

# THE COMPANIES ACT 1984

## ACT NO 57 OF 1984

### I assent

#### ARRANGEMENT OF SECTIONS

#### PART 1 - PRELIMINARY

##### Section

- |                        |                            |
|------------------------|----------------------------|
| 1. Short title.        | 5. Protection of officers  |
| 2. Interpretation.     | 6. Delegation of powers    |
| 3. Application of Act. | 7. General powers of Court |
| 4. The Registrar.      | 8. Evidence                |

#### PART II - FORMATION AND REGISTRATION OF COMPANIES

- |   |  |
|---|--|
| 9. Formation and nature of companies.       | 18. Power to dispense with "Limited".          |
| 10. Restrictions on formation of companies. | 19. Registration of companies.                 |
| 11. Name of company.                        | 20. Effect of Memorandum and Articles.         |
| 12. Minimum capital.                        | 21. Copies of Memorandum and Articles.         |
| 12A. Denomination of share capital.         | 22. Company's powers.                          |
| 13. Membership of Holding company.          | 23. Ultra Vires transactions.                  |
| 14. Articles of Association.                | 24. Minimum number of members.                 |
| 15. Requirements as to Memorandum.          | 25. No constructive notice of certain matters. |
| 16. Requirements as to Articles.            |  |
| 17. Form of Memorandum and Articles.        |  |

#### PART III- ALTERATION IN NATURE OR OBJECTS OF COMPANIES

- |  |   |
|--|---|
| 26. Conversion of company limited by shares.<br>to company limited by guarantee. | 30. Alteration of memorandum, generally.                    |
| 27. Conversion of limited and unlimited companies.<br>memorandum.                | 31. Alteration of objects.                                  |
| 28. Conversion of public and private companies.                                  | 32. Alteration of certain provisions of                     |
| 29. Change of name.  | 33. Alteration of articles.                                 |
|  | 34. Effect of alterations on members who do not<br>consent. |

#### PART IV - PROSPECTUSES, SHARES, DEBENTURES AND CHARGES

##### SUB-PART I - AUTHORISED MUTUAL FUNDS AND PRIVATE COMPANIES

- |  |                        |
|--|------------------------|
| 35. Company may be declared<br>Authorised Mutual Fund. | 36. Private companies. |
|--|------------------------|

##### SUB-PART II - PROSPECTUSES AND STATEMENT IN LIEU THEREOF

- |  |  |
|--|--|
| 37. Requirements of a prospectus.<br>prospectus          | 43. Civil liability for mis-statement in |
| 38. Advertisement deemed to be prospectus.               | 44. Stop trading order.                  |
| 39. Documents deemed to be prospectus.                   | 45. Waiting period.                      |
| 40. Forms and content of prospectus.                     | 46. Statement in lieu of prospectus      |
| 41. Over-subscription in debenture issue.<br>business in | 47. Restrictions on commencement of      |
| 42. Allotment by reference to stock exchange.            | certain circumstances.                   |

**SUB-PART III -SHARES**

- |   |  |
|---|--|
| 48. Allotment and minimum subscription.     | shares.  |
| 49. Return of Allotment.                    | 60. Redeemable preference shares.                  |
| 50. Shares not paid for in cash.            | 61. Validation of shares improperly issued.        |
| 51. Difference in calls and payments        | 62. Reduction of share capital.                    |
| 52. Share warrant.                          | 63. Confirmation of reduction of share capital.    |
| 53. Commission or other allowance.          | 64. Effect of confirmation order.                  |
| 54  | 65. Numbering of shares.                           |
| . Discount.                                 | 66. Evidence of title.                             |
| 55. Share Premium account.                  | 67. Voting rights.                                 |
| 56. Relief from section 55.                 | 68. Disproportionate rights.                       |
| 57. Prohibited transactions in shares.      | 68A Legal regime applicable to an approved company |
| 57A Company may hold its own shares.        | 69. Equal rights to dividend and capital.          |
| 57B Transfer of own shares held by company. | 70. Limitation as to voting rights.                |
| 58. Alteration in number of shares.         | 71. Variation of class rights.                     |
| 59. Financial assistance for acquisition of | 72. Option over unissued shares.                   |
|   | 73. Payment of interest out of capital.            |

**SUB-PART IV - DEBENTURES**

- |  |                                     |
|--|-------------------------------------|
| 74. Debenture holders' representative. | 78. Register of debenture holders.  |
| 75. Special powers of Court.           | 79. Reissue of redeemed debentures. |
| 76. Perpetual debentures.              | 80. Inscription of mortgages.       |
| 77. Debentures to bearer.              |                                     |

**SUB-PART V - CHARGES**

81. Lodging of particulars of charges.

**SUB-PART VI - TITLE AND TRANSFERS**

- |  |  |
|--|--|
| 82. Transfer of shares and debentures.   | register.  |
| 83. Privilege or lien on shares.         | 88. Notice of refusal to enter transfer in register. |
| 84. Loss or destruction of certificates. |  |
| 85. Pledges.                             | 89. Certificate of transfers.                        |
| 86. Instrument of transfer.              | 90. Issue of Certificates.                           |
| 87. Request of transfer for entry in     |  |

**PART V -MANAGEMENT AND ADMINISTRATION OF COMPANIES****SUB-PART I - OFFICE AND NAME**

- |                               |   |
|-------------------------------|---|
| 91. Registered Office.        | 93. Publication of Name.                              |
| 92. Notification to register. | 94. Registrar may direct change of registered office. |

**SUB-PART II - DIRECTORS AND OTHER OFFICERS**

- |  |   |
|--|---|
| 95. Directors.   | 108. Remuneration of officers.              |
| 96. Restrictions on appointment of or advertisement for directors. | 109. Assignment of office.                  |
| 97. Share qualifications of directors.                             | 110. Secretary.                             |
|  | 111. Qualifications of Company Secretaries. |

- |  |  |
|--|--|
| 98. Undischarged bankrupts.  | 112. Standard of care and civil liability of officers.   |
| 99. Voting on appointment of directors.                                | 113. Protection of directors from exclusion from office. |
| 100. Removal of directors.   | 114. Indemnity for officers and auditors.                |
| 101. Powers of directors.  | 115. Register of directors, managers and secretaries.    |
| 102. Duties of Directors.  | 116. Validity of acts of officers.                       |
| 103. Approval of the company.  | 117. Power to restrain persons from managing companies.  |
| 104. Prohibition of tax-free payments to directors.                    | 118. Power to disqualify persons from managing company   |
| 105. Loans to directors.   |  |
| 106. Payments to directors for loss of office or transfer of property. |  |
| 107. Insider trading.  |  |

### SUB-PART III - PROMOTERS AND CONTRACTS

- |                                   |  |
|-----------------------------------|--|
| 119. Pre-incorporation contracts. | 122. Bills of exchange and promissory notes.             |
| 120. Duties of promoters.         | 123. Execution of deeds and use of official seal abroad. |
| 121. Form of contract.            |  |

### SUB-PART IV - MEETINGS AND PROCEEDINGS

- |  |  |
|--|--|
| 124. Entries in minute Book.                       | 132. Circulation of Members' resolution.             |
| 125. Annual General Meeting.                       | 133. Ordinary resolutions.                           |
| 126. Extraordinary general meeting on requisition. | 134. Special resolution.                             |
| 127. Calling of meetings.                          | 135. Resolution requiring special notice.            |
| 128. Right to demand a poll.                       | 136. Lodging of copies of resolution and agreements. |
| 129. Procedure at meetings.                        | 137. Resolutions at adjourned meetings.              |
| 130. Proxies.                                      | 138. Minutes of proceedings.                         |
| 131. Power of Court to Order meeting               | 139. Inspection of minute books.                     |

### SUB-PART V - MEMBER'S REGISTER

- |   |  |
|---|--|
| 140. Register of Index.                   | 144. Branch registers.                     |
| 141. Place where register and index kept. | 145. Trusts.                               |
| 142. Inspection and closing of register.  | 146. Register of substantial shareholders. |
| 143. Rectification of register.           |  |

### SUB-PART VI - ANNUAL RETURN

- |   |  |
|---|--|
| 147. Annual return by a company having a share capital. | 149. Annual return by private companies. |
| 148. Annual return by a company limited by guarantee.   | 150. Annual return by public companies.  |

## PART VI - ACCOUNTS AND AUDIT

### SUB-PART I - ACCOUNTS

- 151. Keeping of accounts
- 151A. Keeping of accounts in foreign currency
- 152. Accounting periods for group accounts
- 153. Date of closing of financial year.
- 154. Profit and loss account and balance sheet.
- 155. Laying of group accounts before holding company.
- 156. Requirements of Sixth Schedule.
- 157. Signing of accounts and Directors' report.
- 158. Members' entitlement to accounts.
- 159. Exemption from provisions of this Sub-Part.
- 160. Duty to give information.

**SUB-PART II - AUDIT**

- |  |   |
|--|---|
| 161. Qualifications for appointment as auditor.                                | non-exempt private companies.   |
| 162. Approved auditors.  | 169. Right of auditor who resigns to requisition meeting of company, etc. |
| 163. Persons who may be appointed auditors.                                    | 170. Exempt private companies.  |
| 164. Appointment of auditors.  | 171. Auditors' remuneration.  |
| 165. Nomination for appointment as auditors.                                   | 172. Audit of accounts.   |
| 166. Removal of auditors.  | 173. Duties of auditors towards debenture holders' representative.        |
| 167. Supplementary provisions relating to appointment and removal of auditors. |   |
| 168. Resignation of auditors in public and                                     |   |

**PART VII - ARRANGEMENTS AND RECONSTRUCTION**

- |   |  |
|---|--|
| 174. Compromise or arrangement with schemes.<br>creditors or members. | 180. Orders to protect rights under takeover |
| 175. Summoning of meetings.   | 181. Non-compliance due to inadvertence etc. |
| 176. Reconstruction and amalgamation of companies.<br>members.        | 182. Other powers of Court.                  |
| 177. Take-over schemes.   | 183. Acquisition of shares of dissenting     |
| 178. Variation of take-over offers.                                   |  |
| 179. Statement as to proposed take-over offers.                       |  |

**PART VIII - PROTECTION OF MINORITIES**

- |                                    |                          |
|------------------------------------|--------------------------|
| 184. Remedy in cases of oppression | 186. Restraining orders. |
| 185. Representative actions.       | 187. Order for costs.    |

**PART IX - RECEIVERS AND MANAGERS**

- |   |   |
|---|---|
| 188. Appointment of receiver.   | manager.  |
| 189. Qualification for appointment as receiver or<br>manager.                                 | 194. Statement that receiver or manager<br>appointed.                           |
| 190. Appointment of liquidator as receiver or<br>manager and application by liquidator.       | 195. Information where receiver or manager<br>appointed and use of common seal. |
| 191. Liability and application to Court and<br>powers of receiver to make calls on<br>shares. | 196. Statement submitted to receiver or<br>manager.                             |
| 192. Remuneration of receivers and managers.  | 197. Lodging of accounts of receivers and<br>managers.                          |
| 193. Notification of appointment of receiver<br>or  | 198. Payment of debts subject to floating<br>charge.                            |
|   | 199. Default by receiver or manager.  |

**PART X - INVESTIGATIONS**

- |  |   |
|--|---|
| 200. Qualifications of inspectors.         | 207. Investigation of financial or other<br>control of corporation. |
| 201. Declared companies.                   | 208. Procedure and powers of inspector.                             |
| 202. Investigation of declared companies.  | 209. Cost of investigations.  |
| 203. Investigation of other companies.     |   |
| 204. Inspectors' Report.                   |   |
| 205. Investigation at Company's request.   |   |
| 206. Investigation of related corporation. | 210. Report of inspector admissible in                              |

evidence.  
 211. Suspension of proceedings in relation to  
       declared company.  
 212. Power to require information as to persons  
       interested in shares or debentures.

213. Power to impose restrictions on shares or  
       debentures.  
 214. Inspectors appointed in other countries.

## PART XI - WINDING UP

### SUB-PART I-GENERAL

215. Modes of winding up.

### SUB- PART II- WINDING UP BY THE COURT

216. Petition for winding up.  
 217. Commencement of winding up.  
 218. Preliminary costs.  
 219. Powers of Court and effect of winding up order.  
 220. Proceedings against company.  
 221. Property of company.  
 222. Lodging and service of order.  
 223. Appointment of liquidator.  
 224. Liquidator other than official Receiver.  
 225. Control of liquidators.  
 226. General provisions as to liquidators.  
 227. Custody and vesting of company's property.  
 228. Statement of company's affairs.  
 229. Liquidator's report.  
 230. Powers of liquidator.  
 231. Company may be required to contribute to debts of related company  
 232. Pooling of assets of related companies.  
 233. Guidelines for orders to contribute or pool assets.

234. Modalities of winding up.  
 235. Payment into bank by liquidator.  
 236. Release of liquidator and dissolution of company.  
 237. Committee of inspection.  
 238. Constitution and proceedings of committee of of inspection.  
 239. Power to stay winding up.  
 240. List of contributories.  
 241. Liability of presents and past members.  
 242. Nature of liability.  
 243. Death or Bankruptcy of of Contributory.  
 244. Payment of debts due by contributory.  
 245. Special manager.  
 246. Receiver for debenture holders or creditors.  
 247. Creditors' claims and distribution of assets.  
 248. Other powers of Court.  
 249. Powers of arrest.  
 250. Foreign companies.

### SUB-PART III - VOLUNTARY WINDING UP

#### *A. Before winding up*

251. Circumstances for voluntary winding up.

252. Effect of voluntary winding up.

#### *B. Members' winding up*

253. Declaration of solvency.  
 254. Liquidation in Members' winding up.

255. Insolvency of company.

### C. Creditors Winding up

- |  |                                |
|--|--------------------------------|
| 256. Creditors' meeting.                   | 258. Committee of inspection.  |
| 257. Liquidators in creditors' winding up. | 259. Property and proceedings. |

### D. After Winding up

- |   |   |
|---|---|
| 260. Distribution of property.                                  | 264. Annual meeting of members and creditors. |
| 261. Appointment, remuneration, acts and removal of liquidator. | 265. Final meeting and dissolution.           |
| 262. Powers and duties of liquidator.                           | 266. Arrangement binding on creditors.        |
| 263. Consideration for sale of company's property.              | 267. Application to Court.                    |
|   | 268. Costs.                                   |

## SUB-PART IV - PROVISIONS APPLICABLE TO EVERY WINDING UP

- |  |   |
|--|---|
| 269. Liquidator.                                       | 280. Resolutions at adjourned meetings or creditors and contributories. |
| 270. Powers of Official Receiver.                      | 281. Meetings to ascertain wishes of creditors or contributories.       |
| 271. Notice of appointment and address of liquidator.  | 282. Proof of debts.  |
| 272. Service on liquidator and company.                | 283. Priorities.  |
| 273. Liquidator's account.                             | 284. Undue Preference.  |
| 274. Default by liquidator.                            | 285. Liquidators' right in respect of certain sales to or by company.   |
| 275. Notification of liquidation.                      | 286. Disclaimer of onerous property.                                    |
| 276. Books of company.                                 | 287. Rights of creditor as execution or attachment.                     |
| 277. Investment of surplus funds.                      | 288. Movables taken in execution.                                       |
| 278. Unclaimed assets.                                 |   |
| 279. Expenses of winding up where assets insufficient. |   |

## SUB-PART V - DISSOLUTION

- |   |   |
|---|---|
| 289. Powers of Court.                                     | defunct company.                                    |
| 290. Striking defunct company off register.               | 293. Disposal of outstanding interest.              |
| 291. Official Receiver to act in lieu of defunct company. | 294. Liability of Official Receiver as to property. |
| 292. Vesting of outstanding assets of                     | 295. Accounts and audit.                            |

## SUB-PART VI - ALTERNATIVE SIMPLIFIED PROCEDURE FOR VOLUNTARY WINDING UP OF SOLVENT COMPANIES

296. Alternative simplified procedure for voluntary winding up of solvent companies.

## SUB-PART VII - WINDING UP OF UNREGISTERED CORPORATION

- |                                   |                          |
|-----------------------------------|--------------------------|
| 297. Application of this Part.    | 300. Power of Court.     |
| 298. Circumstances of winding up. | 301. Outstanding assets. |
| 299. Contributories.              |                          |

## PART XII - FOREIGN COMPANIES

- |   |  |
|---|--|
| 302. Application of this Part.                | 308. Fee payable on registration of foreign company. |
| 303. Registration of foreign companies.       | 309. Name and country of incorporation.              |
| 304. Registered office and authorized agents. | 310. Service of notices.                             |
| 305. Return of alterations.                   | 311. Branch registers.                               |
| 306. Registrar's Certificate.                 | 311A. Cessation of business in Mauritius.            |
| 307. Balance sheets.                          |  |

## PART XIII - MISCELLANEOUS

- |   |  |
|---|--|
| 312. Service of documents.  | 331. Other offences  |
| 313. Prohibition of large partnerships.   | 332. Jurisdiction.   |
| 314. Disposal of unclaimed shares.  | 333. Penalties.  |
| 315. Civil Liability.   | 334. Liability of certain persons.                               |
| 316. Power to grant relief.   | 335. Reports of offences.  |
| 317. Irregularities in proceedings.   | 336. Production and inspection of books where offence suspected. |
| 318. Inspection of documents.   | 337. Costs in actions by limited companies.                      |
| 319. Translation of instruments.  | 338. Copies of documents.  |
| 320. Offences relating to liquidation.  | 339. Arbitration.  |
| 321. Inducement to be appointed liquidator.   | 340. Fees.   |
| 322. Interference with books.   | 341. Rules.  |
| 323. Failure to keep accounts.  | 342. Prescribed forms.   |
| 324. Contracting debt with no reasonable or probable ground of expectation of ability to pay. | 343. Regulations.  |
| 325. Offers of shares or debentures.  | 344. Amendment of Schedules.                                     |
| 326. False and misleading statement.  | 345. Fees paid to company.                                       |
| 327. Statement by officers.   | 346. Repeals.  |
| 328. Deceptive inducements.   | 347. Transitional provisions.                                    |
| 329. Use of word "Limited".   | 348. Company Law Advisory Committee.                             |
| 330. Fraud by officers  | 349. Commencement.   |

**An Act**

**To amend and consolidate the law relating to companies**

ENACTED by the Parliament of Mauritius, as follows -

**1. Short Title.**

This Act may be cited as the Companies Act 1984.

PART I - PRELIMINARY

**2 Interpretation.**

(1) In this Act -

"accounts" - means financial statements which include balance sheet, profit and loss account, statement of source and application of funds, notes and other statements, which collectively are intended to give a true and fair view of the affairs of the company;

"agency deed" -

(a) means a deed executed by a company and a debenture holders' representative in relation to the issue of debentures; and

(b) includes a supplemental document, resolution or scheme of arrangement modifying the terms of the deed and a deed substituted therefor;

"annual general meeting" means the meeting of a company required to be held by section 125;

"annual return"-

(a) means -

(i) in relation to a company having a share capital, the return required to be made by section 147;

(ii) in relation to a company limited by guarantee, the return required to be made by section 148; and

(b) includes any document attached to or intended to be read with the return;

"approved valuer" means -

- (a) a qualified auditor;
- (b) a land surveyor;
- (c) a registered professional engineer;
- (d) a qualified architect;
- (e) a chartered quantity surveyor;
- (f) a chartered surveyor;
- (g) any other person designated as such by the Minister, by public notice;

"arrangement" includes a re-organisation of the share capital of a company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both these methods;

"articles" -

- (a) means the articles of association of a company; and
- (b) includes, so far as they apply to the company, the provisions contained in Table A of the Fourth Schedule to the Companies Act 1913 or in Table A and Table B of the First Schedule to this Act;

"associated corporation" with reference to a company means a corporation the Board of Directors or managing body of which can be appointed or removed by exercise of power whether by vote or by contract by persons or their nominees, which persons are the same persons as those who hold by themselves or their nominees not less than half the voting shares in the company.

"authorised agent" means a person named in a memorandum of appointment or power of attorney lodged under section 303(1)(e) or 304(6);

"authorised mutual fund" means a company which is declared as such under section 35;

"banking company" means a bank licensed under the Banking Act;

"book" includes any account, deed, writing or document, and any other record of information however compiled, recorded or stored;

"borrowing company" means a company that is or will be under a liability to repay any money received or to be received by it in response to an invitation to the public to subscribe for or purchase debentures;

"branch register" means -

- (a) in relation to a company, a branch register of members required to be kept by section 144;
- (b) in relation to a foreign company, a branch register of members required to be kept by section 311 ;

"capital redemption reserve" means the reserve required to be kept by section 60;

"carrying on business" for the purposes of Part XII includes establishing or using a share transfer or share registration office or administering, managing or otherwise dealing with property situated in Mauritius as an agent or other personal representative;

"certified" means -

- (a) in relation to a copy or extract of a document, certified in the prescribed manner to be a true copy or extract of the document; and
- (b) in relation to a translation of a document, certified in the prescribed manner to be a correct translation of the document into the English or French language;
- (c) the "prescribed manner" for the purposes of this definition means the manner provided by section 338 of this Act or by section 181A of the Courts Act;

"charge" means -

- (a) (i) a mortgage;
- (ii) a fixed or floating charge made under Articles 2202 to 2202-55 of the Code Napoleon;
- (iii) a deposit of a share or debenture certificate made under Articles 2129-1 to 2129-6 of the Code Napoleon;
- (iv) a pledge of shares or debentures;
- (v) a lien over a Motor Vehicle under Articles 2100 to 2111 of the Code Napoleon (Du gage sans déplacement sur les véhicules automobiles);

- (vi) A lien over plant and equipment under Articles 2112 to 2129 of the Code Napoleon (Du gage sans déplacement sur l'outillage et matériel d'équipement professionnel, industriel ou agricole);
  - (vii) a charge on a ship or aircraft;
  - (viii) an agreement to give a charge; and
  - (ix) any attachment on the proceeds to be paid by the Sugar Syndicate.
- (b) does not include -
- (i) a hire-purchase agreement;
  - (ii) rents, rent-charges and annuities granted or reserved out of land;

"Companies Liquidation Account" means the account required to be kept by section 278;

this "company" means a company formed and registered under Act or an existing company; and

- (i) includes an offshore company

"company holding and export or development certificate" means a company holding a certificate under the Export Service Zone Act or the Export Processing Zones Act, or the Development Incentives Act or the Hotel Management (Incentives) Act 1982;

"Company Law Advisory Committee" means the committee set up under section 348;

"company limited by guarantee" means a company formed on the principle of having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;

"company limited by shares" means a company formed on the principle of having the liability of its members limited by the memorandum to any amount unpaid on the shares respectively held by them;

"contractor" in Sub Part III of Part V, means a person who enters into a pre-incorporation contract on behalf of a company prior to its incorporation;

"contributory" -

- (a) means a person liable to contribute to the assets of a company in the event of its being wound up, and
- (b) includes the holder of fully paid shares in the company;

"corporation" -

- (a) means a body corporate, including a foreign company or a partnership formed or incorporated or existing in Mauritius or elsewhere, and
- (b) does not include -
  - (i) a statutory corporation;
  - (ii) a corporation sole;
  - (iii) a registered co-operative society;
  - (iv) a trade union; or
  - (v) a registered association;

"Court" means the Bankruptcy Division of the Supreme Court;

"creditors' winding up" means a winding up carried out under Sub-Part III of Part XI other than a members' voluntary winding-up;

"Curator" means the Curator appointed under the Curatelle Act;

"date of incorporation" means the date of registration of the company;

"debenture" means -

- (a) a written acknowledgement of indebtedness issued by a company in respect of a loan made or to be made to it or to any other person or money deposited or to be deposited with the company or any other person or the existing indebtedness of the company or any other person whether constituting a charge on any of the assets of the company or not;
- (b) includes -
  - (i) debenture stock;
  - (ii) convertible debenture;
  - (iii) a bond or an obligation;
  - (iv) loan stock;

- (v) an unsecured note; or
  - (vi) any other instrument executed, authenticated, issued or created in consideration of such a loan or existing indebtedness; and";
- (c) does not include -
- (i) a bill of exchange;
  - (ii) a promissory note;
  - (iii) a letter of credit;
  - (iv) an acknowledgement of indebtedness issued in the ordinary course of business for goods or services supplied;
  - (v) a policy of insurance; or
  - (vi) a deposit certificate, pass book or other similar document issued in connection with a deposit or current account at a banking company;

"debenture holders' representative" means a person designated as such in an agency deed;

"debenture stock" means -

- (a) a debenture by which a company or a debenture holders' representative acknowledges that the holder of the stock is entitled to participate in the debt owing by the company under the agency deed; and
- (b) includes loan stock;

"declared company" means a company or a foreign company designated as such under section 201;

"designated country" means a country which, in its own law, contains a provision similar to section 301, and which is designated as such by the Minister by public notice;

"development certificate" means a certificate issued or deemed to have been issued under the Development Incentives Act;

"development company" means a company in relation to which a

development certificate is in force;

"director" -

- (a) means any person occupying the position of director of a company by whatever name called; and
- (b) includes an alternate or substitute director and,

subject to subsection (2) of this section, a person in accordance with whose directions or instructions a director is accustomed to act;

"distribution", in relation to a distribution by a company to a shareholder means

- (a) the direct or indirect transfer of money or property, other than the company's own shares, to, or for the benefit of, the shareholder; or
- (b) the incurring of a debt to, or for the benefit of, the shareholder, in relation to shares held by that shareholder, whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness, or by some other means;

"emoluments" in relation to a director -

- (a) includes a fee, percentage or other payment, and the money value of any consideration, allowance or perquisite, given directly or indirectly, to him in relation to the management of the affairs of the company or of a related company, whether as a director or otherwise; and
- (b) does not include an amount given in payment or reimbursement of out-of-pocket expenses incurred for the benefit of the company;

"employee" means a person who has entered into, or works, in Mauritius, under an agreement or a contract of service or apprenticeship with a company, whether by way of manual labour, clerical or managerial work, or otherwise, and however remunerated;

"executive" means an employee who has been given responsibility for some section of the activities of the company;

"executive director" means a director who is in the whole time

service of the company and has been given responsibility for some section of its activities;

"exempt private company" has the meaning given in subsection (12) of this section;

"expert" means an approved valuer or any other person whose profession gives authority to a statement made by him;

"export enterprise" has the same meaning as in the Export Processing Zones Act;

"Financial year" means the year in respect of which the accounts of the company or corporation, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or corporation terminates, the accounts have been made up for a greater or lesser period than a year, that greater or lesser period shall be deemed to be a financial year; and such period shall not in the case of the first financial year of a company be more than 15 months from its date of incorporation";

"firm" means the association formed by persons who enter into a partnership or societe not registered under this Act or the Companies Act 1913;

"floating charge" has the meaning given in the Code Napoleon;

"foreign company" means a body of persons formed outside Mauritius which does not have its principal place of business or head office in Mauritius and which -

- (a) is a body corporate in its place of incorporation; or
- (b) under the law of its place of formation may sue and be sued, or hold property in the name of an officer of the body duly appointed for that purpose;

"group accounts" means the accounts required to be furnished by section 155;

"group of companies" means two or more companies one of which is the holding company of the other or others;

"guarantor company" means a company that has agreed to guarantee the repayment of any money received or to be received by a borrowing company in response to an invitation to the public to subscribe for or purchase debentures;

"heir" includes a legatee, an executor and a personal representative;

"hire-purchase agreement" has the same meaning as in the Hire Purchase (Credit Sales) Act;

"holding company" has the meaning given by subsection (5)(c);

"inspector" means a qualified person in terms of section 200 who is appointed to carry out an investigation under Part X;

"insurance company" means a company registered under the Insurance Act;

"limited company" means -

- (a) a company limited by shares or by guarantee; and
- (b) in the case of a company incorporated before the commencement of this Act, a company limited both by shares and by guarantee;

"liquidator" includes the Official Receiver acting as the liquidator;

"lodged" means lodged with the Registrar;

"manager" means -

- (a) in Part IX, a person appointed under that Part to carry on a company's activities and dispose of its undertaking;
- (b) in any other Part, the principal executive of a company, whether or not he is a director;

"member" has the meaning given to it by section 19(6);

"members' register" means the register required to be kept by section 140;

"members' winding up" means a winding up carried out under Sub-Part III of Part XI where a declaration of solvency has been made and lodged under section 253;

"memorandum" means the memorandum of association of a company;

"minimum subscription", in relation to a share offered to the public for subscription, means the amount stated in the prospectus, in accordance with paragraph 4(a) of the Second Schedule, as being the minimum amount which, in the opinion of the directors, must be raised by the issue of the shares so offered;

"Minister" means the Minister to whom responsibility for the subject of Finance is assigned;

"nominee" means a person who, in exercising a right in relation to a share, debenture or other property, is entitled to exercise that right only in accordance with instructions given by some other person either directly or through the agency of one or more persons, and a person is the nominee of another person where he is entitled to exercise such a right only in accordance with instructions given by that other person;

a "non-resident" means any person in any of the following categories:-

- (a) a person who does not normally reside or carry on business in Mauritius;
- (b) a person who is a non-resident for the purposes of the Exchange Control Act;

"offer" includes an invitation to make an offer;

"offeree" means a holder of shares which are included in a take-over offer;

"offeree company" means a company whose shares are proposed to be acquired under a take-over scheme;

"offeror" means a person who makes a take-over offer, whether alone or jointly with another person;

"officer", in relation to a corporation -

- (a) includes -
  - (i) a director, a secretary or an executive;
  - (ii) a receiver or manager of any part of the undertaking of the company appointed under a power contained in an instrument;
  - (iii) a liquidator appointed in a voluntary winding up;
- (b) does not include -
  - (i) a receiver who is not also a manager;
  - (ii) a receiver and manager appointed by the Court; or
  - (iii) a liquidator appointed by the Court or by the creditors;

"ordinary resolution" has the meaning given by section 133(2);

"ordinary share" means a share which is not a preference share or participating preference share;

"Offshore Certificate" means a certificate issued pursuant to section 311 D;

"Offshore company" means any company, including a foreign company, that is granted an "Offshore Certificate" under Section 311D.;

"Offshore Companies Committee" means the Committee established under section 311C;

"Secretary for Offshore Companies" means the secretary appointed under section 311 C;

"participating preference share" means a preference share which entitles the holder -

- (a) in addition to a preferential dividend, to participate for dividend in any surplus profits with the ordinary shareholders once the ordinary shareholders have received the equivalent of the preferential dividend; and/or
- (b) in addition to a preferential right to repayment on a winding up, to participate with the ordinary shareholders in any surplus which may remain after the paid up capital has been repaid;

"partnership" means any civil or commercial partnership including a societe not registered under this Act or Companies Act 1913;

"person concerned" in relation to a corporation, includes -

- (a) a person who is or has been employed by a corporation as a director, banker, auditor, attorney-at-law, notary or otherwise;
- (b) a person who, or in relation to whom there are reasonable grounds for suspecting that he -
  - (i) has in his possession any property of the corporation;
  - (ii) is indebted to the corporation; or

(iii) is able to give information concerning the promotion, formation, management, dealing, affairs or property of the corporation;

"petition" means a petition for the winding up of a company;

"preference share" means a share which entitles the holder to a dividend of a fixed amount, or not exceeding a fixed amount, whether cumulative or not, and, in a winding up, to repayment of capital, in priority to any other class of shares, but which confers no other rights in respect of dividend or capital;

"pre-incorporation contract" means a contract entered into by a contractor in the name of or on behalf of a proposed company before its incorporation;

"printed" includes typewritten or lithographed or reproduced by any mechanical, electronic, photographic or other process;

"private company" means a company which -

- (a) by its articles restricts the right to transfer its share;
- (b) subject to subsection (10) of this section has not more than 25 members provided that where 2 or more of its members hold one or more shares jointly they shall be deemed to be one member; and
- (c) is prohibited by section 36 from making any invitation to the public to subscribe for any of its shares or debentures;

"profit and loss account" includes income and expenditure account, revenue account or any other account showing the results of the business of a company for a period;

"promoter" -

- (a) means a person who is or has been engaged or interested in the formation of a company;
- (b) does not include a person acting in a professional capacity for persons engaged in procuring the formation of a company;

"prospectus" -

- (a) means a notice, circular, advertisement or request

inviting applications or offers from the public to subscribe for or purchase, or offering to the public for subscription or purchase, a share in or debenture of a company or proposed company; and

(b) includes a statement attached to or intended to be read with the prospectus;

"qualified auditor" means a person who is qualified to be appointed as an auditor under section 161;

"registered" means registered under this Act or the Companies Act 1913;

"registered association" has the same meaning as in the Registration of Associations Act;

"registered office" means the premises required to be kept by a company under section 91;

"registered co-operative society" has the same meaning as in the Cooperative Societies Act;

"Registrar" means the Registrar of Companies or any other person performing the duties of the Registrar of Companies;

"related corporation" in relation to a corporation means a corporation that is deemed to be related to the first-mentioned corporation by virtue of subsection (7) of this section;

"relative" means spouse, child, stepchild, adopted child, parent, stepparent, adoptive parent, grandparent, brother, sister, nephew, niece, first cousin or grandchild;

"resolution" when not otherwise qualified means an ordinary resolution;

"revenue reserve" means any reserve which is regarded as free for distribution through the profit and loss account;

"ruling Bank Rate" is the minimum discount and advance rate published by the Bank of Mauritius under section 14 of the Bank of Mauritius Act;

"securities" has the same meaning as in the Stock Exchange Act 1988;

"share" -

(a) means a share in the share capital of a company; and

(b) includes stock into which shares have been converted before the commencement of this Act;

"share premium account" means the account referred to in section 55;

"shareholder" has

- (a) the meaning given to it by section 19(7);
- (b) includes, in the case of an Offshore Company, a nominee;

"special notice" means a notice which satisfies the requirements of section 135;

"special resolution" has the meaning given by section 134;

"specified company" means a banking company or any other company which the Minister may, by notice, published in the Gazette, declare to be a specified company for the purposes of Sub-Part II of Part IV;

"Stock Exchange" means a stock exchange established under the Stock Exchange Act 1988 or any other stock exchange outside Mauritius;

"Stock Exchange Commission" means the Stock Exchange Commission set up under the Stock Exchange Act 1988;

"Stock market" means such primary and secondary or other stock market as may be established under the Stock Exchange Act 1988;

"subsidiary" has the meaning given by subsection (5)(a) of this section;

"substantial shareholder" means a person, in Mauritius or elsewhere, who holds by himself or by his nominee, a share or an interest in a share which entitles him to exercise not less than five per cent of the aggregate voting power exercisable at a general meeting;

"take-over offer" means an offer or proposed offer for the acquisition of shares in a take-over scheme;

"take-over scheme" means a scheme involving the making of an offer for the acquisition of shares which, together with any share to which the offeror is beneficially entitled, including

- (a) shares which he is or will be entitled to acquire on the fulfillment of a condition or by agreement; and
- (b) where the offeror is a related corporation, shares which any subsidiary or holding company of the offeror or any other subsidiary of the offeror's holding company is or will be entitled to acquire;

carry the right to exercise or control the exercise of more than one-third of the voting power at a general meeting of the offeree company;

"trade union" has the same meaning as in the Industrial Relations Act;

"unanimous resolution" means a resolution which has the assent of every member present in person or by proxy and voting at a meeting to which notice to propose the resolution has been duly given;

"unit" means a unit issued under a unit trust scheme;

"unit trust scheme" means a scheme intended to provide facilities for the participation by a unit holder in the income, profits and gains arising out of the acquisition, holding, management or disposal of securities or other property by a company authorised to set up such a scheme under section 35;

"unlimited company" means a company formed on the principle of having no limit placed on the liability of its members;

"unregistered corporation"

- (a) includes a foreign company or any association or body of two or more persons;

- (b) does not include a company;

"voting right" for the purposes of section 67, 68, 69 and 347 (9) to (14) means a right to receive notices of and attend any general meeting of the company and to speak and vote in respect of the share held by the shareholder on resolutions placed before the meeting;

"wholly owned subsidiary" has the meaning given by subsection (6) of this section;

"winding-up resolution" means a resolution passed for the winding up of a company;

"year" means a calendar year.

- (2) A person shall not be deemed to be, within the meaning of any provision of this Act, a person in accordance with whose directions or instructions the directors of a company are accustomed to act by reason only that the directors of the company act on advice given by him in a professional capacity.
- (3) (a) An invitation to the public to deposit money with or to lend money to a company shall be deemed to be an invitation to subscribe for or purchase debentures of the company.
- (b) Any document that is issued or intended or required to be issued by a company acknowledging or evidencing or constituting an acknowledgement of the indebtedness of the company in respect of any money that is or may be deposited with or lent to the company in response to an invitation under paragraph (a) shall be deemed to be a debenture.
- (c) An invitation to the public by a specified company shall not be deemed to be an invitation to the public to deposit money with or to lend money to the company.
- (4) A reference in this Act to offering shares or debentures to the public shall, unless the contrary intention appears, be construed as including a reference to offering them to any section of the public, whether selected as clients of the person issuing the prospectus or in any other manner, and notwithstanding that the offer is capable of acceptance only by each person to whom it is made or that an offer or application may be made pursuant to the invitation only by a person to whom the invitation is issued, but a *bona fide* offer with respect to shares or debentures shall not be deemed to be an offer to the public if it is -
- (a) an offer to enter into an underwriting agreement;
- (b) made to a person whose ordinary business is to buy or sell shares or debentures whether as principal or agent;
- (c) made to existing members or debenture holders of a company and relates to shares in or debentures of that company; or
- (d) made to members under section 263.
- (5) (a) Subject to paragraph (b), a corporation shall be

deemed to be a subsidiary of another corporation where -

- (i) that other corporation -
    - (A) controls the composition of the Board of Directors of the first-mentioned corporation; or
    - (B) controls more than half of the voting power at a general meeting of the first-mentioned corporation; or
    - (C) holds more than half of the issued share capital of the first-mentioned corporation which does not consist of preference shares; or
  - (ii) the first-mentioned corporation is a subsidiary of any corporation which is that other corporation's subsidiary.
- (b) (i) Subject to sub-paragraph (ii), any share held or power exercisable -
- (A) by a person as a nominee for a corporation; or
  - (B) by, or by a nominee for, a subsidiary of a corporation, shall be treated as held or exercisable by that corporation.
- (ii) Any share held or power exercisable by, or by a nominee for, a corporation or its subsidiary shall be deemed not to be held or exercisable by the corporation if the ordinary business of the corporation or its subsidiary, as the case may be, includes the lending of money and the share is held or the power is exercisable by way of security only for the purposes of a transaction entered into in the ordinary course of that business.
- (c) Where a corporation is a subsidiary of another corporation, that latter corporation shall be the holding company of its subsidiary.

- (d) For the purposes of this Act a corporation is "the ultimate holding company" of another corporation if -
- (i) the other corporation is a subsidiary of the first mentioned corporation; and
  - (ii) the first mentioned corporation is not itself a subsidiary of any corporation.
- (e) For the purposes of this Act "the ultimate holding company in Mauritius" in relation to a company incorporated in Mauritius means a holding company which is not a subsidiary of a corporation incorporated in Mauritius.
- (6) A company shall be deemed to be the wholly-owned subsidiary of another corporation if the members of the company do not include any person apart from -
- (a) that other corporation;
  - (b) a nominee of that other corporation;
  - (c) a subsidiary of that other corporation being a subsidiary the members of which do not include any person apart from that other corporation or a nominee of that other corporation; or
  - (d) a nominee of such a subsidiary.
- (7) Where a corporation is -
- (a) the holding company of another corporation;
  - (b) a subsidiary of another corporation;
  - (c) a subsidiary of the holding company of another corporation; or
  - (d) the associated corporation of another corporation,
- the first-mentioned corporation and that other corporation shall be deemed to be related to each other and each is a related corporation of the other.
- (8) (a) Subject to paragraph (b), a person shall be deemed to have an interest in shares or debentures, whether or not the interest is held jointly with another person, where -

- (i) a corporation holds them or has any right in or over them and that corporation or its directors are accustomed to act in accordance with his directions or instructions, or he is entitled to exercise, or control the exercise of, one-third or more of the voting power at a general meeting of that corporation;
  - (ii) his spouse, not being a director of the corporation, or his minor child, step-child or adopted child holds or has an interest in the shares or debentures;
  - (iii) he has agreed to purchase the shares or debentures or an interest therein;
  - (iv) he otherwise has a right to have the shares or debentures or an interest therein transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfillment of a condition or not;
  - (v) he has a right to acquire the shares or debentures or an interest therein under an option, whether the right is exercisable presently or in the future and whether on the fulfillment of a condition or not; or
  - (vi) in the case of a share of which he is not the registered holder, he is entitled, otherwise than by reason of his having been appointed as proxy or representative to vote at a meeting of members of a corporation or of a class of its members, to exercise, or control the exercise of, a right attached to the shares.
- (b) A person whose ordinary business includes the lending of money shall not be deemed to hold an interest in shares or debentures if he holds the interest only by way of security for the purpose of a transaction entered into in the ordinary course of that business.
- (9) For the purposes of sections 57, 62, 63 and 64, any issued share capital includes the share premium account and any capital redemption reserve.
- (10) For the purposes of determining whether the number of members of a private company exceeds twenty-five, no account shall be taken of persons who are members under a scheme for employee participation.

- (11) A company shall be deemed to be unable to pay its debts when -
- (a) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding one thousand rupees then due has served on the company by leaving at the registered office a demand under his hand or under the hand of his lawfully authorised agent requiring the company to pay the sum 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;
  - (b) execution or other process issued on a judgment or order of any Court in favour of a creditor of the company is returned unsatisfied; or
  - (c) it is proved to the satisfaction of the Court that the company is unable to pay its debts, having regard to its existing, contingent and prospective liabilities.
- (12) (a) A company shall be an 'exempt private company' where it is a private company which in respect of its last preceding financial year satisfied both of the following criteria -
- (i) the issued share capital and reserves of the company are less than Rs 2 million or such other amount as may be prescribed;
  - (ii) the turnover is less than Rs 4 million or such other amount as may be prescribed.
- (b) A private company which is not an exempt private company is a non-exempt private company.
  - (c) In the application of this subsection to any period which is a financial year of a company but not in fact a year, the maximum figure for turnover in paragraph (a) (ii) above shall be proportionately adjusted.
  - (d) A private company which is incorporated after the commencement of this Act shall qualify as an exempt private company in respect of its first financial year if it satisfies both the relevant qualifying criteria in respect of that year.

### 3. Application of Act.

The provisions of Part XI relating to any remedy against the property of a company, the priorities of debts and the effect of an arrangement with creditors shall bind the Crown.

### 4. The Registrar.

(1) The Minister shall designate a public officer to be the Registrar of Companies, and may designate other public officers to assist the Registrar in the exercise of his functions under this Act.

(2) For the purpose of ascertaining whether a company or an officer is complying with this Act or any subsidiary enactment made under this Act, the Registrar may, on giving seventy-two hours written notice to the company, call for the production of or inspect any book required to be kept by the company.

(3) The Registrar shall keep such registers as he considers necessary in such form as he thinks fit.

(4) Any person may -

(a) inspect a document which has been lodged; or

(b) require a certificate of the registration of a company or any other certificate issued under this Act or a copy of or extract from any document which has been lodged to be given or certified by the Registrar.

(5) (a) Where the Registrar is of opinion that a document submitted to him to be lodged -

(i) contains matter contrary to law;

(ii) is, by reason of an omission or misdescription, not complete;

(iii) does not comply with the requirements of this Act or of any subsidiary enactment made under this Act; or

(iv) contains any error, alteration or erasure, he may refuse to accept the document.

- (b) Where the Registrar refuses to accept a document under paragraph (a) he shall, within 14 days, give written notice in that behalf to the person who submitted the document and may require him to -
    - (i) resubmit the document duly amended or completed; or
    - (ii) submit a fresh document in its place.
  - (c) Where a document is submitted within the prescribed delay to the Registrar to be lodged, and the document is resubmitted or a fresh document is submitted in its place under paragraph (b) as a and within the delay required by the Registrar, the document shall, in all circumstances, be deemed to have been lodged before the expiration of the time limit prescribed for the lodging of the document.
- (6)
- (a) Where a memorandum or articles or any other document relating to a company required to be lodged, has been lost or destroyed, the company may apply to the Registrar for leave to lodge a copy of the document.
  - (b) On receipt of an application under paragraph (a), the Registrar may direct that a notice in that behalf shall be given to such person and in such manner as he thinks fit.
  - (c) The Registrar may on being satisfied -
    - (i) that the original document has been lost or destroyed;
    - (ii) of the date of the lodging of the document; and
    - (iii) that the copy of the document produced to him is a correct copy, certify on that copy that he is so satisfied and direct that the copy be lodged in the same manner as the original document.
  - (d) The copy shall, on being lodged, from such date as is mentioned in the certificate as the date of the lodging of the original, have the same force and effect as the original.
- (7) Where a person is required by this Act to do any act within a specified time, the Court may, under section 317(4) on good cause being shown, extend the time within which the act is required to be done.

## **5. Protection of officers.**

Every inspector shall, for the purposes of the Public Officers Protection Act, be deemed to be a public officer or person lawfully engaged in the performance of a public duty.

## **6. Delegation of powers.**

The Registrar may delegate any of his duties under this Act to a person referred to in section 4(1).

## **7. General powers of Court.**

- (1) Any person aggrieved by a decision of the Registrar may, within 21 days of the date on which he is notified of the decision, appeal to the Court against the decision, and the Court may confirm, reverse or vary the decision or make such order or give such directions in the matter as it thinks fit.
- (2) Where a person makes default in complying with a requirement of this Act relating to the lodging of a document or the giving of a notice and still fails to make good the default within 14 days from the service on the person of a notice requiring it to be done, the Court may, on the application of the Registrar or the Official Receiver or, if the person making default is a corporation on the application of a member or creditor, make an order directing the person, or if the person making default is a corporation, the corporation or any officer, to make good the default within such time as may be specified in the order.
- (3) Any order under subsection (2) may provide that all costs of and incidental to the application and the order thereon shall be borne by the company or by any officers of the company responsible for the default.
- (4) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default.
- (5) An application under subsection (2) may be made to the District Court in its civil jurisdiction and the District Court may exercise the powers of the Court under that subsection.

## **8. Evidence.**

- (1) A copy of or an extract from a document which has been lodged and which is certified by the Registrar shall be

admissible as evidence in any proceedings of the truth of the contents of the copy or extract.

- (2) A certificate issued by the Registrar that a requirement of this Act has or has not been complied with at or within a specified date shall be admissible in any proceedings as evidence of the matters stated in the certificate.

## **PART II - FORMATION AND REGISTRATION OF COMPANIES**

### **9. Formation and nature of companies.**

- (1) (a) Any 2 or more persons associated for a lawful purpose may, by subscribing their names to a memorandum and complying with the requirements of this Part as to registration, form a company.
- (b) For the purposes of this subsection, 2 or more persons who hold a share jointly shall be deemed to constitute one person.
- (2) Every company shall be -
- (a) a company limited by shares; or
- (b) a company limited by guarantee; or
- (c) an unlimited company.
- (3) (a) Every company shall be a private company or a public company.
- (b) Every company shall be a public company unless it is stated in its memorandum that it is a private company.
- (4) Every company shall be deemed to be a commercial company.

### **10. Restrictions on formation of companies.**

- (1) (a) A company limited by shares and an unlimited company must be registered with shares.
- (b) A company limited by guarantee shall not after the commencement of this Act be registered with shares and shall not create or issue shares.
- (2) A company limited by guarantee shall not-
- (a) be registered -

- (i) for the purpose of carrying on any business that has for its objects the making of profits by the company or its members; or
- (ii) where the total liability of its members to contribute to the assets of the company in the event of its being wound up is less than 5,000 rupees;
- (b) unless it was formed before the commencement of this Act, carry on a business in circumstances which would, by virtue of paragraph (a), not entitle the company to registration.
- (3) A private company shall not be registered if the number of its members exceeds 25.

#### **11. Name of Company.**

- (1) No company including a foreign company shall be registered under a name which is identical with that of an existing company, or statutory corporation, or so nearly resembles that name as to be likely to mislead, except where the existing company or statutory corporation is in the course of being dissolved and signifies its consent in such manner as the Registrar requires.
- (2) Except with the Minister's written consent, no company including a foreign company shall be registered under a name which includes -
  - (a) the word "National", "Regional", "State", "Government", "Authority", "Corporation", "Mauritius" or any other word which in the Registrar's opinion suggests, or is likely to suggest, that it enjoys the patronage of the Government or of a statutory corporation, or of the Government of any other state;
  - (b) the word "Municipal", or "Chartered" or any other word which in the Registrar's opinion suggests, or is likely to suggest, connection with a local authority in Mauritius or elsewhere;
  - (c) the word "cooperative";
  - (d) the word "broadcast", "broadcasting", "diffusion", "rediffusion" or "television";

- (e) the name "Mauritius Television Corporation" or "Voice of Mauritius" or "Mauritius Broadcasting Corporation" or a name which so clearly resembles any of these names as to be likely to be mistaken for them;
  - (f) the words "Chamber of Commerce".
- (3) Except with the consent of the Court no company including a foreign company shall be registered by a name, which in the opinion of the Registrar is undesirable or misleading.
- (4) Where a company, on its first registration or on its registration under a new name, is registered by a name identical with that of an existing company or statutory corporation or so nearly resembling that name as to be likely to mislead, the first-mentioned company -
- (a) may, with the Minister's written consent, change its name; and
  - (b) shall, where the Registrar so directs within 6 months of its being registered by that name, change its name within a period of 28 days from the date of the direction.
- (5) Any person may make a written application to the Registrar for the reservation of a name set out in the application as -
- (a) the name of a proposed company;
  - (b) the name to which a company proposes to change its name; or
  - (c) the name under which a foreign company proposes to be registered, either originally or on change of name.
- (6) Where the Registrar is satisfied that the application is made in good faith and that the proposed name is a name under which the proposed company, company or foreign company could be registered without contravention of subsections (1) to (3), he shall reserve the proposed name for a period of 3 months from the date he issues the notice of reservation of name in the form prescribed in the Tenth Schedule.
- (7) No other company or foreign company shall during the period for which a proposed name is reserved, be

registered, whether originally or on change of name, under the proposed name or under any other name that, in the Registrar's opinion, so closely resembles the proposed name as to be likely to mislead.

- (8) The reservation of a name under this section shall not by itself entitle the proposed company, company or foreign company to be registered under that name, either originally or on change of name.

## **12. Minimum capital.**

- (1) No company having a share capital, other than an unlimited company, shall transact any business, exercise any borrowing powers or incur any indebtedness, except for a purpose incidental to its registration or to the obtaining of subscription to, or payment for, its shares, unless -
- (a) consideration to the value of not less than 25,000 rupees or such higher amount as may be prescribed and if the company is an offshore company, such amount as may be prescribed; and
  - (b) it has furnished to the Registrar a declaration signed by one of the directors or by the secretary, stating that the requirements of paragraph (a) have been complied with.
- (2) For the purposes of subsection (1) no value attributed to the goodwill of a business or to services rendered or to be rendered to a company shall be regarded as consideration for value for the issue of shares.
- (3) For the purpose of subsection 1(a) if the Company is an offshore bank or an offshore company, its shares capital may be denominated in either Mauritian rupees or in any freely convertible foreign currency, as may be approved by the Central Bank.

## **12A. Denomination of share capital**

- (1) Where a company is admitted on the Official List of the Stock Exchange, it may, with the approval of the Registrar, denomination its share capital in a foreign currency.

(2) Where a company has denominated its share capital in accordance with subsection (1), it shall, within 14 days of the date of such denomination, lodge with the Registrar a notice to that effect.

(3) Where the share capital of a company is denominated in a foreign currency, it shall not without the prior approval of the Registrar, change the denomination into another currency.

(b) by inserting immediately after section 151, the following new section.

**13. Membership of holding company.**

(1) Subject to the other provisions of this section, a corporation or its nominee shall not become a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary or to a nominee for the subsidiary shall be void.

(2) (a) Subject to paragraph (b) a subsidiary which is, at the commencement of this Act, a member of its holding company, may continue to be a member.

(b) The subsidiary shall after one year from the commencement of this Act have no right to vote at meetings of the holding company or any class of members thereof.

(3) (a) Subject to paragraph (b), a corporation, which after the commencement of this Act, becomes a subsidiary, may continue to be a member of its holding company, if, at the time when it becomes a subsidiary, it already holds shares in that holding company.

(b) The subsidiary shall -

(i) have no right to vote at meetings of the holding company or of any class of its members; and

(ii) within the period of 12 months or such longer period as the Court may allow after it became the subsidiary of its holding company, dispose of all its shares in the holding company.

(4) Where a subsidiary already holds shares in its holding company, shares in the holding company may be allotted to its subsidiary if the allotment is made -

- (a) by way of capitalization of reserves of the holding company; and
  - (b) to all members of the holding company on a basis which is in direct proportion to the number of shares held by each member in the holding company.
- (5) Where before the commencement of this Act a subsidiary would have been entitled to subscribe for shares in its holding company, the holding company may, on behalf of the subsidiary, sell the shares for which the subsidiary would have been entitled to subscribe.
- (6) For the purposes of this section, "share", in relation to a company limited by guarantee or an unlimited company, includes any interest of its members as such, whatever the form of that interest.
- (7) This section shall not apply to a subsidiary which is concerned as a trustee under a foreign law, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purpose of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

#### **14. Articles of Association.**

The subscribers to a memorandum -

- (a) may, in the case of a company limited by shares;
- (b) shall, in the case of a company limited by guarantee or an unlimited company, cause to be drawn up and signed articles setting out rules for the company.

#### **15. Requirements as to Memorandum.**

- (1) Every memorandum shall be printed, divided into numbered paragraphs and dated and shall state -
- (a) the name of the company, which shall, subject to section 18, include the word "Limited" as the last word of the name in the case of a company limited by shares or guarantee;
  - (b) the objects of the company;
  - (c) in the case of a company having a share capital, the amount of share capital with which the company proposes to be registered and the manner in which it will be divided into shares of a fixed amount;

- (d) in the case of a company limited by shares or guarantee, that the liability of the members is limited;

- (e) in the case of a company limited by guarantee, 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 after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member and of the cost, charges and expenses of winding up, such amount as may be required not exceeding a specified amount;
  - (f) in the case of an unlimited company, that the liability of the members is unlimited;
  - (g) in the case of a private company, that it is a private company;
  - (h) the full names, addresses and descriptions of the subscribers; and
  - (i) that the subscribers are desirous of being formed into a company in pursuance of the memorandum and, where the company is to have a share capital, that they respectively agree to take the number of shares in the capital of the company set out opposite their names.
- (2) Every subscriber to the memorandum shall sign the memorandum.
  - (3) A statement in the memorandum of a company limited by shares that the liability of members is limited shall mean that the liability of the members is limited to any amount unpaid on the shares respectively held by them.
  - (4) The objects of the company to be stated in the memorandum shall be the business or businesses which it is formed to carry on, or the purpose or purposes which the company is formed to achieve, and not more than 4 of such objects shall be stated and shall each be expressed in clear and concise terms.
  - (5) The powers or means by which the company is to attain its objects shall not be set out in the memorandum or articles.

## **16. Requirements as to Articles.**

- (1) Articles shall be printed, divided into numbered paragraphs, and signed by every subscriber to the memorandum.

- (2) Articles of a public company may include all or any of the provisions of Table A of the First Schedule and the articles of a private company may include all or any of the provisions of Table B of that Schedule.

- (3) Where, in the case of a company limited by shares registered after the commencement of this Act, articles are not lodged or, where articles are lodged, in so far as the articles do not exclude or modify the provisions contained in Table A of the First Schedule, the provisions of that Table shall, so far as applicable, be the articles of the company in the same manner and to the same extent as if they were contained in the articles lodged.
- (4) Where, in the case of a private company registered after the commencement of this Act, articles are not lodged, or where articles are lodged, in so far as the articles do not exclude or modify the articles contained in Table B of the First Schedule, the provisions of that Table shall, so far as applicable, be the articles of the company in the same manner and to the same extent as if they were contained in articles lodged.

**17. Form of Memorandum and Articles.**

The form of -

- (a) the memorandum of a company limited by shares;
- (b) the memorandum and articles of a company limited by guarantee;
- (c) the memorandum and articles of an unlimited company,

shall respectively be in the form set out in Tables C, D and E of the First Schedule.

**18. Power to dispense with "limited".**

- (1) Where it is proved to the satisfaction of the Minister 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 or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Minister may 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 direction under this section may be granted on such conditions (including the maximum area of land the company may hold) as the Minister thinks fit, and those conditions shall be binding on the association, and

- shall, if the Minister so directs, 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.
  - (4) A direction under this section may at any time be revoked by the Minister, 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.
  - (5) No direction under this section may be revoked unless the Minister has given to the association notice in writing of his intention and has afforded the association an opportunity of being heard in opposition to the revocation.
  - (6) Where, as a result of a direction given under subsection (1) the memorandum or articles includes a provision that the memorandum or articles shall not be altered except with the consent of the Minister, the company may not by special resolution alter any provision of the memorandum or articles.
  - (7) Where an authorisation under this section is revoked, the memorandum or articles may be altered by special resolution so as to remove any provision in or to the effect that the memorandum or articles may be altered only with the consent of the Minister.

## **19. Registration of companies**

- (1) The memorandum and, in the case of a company which requires articles, the articles shall be embodied in a notarial deed signed by each subscriber, and the mark affixed by a party in view of a signature shall be valid if certified by the notary in accordance with the Notaries Act.
- (2) Where the memorandum and, as the case may be, the articles are embodied in a notarial deed, the deed and one copy thereof shall be lodged with the Registrar by the notary and thereupon the Registrar shall, subject to subsections (5) and (6) and section 4(5), register the company and

- (a) retain the copy of the deed; and
  - (b) return the original to the notary with the date of registration endorsed on it.
- (3) The notary engaged in the formation of the company shall lodge with the Registrar an affidavit in the form prescribed in the Tenth Schedule, in which he shall state that the requirements of this Act have been complied with.
- (4) Where a company is registered, the Registrar shall issue a certificate of incorporation in the form prescribed in the Tenth Schedule certifying that the company is, from the date specified in the certificate, being the date of incorporation, registered, and that the company is -
- (a) a company limited by shares;
  - (b) a company limited by guarantee;
  - (c) an unlimited company,

as the case may be, and, where applicable that it is a private company.

- (5) From the date of incorporation, the subscribers to 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, having perpetual succession and a common seal and subject to section 22 capable forthwith -
- (a) of exercising all the functions of a company;
  - (b) of suing and being sued;
  - (c) of acquiring, holding, dealing with and disposing of movable and immovable property;
  - (d) of existing with such liability on the part of its members to contribute to the assets of the company in the event of its being wound up as is provided by this Act.
- (6) The subscribers to the memorandum shall be deemed to have agreed to become members of the company and, on the incorporation of the company, shall be entered in the members' register, and every other person who agrees to become a member of a company and whose name is entered in the members' register shall be a member of the company.

(7) A member of a company limited by shares is a shareholder.

**20. Effect of Memorandum and Articles.**

- (1) Where a company is registered, the memorandum and articles shall, subject to the other provisions of this Act, have the effect of a contract between the company and its members and between the members themselves, whereby they agree to observe and perform the provisions of the 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.
- (3) In any action by a member to enforce any obligation owed under the memorandum or articles to him and any other member, the member shall, if any other member is affected by the alleged breach of the obligation, sue in a representative capacity on behalf of himself and all other members who may be affected, other than any who are defendants, and section 185 shall apply to such proceedings.

**21. Copies of Memorandum and Articles.**

- (1) A company shall, on a member's written request, send to him a copy of the memorandum or articles on payment of a fee prescribed in the Eleventh Schedule.
- (2) Where an alteration is made to the memorandum or articles, no copy of the memorandum or articles shall be issued by the company unless -
  - (a) the copy is in accordance with the alteration; or
  - (b) subject to subsection (3), a copy of the order or resolution making the alteration, or, in the case of an agreement referred to in section 136 (*lodging copies of resolutions*), a copy of the agreement, is annexed to the copy of the memorandum or articles and the particular clauses or articles affected are clearly indicated.
- (3) Where the sole effect of a resolution is to amend the articles, there shall be sufficient compliance with subsection (2) if every copy of the articles issued after the passing of the resolution embodies the effect of the amendment and refers to the date of the passing of the resolution.

- (4) Subject to subsection (5), a copy of every order made under section 174(3) (*arrangements and reconstructions*) shall be annexed to every copy of the memorandum issued after the order has been made.
- (5) The Court may exempt a company from compliance with the requirements of subsection (4) or determine the period during which the company shall so comply.

## 22. Company's powers.

Every company shall have, for the furtherance of its objects as stated in its memorandum, all the powers of a natural person.

## 23. Ultra Vires transactions.

- (1) A company shall not carry on an object or do an act in furtherance of an object not stated in its memorandum.
- (2) Notwithstanding subsection (1), nothing done by a company and no transfer of any property to or by a company shall be invalid, void or unenforceable by reason only of the fact that the company was without capacity or power to do it, or to execute or give, or take such transfer.
- (3) Notwithstanding subsection (2) the Court may, on the application of -
  - (a) a member; or
  - (b) the holder of a debenture secured by a floating charge over the company's property or of a debenture holders' representative; or
  - (c) a creditor of the company who satisfies the Court that he is, or is likely to be, materially prejudiced by the company's act or transfer of property,

prohibit or restrain the doing of any act or the transfer of any property in breach of subsection (1).

- (4) Nothing in subsection (2) shall relieve an officer or former officer of the company from liability to the company for a breach of the provisions of its memorandum or articles or for entering into a transaction in breach of subsection (1), and nothing in subsection (2) shall restrict the right of a member to apply to the Court under section 184 (*remedy in cases of oppression*) or the

right of a member to present a petition for the winding up of the company under subsection (4)(h) of section 216.

**24. Minimum number of members.**

Where the number of members of a company, other than a company the whole of the issued shares of which are held by a holding company, is reduced below 2 it shall not carry on business for more than 6 months while the number is so reduced and a person who is a member of the company during the time that it carries on business after those 6 months and knows that it is carrying on business with fewer than 2 members shall be liable for the payment of all the debts of the company contracted during the time that it carries on business after those 6 months.

**25. No constructive notice of certain matters.**

- (1) No person shall be affected by, or be deemed to have notice or knowledge of, the contents of a document relating to a company or foreign company by reason only that the document has been lodged with the Registrar or is available for inspection at an office of the company.
- (2) Except where that person has or ought, by virtue of his position in or relationship to a company, to have knowledge of the fact, the company may not assert against a person who has dealt with the company or with a person who has derived title or other rights from the company that -
  - (a) the memorandum or articles have not been complied with;
  - (b) a person named as such in the most recent notice lodged under section 115 is not a director, manager or secretary of the company;
  - (c) the place named in the most recent notice lodged under section 92, 303 or 305 is not the registered office of the company;
  - (d) a person held out by the company to be an officer or agent of the company has not been duly appointed or has no authority to exercise the powers and perform the duties that are customary in the business of the company and are usual for an officer or agent of the type concerned to exercise;
  - (e) an officer or agent of the company having authority to issue or certify a copy of a document on behalf of the company did not have authority to warrant the genuineness of the document and the accuracy of the

copy so issued; or

- (f) a document bearing the seal of the company, attested by the signatures of 2 or more persons who in accordance with paragraph (b) or (d) can be assumed to be officers of the company acting with its authority, is not duly sealed by the company.

**PART III - ALTERATION IN NATURE OR OBJECTS OF COMPANIES**

**26. Conversion of company limited by shares to company limited by guarantee.**

- (1) A company limited by shares may be converted to a company limited by guarantee where -

- (a) there is no unpaid liability on any of its shares;
- (b) all its members agree in writing to the conversion and to the voluntary surrender to the company for cancellation of all the shares held by them immediately before the conversion;
- (c) new articles and a new memorandum appropriate to a company limited by guarantee are lodged; and
- (d) the total liability of the members to contribute to the assets of the company, in the event of its being wound up, is not less than 5,000 rupees.

- (2) Where -

- (a) a copy of the new articles and of the special resolution adopting them; and
- (b) a declaration by a director and the secretary of the company stating that the requirements of subsection (1) have been complied with,

are lodged, the Registrar shall, subject to the other provisions of this Act, issue a certificate of the conversion.

- (3) The conversion of a company under this section shall -

- (a) take effect on the issue of the certificate;
- (b) operate so that all shares are deemed to have been validly surrendered and cancelled notwithstanding anything in section 57 (*prohibited transactions in shares*);

- (c) have effect so that every member who has not agreed to contribute to the assets of the company in the event of its being wound up shall cease to be a member; and
- (d) not affect any right or obligation of the company any except as otherwise provided in this section or render defective any proceedings by or against the company.

**27. Conversion of limited and unlimited companies.**

- (1) An unlimited company may convert to a limited company by passing a special resolution to that effect by altering its memorandum and lodging a copy of the resolution.
- (2) An unlimited company which has converted to a limited company may not commence or continue business until it has furnished the Registrar with a declaration in the terms required by section 12(1)(b).
- (3) A limited company may convert to an unlimited company by passing a unanimous resolution to that effect and lodging a copy of the resolution.
- (4) Where a company has complied with subsection (1),(2) or (3), the Registrar shall, subject to the other provisions of this Act, issue to the company a new certificate confirming the conversion and cancel the previous certificate of incorporation.
- (5) The conversion of a company under this section shall -
  - (a) take effect on the issue of the certificate; and
  - (b) not affect the identity of the company or any right or obligation of the company or render defective any proceedings by or against the company.

**28. Conversion of public and private companies.**

- (1) A public company that has not for the time being more than 25 members may convert to a private company by lodging -
  - (a) a copy of a special resolution passed to that effect; and
  - (b) a declaration by a director or secretary of the company stating the full names, addresses and descriptions of all the members, and the number of

shares held by each of them respectively.

- (2) A private company may, subject to its memorandum or articles, convert to a public company by lodging with the Registrar -
  - (a) a copy of a special resolution passed to that effect; and
  - (b) a statement in lieu of prospectus.
- (3) Where a company has complied with subsection (1) or (2), the Registrar shall issue to the company a new certificate in the form prescribed in the Tenth Schedule confirming the conversion and cancel the previous certificate of incorporation.
- (4) The conversion of a company under this section shall -
  - (a) take effect on the issue of the certificate; and
  - (b) not affect the identity of the company or any right or obligation of the company or render defective any proceedings by or against the company.

### **29. Change of name.**

- (1) A company may, subject to subsection (2), change its name by passing a special resolution to that effect and lodging a copy of the resolution.
- (2) Where a company has complied with subsection (1), the Registrar shall, if the proposed name does not contravene section 11, issue to the company a certificate confirming the change of name.
- (3) The change of name of a company under this section shall -
  - (a) take effect on the issue of the certificate; and
  - (b) not affect the identity of the company or any right or obligation of the company or render defective any proceedings by or against the company.

### **30. Alteration of memorandum, generally.**

- (1) A memorandum may be altered by special resolution to the extent and in the manner provided by this Act in section 29 (*change of name*), 31 (*alteration of objects*), 32 (*alteration of provisions not required in memorandum*), 58

(alteration of capital), 62 to 64 (reduction of capital), 71 (variation of class rights), 176 (reconstruction and amalgamation), and 184 (remedy for oppression).

- (2) The company shall, within 14 days after the passing of a resolution or the making of an order affecting the memorandum, lodge a copy of the resolution or order and, if the Registrar so requires, a copy of the memorandum as altered.
- (3) Where a company has complied with subsection (2), the Registrar shall issue to the company a certificate confirming the alteration to the memorandum and require the company to cause a notice to that effect to be published in such manner as the Court or the Registrar may direct.

### **31. Alteration of objects**

- (1) Subject to subsection (8), a company, may by special resolution alter its memorandum with respect to the objects for which it is established and such alteration may, notwithstanding section 15(4), include additional objects.
- (2) The company shall, within 14 days of the passing of a resolution under subsection (1), give notice to that effect to every holder of a debenture secured by a floating charge over the company's property and to every debenture holders' representative.
- (3) A person referred to in subsection (4) may, within 28 days after the passing of the resolution, apply to the Court for an order to cancel the alteration.
- (4) An application under subsection (3) may be made -
  - (a) by the Registrar;
  - (b) in the case of a private company, by a member or by a person to whom notice has to be given under subsection (2);
  - (c) in the case of a public company -
    - (i) by the holders of not less than 10 per cent in the aggregate of the company's issued shares or any class thereof, or, if the company has no shares, by not less than 10 per cent of the company's members;
    - (ii) a debenture holders' representative who

represents the holder of a debenture secured by a floating charge over the company's property;  
or

(iii) by the holders of not less than 10 per cent of the company's debentures secured by a floating charge over the company's property.

- (5) The company shall forthwith give written notice to the Registrar of an application under subsection (3).
- (6) On an application under subsection (3) the Court may -
- (a) make an order confirming the alteration in whole or in part and on such terms and conditions as it thinks fit;
  - (b) adjourn the proceedings in order that an arrangement may be made to its satisfaction for the purchase of the interests of dissentients;
  - (c) give such direction or make such order as it thinks fit for facilitating the arrangement or carrying it into effect; or
  - (d) make an order cancelling the alteration.
- (7) The company shall within 28 days of the making by the Court of any order under subsection (6) deliver a copy to the Registrar.
- (8) A resolution under subsection (1), shall, if an application is made to the Court under this section, not have effect except in so far as it is confirmed by the Court.

### **32. Alteration of certain provisions of memorandum.**

- (1) Subject to the other provisions of this section and to sections 34 (*effect of alterations on members who do not consent*) and 128 (*right to demand a poll*) a company may, by special resolution, alter a provision in its memorandum which might lawfully have been contained in the articles.
- (2) Subsection (1) shall not -
- (a) apply where the memorandum provides for or prohibits the alteration of any of its provisions;
  - (b) authorise any variation or abrogation of the special rights of any class of members.

- (3) Section 31(2),(3),(4),(5),(6),(7) and (8) (*procedure for altering objects*) shall apply to an alteration under subsection (1).

### 33 Alteration of articles.

- (1) Subject to its memorandum, a company may, by special resolution alter its articles.
- (2) Subject to subsection (1), a public company may amend its articles by the adoption of any provision contained in Table A of the First Schedule and a private company may amend its articles by the adoption of any provision contained in Table B of the First Schedule, by reference only to the provision in the Table or to the number of a particular provision of the Table, without the need to set out in the special resolution the text of the provision adopted.
- (3) Subject to sections 71 (*variation of Class rights*), 137 (*resolutions at adjourned meetings*), and 184 (*remedy in cases of oppression*), an alteration under subsection (1) or (2) shall, on and from the date of the special resolution or such later date as is specified in the resolution, be as valid as if originally contained in the articles.

### 34. Effect of alterations on members who do not consent.

Notwithstanding the memorandum or articles of a company, no member shall, unless before or after the alteration is made, he agrees in writing to be bound by it, be bound by an alteration made in the memorandum or articles after the date on which he became a member in so far as the alteration-

- (a) requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made; or
- (b) in any way increases his liability as at that date to contribute to the share capital of or otherwise to pay money to the company.

**PART IV - PROSPECTUSES, SHARES, DEBENTURES AND CHARGES**

*Sub-Part I - Authorised mutual funds and private companies*

**35. Company may be declared Authorised Mutual Fund.**

(1) Where the Minister is satisfied that -

- (a) a public company, or a foreign company having a place of business in Mauritius, has been registered or incorporated for the purpose of holding and managing securities or of other property for the making of revenue and for profit and not for the purpose of control; and
- (b) in the memorandum and articles or in some other instrument binding on it satisfactory provision is included for ensuring that -
  - (i) if an invitation is made to the public to subscribe for its shares, the price at which the shares are offered shall be based on the net value of its assets at the time of the offer with no addition except for a reasonable service charge; and
  - (ii) the company will at any time repurchase any such shares from the holder at a price based on the value of its assets at the time of the repurchase without any deduction except for a reasonable service charge,

the Minister may, subject to such conditions as he thinks fit, by notice published in the *Gazette*, declare the company to be an authorised mutual fund and direct that, so long as the company remains an authorised mutual fund, any of the provisions of sections 37 to 42, 57(1)(c) and (d) or 62 shall not apply to that company.

(2) Where the Minister considers that a notice made under subsection (1) should be revoked or that the terms of the notice should be varied, he shall -

- (a) serve on the company a written notice to that effect; and
- (b) invite the company to make, within a period of one month from the date of service of the notice, any representation it may wish to make with respect to the proposed revocation or variation.

- (3) the Minister may revoke or vary the notice after the expiration of the period specified in subsection (2), but shall before deciding whether or not to revoke or vary the notice, take into consideration any representation made under subsection (2) by the company.
- (4) A company which is declared to be an authorised mutual fund under subsection (1) may also be authorised by the Minister to manage a unit trust schemes, approved under the Unit Trust Act 1989.

### **36. Private companies.**

No person shall issue a prospectus relating to a private company.

*Sub-Part II - Prospectuses and statement in lieu thereof*

### **37. Requirements of a prospectus.**

- (1) Subject to subsection (4), no person shall issue, circulate or distribute any form of application for shares or debentures unless -
  - (a) the form is accompanied by a prospectus whose date of publication is a date within the period of 6 months immediately preceding the date on which the form was issued, circulated or distributed;
  - (b) the prospectus complies with the requirements of this section; and
  - (c) a copy of the prospectus and particulars of the issue, circulation or distribution have been lodged with the Registrar.
- (2) The Registrar shall not accept a copy of a prospectus unless -
  - (a) the prospectus complies with the requirements of this Act and of any subsidiary enactment made under the Act; and
  - (b) there is also lodged a copy of -
    - (i) every consent required by section 40 to the issue of the prospectus;
    - (ii) every material contract referred to in the prospectus or, in the case of a contract not reduced into writing, a declaration giving full particulars of the contract.

(3) Every company shall -

- (a) cause a copy of every document referred to in subsection (2)(b) to be deposited, not later than 7 days after the prospectus is lodged, at its registered office; and
- (b) keep every such copy, for a period of at least 6 months after the lodging of the prospectus, for the inspection by its members and creditors.

(4) Subsection (1) shall not apply if the form is issued, circulated or distributed in connection with -

- (a) shares or debentures which are not offered to the public; or
- (b) a take-over scheme.

(5) Subject to subsection (7), no person shall issue, circulate or distribute an invitation to the public to deposit money with or lend to a company or proposed company unless -

- (a) a copy of the prospectus relating to the invitation has been lodged;
- (b) the prospectus contains an undertaking by the company or proposed company that it will, within 2 months after the acceptance of any money as a deposit or loan from any person in response to the invitation, issue to that person a document which acknowledges or evidences or constitutes an acknowledgement of the indebtedness of the company in respect of that deposit or loan; and
- (c) where the deposits or loans are not to be secured by a charge or charges on the company's undertaking or on any of the company's assets, any statement in the invitation or advertisement relating to documents to be issued evidencing such deposits or loans shall refer to those documents as unsecured deposit notes or unsecured notes, or by some other description that includes the word "unsecured", and shall not -
  - (i) refer to the documents as debentures; or
  - (ii) refer to them by any description that includes the word "registered".

(6) Where a company has accepted any money as a deposit or loan under subsection (5), it shall within 2 months after the

acceptance of the money issue to that person a document which -

- (a) acknowledges or evidences or constitutes an acknowledgement of the indebtedness of the company in respect of that deposit or loan; and
- (b) complies with the other requirements of this section.

(7) Subsection (5) shall, subject to such conditions as the Minister thinks fit, not apply to a specified company.

### **38. Advertisement deemed to be prospectus.**

(1) Every advertisement which is issued, circulated or distributed and which offers or calls attention to an offer or intended offer of shares in or debentures of a company or proposed company to the public for subscription or purchase shall be treated as a prospectus if it -

- (a) contains any information other than the following -
  - (i) the number and description of the shares or debentures concerned;
  - (ii) the name and date of registration of the company and its paid-up share capital;
  - (iii) a concise statement of the general nature of the main business or proposed main business of the company;
  - (iv) the names, addresses and description of -
    - (A) the directors or proposed directors;
    - (B) the brokers or underwriters to the issue (if any); and
    - (C) in the case of debentures, the debenture holders' representatives;
  - (v) the name of the stock exchange (if any) of which the brokers or underwriters to the issue are members;
- (iv) particulars of the opening and closing dates of the offer and the time and place at which copies of the prospectus and forms of application for the shares or debentures may be obtained; and

(vii) statements with respect to the sale price of shares, or the yield therefrom or other benefits received or likely to be received by holders of shares, in relation to an authorised mutual fund; and

(b) fails to state that applications for shares or debentures will proceed only on one of the forms of application referred to in and attached to a printed copy of the prospectus.

(2) For the purposes of this section where -

(a) an advertisement offering or calling attention to an offer or intended offer of shares in or debentures of a company or proposed company to the public for subscription or purchase is issued, circulated, or distributed;

(b) the person who issued, circulated or distributed the advertisement, before so doing, obtained a certificate signed by at least 2 directors of the company or 2 proposed directors of the proposed company, that the proposed advertisement is an advertisement that will not be treated as a prospectus by virtue of subsection (1); and

(c) the advertisement is not patently an advertisement that is deemed to be a prospectus by virtue of subsection (1),

the company and every person who signed the certificate shall be deemed to be a person who issued, circulated or distributed the advertisement, and no other person shall be deemed to be such a person.

(3) A person who has obtained a certificate referred to in subsection (2)(b) shall, if so required by the Registrar, forthwith deliver the certificate to the Registrar.

### **39. Document deemed to be prospectus.**

(1) Where a company allots or agrees to allot a share or debenture to any person with a view to its being offered for sale to the public, any document by which the offer for sale to the public is made shall be deemed to be a prospectus.

(2) For the purposes of this section, an allotment of, or an agreement to allot, a share or debenture shall, unless the contrary is proved, be deemed to have been made with a view to the share or debenture being offered for sale to the public if it is shown that

- (a) an offer of the share or debenture for sale to the public was made within 6 months after the allotment or agreement to allot; or
- (b) at the date when the offer was made the whole consideration to be received by the company in respect of the share or debenture had not been so received.

#### 40. Forms and content of prospectus.

- (1) Every prospectus shall -
  - (a) be printed in type of a size approved by the Registrar;
  - (b) be dated and that date shall, unless the contrary is proved, be taken as the date of issue of the prospectus;
  - (c) subject to subsection (4), be signed by every director or person named in the prospectus as a proposed director, or by his agent authorised in writing;
  - (d) state that a copy has been lodged with the Registrar and also state immediately after that statement that the Registrar assumes no responsibility as to its contents;
  - (e) subject to Part III of the Second Schedule, state the matters specified in Part I of that Schedule and set out the reports specified in Part II of that Schedule;
  - (f) where the person making a report specified in Part II of the Second Schedule has made therein, or has without giving a reason, indicated therein, any such adjustment as is mentioned in paragraph 30 of that Schedule, have endorsed thereon or attached thereto a statement by that person setting out the adjustment and giving the reason therefor;
  - (g) contain a statement that no share or debenture, as the case may be, shall be allotted on the basis of the prospectus later than 6 months after its date of issue;

- (h) where it contains a statement made or purporting to have been made by an expert or contains what purports to be a copy of or extract from a report, memorandum or valuation of an expert, state the date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for incorporation in the prospectus and contain a copy of that person's consent which shall have previously been lodged with the Registrar;
- (i) not contain the name of any person as a debenture holders' representative or as an auditor or a banker or an attorney at law or share broker of the company or proposed company or for or in relation to the issue or proposed issue of shares or debentures, unless that person has consented in writing before the issue of the prospectus to act in that capacity in relation to the prospectus and a copy of the consent has been lodged with the Registrar; and
- (j) Subject to subsection (2) where the prospectus offers shares in or debentures of a foreign company incorporated or to be incorporated, contain particulars with respect to -
  - (i) the instrument constituting the company;
  - (ii) the enactment or provisions having the force of an enactment by or under which the incorporation of the company was effected or is to be effected;
  - (iii) an address in Mauritius where such instrument, enactments or provisions or certified copies thereof may be inspected;
  - (iv) the date on which and the place where the company was or is to be incorporated; and
  - (v) whether the company has established a place of business in Mauritius and, if so the address of its principal office in Mauritius.

(2) Subsection (1)(j)(i), (ii) and (iii) shall not apply in the case of a prospectus issued more than 2 years after the day on which the company was entitled to commence business.

(3) A document referred to in section 39 shall, in addition state -

- (a) the net amount of the consideration received or to

be received by the company in respect of shares or debentures to which the offer relates; and

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

(4) Where an offer to which section 38 relates is made, it shall be sufficient if the document referred to in that section is signed on behalf of the company by 2 directors or their authorised agent in writing.

(5) A condition requiring or binding an 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.

(6) Where a prospectus does not comply with the requirements of this Act or any subsidiary enactment made under this Act, no director or other person shall incur any liability in respect of the failure to comply if he proves that he had no knowledge of the matter and that he exercised due diligence to ensure that the failure to comply did not occur.

(7) The Registrar after consultation with the Company Law Advisory Committee may, by instrument in writing, exempt a company, as specified in the instrument and subject to such conditions (if any) as are specified in the instrument, from compliance with any of the requirements of the Second Schedule.

(8) A company who is exempted by the Registrar, subject to a condition, from compliance with a requirement of the Second Schedule shall not contravene or fail to comply with the condition.

(9) Where a company has contravened or fail to comply with a condition to which an exemption under subsection (7) is subject, the Court may, on the application of the Registrar order the company to comply with the condition.

(10) The Registrar after consultation with the Company Law Advisory Committee may, by instrument in writing, declare that the Second Schedule shall have effect in its application to or in relation to a particular company or class of companies in a particular case as if a provision or provisions of the Schedule specified in the instrument were omitted, modified or varied in a manner specified in the instrument, and, where such a declaration is made, the Schedule shall have effect accordingly.

(11) A copy of an instrument executed under this section shall be published in the *Gazette*.

#### **41. Over-subscription in debenture issue.**

(1) A company shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue disclosed in the prospectus unless the prospectus specifies -

- (a) that the company expressly reserves the right to accept or retain over-subscriptions; and
- (b) a limit expressed as a specific sum of money on the amount of over-subscriptions that may be accepted or retained, being an amount not exceeding 25 percent above the amount of the issue as disclosed in the prospectus.

(2) Subject to the Second Schedule, where a company specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions -

- (a) the company shall not make, authorise or permit any statement of, or reference to, the asset-backing for the issue to be made or contained in a prospectus relating to the issue, other than a statement or reference to the total tangible assets and the total liabilities of the company and of its guarantor companies; and
- (b) the prospectus shall contain a statement or reference as to what the total assets and total liabilities of the company would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

#### **42. Allotment by reference to stock exchange.**

(1) Where a prospectus states or implies that application has been or will be made for permission for the shares or debentures offered in the prospectus to be listed for quotation on the official list of a stock exchange, any allotment on an application made pursuant to the prospectus shall, subject to subsection (3), whenever made, be void if the permission is not -

- (a) applied for in the form required by the stock exchange before the third day on which the stock exchange is open after the date of issue of the prospectus; or
- (b) granted before the expiry of 42 days from the date of issue of the prospectus or such longer period not exceeding 3 months from the date of issue as is,

within that period of 42 days, notified to the applicant by or on behalf of the stock exchange.

(2) (a) Where the permission has not been applied for, or has not been granted, the company shall, subject to subsection (3), forthwith repay without interest any money received from any applicant in pursuance of the prospectus, and if the money is not repaid within 14 days after the company so becomes liable to repay it, the directors shall, in addition to the liability of the company but subject to paragraph (b), be jointly and severally liable to repay that money with interest at the ruling Bank Rate from the expiration of that period of 14 days.

(b) a director shall not be liable under paragraph (a) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(3) Where, in relation to any shares or debentures, the permission is not applied for or is not granted, the Minister may, on application made by the company before any share or debenture is purported to be allotted, by public notice, provide that subsections (1) and (2) shall not apply to the allotment of the shares or debentures.

(4) Where a stock exchange has, within the time specified in subsection (1)(b), granted permission subject to any condition, permission will be deemed to have been granted by the stock exchange if the directors have given to the stock exchange an undertaking in writing to comply with the condition.

(5) Where a prospectus contains a statement to the effect that the memorandum and articles comply or have been drawn up so as to comply with a condition imposed by a stock exchange, the prospectus shall, unless the contrary intention appears, be deemed for the purposes of this section to imply that application has been, or will be, made for permission for the shares or debentures offered by the prospectus to be listed for quotation on the official list of the stock exchange.

(6) A condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement of this section or purporting to do so shall be void.

(7) The company shall, for so long as it may become liable to repay money under subsection (2), keep in a separate bank account all money received in pursuance of a prospectus.

(8) No person shall issue a prospectus which includes -

(a) an untrue statement that permission has been granted for those shares or debentures to be dealt in or quoted on any stock exchange; or

- (b) a statement in any way referring to -
  - (i) any such permission;
  - (ii) any application or intended application for any such permission
  - (iii) dealing in or quoting the shares or debentures on any stock exchange; or
  - (iv) any condition imposed by a stock exchange, unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the stock exchange within 3 days of the issue of the prospectus or the statement has been approved by the Registrar for inclusion in the prospectus.

(9) This section shall have effect -

- (a) in relation to shares or debentures agreed to be taken by a person underwriting an offer contained in a prospectus, as if he had applied for them pursuant to the prospectus; and
- (b) in relation to a prospectus offering shares for sale as if
  - (i) a reference to sale were substituted for a reference to allotment; and
  - (ii) the persons by whom the offer is made, and not the company, were liable under subsection (2) to repay money received from applicants, and references to the company's liability under that subsection were construed accordingly.

#### **43. Civil liability for misstatement in prospectus.**

- (1) Subject to the other provisions of this section, every person who -
  - (a) is a director at the time of the issue of a prospectus; or
  - (b) authorises or causes himself to be named and is named in a prospectus as a director or as having agreed to become a director either immediately or after an interval of time; or
  - (c) is a promoter; or

(d) authorises or causes the issue of a prospectus

shall be liable to pay compensation to any person who subscribes for or purchases shares or debentures on the faith of a prospectus for any loss or damage sustained by reason of -

- (i) an untrue statement in the prospectus; or
- (ii) the willful non-disclosure in the prospectus of any matter which he had knowledge and which he knew to be material.

(2) No person shall be liable under subsection (1)(d) as a person authorising or causing the issue of a prospectus by reason only that -

- (a) in a case where the consent of an expert is required to the issue of a prospectus, he has given that consent, except in respect of an untrue statement in the prospectus purporting to be made by him as an expert; or
- (b) his name is included in a prospectus as a debenture holders' representative, auditor, barrister, attorney at law or share broker, or as a person performing some other professional or advisory function only.

(3) Subject to subsection (4) no person shall be liable under subsection (1) if he proves that -

- (a) having consented to become a director, he withdrew his consent before the issue of the prospectus, and it was issued without his authority or consent;
- (b) the prospectus was issued without his knowledge or consent and he gave reasonable notice to the public of the fact as soon as possible after he became aware of its issue;
- (c) after the issue of the prospectus and before any allotment or sale under it he withdrew his consent and gave reasonable notice to the public of the withdrawal as soon as possible after he became aware of any untrue statement in the prospectus;
- (d) in relation to an untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment or sale of the shares or debentures

believe, that the statement was true;

- (e) in relation to an untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert contained in what purports to be a copy of or extract from a report, memorandum or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report, memorandum or valuation, and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that that person had given the consent required by section 40 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for lodging, or, to that person's knowledge, before any allotment or sale thereunder; and
  - (f) in relation to a statement purporting to be a statement made by a public officer contained in what purports to be a copy of or extract from a public document, it was a correct and fair representation of the statement or copy of or extract from the document.
- (4) Subsection (3) shall not apply in the case of a person who is liable under subsection (1)(d), by reason of his having given a consent required of him by section 40(1)(h), in respect of an untrue statement purporting to have been made by him as an expert
- (5) A person who apart from this subsection would be liable under subsection (1)(d) by reason of his having given a consent required of him by section 40 (1)(h), in respect of an untrue statement purporting to be made by him as an expert shall not be liable if he proves that -
- (a) having given his consent under section 40(1)(h), to the issue of the prospectus, he withdrew it in writing before a copy of the prospectus was lodged with the Registrar;
  - (b) after a copy of the prospectus was lodged with the Registrar and before any allotment or sale of shares or debentures, he withdrew his consent and gave reasonable notice to the public of the withdrawal as soon as possible after he became aware of the untrue statement; or
  - (c) he was competent to make the statement and had

reasonable ground to believe and did up to the time of the allotment or sale of shares or debentures believe that the statement was true.

(6) Where -

- (a) a prospectus contains the name of a person as a director, or as having agreed to become a director, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to its issue; or
- (b) the consent of a person is required under section 40(1)(h) to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

every director of the company other than a director without whose knowledge or consent the prospectus was issued, and every other person who authorised or caused its issue shall be liable to indemnify the person so named or whose consent was so required 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 of the inclusion in it of a statement purporting to be made by him as an expert, or in defending himself against any action or legal proceeding brought against him in respect thereof.

#### **44. Stop trading order.**

- (1) Where a prospectus has been lodged and it appears to the Registrar that it -
  - (a) contains a statement, promise, estimate or forecast that is false or misleading, whether or not the statement or other particular was false or misleading at the time the prospectus was lodged;
  - (b) fails to comply in any material respect with this Sub-Part or the Second Schedule;
  - (c) conceals or omits to state a material fact whereby a statement in the prospectus is rendered misleading in the context in which it appears.,

the Registrar may apply to the Court for a stop trading order under this section.

- (2) Where the Court is satisfied that the ground for the application is established, it may make an order -

- (a) cancelling the lodging of the prospectus and directing that -
  - (i) the prospectus shall be withdrawn; and
  - (ii) further subscriptions or purchases may not be received or made by the company with respect to the shares or debentures offered in the prospectus;
- (b) declaring any contract for the subscription or purchase of shares or debentures offered in the prospectus to be voidable;
- (c) directing the company to repay with interest any money received from applicants in pursuance of the prospectus;
- (d) directing the company to forthwith reissue the prospectus amended in such terms as the Court shall direct; or
- (e) on such terms as it thinks fit to protect the rights of persons injuriously affected by the issue of the prospectus.

(3) In exercising its powers under this section, the Court may, on the *ex parte* application of the Registrar and on being satisfied of the existence of a *prima facie* case, made an interim order in terms of subsection (2)(a) which shall expire 14 days from the date on which it is made.

#### **45. Waiting period.**

(1) In this section, "waiting period" means, subject to subsection (2), a period of 7 days after the first publication of a prospectus which has been lodged or such longer period as may be stated in the prospectus as the period before the expiration of which applications, offers, or acceptances in response to the prospectus will not be accepted or treated as binding.

(2) Where the shares or debentures to which the invitation relates are dealt in on a stock exchange or where the prospectus states that application has been or will be made for permission to deal therein on any stock exchange, and it is necessary to advertise the prospectus in one or more newspapers to comply with the requirements of that stock exchange, the publication of the prospectus shall not be deemed to have occurred until the prospectus is so advertised.

(3) No binding contract or legally enforceable obligation, other than a *bona fide* underwriting agreement in respect of any such shares or debentures, shall be entered into in response to any invitation to the public in respect of any shares or debentures of any public company until after the expiration of the waiting period, and any application, offer or acceptance by any person in response to the invitation shall be revocable by that person at any time before the expiration of the waiting period.

(4) Where an invitation is made to the public in respect of any shares or debentures of a public company, an application for such shares or debentures shall not be revocable during a period of 7 days immediately after the expiry of the waiting period unless, before the expiry of that period of 7 days, some person responsible for the prospectus has in accordance with section 43 given notice to the public, which notice has the effect under that section of excluding or limiting the responsibility of the person giving it.

#### **46. Statement in lieu of prospectus.**

(1) A public company having a share capital which does not issue a prospectus on, or with reference to, its formation shall not allot any of its shares or debentures unless it has, not later than 3 days before the first allotment of either shares or debentures, lodged a statement in lieu of prospectus.

(2) Every statement in lieu of prospectus shall -

- (a) be 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;
- (b) subject to Part III of the Third Schedule, be in the form of and state the matters specified in Part I of that Schedule and set out the reports specified in Part II of that Schedule; and
- (c) where the person making a report specified in Part II of the Third Schedule has made therein or has, without giving the reason, indicated, therein any such adjustment as is mentioned in paragraph 6 of Part III of that Schedule, have endorsed thereon or attached thereto a written statement signed by that person setting out the adjustment and giving the reason therefor.

#### **47. Restrictions on commencement of business in certain circumstances.**

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

- (a) if any money is or may become liable to be repaid to applicants for any shares or debentures offered for public subscription by reason of any failure to apply for or obtain permission for listing for quotation in any stock exchange; or
- (b) unless -
  - (i) 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;
  - (ii) every director 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; and
  - (iii) there has been lodged with the Registrar a declaration by the secretary or one of the directors of the company in the form prescribed in the Tenth Schedule verifying that the above conditions have been complied with.

(2) Where a public company having a share capital has not issued a prospectus inviting the public to subscribe for its shares the company shall not commence any business or exercise any borrowing power unless -

- (a) there has been lodged with the Registrar a statement in lieu of prospectus which complies with the provisions of this Act;
- (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 payable in cash; and
- (c) there has been lodged with the Registrar a declaration by the secretary or one of the directors of the company in the form prescribed in the Tenth Schedule verifying that paragraph (b) of this

subsection has been complied with.

(3) The Registrar shall on the lodging of the statutory declaration in accordance with this section certify in the form prescribed in the Tenth Schedule that the company is entitled to commence business and to exercise its borrowing powers and that certificate shall be conclusive evidence thereof.

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

(5) Where shares and debentures are offered simultaneously by a company for subscription nothing in this section shall prevent the receipt by the company of any money payable on application for the debentures.

#### SUB-PART III - SHARES

#### **48. Allotment and minimum subscription.**

(1) (a) No allotment of shares offered to the public shall be made unless -

- (i) the minimum subscription has been subscribed; and
- (ii) the sum payable on application for the shares so subscribed has been received by the company.

(b) Where a cheque is given in payment of a sum under paragraph (a)(i), the sum shall not be deemed to have been received by the company until the cheque is paid by the bank on which it is drawn.

(2) The minimum subscription shall be calculated on the nominal value of each share, and where the shares are issued at a premium on the nominal value of, and the amount of the premium payable on, each share.

(3) The amount payable on application on each share offered to the public shall not be less than 5 per cent of the nominal amount of the share.

(4) (a) Where the conditions referred to in subsection (1) have not been satisfied after the expiry of 4 months from the first issue of the prospectus, any money received from applicants for shares shall forthwith be repaid to them without interest.

(b) Subject to paragraph (c) where any money received

under paragraph (a) is not repaid within 5 months 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 ruling Bank Rate from the expiry of the period of 5 months.

(c) A director shall not be liable under paragraph (b) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) (a) An allotment made by a company to an applicant in contravention of this section or of section 46, shall, notwithstanding that the company is in the course of being wound up, be voidable at the option of the applicant.

(b) An option under paragraph (a) may be exercised by written notice given to the company not later than one month after the date of the allotment.

(6) (a) Subject to paragraph (b), every director who knowingly contravenes or permits or authorises the contravention of this section or of section 46 shall be liable to compensate the company and the allottee for any loss, damages or costs which the company or the allottee has sustained or incurred thereby.

(b) No proceedings for the recovery of any compensation under paragraph (a) shall be commenced after the expiry of 2 years from the date of the allotment.

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

(8) No company shall allot, and no officer or promoter of a company or a proposed company shall authorise or permit the allotment of, shares or debentures to the public on the basis of a prospectus after the expiry of 6 months from the issue of the prospectus.

(9) Where an allotment of shares or debentures is made on the basis of a prospectus after the expiry of six months from the issue of the prospectus, such allotment shall not by reason of that fact be voidable or void.

#### **49. Return of allotment.**

(1) Where a company makes an allotment of its shares or any of its shares are deemed to have been allotted under subsection (5) the company shall within one month lodge a return of the allotment in the form prescribed in the Tenth Schedule, stating -

(a) the number and nominal amount of the shares comprised in the allotment;

- (b) the amount paid, deemed to be paid, or due and payable on the allotment of each share;
- (c) where the capital of the company is divided into shares of different classes, the class of shares to which each share comprised in the allotment belongs; and
- (d) subject to subsection (2), the full name and the address and description of each allottee and the number and class of shares allotted to him.

(2) Where shares are allotted or deemed to have been allotted as fully or partly paid up otherwise than in cash and the allotment is made pursuant to a written contract, the company shall with the return lodge the contract evidencing the entitlement of the allottee or a copy of the contract.

(3) Where a copy of a contract is lodged the contract shall, if the Registrar so requires, be produced at the same time.

(4) Where the contract referred to in subsection (2) is not in writing, the company shall within one month after the allotment lodge with the return a statement of particulars in the form prescribed in the Tenth Schedule, or where the shares are allotted pursuant to an arrangement approved by the Court under section 176, a copy of the order of the Court.

(5) For the purposes of this section shares issued without formal allotment to subscribers to a memorandum shall be deemed to have been allotted to them on the date of the registration of the company.

(6) Nothing in this section or in section 50 shall render any party to a contract, pursuant to which shares are allotted for a consideration other than cash, liable for payment of registration duty under the Registration Duty Act, where such duty would not be payable apart from these sections.

#### **50. Shares not paid for in cash.**

(1) Shares shall be deemed not to have been paid for in cash except to the extent that the company has actually received cash in payment of the shares at the time of or subsequently to the agreement to issue the shares.

(2) Where shares are issued to a person who has transferred or agreed to transfer property or business assets to the company or has rendered or agreed to render services to the company or to persons nominated by him, the amount of any payment made for the property, business assets or services shall be deducted from the

amount of any cash payment made for the shares and the balance shall notwithstanding any exchange of cheques or other securities be treated as having been paid in cash for such shares.

(3) Where shares are subscribed for in a memorandum or are allotted for a consideration other than for cash the company shall lodge with the Registrar within the time prescribed by section 49 -

- (a) the return and written contract or particulars required by section 49;
- (b) an affidavit in the form prescribed in the Tenth Schedule by a director of the company to the effect that the consideration prescribed is not less than the amount by which the shares have been paid up otherwise than in cash and describing the consideration for the allotment in sufficient detail to identify it and stating an estimate of its value and how that value was assessed.

(4) Where the Registrar is dissatisfied with the value mentioned in the affidavit lodged under subsection (3)(b), he may refer the matter to the Registrar-General who may assess the value in accordance with the provisions of section 17 and 18 of the Registration Duty Act and the provisions of those sections including the right of appeal under those sections shall *mutatis mutandis* apply to a valuation for the purposes of this section.

(5) Where in accordance with the provisions of subsection (4) the value of the consideration is assessed as being less than the nominal amount stated in the return as having been paid up on the shares, the shares shall be deemed to be unpaid to the extent of the difference between the said value and the said nominal amount.

#### **51. Difference in calls and payments.**

Where a company is authorised by its articles, it may -

- (a) on the issue of shares make provision for varying the amounts and times of payment of calls as between members;
- (b) accept from a member the whole or a part of the amount remaining unpaid on any share although no part of that amount has been called up; and
- (c) where a larger amount is paid up on some shares than on others, pay dividends in proportion to the amount paid up on each share.

**52. Share warrant.**

- (1) A public company, if so authorised by its articles, may -
  - (a) with respect of any fully paid up shares and subject to such terms and conditions as may be prescribed, issue a share warrant stating that the bearer of the warrant is entitled to the shares specified in it; and
  - (b) provide (by coupons or otherwise) for the payment of the future dividends on the shares included in the warrant.
- (2) A share warrant issued under subsection (1) shall entitle the bearer to the shares specified in it and the shares may be transferred by delivery and endorsement of the warrant.

**53. Commission or other allowance.**

(1) Subject to subsections (3) and (4), no company shall apply any of its shares or capital either directly or indirectly in making a payment to a person in consideration of his subscribing or agreeing to subscribe to any shares or procuring or agreeing to procure subscriptions for any shares in the company.

(2) Subsection (1) shall apply whether the subscribing or procuring of subscriptions is made subject to any condition or not and whether the shares or money are so applied by being added to the purchase money or any property acquired by the company or to the contract price of any work to be executed for the company, or the money is paid out of the nominal purchase money or contract price or otherwise.

(3) A company may pay a commission to a person in consideration of his subscribing or agreeing to subscribe for any shares, or procuring or agreeing to procure subscriptions, for any shares in the company, whether in either case subject to any conditions or not, if -

- (a) the payment is authorised by the articles;
- (b) the commission does not exceed 10 per cent of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is

less;

- (c) the amount or rate of the commission is -
  - (i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or
  - (ii) in the case of shares of not so offered, disclosed in the statement in lieu of prospectus, or in a statement signed in like manner as a statement in lieu of prospectus and lodged before the payment of the commission, and, where a circular or notice not being a prospectus inviting subscription for the shares is issued, also disclosed in the circular or notice; and
- (d) the number of shares which persons have agreed to subscribe absolutely for a commission is disclosed in like manner.

(4) Nothing in this section shall affect the power of a company to pay brokerage, in addition to or in lieu of the commission referred to in subsection (3), if the amount or rate per cent of the brokerage paid or agreed to be paid by the company is -

- (a) in the case of shares offered to the public for subscription, disclosed in the prospectus;
- (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 signed in like manner as a statement in lieu of prospectus and lodged before the payment of the brokerage; and
- (c) where a circular or notice not being a prospectus inviting subscription for the shares is issued, also disclosed in the circular or notice.

(5) A vendor to, promoter of, or other person who receives payment in money or shares from a company, shall have 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 lawful under this section.

#### **54. Discount.**

- (1) Subject to the other provisions of this section, the issue price of a share shall not be less than its nominal value.

- (2) A company may issue at a discount shares of a class already issued if -
  - (a) the issue of the shares at a discount is authorised by special resolution of the company and is confirmed by order of the Court;
  - (b) the resolution specifies the maximum rate of discount at which the shares are to be issued;
  - (c) at the date of the issue not less than one year has elapsed since the date on which the company was entitled to commence business; and
  - (d) the shares are issued within one month after the date on which the issue is confirmed by order of the Court or within such extended period as the Court may allow.
- (3) The Court may make an order confirming an issue made under subsection (2) on such terms and conditions as it thinks fit.
- (4) In deciding whether to make an order confirming an issue under subsection (2) the Court shall take into account -
  - (a) the amount of discount at which the shares are proposed to be issued;
  - (b) whether the discount is reasonably required having regard to the market value of the same class of shares already issued by the company;
  - (c) the financial situation of the company;
  - (d) whether the interests of any shareholders or class of shareholders will be prejudiced by the issue and whether any such prejudice is outweighed by the advantages to be gained by the company as a whole from the making of the issue.
- (5) Every prospectus relating to an issue of shares under subsection (2) shall contain particulars of the discount allowed or of so much of that discount as has not been written off at the date of the issue of the prospectus.
- (6) (a) No company shall issue shares of any class at any discount unless it first offers the shares to every member of that class in proportion to the number of those shares held by him.

(b) Every offer under paragraph (a) shall be made by written notice specifying -

- (i) the number of shares to which the member is entitled; and
  - (ii) the limit within which the offer may be accepted, which shall not be less than 14 days.
- (c) Where an offer is not accepted within the time specified by the notice, the shares may be issued on terms not more favourable than those offered to the members.

#### **55. Share premium account.**

(1) Where a company issues shares for which a premium is received by the company, whether in cash or other valuable consideration, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to a share premium account.

(2) The share premium account may be applied -

- (a) in paying up unissued shares to be issued to members as fully paid bonus shares;
- (b) in paying up in whole or in part the balance unpaid on shares previously issued to members;
- (c) in the case of an insurance company, by appropriation or transfer to a fund established and maintained pursuant to the Insurance Act;
- (d) in writing off -
  - (i) the preliminary expenses of the company;
  - (ii) the expenses of, or the commission or brokerage paid or discount allowed on, or any duty, fee or tax payable on or in connection with, any issue of shares of the company; or
- (e) in providing for the premium payable on redemption of redeemable preference shares, or shares issued to employees under any scheme for employee shareholding in the company, or on any debentures of the company.

#### **56. Relief from section 55.**

(1) The Minister may by notice published in the *Gazette* make

such provision as appears to him appropriate for relieving companies from the requirements of section 55 in relation to premiums other than cash premiums.

(2) A notice made by the Minister under this section may make different provisions for different cases or classes of case.

#### **57. Prohibited transactions in shares.**

(1) Except as provided in sections 58 to 64 but subject to subsection 4 and section 26 (*conversion to company limited by guarantee*), no company shall -

- (a) alter the number of its shares or the amount remaining payable thereon;
- (b) release a shareholder or former shareholder from any liability on shares;
- (c) reduce its issued share capital;
- (d) provide any financial assistance, directly or indirectly, for the subscription or purchase of its shares or the shares of its holding company;
- (e) acquire, by way of purchase or otherwise, any of its issued shares or any share of its holding company.

(2) For the purposes of subsection (1)(e), shares shall be deemed to have been acquired by a company if they purport to be held on behalf of the company, notwithstanding that they are registered in the names of a nominee.

(3) Every purported transaction effected -

- (a) in breach of subsection (1)(a), (b) or (c) shall be void;
- (b) in breach of subsection (1)(d) or (e) shall, except in the case of a *bona fide* purchaser or seller of shares without knowledge of the breach, be voidable by the company, and any payment made by the company in that behalf shall forthwith be repayable with interest at the ruling Bank Rate.

(4) Notwithstanding subsection (1)(c), a company admitted for quotation on the Official List of the Stock Exchange may, out of its revenue reserve, purchase up to 5% of its issued share capital.

(5) The Minister may make such regulations as he deems necessary for carrying into effect the provisions of subsection (4), sections 57A and 57B.

- (6) (a) Subject to section 57A, the issued share capital of a public company shall be deemed to have been cancelled to the extent of the share capital it has purchased pursuant to subsection(4).
- (b) On cancellation of the share capital under paragraph (a)-
- (i) the rights and privileges attached to the shares so cancelled shall lapse; and
- (ii) the shares so cancelled may be reissued in accordance with section 57B.
- (c) Any cancellation of share capital under this subsection shall be deemed not to be a reduction of capital under section 62.

#### **57A Company may hold its own shares**

(1) Any share capital purchased by a public company pursuant to section 57(4) shall, notwithstanding section 57(6), be deemed not to have been cancelled where-

- (a) the articles and memorandum of the company specifically provide that it may hold its own shares; and
- (b) the Board of Directors, by resolution, resolve that the share capital so purchased shall not be cancelled.

(2) Where the share capital purchased by a public company has not been cancelled pursuant to subsection (1), the shares concerned shall be held by the company in itself.

(3) Where a company holds any share capital pursuant to subsection (2)-

- (a) the rights and obligations attached to the shares so held shall not be exercised by or against that company so long as it holds those shares; and
- (b) that company shall not -
- (i) exercise any voting rights attached to the

shares

so held; or

- (ii) make or receive any distribution authorised or payable in respect of the shares so held.

**57B. Transfer of own shares held by company**

(1) Where a company holds its own shares pursuant to section 57A and it is specifically provided in its articles and memorandum that it may transfer the shares so held and the Board of Directors, by resolution, resolve that the shares so held be transferred, the shares shall then be transferred.

(2) A transfer of shares under subsection (1) shall be made as if it were an issue of shares under this Act.

(3) The company shall, within 14 days of the date of the passing of a resolution under section 57A or 57B, lodge a notice to that effect with the Registrar.

**58. Alteration in number of shares.**

(1) Where a company is authorised by its articles, it may in general meeting alter its memorandum so as to -

- (a) increase the number of its shares by creating new shares;
- (b) reduce the number of its shares by -
  - (i) cancelling shares which have not been taken or agreed to be taken; or
  - (ii) consolidating its existing shares, whether issued or not, into a smaller number of shares;
- (c) subdivide its shares into shares of a smaller amount if the proportion between the amount paid and the amount, if any, unpaid on each reduced share remains the same as it was in the case of the share from which the reduced share is derived; or
- (d) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares.

(2) Where shares are consolidated, the amount paid and any unpaid liability thereon, and any fixed sum by way of dividend or

repayment to which such shares were entitled, shall also be consolidated.

(3) Where a company has altered its share capital in a manner specified in subsection (1), it shall within 14 days lodge a notice to that effect.

(4) A notice under subsection (3) shall include particulars with respect to the classes of shares affected and, in the case of an issue of shares, the conditions subject to which the new shares have been or are to be issued.

#### **59. Financial assistance for acquisition of shares.**

It shall be lawful for a company -

- (a) where the company is authorised by its articles and the payment does not exceed 10 per cent of the price at which the shares are issued or such lesser rate as may be specified in the articles, to pay commission or brokerage to a person in consideration of his subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in the company;
- (b) where the lending of money is part of the ordinary business of the company, to lend money for use in the subscription or purchase of shares in the company or its holding company;
- (c) in accordance with a scheme for the time being in force, to provide money for the purchase or subscription of shares to be held for the benefit of a person who is in the *bona fide* employment of the company or related company, including any director holding salaried employment in the company or in a holding company or subsidiary of the company;
- (d) to lend money to a person, who is in the **bona fide** employment of the company or in a holding company or subsidiary of the company including a director holding a salaried employment, with a view to enabling him to purchase or subscribe for shares to be held by himself beneficially and not as nominee for the company or any other person;
- (e) to pay a dividend on its shares, notwithstanding that the dividend received by a shareholder is used to discharge any liability on his shares or to repay money borrowed for the purpose of subscribing or purchasing shares.

## 60. Redeemable preference shares.

(1) Subject to the other provisions of this section where a company having a share capital is authorised by its articles, it may -

(a) issue preference shares; or

(b) convert existing shares, whether issued or not, into preference shares,  
which are, or at the option of the company are liable, to be redeemed on such terms and in such manner as is provided in the articles.

(2) No company shall issue a preference share or convert an existing share into a preference share unless there are set out in its memorandum or articles the rights of the holders of those shares in relation to other shares or other classes of preference shares with respect to -

(a) repayment of capital;

(b) participation in surplus assets and profits;

(c) cumulative or non-cumulative dividends;

(d) voting; and

(e) priority of payment of capital and dividend.

(3) A redemption of preference shares shall not be deemed to reduce the amount of the share capital of the company.

(4) No preference share shall be redeemed -

(a) except out of -

(i) profits which would otherwise be available for dividend; or

(ii) the proceeds of a fresh issue of shares made for the purposes of the redemption; and

(b) unless the shares are fully paid up.

(5) Any premium payable on redemption shall be provided out of profits or of the share premium account before the shares are redeemed.

(6) Where a preference share is redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for dividend, be transferred to a capital redemption reserve a sum equal to the nominal amount of the shares redeemed.

(7) Subject to this section, sections 59 (*financial*

*assistance for acquisition of shares), 62 (reduction of capital), 63 (confirmation of reduction of capital) and 64 (effect of confirmation order) shall apply as if the capital redemption reserve were paid up capital of the company.*

(8) Where a company has redeemed or is about to redeem preference shares it may issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and for the purpose of any fee payable under this Act

- (a) the share capital of the company shall not, subject to paragraph (b), be deemed to be increased by that issue;
- (b) where new shares are issued before the redemption of the old shares, the new shares shall not be deemed to have been issued under this subsection unless the old shares have been redeemed within one month after the issue of the new shares.

(9) The capital redemption reserve may be applied in paying up unissued shares of the company to be issued to members as fully paid bonus shares.

(10) Where a company redeems a redeemable preference share, it shall, within 14 days after so doing, lodge a written notice specifying the share redeemed.

#### **61. Validation of shares improperly issued.**

(1) Where a company has purported to create, issue or allot shares and the creation, issue or allotment or the terms thereof was not authorised by this Act or any other law, the Court may, on application made by the company, by a member or creditor or by a mortgagee of any of the shares, make an order validating the creation, issue or allotment of those shares or confirming the terms of their creation, issue or allotment.

(2) A copy of every order made under subsection (1) shall be lodged with the Registrar by the company and the shares shall thereupon be deemed to have been validly created, issued or allotted.

#### **62. Reduction of share capital.**

(1) Subject to section 63, where a company is authorised by

its articles, it may by special resolution reduce its share capital in any manner and in particular, without limiting the generality of the foregoing, may -

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
- (b) cancel any paid up capital which is lost or unrepresented by available assets;
- (c) pay off any paid up share capital which is in excess of the needs of the company; or
- (d) alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) Subject to subsection (3), where the proposed reduction of share capital involves a diminution of liability in respect of unpaid share capital or the payment to a member of any paid up share capital, or where in any other case the Court so directs,-

- (a) every creditor who, at the date fixed by the Court is entitled to a debt or claim, which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;
- (b) the Court, unless satisfied on affidavit that there are no such creditors -
  - (i) shall settle a list of creditors so entitled to object;
  - (ii) shall ascertain as far as possible, without requiring an application from a creditor, the names of those creditors and the nature and amount of their debts or claims; and
  - (iii) may publish notices fixing a final day on or before which creditors not entered on the list may claim to be so entered; and
- (c) where a creditor entered on the list, whose debt or claim is not discharged or has not been determined, does not consent to the reduction, the Court may dispense with the consent of that creditor on the company securing payment of his debt or claim by appropriating as the Court directs -
  - (i) where the company admits the full amount of the debt or claim or, though not admitting it, is

willing to provide for it, the full amount of the debt or claim; or

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

(3) The Court may, having regard to any special circumstances of any case, direct that subsection (2) shall not apply as regards any class of creditors.

### **63. Confirmation of reduction of share capital.**

(1) Where the Court is satisfied, with respect to every creditor who under section 62 is entitled to object to the reduction, that his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined, or has been secured, it may, subject to the other provisions of this section, make an order confirming the reduction on such terms as it thinks fit.

(2) In deciding whether to confirm a reduction of share capital the Court shall take into account -

- (a) where, in the case of class of shares, the liability to pay unpaid capital is reduced or the capital is to be repaid wholly or in part, the sufficiency of -
  - (i) the assets of the company to provide for the repayment of the capital in respect of all classes of the company's shares which rank for repayment of capital before that class of shares; and
  - (ii) the profits which the company is likely to earn in the future to provide for the fixed dividends on all classes of the company's preference shares which rank for payment of a fixed dividend before that class of shares;
- (b) where the resolution provides for the repayment of the amount paid up on a class of preference shares, or on certain shares of a class, the reasonableness of the amount to be paid to the members having regard to -
  - (i) the circumstances in which the shares were issued;

- (ii) the financial situation of the company;
- (iii) the yield on the issued shares of the company which are not to be repaid by the terms of the resolution; and
- (iv) the amount which the members whose shares are to be repaid would receive if the company were wound up forthwith.

(3) The Court shall not confirm the reduction in respect of preference shares if the amount to be paid to the holders of those shares is less than the amount by which the capital paid up on shares held by them is to be reduced, unless the resolution is supported by a unanimous resolution passed at a separate meeting of the preference shareholders.

(4) Where the resolution provides for the cancellation of paid up capital which is lost or unrepresented by available assets, the Court shall not confirm the reduction unless the loss or deficiency is borne by the holders of shares who would bear it if the company were wound up immediately, in the same order and in the same proportion as in the winding up.

#### **64. Effect of confirmation order.**

(1) An order under section 63 shall specify -

- (a) the amount of the share capital of the company as altered by the order;
- (b) the number of shares into which it is to be divided;
- (c) the amount of each share; and
- (d) the amount, if any, at the date of the order deemed to be paid up on each share.

(2) Every company shall, within 14 days, lodge with the Registrar a copy of an order made under section 63.

(3) Where a copy of the order is lodged -

- (a) the resolution for reducing share capital as confirmed by the order shall take effect; and
- (b) the particulars specified in subsection (1) shall be substituted for the corresponding particulars in the memorandum and that substitution and any addition ordered by the Court to be made to the name of the

company shall, in the case of an addition to the name, for such period as is specified in the order, be deemed to be alterations of the memorandum.

(4) Subject to subsection (5), a past or present member of a company limited by shares shall not be liable, in respect of any share, to any call or contribution exceeding in amount any difference between the amount of the share as fixed by the order and the amount paid, or any reduced amount which is to be deemed to have been paid, on the share.

(5) Where a creditor entitled to object to the reduction 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 to pay the amount of his debt or claim -

(a) every person who was a member at the date of the lodging of the copy of an order under section 63 shall be liable to contribute, for the payment of the 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 date; and

(b) the Court may, if the company is wound up, on the application of the creditor and proof of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, settle a list of persons liable to contribute under paragraph (a) and make and enforce calls and orders on the contributories settled on the list as if they were contributories in a winding up.

(6) Nothing in subsection (5)(a) shall affect the rights of the contributories among themselves.

## **65. Numbering of shares.**

(1) Subject to subsection (2), every share shall be distinguished by an appropriate number.

(2) (a) Where at any time all the issued shares in a company, or all the issued shares in a company of a particular class, are fully paid up and rank equally for all purposes, those shares shall not be required to have a distinguishing number so long as each of those shares remains fully paid up and ranks equally for all purposes with all the shares of the same class for the time being issued and fully paid up.

(b) It shall not be necessary for the shares to have a distinguishing number -

- (i) where all the issued shares in a company are evidenced by a certificate referred to in section 66;
- (ii) each certificate is distinguished by an appropriate number; and
- (iii) that number is recorded in the members' register.

(3) The shares registered in a branch register shall be distinguished from the shares registered in the members' register, and no entry relating to a transaction with respect to any shares registered in a branch register shall, during the continuance of that registration, be made in any other register.

#### **66. Evidence of title.**

(1) A certificate under the seal of a company specifying any shares held by a member shall be admissible as evidence of his title to the shares.

(2) Every certificate shall comply with the Stamp Act and be under the seal of the company and specify, as at the date of its issue -

- (a) the name of the company and the authority under which the company is constituted;
- (b) the address of the registered office of the company or, where the certificate is issued by a branch office, the address of that branch office; and
- (c) the nominal value and the class of the shares and the extent to which the shares are paid up.

(3) Where a company is authorised by its articles, it may have a duplicate seal which shall be a facsimile of the seal of the company with the addition on its face of the words "Share Seal" and a certificate under the duplicate seal shall for the purposes of this section be deemed to be sealed with the seal of the company.

(4) A failure to comply with this section shall not affect the rights of the holder of a share.

#### **67 Voting rights.**

Subject to section 70 and subsections (9), (10), (11), (12), (13) and (14) of section 347 every member of a public company or a subsidiary or holding company of a public company other than a

holder of preference shares shall, notwithstanding anything in the memorandum or articles, have a right to attend any general meeting of the company and to speak and vote in respect of his shares on every resolution placed before the company and this voting right on a poll shall be in proportion to his share of the paid up capital on the voting shares.

## **68 Disproportionate rights.**

(1) Subject to subsections (2) and (5), no public company or subsidiary or holding company of a public company, shall issue a share which carries rights in the company as to dividend, capital or otherwise which are, in relation to the paid up capital on the share, disproportionate to the rights attaching to any other share other than a preference share or a participating preference share.

(2) A public company or subsidiary or holding company of a public company may issue a preference share and the memorandum or articles may provide that the holder of a preference share shall not be entitled to attend, speak or vote at a general meeting of the company except on a resolution -

- (a) moved during such period as the preferential dividend or any part thereof remains in arrear and unpaid, being a period starting from a date not more than 12 months, or such lesser period as the memorandum or articles may provide, after the due date of the dividend;
- (b) which varies the rights attached to the shares;
- (c) to remove an auditor of the company or to appoint another person in place of the auditor; or
- (d) for the winding up of the company or moved during the winding up of the company.

(3) For the purposes of subsection (2) a dividend shall be deemed to be due on the date appointed in the memorandum or articles for the payment of the dividend for any year or other period or, if no such date is appointed, on the day immediately following the expiry of the year or other period, whether or not the dividend has been earned or declared.

(4) Where the holder of a preference share has a right to vote on a resolution in accordance with subsection (2), his voting right on a poll as the holder of the share shall be in proportion to his share of the total paid up capital of the company.

(5) A public company or a subsidiary or holding company of a public company may issue a participating preference share which

shall confer on the shareholder voting rights which are proportionate to his share of the paid up capital on the voting shares of the company.

(6) Without in any way limiting the meaning of the words "or otherwise" in subsection (1) it is declared for the avoidance of doubt that these words include -

- (a) any right to nominate or appoint or remove directors or other officers of the company, and
- (b) any right to receive any part of the income of the company whether or not declared as a dividend.

(7) "Issue a share" for the purposes of subsection (1) includes increasing or otherwise altering the rights carried by a share into another class of share.

#### **68A Legal regime applicable to an approved company**

(1) The provisions of sections 67,68,69 and 347(9) to (14) shall not apply to an approved company.

(2) For the purposes of this section, "approved company" means a public company approved by the Minister, in which Government holds, directly or indirectly, more than 50 per cent of the share capital immediately prior to the sale of any shares which reduces the shareholding of Government to 50 per cent or less.

#### **69. Equal rights to dividend and capital.**

(1) Where a public company or subsidiary or holding company of a public company has, before the commencement of the Act or while it was a private company, issued a share which confers on the holder a disproportionate right to dividend or capital, the company shall not -

- (a) issue an invitation to subscribe for or to purchase any of its shares until the rights as to voting, dividend and capital attached to each share have been varied so as to comply with section 68;
- (b) if it is a private company, be converted into a public company until the rights as to voting, dividend and capital attached to each share of the company have been varied so as to comply with section 68;
- (c) alter the rights of a preference share so that it becomes a participating preference share or an ordinary share without conferring on the share the right to vote provided by section 68.

(2) If a private company after the commencement of this Act becomes a subsidiary or holding company of a public company it shall within 6 months alter the rights attached to each share so as to comply with section 68.

(3) Nothing in this section or in sections 67 and 68 shall in the case of any shares issued before the commencement of this Act affect any voting rights attached to those shares save as provided in section 347 or any right attached to the shares as to dividend or capital.

#### **70. Limitation as to voting rights.**

(1) A company may in its articles provide that a member shall not be entitled to vote unless all calls or other sums personally due by him in respect of shares in the company have been paid.

(2) Where a company limited by shares has under section 51 (b) accepted from a member an amount remaining unpaid on his shares although no part of that amount has been called up, the member shall not be entitled to any voting rights in respect of the amount paid until it would, but for that payment, have become payable.

(3) Nothing in this section or in sections 67 and 68 shall in the case of any shares issued before the commencement of this Act affect any voting rights attached to those shares save as provided in section 347 or any right attached to the shares as to dividend or capital.

#### **71. Variation of class rights.**

(1) Where shares are divided into different classes, the rights attached to a class shall not be varied except to the extent and in the manner provided in the section and in the memorandum and articles.

(2) Subject to the other provisions of this section a company may, by special resolution, alter its memorandum and articles by -

(a) inserting a provision regarding the variation of the rights of any class of shares; or

(b) modifying the terms of any such provision

(3) Where the memorandum expressly forbids any variation of the rights of a class of shares, or contains a provision regarding the variation and expressly forbids any alteration of that provision, the rights of the class or the provision for variation shall not be altered except with the sanction of the Court under an arrangement under section 174.

(4) An alteration under subsection (2) shall require the prior written consent of the holders of at least three fourths of the issued shares of each class or the sanction of a special resolution of the holders of the shares of each class and shall, for the purposes of subsections (7) to (11) be deemed to be a variation of the rights of each class of shares.

(5) Notwithstanding the memorandum and articles, the rights attached to a class of shares first issued after the commencement of this Act shall not be varied except with the written consent of the holders of at least three fourths of the issued shares of that class or the sanction of a special resolution of the holders of the shares of that class.

(6) A resolution which would have the effect of diminishing the proportion of the total votes exercisable at a general meeting of the company by the holders of the existing shares of a class or of reducing the proportion of the dividends or distributions payable at any time to the holders of the existing shares of a class, shall be deemed to be a variation of the rights of that class.

(7) Where the rights of a class of shares are varied, the holders of not less in the aggregate than 10 per cent of the issued shares of that class may apply to the Court to have the variation cancelled.

(8) An application under subsection (7) shall be made within 60 days of the date on which the variation was effected and may be made, on behalf of the shareholders entitled to make the application, by any one or more of their number as they may appoint in writing.

(9) Where an application is made under subsection (7) the company shall forthwith lodge with the Registrar a notice in that behalf.

(10) The Court, after hearing the applicant and any other person interested in the application who applies to the Court to be heard, shall -

- (a) if it is satisfied that the variation would unfairly prejudice the shareholders of any class, make an order cancelling the variation; and
- (b) if not so satisfied, make an order confirming the variation.

(11) Where an order is made under subsection (10), the company shall, within 28 days, lodge with the Registrar a copy of the order.

**72. Option over unissued shares.**

(1) Subject to subsection (2), a public company shall not grant an option which enables a person to take up unissued shares after a period of 5 years has elapsed from the date on which the option was granted.

(2) Subsection (1) shall not apply where a debenture holder has an option to take up shares of the company by way of redemption of the debenture.

**73. Payment of interest out of capital.**

(1) Where a share is 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 long period, the company may, subject to subsection (2), pay interest on so much of such share capital as is for the time being paid up and charge the interest so paid to capital as part of the cost of the construction or provision.

(2) (a) No such payment shall be made unless it is authorised, by the articles or by special resolution, and is approved by the Court.

(b) Before approving of a payment, the Court may at the company's expense appoint a person to inquire and report as to the circumstances of the case and require the company to give security for the payment of the costs of the inquiry.

(c) The payment shall be made for a period determined by the Court, but not exceeding a period of 12 months after the works or buildings have been actually completed or the plant provided.

(d) The rate of interest shall in no case exceed the ruling Bank Rate.

(e) 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.

SUB-PART IV - DEBENTURES

**74. Debenture holders' representative.**

(1) If a company issues or agrees to issue debentures of the same class to more than 25 persons, or to any one or more persons with a view to the debentures or any of them being offered for sale to more than 25 persons, the company shall before issuing any of the debentures -

(a) sign under its seal and agency deed; and

- (b) procure the signature to the deed by a person qualified to act as a debenture holders representative.

(2) For the purposes of this section, debentures shall not be deemed to be of the same class if -

- (a) they do not rank equally for repayment when any security created by the debenture is enforced or the company is wound up; or

- (b) different rights attach to them in respect of -

- (i) the rate of, or dates for, payment of interest;

- (ii) the dates when, or the instalments by which, the principal of the debentures will be repaid, unless the difference is solely that the class of debentures will be repaid during a stated period of time and particular debentures will be selected by the company for repayment at different dates during that period by drawings, ballot or otherwise;

- (iii) any right to subscribe for or convert the debentures into shares or other debentures of the company or any other company or corporation; or

- (iv) the powers of the debenture holders to realise any security.

(3) No agency deed shall cover more than one class of debentures.

(4) The Fourth Schedule to the Act shall apply to the following -

- (a) the qualification, appointment and removal of a debenture holders' representative;

- (b) the naming of a successor to a debenture holders' representative;

- (c) the matters to be set out in an agency deed;

- (d) the powers of the debenture holders' representative;

- (e) the right of the debenture holders' representative

- to obtain information from the borrowing company;
- (f) meetings of debenture holders;
- (g) the duties of the debenture holders' representative;
- (h) repayment of loans or deposits where the purpose stated in a prospectus issued in relation to debentures, is not achieved;
- (i) release of the debenture holders' representative.

#### **75. Special powers of court.**

The Court may compel any person to take up and pay for any debenture which he has contracted with the company to take up or pay for.

#### **76. Perpetual debentures.**

Notwithstanding any other law, a condition contained in a debenture or in an agency deed for securing a debenture, whether the debenture or agency deed is issued or made before or after the commencement of this Act, shall not be invalid by reason that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period however long.

#### **77. Debentures to bearer.**

No company shall issue debentures to bearer.

#### **78. Register of debenture holders.**

(1) Every company which issues debentures shall at its registered office keep a register of debenture holders which shall contain the following particulars -

- (a) the names and addresses of the debenture holders;
- (b) the amount of debentures held by them.

(2) The register shall, except when duly closed, be open to the inspection of a debenture holder or a member.

(3) For the purposes of this section a register shall be deemed to be duly closed if closed in accordance with a provision contained in the articles, the debenture, the debenture stock certificate, the agency deed or any other document relating to or securing the debenture, during such period, not exceeding in the aggregate 30 days in any year, as is specified in the document.

- (4) (a) Every company shall, at the request of a debenture

holder or a member and on payment of the prescribed fee in the Eleventh Schedule for every page required to be copied, forward to him a copy of the register of debenture holders.

(b) The copy need not include any particulars as to a debenture holder other than his name and address and the debenture held by him.

#### **79. Reissue of redeemed debentures.**

(1) Where a company has, whether before or after the commencement of this Act, redeemed a debenture, it shall subject to subsection (2) -

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

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

have and be deemed always to have had the power to reissue the debentures by reissuing the same debentures or by issuing other debentures in their place.

(2) The reissue of a debenture or the issue of one debenture in place of another under subsection (1), shall not be regarded as the issue of a new debenture for the purpose of any provision in the articles or in any contract entered into by the company limiting the amount or number of debentures that may be issued by the company.

(3) After the reissue the person entitled to the debentures shall have and shall be deemed always to have had the same priorities as if the debentures had never been redeemed.

(4) Where, whether before or after the commencement of this Act, a company has given a debenture to secure advances on current account or otherwise, the debenture shall not be deemed to have been redeemed by reason that the account of the company with the debenture holder has ceased to be in debit while the debenture remains unsatisfied.

#### **80. Inscription of mortgages.**

(1) Where a company has decided to issue debentures and to secure their payment by a mortgage or floating charge -

(a) it shall not be necessary to mention the name, surname, profession and domicile of the creditor in

the deed specified in sections 48 to 48B of the Transcription and Mortgage Act;

- (b) the inscription of such mortgage or floating charge shall be valid if the first and last serial numbers of the said debentures are mentioned.

(2) Subject to section 74 and the Fourth Schedule, the appointment of a debenture holders' representative, with power to require the inscription of a mortgage with an election of domicile and the renewal or erasure of such inscription, and generally to take all measures for the protection of the rights of the debenture holders, shall be made in such manner as the company may at the time of the issuing of the said debentures determine.

#### SUB-PART V - CHARGES

##### **81. Lodging of particulars of charges.**

(1) Every company shall, within 28 days of the creation by the company of any charge or of making any issue of debentures charged on or affecting any property of the company, lodge with the Registrar a statement of the particulars specified in subsection (3) or (4) in the form prescribed in the Tenth Schedule.

(2) Where -

- (a) a company acquires any property which is subject to a charge referred to in subsection (1), particulars of which would, if it had been created by the company after the acquisition of the property, have been required to be lodged;
- (b) a registered foreign company has, before registration, created a charge subject to subsection (1), particulars of which would, if it had been created by the company while it was registered, have been required to be lodged; or
- (c) a registered foreign company has before registration acquired property which is subject to a charge subject to subsection (1), particulars of which would, if it had been created by the company after the acquisition and while it was registered, have been required to be lodged;

the company shall, within 28 days after the date on which the acquisition is completed or the date of the registration of the company in Mauritius, as the case may be, cause a statement of the particulars specified in subsection (3) or (4) to be lodged in the form prescribed in the Tenth Schedule.

(3) Subject to subsection 4, the particulars required to be given in the statement are -

- (a) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property;
- (b) the amount secured by the charge;
- (c) a description sufficient to identify the property charged;
- (d) the name of the person entitled to the charge; and
- (e) any prohibition or restriction contained in the instrument creating the charge, or in any agency deed, on the power of the company to create any other charge or issue debentures ranking in priority to or equally with the charge or debentures in respect of which the application is made.

(4) Where the holders of a series of debentures are entitled to the benefit of a charge the particulars required to be given in the statement are -

- (a) the total amount secured by the whole series;
- (b) the dates of the resolution authorising the issue of the series and the date of the agency deed or other instrument by which the security is created or defined;
- (c) the name of the debenture holders' representative; and
- (d) the particulars required to be given by paragraphs (c) and (e) of subsection (3).

(5) Where a charge (including an issue of debentures), particulars of which are required to be lodged under subsection (1)

- (a) is transferred by the chargeholder or debenture holders' representative;
- (b) is modified in a material respect;
- (c) has its priority altered in relation to any other charge or issue of debentures,

the company or in the case of transfer, the transferee, shall lodge particulars, of the name and description of the transferee and of any material modification to the terms of the charge and of any alteration in priority, such particulars to be lodged within 28 days after the making of such transfer or modification or alteration of priority in the form prescribed in the Tenth Schedule.

(6) (a) Where, in relation to a charge particulars of which are required to be lodged under subsection (1) -

- (i) the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (ii) the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking of the company concerned,

the company shall lodge a certificate of satisfaction in whole or in part, or of the fact that the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be in the form prescribed in the Tenth Schedule.

(b) The certificate shall be supported by evidence sufficient to satisfy the Registrar of the payment, satisfaction, release or cessation referred to in paragraph (a).

#### **SUB PART VI - TITLE AND TRANSFERS**

##### **82 Transfer of shares and debentures.**

(1) Every share shall be movable property and subject to the provisions of this Sub-Part may be transferred in the manner provided by the articles.

(2) Every debenture shall be movable property and subject to the provisions of this Sub-Part may be transferred in accordance with the provisions of any agreement or deed between the company and the debenture holder or debenture holders' representative.

##### **83 Privilege or lien on shares.**

(1) Notwithstanding any other law, a company shall, where the articles so provide, be entitled to a privilege or lien, independently of and without the necessity for inscription, in priority to any other claim, over every issued share, whether fully paid or not, and over any dividend payable on the share, for all money due by the holder of that share to the company whether by way of money called or payable at a fixed time in respect of that share

or otherwise.

(2) (a) Subject to paragraph (b) a company may, in such manner as the directors think fit, sell any share on which the company has a privilege or lien.

(b) No sale shall be made unless -

(i) a sum in respect of which the lien exists is presently payable; and

(ii) until the expiry of 14 days after a written notice, stating and demanding payment of such part of the amount in respect of which the privilege or lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of the death or bankruptcy of the registered holder.

(3) (a) The directors may, to give effect to any sale under subsection (2), authorise some person to transfer the shares sold to the purchaser thereof.

(b) The purchases shall be registered as the holder of the share comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings relating to the sale.

(4) The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and any residue shall, subject to a like lien for sums not presently payable as existed upon the share before the sale, be paid to the person entitled to the share at the date of the sale.

(5) The directors may, where the articles so provide, decline to register the transfer of a share on which the company has a lien.

#### **84 Loss or destruction of certificates.**

(1) Subject to subsection (2) and (3), where a certificate or other document of title to a share or debenture is lost or destroyed, the company shall on an application being made by the owner and on payment of a fee prescribed in the Eleventh Schedule issue a duplicate certificate or document to the owner.

(2) The application shall be accompanied by -

(a) an affidavit that -

- (i) the certificate or document has been lost or destroyed, and has not been pledged, sold or otherwise disposed of; and
  - (ii) in the case of a loss proper searches have been made; and
- (b) a written undertaking that if the certificate or document is found, or received by the owner, it will be returned to the company.

(3) Where the value of the shares or debentures represented by the certificate or document is greater than 1,000 rupees, the directors shall, before accepting an application for the issue of a duplicate certificate or document, require the applicant to -

- (a) cause an advertisement to be inserted in a newspaper stating that the certificate or document has been lost or destroyed and that the owner intends, after the expiry of 14 days after the publication of the advertisement, to apply to the company for a duplicate;
- (b) furnish such indemnity as the directors consider to be adequate against any loss following on the production of the original certificate or document.

## **85. Pledges.**

(1) Any share or debenture may be given in pledge in all civil and commercial transactions in accordance with the Code Napoleon.

(2) Every company shall keep a register in which the transfer of shares or debentures given in pledge may be inscribed, stating that the pledgee holds the share or debenture not as owner but in pledge of a debt the amount of which shall be mentioned in the case of a civil pledge, and a pledge shall be sufficiently proved by a transfer inscribed in the register.

(3) The transfer shall be signed by the pledger and by the pledgee and by the secretary of the company.

## **86. Instrument of transfer.**

(1) (a) Subject to section (4) notwithstanding anything in its articles a company shall not enter a transfer of shares or debentures in the members' register or the register of debenture holders unless a valid instrument of transfer has been delivered to the company in the form required by section 24 of the Registration Duty Act.

(b) Nothing in paragraph (a) shall prejudice any power to register as a member or debenture holder a person to whom the right to any share or debenture has been transmitted by operation of law.

(2) A transfer of the share, debenture or other interest of a deceased member of a company made by his heir or by the Curator shall, subject to any other law relating to stamp duty, registration dues or succession duty, be as valid as if he had been such a member at the time of the execution of the instrument of transfer, even if the heir or the Curator is not himself a member.

(3) Before entering a transfer made under subsection (2) in the members' register or the register of debenture holders, the directors of the company may require production of proper evidence of the title of the heir or, in the case of the Curator, of the vesting order.

(4) Subsection (1)(a) shall not apply to securities traded on a stock market of the Stock Exchange.

#### **87. Request of transfer or for entry in register.**

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

(2) On the written request of the transferor of a share or debenture or other interest in a company, the company shall by written notice require the person having the possession, custody or control of the share certificate or debenture and the instrument of transfer thereof or either of them to deliver it or them to its registered office, within such period as may be specified in the notice, being not less than 7 nor more than 28 days after the date of the notice, to have the share certificate or debenture cancelled or rectified and the transfer entered in the appropriate register or otherwise dealt with.

(3) Where a person refuses or neglects to comply with a notice under subsection (2) the transferor may apply to the Court to issue a summons for that person to appear before the Court and show cause why the document mentioned in the notice should not be delivered or produced.

(4) The Court may order the person summoned under subsection (3) to deliver a document referred to in subsection (2) to the company on such terms or conditions as the Court thinks fit.

(5) A list of all share certificates or debentures called for

under this section and not delivered shall be exhibited at the registered office of the company and shall be advertised in such newspapers and at such times as the company thinks fit.

**88. Notice of refusal to enter transfer in register.**

Where a company refuses to register a transfer of any share, debenture or other interest in the company it shall, within 28 days after the date on which the transfer was delivered to it, send to the transferor and to the transferee notice of the refusal and in the case of a public company the reasons for the refusal shall be given in the notice.

**89. Certification of transfers.**

(1) The certification by a company of an instrument of transfer of a share, debenture or other interest in the company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a *prima facie* title to the share, debenture or other interest in the transferor named in the instrument of transfer but not as a representation that the transferor has any title to the share, debenture or other interest.

(2) Where a certification is expressed to be limited to 42 days or any longer period from the date of certification, the company and its officers shall not, in the absence of fraud, be liable in respect of the registration of any transfer of a share, debenture or other interest comprised in the certification after expiry of the period so limited or any extension thereof given by the company if the instrument of transfer has not, within that period been delivered to the company for entry in the appropriate register.

(3) For the purposes of this section -

- (a) an instrument of transfer shall be deemed to be certificated if it bears the words "certificate delivered" or words to the like effect;
- (b) the certification of an instrument of transfer shall be deemed to be made by a company if -
  - (i) the person issuing the instrument is a person apparently authorised to issue certificated instruments of transfer on the company's behalf;
  - (ii) the certification is signed by a person apparently authorised to certificate transfers on the company's behalf or by any officer of the company so apparently authorised; and

- (c) a certification that purports to be authenticated by a person's signature or initials, whether handwritten or not, shall be deemed to be signed by him unless it is shown that the signature or initials were not placed there by him and were not placed there by any other person apparently authorised to use the signature or initials for the purpose of certificating transfers on the company's behalf.

**90. Issue of certificates.**

Every company shall, within 2 months after the allotment of any of its shares or debentures, and within one month after the date on which a transfer (other than a transfer which the company is entitled to refuse, and does refuse, to enter in the appropriate register) of any of its shares or debentures is delivered to the company, complete and have ready for delivery all the appropriate certificates and debentures in connection with the allotment or transfer.

**PART V - MANAGEMENT AND ADMINISTRATION OF COMPANIES**

*Sub-Part I - Office and name*

**91 Registered office.**

Every company shall as from the day on which it begins to carry on business or as from the fourteenth day after the date of its registration, whichever is the earlier, have a registered office in Mauritius to which all communications and notices may be addressed and which shall be open and accessible to persons entitled under this Act to inspect any registers kept by the company or persons having service to effect on the company, for not less than 4 hours between the hours of 9 a.m. and 4 p.m. on every day other than a Saturday or a public holiday.

**92. Notification to Registrar.**

Every company when lodging its memorandum and articles for registration under section 19 shall lodge with the Registrar a notice of the situation of the registered office and shall lodge with the Registrar any change in those particulars, within 14 days after the date of any such change in the form prescribed in the Tenth Schedule.

**93. Publication of name.**

Every company shall -

- (a) cause its name to appear in legible romanised letters on -
  - (i) its seal; and
  - (ii) all business letters, statements of account, invoices, official notices, publications, bills of exchange, promisory notes, orders, receipts and letters of credit of, or purporting to be issued or signed by or on behalf of, the company;
- (b) cause its name, and, in the case of the registered office, the words "Registered Office", to be permanently displayed in a prominent position in legible romanised letters on the outside of every office or place in which its business is carried on.

**94. Registrar may direct change of registered office.**

Where the Registrar has reasonable grounds to believe that a company has selected as the situation of its registered office a place which because of its location is difficult or impracticable for persons who have dealings with the company to visit or to effect service on the company, the Registrar may direct the company by notice in writing to change its registered office within 28 days to a place where it will be practicable for such persons to visit or effect service on the company.

*Sub-Part II - Directors and other officers*

**95. Directors.**

(1) Every company shall have not less than 2 directors who shall be ordinarily resident in Mauritius except for an offshore company which shall have at least one of its directors ordinarily resident in Mauritius.

(2) No person other than a natural person of full age and capacity shall be a director.

(3) The first directors of a company shall be named in the return lodged with the Registrar under section 115(6)(a).

**96. Restrictions on appointment of or advertisement for directors.**

(1) A person shall not be named as a director or proposed director in the return of directors lodged under section 115(6)(a), in a memorandum, in the articles, in a prospectus or a statement in lieu of prospectus, unless before the memorandum or articles are lodged with the Registrar or the prospectus is issued or the statement in lieu of prospectus is lodged, as the case may be, he

has, by himself or by his agent authorised in writing for the purpose, signed and lodged a consent in writing to act as a director and subject to subsection (3), he has in the form prescribed in the Tenth Schedule -

- (a) signed the memorandum for a number of shares not less than his qualification shares, if any;
- (b) signed and lodged an undertaking in writing to take from the company and pay for his qualification shares, if any; or
- (c) made and lodged a declaration to the effect that a number of shares, not less than his qualification shares, if any, is registered in his name.

(2) Where a person has signed and lodged an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

(3) Paragraphs (a), (b) and (c) of subsection (1) shall not apply to -

- (a) a company limited by guarantee; or
- (b) a private company.

#### **97. Share qualification of directors.**

(1) Every director, who is by the articles required to hold a specified share qualification and who is not already qualified, shall obtain his qualification within 2 months after his appointment or such shorter period as is fixed by the articles.

(2) Subject to any provision to the contrary in the articles the qualification of a director shall be held by him solely and not as one of several joint holders.

(3) A director shall vacate his office if he has not within the period referred to in subsection (1) obtained his qualification or if, after so obtaining it, he ceases at any time to hold his qualification.

(4) A person vacating office under this section shall not be capable of being reappointed as director until he has obtained his qualification.

#### **98. Undischarged bankrupts.**

(1) No person who is an undischarged bankrupt shall except with the leave of the Court, act as director of, or directly or

indirectly take part in or be concerned in the management of, a company.

(2) The Court shall not give leave under this section unless notice of the application to the Court for leave has been served on the Registrar and on the Official Receiver.

(3) The Registrar and the Official Receiver may be represented at the Court hearing and may oppose the granting of the application.

#### **99. Voting on appointment of directors.**

(1) No motion for the appointment of 2 or more persons as directors by a single resolution at a general meeting of a public company shall be made unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against.

(2) A resolution passed pursuant to a motion made in contravention of this section shall be void, whether or not an objection to its motion was made at the time.

(3) Where a resolution pursuant to a motion made in contravention of this section is passed, no provision in the memorandum or articles for the automatic reappointment of retiring directors in default of another appointment shall apply.

(4) For the purposes of this section, a motion approving a person's appointment or nominating a person for appointment shall be treated as a motion for his appointment.

(5) Nothing in this section shall -

(a) apply to a resolution altering the company's articles; or

(b) prevent the election of 2 or more directors by a poll.

#### **100. Removal of directors.**

(1) Subject to the other provisions of this section a public company may, notwithstanding anything in its memorandum or articles or in any agreement between it and a director, by ordinary resolution remove a director before the expiry of his period of office.

(2) Where a director who is to be removed under subsection (1) was appointed to represent the interests of a particular class of members or debenture holders, the resolution shall not take

effect until his successor has been appointed.

(3) Special notice shall be required of a resolution to remove a director under subsection (1) or to appoint some person in place of a director so removed at the meeting at which he is removed, and, on receipt of notification of such intended resolution, the company shall forthwith send a copy to the director concerned, and the director shall be entitled to be heard on the resolution at the meeting.

(4) Where notice is given under subsection (3) and the director concerned makes written representations to the company and requests their notification to the members, the company shall, unless the representations are received by it less than 48 hours before the meeting -

- (a) state in any notice of the resolution given to members that representations have been made; and
- (b) send a copy of the representations to every member to whom notice of the meeting is sent.

(5) Where a copy of the representations is not sent under subsection (4) because they were received less than 48 hours before the meeting or because of the company's default, the director may, require that the representations shall be read out at the meeting in addition to his right to be heard orally.

(6) Notwithstanding subsection (4) copies of the representations shall not be sent out and the representations shall not be read out at the meeting if, on the application of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the Court may order the company's costs on an application under this subsection to be paid in whole or in part by the director.

(7) A vacancy created by the removal of a director under subsection (1), if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(8) A person appointed director in place of a person removed under subsection (1) shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become a director on the day on which the person in whose place he is appointed was last appointed a director.

(9) Notwithstanding anything in the articles or in any agreement with the director, a director of a public company shall

not be removed by, or be required to vacate his office by reason of, any resolution of the Board of Directors, request or notice of the other directors or any of them.

(10) Nothing in this section shall -

- (a) deprive a person removed under subsection (1) of any compensation payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director; or
- (b) derogate from any power to remove a director which may exist apart from this section.

### **101. Powers of directors.**

(1) Subject to the memorandum or articles and subject to the other provisions of this section, the business of a company shall be managed by the directors who may exercise all the powers of the company which are not by this Act or the memorandum or articles required to be exercised by the members in general meeting.

(2) No alteration of the memorandum or articles shall invalidate any prior act of the directors which would have been valid if that alteration had not been made.

(3) Subject to subsections (4), (5) and (6), the directors of a company which has a share capital shall not, without the approval of an ordinary resolution of the company -

- (a) sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking or of the assets of the company;
- (b) issue any new or unissued shares in the company unless the shares have first been offered on the same terms and conditions to all the existing members or to all the holders of the shares of the class or classes being issued, in proportion as nearly as may be to their existing holdings;

(4) No resolution of the company shall be effective as approving of a transaction -

- (a) specified in subsection (3) (a) unless it expressly authorises the specific transaction proposed by the directors;
- (b) specified in subsection 3(b) if passed more than one year before the issue of the said shares, unless the

issue is in accordance with a scheme for the time being in force relating to the issue of shares to or for the benefit of persons *bona fide* in the employment of the company or any related corporation.

- (5) Nothing in subsection (3) shall prohibit -
- (a) the issue of shares under a *bona fide* underwriting agreement; or
  - (b) the issue to a director at a fair price payable in cash of any share which, under the memorandum and articles, he is required to hold by way of share qualification.

(6) No lender or other person dealing with a company shall be concerned to see or inquire whether the conditions of this section have been fulfilled and no debt incurred or contract entered into with the company by a person dealing with it shall be invalid or ineffectual, except in the case of actual notice to that person, at the time when the debt was incurred or the contract was entered into, that the company was acting in breach of this section.

## **102. Duties of directors.**

- (1) It shall be the duty of the directors of a company -
- (a) to exercise their powers in accordance with this Act and within the limits and subject to the conditions and restrictions established by the company's memorandum and articles;
  - (b) to obtain the authorisation of a general meeting before doing any act or entering into any transaction for which the authorisation or consent of a general meeting is required by this Act or by the company's memorandum or articles;
  - (c) to exercise their powers honestly in good faith in the best interests of the company and for the respective purposes for which such powers are explicitly or impliedly conferred;
  - (d) to exercise, the degree of care, diligence and skill required by section 112;
  - (e) to account to the company for any monetary gain, or the value of any other gain or advantage, obtained by them in connection with the exercise of their powers, or by reason of their position as directors of the company, except remuneration, pensions,

provisions and compensation for loss of office in respect of their directorships of any company which are approved by the company under section 103;

- (f) not to make use of any confidential information received by any of them on behalf of the company as directors otherwise than for the benefit of the company as a whole, either during their terms of office or thereafter unless such use is approved by the company under section 103;
- (g) not to compete with the company or become a director or officer of a competing company, unless it is approved by the company under section 103;
- (h) if they have any interest, whether direct or indirect, immediate or prospective, in any contract or transaction or proposed contract or transaction with the company, to declare each of their respective interests to the meeting of the directors of the company at which the contract or transaction is first taken into consideration or to the first meeting of the directors held after the interest arises (whichever is the later) and in such declaration to state the nature and extent of their respective interests and the effect or probable effect on them of the contract or transaction;
- (i) not to use any assets of the company for any illegal purpose or purpose in breach of paragraphs (a) and (c), and not to do, or knowingly allow to be done, anything by which the company's assets may be damaged or lost (otherwise than in the ordinary course of carrying on its business);
- (j) to transfer forthwith to the company all cash or assets acquired on its behalf (whether before or after its incorporation) or as the result of employing its cash or assets, and until such transfer is effected to hold such cash or assets on behalf of the company and to use it only for the purposes of the company;
- (k) to attend meetings of the directors of the company with reasonable regularity, unless prevented from so doing by illness or other reasonable excuse;
- (l) to keep proper accounting records and make such records available for inspection in accordance with the provisions of section 151.

(2) (a) Subject to paragraph (b) the duties imposed by this section shall be owed to the company, and not to the members,

debenture holders or creditors of the company.

- (b) (i) An application may be made to the Court by any member or in the case of a breach of paragraphs (a), (b), (i), (j) and (l) or subsection (1) by any debenture holder for a declaration that any act or transaction, or proposed act or transaction, by the directors or any director or former director involves a breach of any of their said duties, and an injunction to restrain the directors or any director or former director from doing any such proposed act or entering into any such proposed transaction; and
- (ii) an action for damages for breach of the said duties may be brought in the name of the company by a member under section 185.

(3) (a) For the purposes of paragraph (h) of subsection (1), a general notice given to the other directors by a director to the effect that he is an officer or member of a specific body of persons, whether corporate or unincorporate and is to be regarded as interested in any contract which may, after the date of the notice, be made with that body shall, subject to paragraph (b) be a sufficient declaration of interest in relation to any contract so made if -

- (i) it specifies the nature and extent of his interest in the body;
  - (ii) his interest is not different in nature or greater in extent than the nature and extent specified in the general notice at the time any contract is so made.
- (b) No notice referred to in paragraph (a) shall have effect unless -
- (i) it is given at a meeting of the directors; or
  - (ii) the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given.

(4) The Secretary shall record every declaration under paragraph (h) of subsection (1) and under subsection (3) in the minutes of the meeting at which it was made.

(5) (a) A copy of every declaration made under subsection (1) (h) under subsection (3) shall, within three days after it is made or given, be entered by the company in a book kept for this

purpose.

(b) Such book shall be open for inspection by any director, secretary, auditor or member of the company at the registered office of the company and shall be produced at every general meeting of the company and at any meeting of the directors if any director so requests.

(6) Nothing in this section shall limit the operation of sections 22, 23 and 25.

### **103. Approval of the company.**

(1) The approval of the company for the purposes of paragraphs (e), (f) and (g) of section 102(1) shall require that after full disclosure of all material facts, including the nature and extent of any interest of the director, the transaction has been specifically authorised by either -

- (a) a form of resolution which has been circulated to all members and is signed by three fourths of all members entitled to attend and vote at a general meeting; or
- (b) an ordinary resolution of the company passed at a general meeting at which neither the director concerned, nor the holder of any share in which he is beneficially interested, either directly or indirectly, has voted as member on such resolution, or if such person has voted such vote or votes are not counted.

(2) Subject to subsection (3) the approval of the company in accordance with subsection (1) may be given either before or after the occurrence of the transaction to which it relates.

(3) A resolution approving a transaction or transactions or series of related transactions which has already taken place shall not be effective for the purposes of subsection (1) unless it was signed or passed not later than 15 months after the date when the transaction or the first of the series of transactions took place.

### **104. Prohibition of tax free payments to directors.**

(1) Except under a contract which was in force before the commencement of this Act, and which provides expressly, and not by reference to the articles, for payment of such remuneration, no company shall pay a director remuneration, whether as director or otherwise, free of income tax, or otherwise calculated by reference to or varying with the amount of his income tax, or the rate of income tax.

(2) Any provision in the articles, or in a contract other than a contract referred to in subsection (1) or in a resolution of a company or of a company's Board of Directors for payment to a director of remuneration free of income tax or otherwise calculated by reference to or varying with the amount of his income tax or the rate of income tax, shall have effect as if it provided for payment as a gross sum, subject to income tax, of the net sum for which it actually provides.

(3) For the purposes of this section "Company" shall not include an offshore company.

### 105. Loans to directors.

(1) (a) Subject to paragraph (b), no company other than an unlimited company, shall -

(i) make a loan to a director of the company or of a related corporation; or

(ii) enter into any guarantee, or provide any security, in connection with a loan made to the director by any other person.

(b) Paragraph (a) shall not apply -

(i) to anything done to provide a director with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer;

(ii) subject to subsection (2), to anything done to provide a director who is engaged in the fulltime employment of the company or its holding company with funds to meet expenditure incurred or to be incurred by him in purchasing or otherwise acquiring his principal residence;

(iii) to a loan made to a director, who is engaged in the salaried employment of the company or its holding company, in accordance with a scheme for the making of loans to employees of the company which is approved by the general meeting of the company in so far as its application to directors is concerned;

- (iv) to anything due by a company pursuant to section 59(d) in respect of a director who holds salaried employment or office under the company or in a holding company or subsidiary of the company; or
- (v) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons to anything done by the company in the ordinary course of that business.

(2) Subsection (1) (b) (ii) shall not authorise the making of a loan, or the entering into a guarantee, or the provision of security except -

- (a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or
- (b) on condition that, if the approval of the company is not given in accordance with paragraph (a) at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within 6 months from the conclusion of that meeting.

(3) Where the approval of the company is not given as required by a condition referred to in subsection (2) (b), the directors authorising the making of the loan or the entering into the guarantee or the provision of the security shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

(4) Nothing in this section shall prevent a company from recovering the amount of any loan or amount for which it becomes liable, under any guarantee entered into or in respect of any security given contrary to this section.

#### **106. Payments to directors for loss of office or transfer of property.**

(1) No company shall make any payment or grant any benefit or advantage to a director -

- (a) by way of compensation for loss of office as an

officer of that company or a subsidiary company or as consideration for or in connection with his retirement from any such office; or

- (b) in connection with the transfer of the whole or any part of the undertaking or property of the company,

unless particulars with respect to the proposed payment, benefit or advantage have been disclosed to the members and the proposal has been approved by the company in general meeting.

(2) Where the requirements of subsection (1) are not complied with, the amount received by the director shall be reimbursed by him to the company.

(3) Where such a payment, benefit or advantage is to be made to a director in connection with the transfer to any person, as a result of an offer made to shareholders, of all or any of the shares in the company, the director shall take all reasonable steps to ensure that particulars with respect to the proposed payment, benefit or advantage, including the amount thereof, are included in or sent with any notice of the offer made for their shares which is given to any shareholders, unless those particulars are furnished to the shareholders by virtue of section 177.

(4) Where the requirements of subsection (3) are not complied with, any sum received by the director on account of the payment or any benefit or advantage received by him shall be reimbursed by him to the persons who have sold their shares as a result of the offer made, in proportion to the shares sold by them.

(5) Where, in connection with a transfer referred to in subsection (3), the price to be paid to a director whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess or the money value of the consideration, as the case may be, shall for the purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(6) A reference in this section to a payment to a director by way of compensation for loss of office or as consideration for or in connection with his retirement from office shall not include -

- (a) a payment under an agreement entered into before the commencement of this Act;
- (b) a payment under an agreement, particulars of which have been disclosed to and approved by special resolution of the company;

- (c) a *bona fide* payment by way of damages for breach of contract;
- (d) a *bona fide* payment by way of pension or lump sum payment in respect of past services, including any superannuation or retiring allowance, superannuation gratuity or similar payment where the value or amount of the pension or payment, except in so far as it is attributable to contributions made by the director, does not exceed the total emoluments of the director in the 3 years immediately preceding his retirement or death; or
- (e) a payment to a director, pursuant to an agreement made between him and the company before he became a director, as the consideration or part of the consideration for the director agreeing to serve the company as a director.

(7) In this section "director" includes any person who has at any time been a director of the company or of a related corporation.

#### **107. Insider trading.**

(1) Where, through his association with a company, a person has knowledge of specific information relating to the company or to shares or debentures issued or made available by the company or of a related corporation, and that information is not generally known but, if generally known, might reasonably be expected to affect materially the market price of those shares or debentures, he shall not -

- (a) deal, directly or indirectly, in those shares or debentures for the purpose of gaining an advantage for himself or for any relative or any corporation in which he has an interest as a substantial shareholder or of which he is a partner by the use of that information; or
- (b) divulge the information for the purpose of enabling another person to gain an advantage by using that information to deal, directly or indirectly, in those shares or debentures.

(2) Where an advantage referred to in subsection (1) is gained from a dealing in shares or debentures, any person who gained that advantage shall, whether or not any person has been prosecuted for or convicted of an offence under that subsection but subject to subsection (5), be liable -

- (a) to any other person for the amount of any loss incurred by that other person by reason of the gaining of that advantage; and
- (b) to the company that issued or made available those shares or debentures, for any profit that accrued to him by reason of the gaining of that advantage.

(3) Where a loss or profit referred to in subsection (2) is incurred by means of an advantage gained from a dealing in shares or debentures, the amount of the loss or profit shall be the difference between -

- (a) the price at which the dealing was effected; and
- (b) the price that, in the opinion of the Court before which it is sought to recover the amount of the loss or profit, would have been the market price of the shares or debentures at the time of the dealing if the specific information used to gain that advantage had been generally known at that time.

(4) The Registrar may bring an action in the name of and for the benefit of a person for recovery of a loss or profit referred to in subsection (2).

(5) An action to recover a loss or profit referred to in subsection (2) may not be brought after the expiry of the period of -

- (a) two years next succeeding the dealing in shares or debentures to which the action relates; or
- (b) six months next succeeding the discovery of the relevant facts by the person who suffered the loss or seeks to recover the profit,

whichever first occurs.

(6) For the purposes of subsection (1), a person is associated with a company -

- (a) if he is or was an officer of the company or of a related corporation;
- (b) if he acts, or has acted, as a banker, attorney-at-law, notary, auditor, or professional adviser, or in any other advisory capacity, for the company;
- (c) if he has an interest in one or more shares in the company and the nominal amount of that share, or the

aggregate of the nominal amounts of those shares, is not less than one-tenth of the aggregate of the nominal amounts of all the issued shares of the company; or

- (d) where the person so associated by virtue of paragraph (b) or (c) is a corporation, if he is a director, manager or secretary of that corporation.

(7) In this section "dealing in shares or debentures in relation to a company" means a transaction relating to -

- (a) shares in or debentures of the company or of a related corporation;
- (b) rights or options in respect of acquisitions of such shares or debentures.

#### **108. Remuneration of officers.**

(1) No remuneration shall be paid to an officer by way of a commission on, or a specified percentage of, a company's turnover.

(2) No remuneration shall be paid to an officer by way of commission on or a specified percentage of a company's profits unless -

- (a) the officer is in the whole time employment of the company or is a managing director; and
- (b) the remuneration in the case of a director does not, except with the approval of a special resolution of the company, exceed 5 per cent of the net profits for each director and 10 per cent in the aggregate for all the directors.

(3) Subject to subsection (5), a director who is in receipt of remuneration under subsection (2) shall not be entitled to receive any remuneration by way of commission or percentage of profits from any subsidiary of the company.

(4) Where a director directly or indirectly draws or receives remuneration in breach of subsection (1), (2) or (3), he shall refund any sum so drawn or received to the company with interest at ruling bank rate from the date it was drawn or received.

(5) "Officer" for the purposes of this section does not include a manager or executive who is not a director.

#### **109. Assignment of office.**

(1) No provision in the articles of a public company or a subsidiary of a public company or in an agreement entered into between the company and any other person which empowers a director or manager to assign his office to another person shall have effect unless it is approved by a special resolution of the company.

(2) Nothing in subsection (1) shall prevent the director from appointing an alternate or substitute director in accordance with the articles to act for or on his behalf during his inability for any time to act as director.

#### **110. Secretary.**

(1) Every company shall have one or more secretaries, each of whom shall be a natural person of full age and capacity who shall be ordinarily resident in Mauritius or with the approval of the Registrar a corporation may be appointed.

(2) A secretary shall be appointed by the directors and he, or if there are 2 or more secretaries one of them shall be present at the registered office by himself or his agent or clerk on the days and at the hours during which the registered office is accessible to the public.

(3) Subject to subsection (4), anything required or authorised to be done by or in relation to a secretary may, if the office is vacant or for any other reason the secretary is not capable of acting, be done by or in relation to any assistant or deputy secretary, or, if there is no assistant or deputy secretary capable of acting, by or in relation to any officer of the company authorised generally or specially in that behalf by the directors.

(4) The office of secretary shall not be left vacant for more than 3 months at any time.

(5) A provision requiring or authorising a thing to be done by or in relation to a director and the secretary shall not be satisfied by its being done by or in relation to the same person acting both as director and as, or in place of, the secretary.

(6) Every person shall, within 28 days of his appointment as Secretary, lodge with the Registrar his consent in writing to act as such.

#### **111. Qualifications of company secretaries.**

(1) Every Secretary of a public company or of a non-exempt private company shall be -

(a) either a barrister, an attorney at law, or

any person qualified to be an auditor under section 161, a member of the Institute of Chartered Secretaries and Administrators of United Kingdom or a member of the Chartered Institute of Management Accountants of United Kingdom; or

- (b) a member of a professional association of company secretaries approved by the Minister under subsection (2).

(2) The Minister may, for the purposes of subsection (1)(b), approve an association of company secretaries and notify such approval by publication in the Gazette.

#### **112. Standard of care and civil liability of officers.**

(1) Every officer of a company shall exercise -

- (a) the powers and discharge the duties of his office honestly, in good faith and in the best interests of the company; and
- (b) the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) Where a director of a public company also holds office as an executive he shall exercise that degree of care, diligence and skill which a reasonably prudent and competent executive in his position would exercise.

(3) Without limiting any liability of a director under section (102(2)), where an officer commits any breach of his duties under this Sub-Part -

- (a) the officer and every person who knowingly participated in the breach shall be liable to compensate the company for any loss it suffers as a result of the breach;
- (b) the officer shall account to the company for any profit made by him as a result of such breach; and
- (c) any contract or other transaction entered into between the officer and the company in breach of those duties may be rescinded by the company.

#### **113. Protection of directors from exclusion from office.**

(1) A director may apply to the Court for an order under this

section where the director has been excluded by the other directors or officers of the company from a fair participation in the management by the Board of Directors of the affairs of the company.

(2) The Court on being satisfied -

- (a) that the director has been excluded by the action of the other directors or officers from a fair participation in the management by the Board of Directors of the affairs of the company;
- (b) that there is no provision in any contract between the director and the company or resolution of the general meeting which would justify the other directors or officers from so acting,

may direct that while the director continues to hold office he shall be given the right to participate in the management by the Board of Directors of the affairs of the company and may make such order as the Court considers to be just and equitable in order to give effect to that right of participation.

#### **114. Indemnity for officers and auditors.**

(1) Subject to subsection (2), any provision, whether contained in the articles or in any contract with a company or with any other person, for exempting any officer or auditor of the company from, or indemnifying him against, any liability which by law would otherwise attach to him in respect of any negligence, default or breach of duty of which he may be guilty in relation to the company, shall be void.

(2) Where a company is authorised by its articles, it may indemnify an officer or auditor against any liability incurred by him in defending any proceedings under subsection (1), in which judgment is given in his favour or which he is acquitted or in connection with any application relating to the proceedings in which relief is under this Act granted to him by the Court.

#### **115. Register of directors, managers and secretaries.**

(1) Every company shall keep at its registered office a register of its directors, chairman of directors, managers and secretaries.

(2) The register shall with respect to each director contain his consent in writing to appointment as such and specify -

- (a) his present full name, any former name, his usual residential address, and his business occupations; and

- (b) particulars of any other directorship of a public company or a company which is a subsidiary of a public company held by the director.

(3) Where a person is a director of one or more subsidiaries of the same holding company, and of the holding company, there shall be sufficient compliance with subsection (2) if it is disclosed that the person is the holder of one or more directorships in that group of companies and the group may be described by the name of the holding company with the addition of the word "Group".

(4) The register shall specify with respect to each manager and secretary his full name, usual residential address and other occupation, if any.

(5) The register shall be open to the inspection of -

- (a) any member without charge; and
- (b) any other person on payment of a fee prescribed in the Eleventh Schedule.

(6) The company shall lodge with the Registrar in the form prescribed in the Tenth Schedule -

- (a) when its memorandum and articles are lodged for registration, a return containing the particulars required to be specified in the register;
- (b) within 28 days after a person becomes a director or chairman of directors, a return notifying the Registrar of the change and containing, the particulars required to be specified in the register;
- (c) within 28 days after a person ceases to be a director, or chairman of directors, a return notifying the Registrar of that fact;
- (d) within 28 days after a person becomes a manager or secretary, a return notifying the Registrar of that fact and specifying the full name, address and other occupation, if any, of that person;
- (e) within 28 days after a person ceases to be a manager or secretary, a return notifying the Registrar of that fact; and
- (f) within 28 days of any change in the usual residential address of any director, manager or secretary, a return notifying the Registrar of that

fact and specifying the new residential address of that person.

(7) In this section "director" includes an alternate or substitute director.

**116. Validity of acts of officers.**

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

**117. Power to restrain persons from managing companies.**

(1) No person who is convicted within or outside Mauritius for an offence -

- (a) in connection with the promotion, formation or management of a company;
- (b) involving fraud or dishonesty punishable on conviction with imprisonment for 3 months or more; or
- (c) of acting in breach of section 102(1)(d) or any similar enactment in force outside Mauritius,

shall, within a period of 5 years after his conviction or, if he is sentenced to imprisonment, after his release from prison, without the leave of the Court, act as a director or promoter of, or be in any way whether directly or indirectly concerned or take part in the management of a company.

(2) A person intending to apply for the leave of the Court under this section shall give to the Registrar not less than 14 days notice of his intention.

(3) On the hearing of an application under this section the Registrar may be represented at the hearing of and oppose the granting of the application.

**118. Power to disqualify persons from managing companies.**

(1) Unless cause to the contrary is shown, the Court may on application by the Registrar and on being satisfied as to the matters specified in subsection (2), make an order prohibiting a person specified in the order from acting as a director of, or being concerned in the management of, a company during such period not exceeding 5 years as may be specified in the order.

(2) The matters as to which the Court is to be satisfied before making an order under subsection (1) are -

- (a) that, within the period of 7 years before the making of the application, provided that the period commenced after the commencement of this Act, the person to whom the application relates was a director of, or was concerned in the management of, 2 or more companies to which this section applies;
- (b) that in the case of each company referred to in paragraph (a), the manner in which the person had managed the company was wholly substantially responsible for the company -
  - (i) being wound up;
  - (ii) ceasing to carry on business;
  - (iii) having a receiver or manager of its property appointed; or
  - (iv) entering into a compromise or scheme of arrangement with its creditors; and
- (c) that having regard to the conduct of the person and the prospect of the repetition of such conduct in the affairs of another company it is in the public interest that the order should be made.

(3) In this section "company to which this section applies" means a company -

- (a) that has been wound up, or is in the course of being wound up, because of inability to pay its debts as and when they became due;
- (b) that has ceased to carry on business because it was unable to pay its debts as and when they became due;
- (c) in respect of the property of which a receiver or manager has been appointed whether by the Court or pursuant to the powers contained in an instrument; or
- (d) that has entered into a compromise or scheme of arrangement with its creditors.

(4) Where a holding company and wholly owned subsidiaries are managed as a single group of companies they shall be treated as being one company for the purposes of this section.

Sub-Part III - Promoters and Contracts

**119. Pre-incorporation contracts.**

(1) A company may, within 6 months of the date of incorporation, adopt a pre-incorporation contract, and thereupon the company shall, subject to subsection (3) and (4), be entitled to the benefits and be subject to the liabilities of the contract and the contractor shall cease to be entitled to such benefits or to be subject to such liabilities.

(2) Where a pre-incorporation contract is not adopted by a company, the contractor shall, subject to subsection (3), be entitled to the benefits and be subject to the liabilities of the contract and to recover from the company the value of any benefit received by the company under the contract.

(3) Subject to subsection (4), the other party to a pre-incorporation contract may, whether or not it is adopted by the company, within 12 months of the date of incorporation or within such further period as the Court, may allow, apply to the Court for an order fixing or apportioning liability, owed to that other party under the contract as between the contractor and the company, and the Court on such application may make an order on such terms as the Court considers to be just and equitable.

(4) Where, in the case of a private company, the contractor or contractors subscribe for nine tenths or more of all the shares in the company, and have made it clear to the other party that they are contracting on behalf of a company to be formed, subsections (1), (2) and (3) shall not apply and immediately upon its registration the company shall be entitled to the benefits and be subject to the liabilities of the contract and the contractors shall, unless it is expressly stipulated to the contrary in the pre-incorporation contract, cease to be entitled to those benefits or to be subject to those liabilities.

(5) (a) The instrument whereby a company adopts a pre-incorporation contract shall be dated and signed in accordance with section 121(1) and shall declare that the company thereby adopts the contract and is bound by it.

(b) A copy of the instrument of adoption shall be served on the other party and on the contractor.

**120. Duties of promoters.**

(1) Until the formation of a company is complete and its working capital has been raised, every promoter shall -

(a) observe the utmost good faith towards the company in any transaction with it or on its behalf; and

- (b) shall compensate the company for any loss suffered by it by reason of his failure to exercise such good faith.

(2) A promoter who acquires any property or information in circumstances in which it was his duty to acquire it on behalf of the company shall account to the company for such property and for any profit which he may have made from the use of such property or information.

(3) Any transaction between a promoter and a company may be rescinded by the company unless, after full disclosure of all material facts known to the promoter, the transaction has been entered into or ratified on behalf of the company -

- (a) where no director is a relative or nominee of the promoter, by the Board of Directors; or
- (b) by all the members; or
- (c) by the company at a general meeting at which neither the promoter nor the holders of any shares in which he is beneficially interested shall have voted on the resolution to enter into that transaction.

(4) Notwithstanding any other law no period of limitation shall apply to any proceeding brought by the company to enforce any of its rights under this section, but in any such proceedings the Court may relieve a promoter on such terms as it thinks fit from any liability under subsection (1) or (2) if in all the circumstances, including lapse of time, the Court thinks it equitable so to do.

#### **121. Form of contract.**

- (1) A contract made on behalf of a company -
  - (a) which, if made between private persons, would be required to be in writing, may be made on behalf of the company in writing -
    - (i) signed under the common seal of the company; or
    - (ii) by any person acting under its authority express or implied, and may in the same manner be varied or discharged;
  - (b) which, if made between private persons, would be valid if made orally, may be made orally on behalf of the company by any person acting under its

authority, and may in the same manner be varied or discharged.

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

## **122. Bills of exchange and promissory notes.**

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.

## **123. Execution of deeds and use of official seal abroad.**

(1) A company may, by writing signed under its common seal, empower any person either generally or in respect of any specified matter, as its agent, to execute any deed on its behalf in a foreign country and every deed signed on behalf of the company by such an agent shall bind the company.

(2) Where a company whose objects require or comprise the transaction of business in foreign countries is authorised by its articles, it may have for use in any place outside Mauritius 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.

(3) A company having an official seal referred to in subsection (2) may, by writing signed under its common seal, authorise any person appointed for that purpose in any place outside Mauritius to affix the seal to any deed to which the company is party in that territory, district or place.

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

(5) The person affixing an official seal shall, by writing signed under his hand, on the deed to which the seal is affixed, certify the date on which and place at which it is affixed.

(6) A deed 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.

(7) The company shall lodge with the Registrar within 14 days a statement giving particulars of any agent appointed under

subsection (1).

*Sub-Part IV - Meetings and Proceedings*

**124. Entries in minute book.**

(1) Anything that may be done by a company by ordinary or special resolution may, subject to the articles, be done by a private company by a resolution passed, without a meeting or any previous notice being required, by means of an entry in its minute book signed by at least three-fourths of the members having the right to vote on that resolution, holding in the aggregate at least three-fourths in nominal value of the shares giving that right.

(2) Subject to subsection (3), it shall not be necessary for a private company to hold an annual general meeting if everything required to be done at that meeting by ordinary or special resolution, including the adoption or approval of every balance sheet or other document required to be laid before the meeting is, within the time specified in section 125 for the holding of the meeting, done by means of an entry in its minute book in accordance with subsection (1) and the resolutions for entry in the minute book are delivered to each member for signature or posted to him at the address supplied by him to the company for the service of notices.

(3) Any member may on receiving the resolutions for entry in the minute book under subsection (2) give notice in writing to the directors that he requires an annual general meeting to be called and where any such notice is received by the directors within 7 days from the date on which the resolutions were last delivered or posted to any member, the directors shall convene an annual general meeting.

(4) Any such entry may be signed on behalf of a member by his agent duly authorised in writing.

(5) For the purposes of this section a memorandum posted or otherwise permanently affixed in the minute book and purporting to have been signed for the purpose of becoming an entry therein shall be deemed to be an entry accordingly, and any such entry may consist of several documents in like form each signed by or on behalf of one or more members.

(6) The company shall, within 7 days after any resolution is passed by means of an entry in its minute book in accordance with subsection (1), send to every member by or on behalf of whom the entry has not been signed a copy thereof, specifying the persons who have signed the minutes.

(7) Section 136 shall apply to every resolution which has been passed by means of an entry in the minute book in accordance

with subsection (1) to the same extent as if the resolution had been passed at a meeting of the company.

(8) Where a private company passes a resolution for a creditors' winding up by means of an entry in its minute book in accordance with subsection (1), the company, instead of complying with the requirements of section 256, shall cause a meeting of the creditors of the company to be summoned for a day not later than the tenth day after the day on which the resolution is passed, and shall cause notice of the meeting to be sent by post to the creditors at least 7 days before the day on which the meeting is to be held.

### **125. Annual General Meeting.**

(1) (a) Subject to paragraph (b) an annual general meeting of every company shall be held once in every calendar year and not more than 15 months after the holding of the last preceding annual general meeting.

(b) Where a company holds its first annual general meeting within 15 months of its incorporation it need not hold it in the year of its incorporation.

(2) Subject to notice being given to every person entitled to receive notice of the meeting, a general meeting may be held at any time and the company may resolve that any meeting held or summoned to be held shall be the annual general meeting of the company.

(3) Where default is made in holding an annual general meeting the Court may, on the application of any member, order a general meeting to be called.

### **126. Extraordinary general meeting on requisition.**

(1) General meetings of company which are not annual general meetings are in this Act called "extraordinary general meetings".

(2) Notwithstanding anything in the memorandum of articles, the directors shall, on the requisition of members holding at the date of the deposit of the requisition either -

- (a) not less than one tenth of such of the paid up share capital as at the date of the deposit carries the right of voting at general meetings; or
- (b) in the case of a company not having a share capital, of members representing not less than one tenth of the total voting rights of all members having at that date a right to vote at general meetings;

forthwith proceed to convene an extraordinary general meeting of

the company to be held as soon as practicable but in any case not later than 2 months after the receipt by the company of the requisition.

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

(4) Where the directors do not within 21 days after the date of the deposit of the requisition proceed to convene a meeting, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves, in the same manner as nearly as possible as that in which meetings are to be convened by directors, convene a meeting but any meeting so convened shall not be held after the expiry of 3 months from the date of the receipt by the company of the requisition.

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors to convene a meeting shall be paid to the requisitionists by the company, and any sum so paid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(6) A meeting at which a special resolution is to be proposed shall be deemed not to be duly convened by the directors if they do not give such notice as is required by section 134 in the case of special resolutions.

## **127. Calling of meetings.**

(1) Any member or members holding not less than one tenth of the issued share capital or, where the company does not have a share capital, not less than 5 per cent in number of the members or such lesser member as may be provided in the articles, may call a meeting of the company.

(2) Subject to subsection (3), a meeting of a company or of a class of members, other than a meeting for the passing of a special resolution, shall be called by written notice of not less than 14 days or such longer period as is provided in the articles.

(3) A meeting shall, notwithstanding that it is called by notice shorter than is required by subsection (2), be deemed to be duly called if it is so agreed -

- (a) in the case of a meeting called as the annual general meeting, by all the members entitled to

attend and vote; or

- (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote, being a majority which together holds not less than 95 per cent in nominal value of the shares giving a right to attend and vote or, in the case of a company not having a share capital, together represents not less than 95 per cent of the total voting rights at that meeting of all the members.

(4) Subject to the articles, notice of every meeting shall be served on every member having a right to attend and vote in the manner in which notices are required to be served by Table A of the First Schedule.

#### **128. Right to demand a poll.**

(1) Any provision in the articles shall be void in so far as it would have the effect -

- (a) of excluding the right to demand a poll at a general meeting on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting;
- (b) of making ineffective a demand for a poll on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting that is made -
  - (i) by not less than 5 members having the right to vote;
  - (ii) by a member or members representing not less than one tenth of the total voting rights of all the members having the right to vote;
  - (iii) by a member or members holding shares in the company conferring a right to vote, being shares on which an aggregate sum has been paid up equal to not less than one tenth of the total sum paid up on all the shares conferring that right; or
- (c) of requiring the instrument appointing a proxy or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy to be received by the company or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be

effective thereat.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed to confer authority to demand or join in demanding a poll and, for the purposes of subsection (1), a demand by a person as proxy for a member of the company shall be deemed to be the same as a demand by the member.

(3) A person entitled to vote on a poll at a meeting shall be deemed to be a person entitled to vote for the purposes of this Act.

### **129. Procedure at meetings.**

(1) Subject to the articles and to sections 67 (voting rights) and 132 (circulation of members' resolutions) -

(a) 2 members of a company personally present shall form a quorum;

(b) any member may be elected by the members present at a meeting to be the chairman;

(c) in the case of a company having a share capital -

(i) on a show of hands each member who is personally present and entitled to vote shall have one vote;

(ii) on a poll each member shall have one vote in respect of each share held by him and where all or part of the share capital consists of stock or units of stock, each member shall have one vote in respect of the stock or units of stock held by him which is or are or were originally equivalent to one share; and

(d) in the case of a company not having a share capital, every member shall have one vote.

(2) On a poll taken at a meeting a person entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

(3) A corporation may by resolution of its directors or other governing body -

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

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

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

(4) Where -

- (a) a person present at a meeting is authorised to act as the proxy of a corporation under subsection (3); and
- (b) the person is not otherwise entitled to be present at the meeting,

the corporation shall, for the purposes of subsection (1), be deemed to be personally present at the meeting.

(5) A certificate under the seal of the corporation or signed on its behalf by an authorised person shall be *prima facie* evidence of the appointment or of the revocation of the appointment of a proxy under subsection (3).

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

(7) Where under this Act any notice, copy of a resolution or other document relating to any matter is required to be lodged with the Registrar by a company, and a minute referred to in subsection (6) which relates to such matter is signed by the proxy in accordance with that subsection, the company shall within 28 days lodge a copy of the minute.

### **130. Proxies.**

(1) Subject to section 129, a member entitled to attend and vote at a meeting of the company, or at a meeting of any class of

members of a company, may appoint another person as his proxy to attend and vote in his stead at the meeting and that proxy shall have the same right as the member to speak at the meeting, but, unless the articles otherwise provide -

- (a) a proxy shall not be entitled to vote except on a poll;
- (b) a member shall not be entitled to appoint more than 2 proxies to attend and vote at the same meeting; and
- (c) where a member appoints 2 proxies the appointments shall be invalid unless he specifies the proportions of his holdings to be represented by each proxy.

(2) In every notice calling a meeting of a company or a meeting of any class of members there shall appear with reasonable prominence a statement -

- (a) as to the rights of the member to appoint proxies to attend and vote instead of the member; and
- (b) that a proxy need not also be a member.

### **131. Power of Court to order meeting.**

Where it is impracticable to call a meeting in any manner in which a meeting may be called or to conduct the meeting in the manner provided by the articles or this Act, the Court may, either of its own motion or on the application of a director or of a member who would be entitled to vote at the meeting or of their heir of any such member -

- (a) order a meeting to be called, held and conducted in such manner as the Court thinks fit; and
- (b) give such directions as it thinks fit including a direction that -
  - (i) one member present in person or by proxy shall be deemed to constitute a meeting; or
  - (ii) the heir of any deceased member may exercise all or any of the powers that the deceased member could have exercised if he were present at the meeting.

### **132. Circulation of members' resolutions.**

(1) Subject to the other provisions of this section, a company shall on the requisition in writing of such number of

members of the company as is specified in subsection (2) and, unless the company otherwise resolves, at the expense of the requisitionists -

- (a) give to every member entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting; and
- (b) circulate to every member entitled to have notice of a general meeting any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under subsection (1) shall be -

- (a) any number of members representing not less than one twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or
- (b) not less than 100 members holding shares in the company on which there has been paid up an average sum, per member, of not less than 1,000 rupees.

(3) (a) Every notice of a resolution referred to in subsection (1) shall be given, and any statement so referred to shall be circulated, to every member entitled to have notice of the meeting by serving a copy of the resolution or statement on each member in any manner permitted for service of notice of the meeting.

(b) Every notice of the resolution shall be given to any other member by giving notice of the general effect of the resolution in any manner permitted for giving him notice of the meeting; and the copy shall be served, or notice to the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

(4) Subject to subsection (5), a company shall not be bound to give notice of a resolution or to circulate a statement unless the requisitionists -

- (a) deposit a copy of the requisition signed by them at its registered office -

- (i) in the case of a requisition requiring notice of a resolution, not less than 42 days before the meeting; and
  - (ii) in the case of any other requisition not less than 7 days before the meeting; and
- (b) deposit or tender with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto.

(5) Where after a copy of a requisition requiring notice of a resolution has been deposited at the registered office, an annual general meeting is called for a date not later than 42 days after the copy has been deposited, the copy, though not deposited within the time required by this subsection, shall be deemed to have been properly deposited for these purposes.

(6) A company shall not be bound to circulate a statement if, on the application of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the Court may order the company's costs on an application under this section to be paid by the requisitionists.

(7) Notwithstanding anything in the articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section, and for the purposes of this subsection notice shall be deemed to have been so given notwithstanding the accidental omission in giving it to one or more members.

### **133. Ordinary resolutions.**

(1) Business shall be transacted at general meetings of a company by ordinary resolution, unless the Act or the memorandum or articles require a special resolution.

(2) A resolution is passed as an ordinary resolution if it is proposed as such, and more votes are cast in favour of the resolution than are cast against it.

### **134. Special resolution.**

(1) A special resolution is a resolution which has been passed by a majority of not less than three-fourths of such members as, being entitled so to do, vote in person or by proxy at a general meeting of which, subject to subsection (2), not less than 21 days notice specifying the intention to propose the resolution as a special resolution has been duly given.

(2) A resolution may be proposed and passed as a special

resolution at a meeting of which less than 21 days notice has been given where it is so agreed by a majority in number of the members having the right to attend and vote at the meeting, being a majority which -

- (a) together holds not less than 95 per cent in nominal value of the shares giving that right; or
- (b) in the case of a company not having a share capital, together represents not less than 95 per cent of the total voting rights that could be exercised at that meeting.

(3) At any meeting at which a special resolution is submitted 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 a special resolution is submitted a poll shall be deemed to be effectively demanded if demanded -

- (a) by such number of members for the time being entitled under the articles to vote at the meeting as is specified in the articles, but it shall not in any case be necessary for more than 5 members to make the demand;
- (b) where no such provision is made by the articles, by -
  - (i) 3 members so entitled; or
  - (ii) one member or 2 members so entitled if that member holds or those 2 members together hold not less than 10 per cent of the paid up share capital of the company or if that member represents or those 2 members together represent not less than one-tenth of the total voting rights of all the members having a right to vote at the meeting.

(5) In computing the majority on a poll demanded on the question that a special resolution be passed, regard shall be had to the number of votes cast for and against the resolution and to the number of votes to which each member is entitled by this Act or the articles.

(6) A special resolution by a general meeting of a company shall be required -

- (a) to alter the company's memorandum or articles (except to the extent that alterations may be effected under section 58);
- (b) to wind the company up voluntarily under paragraph (a) of section 251;
- (c) in connection with matters arising in the winding up of the company which the Act requires to be transacted by special resolution;
- (d) in such other cases as the Act or the articles provide.

### **135. Resolution requiring special notice.**

(1) Subject to subsection (2), where special notice is required of a resolution, the resolution shall have no effect unless notice of the intention to move it has been given to the company not less than 28 days before the meeting at which it is moved, and the company shall give its members notice of any such resolution -

- (a) at the same time and in the same manner as it gives notice of the meeting; or
- (b) if that is not practicable, not less than 14 days before the meeting.

(2) Where after notice of the intention to move a resolution referred to in subsection (1) has been given to the company, a meeting is called for a date not later than 28 days after the notice has been given, the notice, although not given to the company within the time required by this section, shall be deemed to be properly given.

### **135A Notice prior to New Allotments**

Where a public company intends to allot shares pursuant to a bonus or a rights issue-

- (a) notice of any meeting convened for the purposes of authorising the issue shall be given in two daily newspapers at least 14 days before the meeting; and
- (b) a copy of the notice shall be lodged with the Registrar forthwith.

### **136. Lodging of copies of resolution and agreements.**

- (1) A printed copy of -

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

shall within 28 days be lodged with the Registrar by the company.

(2) A printed copy of every resolution or agreement to which this section applies shall be forwarded by the company to any member at his request.

### **137. Resolutions at adjourned meetings.**

Where a resolution is passed at an adjourned meeting of the company or of holders of any class of shares or of directors, the resolution shall be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

### **138. Minutes of proceedings.**

(1) Every company shall cause -

- (a) minute of all proceedings of general meetings and of meetings of its directors (and where there are managers, of its managers) to be entered in books kept for that purpose within 28 days of the date on which the relevant meeting was held; and
- (b) those minutes to be signed by the chairman of the meeting at which the proceedings took place or by the chairman of the next succeeding meeting.

(2) Any minute so entered that purports to be signed as provided in subsection (1) shall be *prima facie* evidence of the proceedings to which it relates.

(3) Where minutes have been so entered and signed, then, until the contrary is proved -

- (a) the meeting shall be deemed to have been duly held and convened;
- (b) all proceedings had thereat shall be deemed to have been duly had; and
- (c) all appointments of officers or liquidators made thereat shall be deemed to be valid.

### 139. Inspection of minute books.

(1) The books containing the minutes of proceedings of any general meeting shall be kept by the company at the registered office or the principal place of business in Mauritius of the company, and shall be open to the inspection of any member.

(2) A member who makes a written request to that effect shall, within 14 days of the date of the request, and on payment of the fee prescribed in the Eleventh Schedule for each page or part thereof, be provided by the company with a copy of any minutes specified in subsection (1).

### Sub-Part V - Members' Register

### 140. Register and Index.

(1) Every company shall keep a register of its members and enter therein -

- (a) their names and addresses;
- (b) the date on which the name of each person was entered in the register;
- (c) the date on which any person ceased to be a member during the previous 6 years; and
- (d) in the case of a company having a share capital -
  - (i) the date of every allotment of shares to members and the number of shares comprised in each allotment;
  - (ii) the shares held by each member, distinguishing each share by its number or by the number of the certificate evidencing the member's holding; and
  - (iii) the amount paid or agreed to be considered as paid on the shares of each member.

(2) (a) Every entry required by subsection (1) (a), (b) and (d) shall be made within 28 days of any person becoming a member of the company or, in the case of a subscriber to the memorandum, within 28 days of the incorporation of the company.

(b) Every entry required by subsection (1) (c) shall be

made within 28 days of the date when the person concerned ceased to be a member, or, if he ceased to be a member otherwise than by reason of action by the company, within 28 days of production to the company of satisfactory evidence of the occurrence of the event whereby he ceased to be a member.

(3) A company may keep the names and particulars relating to persons who have ceased to be members of the company separately and the names and particulars relating to former members need not be supplied to any person who applies for a copy of the register unless he specifically requests the names and particulars of former members.

(4) The members' register shall be *prima facie* evidence of any matter inserted therein as required or authorised by this Act.

(5) Every company having more than 50 members shall, unless the members' register is in such a form as to constitute in itself an index, keep an index of the names of the members and shall, within 14 days after the date on which any alteration is made in the members' register, make any necessary alteration in the index.

(6) The index shall in respect of each member contain a sufficient indication to enable the particulars relating to that member in the register to be readily found.

#### **141. Place where register and index kept.**

(1) Subject to subsection (2), the members' register and index shall be kept at the registered office.

(2) (a) Where the work of making up the members' register and the index is done at another office of the company in Mauritius, they may be kept at that other office.

(b) Where the company arranges with some other person to make up the members' register and index on its behalf, they may if that office is in Mauritius be kept at the office of that other person.

(3) Every company shall -

(a) within 14 days after the register and index are first kept at a place other than the registered office, lodge with the Registrar a notice of the place where they are kept; and

(b) within 14 days after any change in the place at which the register and index are kept, lodge a notice of the change.

#### **142. Inspection and closing of register.**

(1) (a) Subject to paragraph (b), a company may, on giving not less than 14 days notice to the Registrar, close the members' register or that part of the members' register relating to any class of members.

(b) No part of the register shall be closed for more than 30 days in the aggregate in any year.

(2) The members' register and index shall be open to the inspection -

(a) of a member without charge; and

(b) of any other person on payment of the fee prescribed in the Eleventh Schedule.

(3) Any person may request the company to furnish him with a copy of the register relating to names, addresses, number of shares held and amounts paid on shares.

(4) On the receipt of the request under subsection (3) and on payment of the fee prescribed in the Eleventh Schedule for each page or part of a page required to be copied, the company shall cause the copy to be sent to the person within a period of 21 days.

#### **143. Rectification of register.**

(1) Where -

(a) the name of a person is without sufficient cause entered in or omitted from the members' register; or

(b) default is made or unnecessary delay takes place in entering in the register the fact that a person has ceased to be a member,

the person aggrieved or any member or the company may apply to the Court for rectification of the register, and the Court may, subject to subsection (4), refuse the application or order the rectification of the register and the payment by the company of any compensation for loss sustained by any party to the application.

(2) On an application under subsection (1) the Court may decide -

(a) any question relating to the title of a 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 and alleged members or between members or alleged members on the one hand and the company on the other; and

(b) generally any question necessary or expedient to be decided for the rectification of the register.

(3) Where the Court makes an order for the rectification of the register, it shall by its order direct the company to lodge with the Registrar a notice of the rectification.

(4) No application for the rectification of the register in respect of an entry which was made in the register more than 20 years before the date of the application shall be entertained by the Court.

#### **144. Branch registers.**

(1) A company having a share capital may cause to be kept, in any place outside Mauritius, a branch register of members which shall be deemed to be part of the members' register.

(2) The company shall lodge with the Registrar notice of the situation of the office where a branch register is kept and of any change in its situation, and if it is discontinued, of its discontinuance, within 28 days after the opening of the office or the change or discontinuance, as the case may be.

(3) A branch register shall be kept in the same manner in which the members' register is by sections 140 to 143 required to be kept.

(4) The company shall transmit to the office at which the members' register is kept a copy of every entry in its branch register as soon as may be after the entry is made, and shall cause to be kept at that office duly entered up from time to time a copy of its branch register, which shall for the purposes of this Act be deemed to be part of the members' register.

(5) A company may discontinue a branch register and thereupon all entries in that register shall be transferred to some other register kept by the company in the same place or to the members' register.

(6) Where by virtue of the law in force in any other country a corporation incorporated under that law keeps a branch register of its members in Mauritius, the Minister may, by public notice, declare that sections 141, 142 and 143 relating to place of keeping, inspection and rectification of members' register shall, subject to any modifications specified in the notice, apply to and in relation to any such branch register as they apply to and in relation to a members' register.

#### **145. Trusts.**

No notice of any expressed, implied or constructive trust, constituted under a foreign law shall be entered in the members' register or be receivable by the Registrar.

**146. Register of substantial shareholders.**

(1) Every public company or subsidiary or holding company of a public company shall keep a register of substantial shareholders in which it shall enter the particulars specified in subsection (2) in respect of every share held by a substantial shareholder or in which directly or indirectly he has an interest.

(2) The particulars to be entered in the register of substantial shareholders are -

- (a) the name and address of the substantial shareholder;
- (b) the number, class and nominal value of the share in which he has an interest;
- (c) the name of the holder of the share if the substantial shareholder is not the holder;
- (d) the nature of the substantial shareholder's interest and its duration if it is limited in duration;
- (e) the date of the acquisition of the interest by the substantial shareholder;
- (f) the date of the disposal of the interest by the substantial shareholder or of any change in the nature of the interest held by him.

(3) Every person in respect of whom an entry is required to be made in the register of substantial shareholders' holdings shall within 14 days after he becomes a substantial shareholder or after any other matter which requires an entry occurs or arises, give to the company written notice of the fact together with a statement of the particulars specified in subsection (2).

(4) Where a person ceases to be a substantial shareholder -

- (a) the entry made in the register of substantial shareholders' holdings shall not be removed from the register; and
- (b) it shall not be necessary to make an entry in the register in respect of a matter which occurs or arises after he ceases to be a substantial shareholder.

(5) Every company referred to in subsection (1) shall keep a

register in which it shall forthwith enter in alphabetical order the name of every person from whom it has received a notice under subsection (3) and the information given in the notice.

(6) The register of substantial shareholders' holdings shall be kept in the same place as the members' register is required by section 141 to be kept, and sections 141 and 142(2), (3) and (4) shall apply to the register of substantial shareholders' holdings as they apply to the members' register.

(7) A company shall not, by reason of anything done under this section be taken for any purpose to have notice of, or be put upon inquiry as to, a right of a person to or in relation to a share.

(8) Where the directors of a company referred to in subsection (1) have reasonable cause to believe that upon the registration of any share transfer a member will become a substantial shareholder, the directors shall give notice to the member of that belief and direct the attention of the member to the requirements of this section.

#### Sub-Part VI - Annual Return

#### **147. Annual return by a company having a share capital.**

(1) Subject to section 149(1) and 150, every company having a share capital shall -

- (a) within twenty-eight days after the date of the annual general meeting of the company or where section 124 applies, the date by which the company is required to complete the entries in its minute book relating to matters required to be done at an annual general meeting; or
- (b) in the case of a company keeping a branch register outside Mauritius, within eight weeks after the dates referred to in paragraph (a),

lodge with the Registrar a return signed by a director, manager or secretary containing the particulars specified in Part I of the Fifth Schedule and accompanied by -

- (a) copies of the documents required to be included in the return by Part II of that Schedule; and
- (b) certificates and other particulars referred to in that Part which are applicable to the company.

(2) The return shall be in accordance with the form set out in Part II of the Fifth Schedule and shall be made up to the date

referred to it in subsection (1).

(3) Where a company keeps a branch register, the particulars of the entries in that register which relate to matters which are required to be stated in the return, shall be included in the return made next after copies of those entries are received at the registered office.

(4) Where the number of the members of a private company exceeds twenty-five, the company shall send with its annual return a certificate signed by a director and by the secretary of the company to the effect that the excess of the number of members of the company over twenty-five consists wholly of persons who are not to be included in computing the number of twenty-five.

#### **148. Annual return by company limited by guarantee.**

(1) Every company limited by guarantee shall, within twenty-eight days after each annual general meeting, lodge a return containing the particulars referred to in subsection (2) and made up to the date of the annual general meeting or a date not later than the fourteenth day after that date.

(2) The return shall contain -

- (a) the address of the registered office;
- (b) in a case in which the members' register is kept elsewhere than at the registered office, the address of the place where it is kept;
- (c) particulars of the total amount of the indebtedness of the company in respect of all charges which are required to be lodged;
- (d) all the particulars, relating to every person who, on the day to which the return is made up, is a director, manager, or secretary which are required to be contained in the register of directors, managers and secretaries;
- (e) the name and address of the auditor.

#### **149. Annual return by private companies.**

(1) An exempt private company shall -

- (a) not be required to include with the annual return a copy of the last balance sheet and profit and loss account of the company;
- (b) send with the annual return a certificate signed by

a director and secretary of the company furnishing the basic financial information set out in Part III of the Fifth Schedule.

(2) A private company shall send with the annual return a certificate signed by a director and a secretary of the company that the company has not since the date of the last return, or, in the case of a first return, since the date of incorporation of the company, issued any prospectus inviting subscriptions for shares in its capital.

**150. Annual return by public companies.**

A public company which -

- (a) has more than 500 members; and
- (b) provides reasonable accommodation and facilities at a place approved by the Registrar for persons to inspect and take copies of its list of members and its particulars of share transferred,

shall not, unless the Registrar otherwise directs, be required to include a list of members with the annual return if a certificate by the secretary is included that the company is of a kind to which this section applies.

**PART VI - ACCOUNTS AND AUDIT**

Sub-Part I - Accounts

**151. Keeping of accounts.**

(1) Every company shall cause accounting records to be kept in accordance with the provisions of this section.

(2) The accounting records shall be sufficient to show and explain the company's transactions.

(3) The accounting records shall be such as to -

- (a) disclose with reasonable accuracy, at any time, the financial position of the company at that time; and
- (b) enable the directors to ensure that any balance sheet or profit and loss account prepared by them complies with the requirements of sections 154 to 156.

(4) The accounting records shall in particular contain -

- (a) entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
  - (b) a record of the assets and liabilities of the company; and
  - (c) where the company's business involves dealing in goods, the statements mentioned in subsection (5).
- (5) The statements referred to in subsection (4) (c) are -
- (a) statements of stock held by the company at the end of each financial year of the company;
  - (b) all statements of stock-takings from which any such statement as is mentioned in paragraph (a) has been or is to be prepared; and
  - (c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased showing the goods and the buyers and sellers in sufficient detail to enable the goods and the buyers and sellers to be identified.

(6) Subject to subsection (7), the accounting records shall be kept at the registered office of the company or at such other place as the directors of the company think fit for a period of 6 years after the completion of the transactions to which they relate and shall at all time be open to inspection by the officers of the company and by any other person authorised to inspect accounting records under this Act.

(7) If accounting records are kept at a place outside Mauritius, accounts and returns with respect to the business dealt with in the accounting records so kept shall be sent to, and kept at a place in Mauritius and shall at all times be open to inspection by the officers of the company and by any other person authorised to inspect accounting records under this Act.

(8) The accounts and returns to be sent to Mauritius in accordance with subsection (7) shall be such as to -

- (a) disclose with reasonable accuracy the financial position of the business in question at intervals not exceeding 6 months; and
- (b) enable the directors to ensure that any balance sheet or profit and loss account prepared by them complies with the requirements of sections 154 to

156.

(9) The Court may on application by a director authorise a qualified auditor acting for the director to inspect the accounting records of the company and any statements and records referred to in subsection (3).

(10) Where a qualified auditor inspects the accounting records or the statements and records referred to in subsection (7) pursuant to an order of the Court under subsection (9), he shall not disclose any information acquired by him in the course of his inspection to a person other than the director on whose application the order was made.

**151A. Keeping of accounts in foreign currency**

(1) Where a company is admitted on the Official List of the Stock Exchange, it may, with the approval of the Registrar, keep its accounting records and prepare its accounts in a foreign currency.

(2) Where a company keeps its accounting records and prepares its accounts pursuant to subsection (1), it shall, within 14 days after starting to so keep the accounting records, lodge with the Registrar a notice to that effect.

(3) Where a company keeps its accounting records and prepares its accounts in a foreign currency, it shall not, without the prior approval of the Registrar, keep its accounting records and prepare its accounts in another currency.

**152. Accounting periods for group accounts.**

(1) Subject to subsections (4) and (5) the directors of every holding company that is not a foreign company shall take reasonable steps to ensure that -

(a) within 2 years after the date of the commencement of this Act, the financial year of each of its subsidiaries coincides with the financial year of the holding company;

(b) within 2 years after a corporation becomes a subsidiary of the holding company, the financial year of that corporation coincides with the financial year of the holding company.

(2) Where the financial year of a holding company that is not a foreign company and that of each of its subsidiaries coincide, the directors of the holding company shall take reasonable steps to ensure that the financial year of the holding company or any of its subsidiaries is not, except with the Registrar's written authorisation, altered.

(3) (a) Where the directors of a holding company are of the opinion that there is good reason why the financial year of any of its subsidiaries should not coincide with the financial year of the holding company, the directors may make a written application to the Registrar for an order authorising the subsidiary to continue to have or to adopt a financial year which does not coincide with that of the holding company, stating the reason for the application.

(b) The Registrar may -

(i) require the directors who make an application under subsection (3) to supply such information relating to the operation of the holding company and of any related corporation as he thinks necessary for the purpose of determining the application;

(ii) at the expense of the holding company request a qualified auditor to investigate and report on the application.

(4) Where an application is made under subsection (3), subsection (1) shall not apply to a subsidiary company to which the application relates until the determination of the application and of any appeal arising out of the application.

(5) (a) Where an order is made under subsection (3), compliance with the terms of the order, or where there has been an appeal, compliance with the terms of an order made on the determination of the appeal shall be deemed to be compliance with subsection (1) in relation to that subsidiary.

(b) Where the application for an order and any appeal arising out of that application are refused, the directors of the holding company shall comply with subsection (1) in relation to that subsidiary within 12 months of the date on which the order of the Registrar is served on the holding company or within 12 months after the determination of the appeal, as the case may be.

(6) Where an application is made under subsection (3) and any appeal arising out of that application are refused, no similar application with respect to that subsidiary shall be made within three years after the refusal of the application or the determination of any appeal, unless the Registrar is satisfied that, since the refusal of the former application or the determination of the appeal, there has been a substantial change in the relevant facts or circumstances.

### **153. Date of closing of financial year.**

(1) The Minister may make regulations requiring companies or any class of companies to adopt a uniform date for the closing of the financial year with respect to the accounts of companies.

(2) Regulations made under subsection (1) may require different dates for the closing of the financial year with respect to different sectors of economic activity.

#### **154. Profit and loss account and balance sheet.**

(1) The directors of every company shall cause to be made out and laid before the company at each annual general meeting a profit and loss account showing a true and fair view of the profit or loss for the period beginning on the day following the date to which the last preceding profit and loss account was made up or, in the case of the first profit and loss account, the date of the registration of the company, and, subject to subsection (2) ending on a date not earlier than eight months before the date of the meeting.

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

(3) The directors of every company shall cause to be made out and laid before the company at each annual general meeting a balance sheet showing a true and fair view of the company's affairs as at the date to which the profit and loss account is required to be made up.

#### **155. Laying of group accounts before holding company.**

(1) Where at the end of its financial year a company has subsidiaries, accounts or statements in this Act referred to as "Group Accounts" dealing with the state of affairs and profit or loss of the company and the subsidiaries shall, subject to subsection (2) and (3), be laid before the company at the general meeting before which the company's own balance sheet and profit and loss account are laid.

(2) Group accounts shall not be required where the company is at the end of its financial year the wholly owned subsidiary of another corporation incorporated in Mauritius.

(3) Group accounts need not deal with a subsidiary of the company if the company's directors are of opinion and the Registrar agrees that -

- (a) it is impracticable, or would be of no real value to members of the company to do so in view of the

insignificant amounts involved, or would involve expense or delay put of proportion to the value to members of the company;

- (b) the result would be misleading or harmful to the business of the company or any of its subsidiaries; or
- (c) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking.

(4) Group accounts may be wholly or partly incorporated in the company's own balance sheet and profit and loss account.

(5) Where the financial year of a subsidiary does not coincide with that of the holding company, the group accounts shall, unless the Registrar on the application or with the consent of the holding company's directors otherwise directs, deal with the subsidiary's state of affairs as at the end of its financial year ending with or last before that of the holding company, and with the subsidiary's profit or loss for that financial year.

(6) The group accounts laid before a company shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with thereby as a whole, so far as concerns members of the company.

#### **156. Requirements of Sixth Schedule.**

The accounts of a public company and non-exempt private company and any group accounts shall comply with such of the requirements of the Sixth Schedule as are applicable to them but where accounts prepared in accordance with these requirements would not otherwise give a true and fair view of the matters required by section 154 to be dealt with in the accounts, the directors of the company shall add such information and explanations as will give a true and fair view of those matters.

#### **157. Signing of accounts and directors' report.**

(1) The profit and loss account and any group accounts shall before they are laid before the company in general meeting be annexed to the balance sheet and shall be approved by the Board of Directors and the balance sheet shall be signed on their behalf by two directors.

(2) There shall be attached to the accounts laid before the company in general meeting a report by the directors with respect to -

- (a) the state of the company's affairs;

- (b) the amount, if any, which they recommend should be paid by way of dividend;
- (c) the amount, if any, which they propose to carry to reserves within the meaning of the Sixth Schedule;
- (d) any further matters required to be included in the directors' report by Regulations made under this Act.

(3) The said report shall deal, so far as is material for the appreciation of the company's affairs by its members and will not in the directors' opinion be harmful to the business of the company or any of its subsidiaries, with any change during the financial year in-

- (a) the nature of the company's business;
- (b) the company's subsidiaries;
- (c) classes of business in which the company has an interest, whether as member or another company or otherwise.

**158. Members' entitlement to accounts.**

(1) Every company shall, not less than fourteen days before each annual general meeting, send a copy of all accounts and, if it is a holding company, group accounts which are to be laid before the company at the meeting, accompanied by a copy of the statements required under section 154, a copy of the directors' report required under section 157 and copy of the auditor's report or reports required by section 172 to every person entitled to receive notice of general meetings of the company.

(2) Any member and any holder of debentures, shall, on written request made by him to the company, be furnished by the company as soon as practicable with a copy of the last accounts and group accounts, if any, laid or to be laid before the company at its annual general meeting, together with copies of other documents required under subsection (1) to accompany those accounts and group accounts, if any.

**159. Exemption from provision of this Sub-Part.**

(1) The directors of a company may make a written application to the Registrar for an order relieving them from any requirement of this sub-part or of the Sixth Schedule relating to the form or content of accounts or consolidated or group accounts or to the

form or content of reports and statements and the Registrar may, subject to subsection (3), make an order subject to such conditions as he thinks fit to impose, including a condition that the directors shall comply with such other requirements relating to the form or content of the accounts, reports or statements as the Registrar thinks fit.

(2) The Registrar may, if he thinks fit, make an order in respect of a specified class of companies relieving the directors of a company in that class from compliance with any requirement of this sub-part or of the Sixth Schedule specified in subsection (1) and the order may be made subject to any condition specified in that subsection.

(3) The Registrar shall not make an order under subsection (1) unless he is of the opinion that compliance with the requirements of this Act would render the accounts or consolidated accounts or report, as the case may be, misleading or inappropriate to the circumstances of the company, or would impose unreasonable burdens on the company, or any officer of the company.

#### **160. Duty to give information.**

(1) Every company which is the subsidiary, holding company, or subsidiary of the holding company of another company shall, within one month of the expiration of the financial year of that other company, notify it in writing of all the matters relating to the affairs of the company giving the information which is required to be included in the annual accounts of that other company or in a statement annexed thereto.

(2) Subject to subsection (3), every director of every company which is required to give a written notification to another company under subsection (1), and every director of that other company shall, within one month of the expiration of the financial year of that other company, notify it in writing of all the matters relating to him personally which are required to be included in the other company's annual accounts, or in a statement annexed thereto.

(3) Where any part of a director's emoluments is calculated by reference to the profits of any company or companies for a financial year thereof, or any class of such profits, the director shall be deemed to have complied with subsection (2) in respect of those emoluments if he notifies the manner in which the emoluments are so calculated and the amount received on account thereof during the financial year of the company to which the notification is given, and further notifies the amount thereof within one month after the annual accounts of the first mentioned company or each of those companies are approved by its directors.

(4) It shall be the duty of a company in which another company holds shares in circumstances which made it necessary for

that other company to include particulars of its shareholding in its annual accounts to notify that other company, within one month after it makes a written request in that behalf, of the number and nominal value of each class of its shares issued and outstanding on the date specified by the other company in its request, being the last day of its financial year.

(5) A director who does not comply with subsection (2) shall commit an offence.

(6) References in this section to matters required to be included in a company's annual accounts or in a statement annexed thereto shall be construed as reference to matters which are required to be shown separately therein, and to matters which are required to be, or which may be, shown in combination with other matters.

*Sub-Part II - Audit*

**161. Qualifications for appointment as auditor.**

(1) No person shall be qualified for appointment as auditor of a company other than an exempt private company unless -

- (a) he is a member of -
  - (i) the Institute of Chartered Accountants in England and Wales;
  - (ii) the Institute of Chartered Accountants of Scotland;
  - (iii) the Institute of Chartered Accountants of Ireland; or
  - (iv) the Association of Certified Accountants; or
- (b) he is a person who possesses such qualifications as are in the opinion of the Minister equivalent to those of a member of any body specified in paragraph (a), in this Act called an "approved auditor"; or
- (c) it is a firm or partnership which provides auditing services performed by a person specified in paragraph (a) or (b).

(2) A person who has before the commencement of the Act been approved by the Governor-General to act as a qualified auditor of a public company shall be an approved auditor under this Act.

**162. Approved auditors.**

(1) Every application by a person to be an approved auditor shall be made to the Minister who may on the grounds provided in section 161(1) (b) grant such approval subject to such limitations or conditions as the Minister thinks fit and the approval may be revoked at any time by him by the service of a notice of revocation on the approved auditor.

(2) (a) The Minister may delegate all or any of his powers under subsection (1) to any person or body of persons charged with the responsibility for the registration or control of accountants in Mauritius.

(b) Any person who is aggrieved by the decision of any person or body of persons to whom the Minister has delegated all or any of his powers under this section may appeal to the Minister who may, in his discretion, confirm, reverse or vary the decision.

(3) The Minister may -

(a) on recommendation from a body of persons charged with the responsibility for the registration and control of accountants in Mauritius; or

(b) where it appears from an investigation under Part X that a qualified auditor is not a fit person to continue to act as a qualified auditor - inquire into the conduct of an auditor and the Minister may, where he is satisfied that the conduct of the auditor is such as to render him unfit to continue to discharge the function of a qualified auditor, declare by notice in the *Gazette* that such person is no longer a qualified auditor and on publication of the notice he shall cease to be a qualified auditor under this Act.

(4) Any person aggrieved by the decision of the Minister may, within 21 days of the date of the notice, appeal to the Court which may vary or reverse the decision on such terms as it considers to be just.

### **163. Persons who may be appointed auditors.**

(1) Subject to the other provisions of this section, no person shall, in the case of a public company or non-exempt private company, -

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

(b) act as auditor of a company; or

(c) prepare a report required by this Act to be prepared by an auditor of a company if he -

- (i) is not, qualified for appointment under section 161;
- (ii) is indebted in an amount exceeding five thousand rupees to the company or to a related corporation unless the debt is in the ordinary course of business; or
- (iii) is not ordinarily resident in Mauritius;
- (iv) is an officer or employee of the company; or
- (v) is a partner, employer or employee of an officer or employee of the company.

(2) No firm shall, in the case of a public company or non-exempt private company -

- (a) consent to be appointed as auditor of a company;
- (b) act as auditor of a company; or
- (c) prepare a report required by this Act to be prepared by an auditor of a company;

unless -

- (d) at least one member of the firm is ordinarily resident in Mauritius;
- (e) all the members of the firm who are so ordinarily resident are qualified for appointment under section 161;
- (f) no member of the firm is indebted in an amount exceeding five thousand rupees to the company or to a related corporation unless the debt is in the ordinary course of business;
- (g) no member of the firm is -
  - (i) an officer or employee of the company; or
  - (ii) a partner, employer or employee of an officer or employee of the company;
- (h) except in the case of an exempt private company, no officer of the company receives any remuneration

from the firm or acts as a consultant to it on accounting or auditing matters.

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

- (a) he is an officer of a related corporation; or
- (b) except where the Registrar otherwise directs, he has, at any time within the immediately preceding period of twelve months, been an officer or promoter of the company or of a related corporation.

(4) For the purposes of this section, a person shall not be deemed to be an officer of a company by reason only that -

- (a) he is or has been the liquidator of that company or of a related corporation;
- (b) he has been appointed auditor of that company or of a related corporation; or
- (c) he is or has been authorised to accept on behalf of the company or a related corporation service of process or any notices required to be served on the company or related corporation.

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

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

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

(8) No person shall -

- (a) if he has been appointed auditor of a company, willfully disqualify himself, while the appointment continues, from acting as auditor of the company; or

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

#### **164. Appointment of auditors.**

(1) At any time before the first annual general meeting of a company, the directors may appoint or, if the directors do not make an appointment, the company at a general meeting may appoint, a person to be the auditor of the company, and any auditor so appointed shall, subject to the other provisions of this section, hold office until the first annual general meeting.

(2) A company shall at each annual general meeting appoint a person to be the auditor of the company, and any auditor so appointed shall, subject to the other provisions of this section, hold office until the next annual general meeting.

(3) Subject to subsections (3) and (4) of section 166, the directors may fill a casual vacancy in the office of auditor, but while such a vacancy continues any surviving or continuing auditor, if any, may act.

(4) Where a company does not appoint an auditor, the Registrar may make the appointment on the written application of a member.

#### **165. Nomination for appointment as auditors of an exempt private company.**

(1) Subject to section 166(3) and subsection (3) of this section, a person shall not be capable of being appointment auditor of an exempt private company at an annual general meeting unless he held office as auditor of the company immediately before the meeting or notice of his nomination as auditor was given to the company not less than twenty eight days before the meeting.

(2) Where notice of nomination of a person as auditor of a company is received by the company whether for appointment at an adjourned meeting under section 166(3) or at an annual general meeting, the company shall, not less than seven days before the adjourned meeting or the annual general meeting, send a copy of the notice to the person nominated, to every auditor, if any, of the company and to every person entitled to receive notice of general meetings of the company.

(3) Where, after notice of nomination of a person as auditor of a company has been given to the company, the annual general meeting of the company is called for a date earlier than twenty eight days after the notice has been given, subsection (1) shall

not apply in relation to the person and, if the annual general meeting is called for a date not more than seven days after the notice has been given and a copy of the notice is, at the time notice of the meeting is given, sent to each person to whom under subsection (2), it is required to be sent, the company shall be deemed to have complied with that subsection in relation to the notice.

#### **166. Removal of auditors.**

(1) Subject to section 167 a company may by ordinary resolution remove an auditor before the expiration of his term of office, notwithstanding anything in any agreement between it and him, and where a resolution removing an auditor is passed at a general meeting of a company, the company shall within fourteen days give notice of that fact in the form prescribed in the Tenth Schedule to the Registrar of Companies.

(2) Nothing in subsection (1) shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that as auditor.

(3) Where an auditor is removed from office under subsection (1)-

(a) the company may at the meeting, by a resolution passed by a majority of not less than three-fourths of such members of the company as being entitled so to do vote in person or by proxy, forthwith appoint another person nominated at the meeting as auditor; or

(b) the meeting may be adjourned to a date not earlier than twenty days and not later than thirty days after the meeting and the company may by ordinary resolution appoint another person as auditor, being a person notice of whose nomination as auditor has, at least ten days before the adjourned meeting, been received by the company.

(4) A company shall, forthwith after the removal of an auditor from office under subsection (1), give written notice of the removal to the directors and, where the company does not appoint another auditor under subsection (3), the directors shall appoint an auditor.

(5) An auditor appointed under subsection (3) or (4), shall, subject to the other provisions of this section, hold office until the next annual general meeting.

#### **167. Supplementary provisions relating to appointment and removal**

**of auditors.**

(1) Except in the case of an exempt private company which has not appointed a qualified auditor, special notice shall be required for a resolution at a general meeting of a company -

- (a) appointing as auditor a person other than a retiring auditor; or
- (b) filling a casual vacancy in the office of auditor; or
- (c) reappointing as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy; or
- (d) removing an auditor before the expiration of his term of office.

(2) On receipt of notice of such an intended resolution as aforesaid the company shall forthwith send a copy thereof -

- (a) to a person proposed to be appointed or removed, as the case may be;
- (b) in a case within subsection (1)(a), to the retiring auditor; and
- (c) where, in a case within subsection (1)(b) or (c), the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.

(3) Where notice is given of such a resolution as is mentioned in subsection (1)(a) or (d) and the retiring auditor or, as the case may be, the auditor proposed to be revoked makes with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall (unless the representations are received by it less than 48 hours before the meeting)-

- (a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(4) If a copy of any such representations as are mentioned in subsection (3) above is not sent out as required by that subsection because received less than 48 hours before the meeting or because

of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.

(5) Copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the Court may order the company's costs on an application under this subsection to be paid in whole or in part by the auditor.

(6) An auditor of a company who has been removed shall be entitled to attend -

- (a) the general meeting at which his term of office would otherwise have expired; and
- (b) any general meeting at which it is proposed to fill the vacancy caused by his removal,

and to receive all notices of, and other communications relating to, any such meeting which any member of the company is entitled to receive, and to be heard at any such meeting which he attends on any part of the business which concerns him as former auditor of the company.

#### **168. Resignation of auditors in public and non-exempt private companies.**

(1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the registered office of the company, and any such notice shall operate to bring his term of office to an end on the date on which the notice is deposited or on such later date as may be specified therein.

(2) An auditor's notice of resignation shall not be effective unless it contains -

- (a) a statement to the effect that there are no circumstances connected with his resignation which he considers should be brought to the notice of the members or creditors of the company; or
- (b) a statement of any such circumstances as aforesaid.

(3) Where a notice having effect under this section is deposited at a company's registered office the company shall within 14 days send a copy of the notice -

- (a) to the Registrar; and

- (b) if the notice contained a statement under subsection (2)(b), to every person who under section 158(1) is entitled to be sent copies of the documents there mentioned.

(4) The company or any person who claims to be aggrieved may, within fourteen days of the receipt by the company of a notice containing a statement under subsection (2)(b), apply to the Court for an order under subsection (5).

(5) If the Court, on an application under subsection (4), is satisfied that the auditor is using the notice to secure needless publicity for defamatory matter, it may by order direct that copies of the notice need not be sent out and the Court may further order the company's costs on the application to be paid in whole or in part by the auditor.

(6) The company shall, within fourteen days of the Court's decision, send to the persons mentioned in subsection (3) -

- (a) if the Court makes an order under subsection (5), a statement setting out the effect of the order;
- (b) if the Court does not make an order under that subsection, a copy of the notice containing the statement under subsection (2) (b).

(7) This section shall not apply to an exempt private company.

**169. Right of auditor who resigns to requisition meeting of company, etc.**

(1) Where an auditor's notice of resignation contains a statement under section 168(2)(b) there may be deposited with the notice a requisition signed by the auditor calling on the directors of the company forthwith duly to convene an extraordinary general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.

(2) Where an auditor's notice of resignation contains any such statement as aforesaid and the auditor requests the company to circulate to its members -

- (a) before the general meeting at which his term of office would otherwise have expired; or
- (b) before any general meeting at which it is proposed to fill the vacancy caused by his resignation or convened on his requisition,

a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation, the company shall (unless the statement is received less than 48 hours before the meeting) -

(i) in any notice of the meeting given to members of the company state the fact of the statement having been made; and

(ii) send a copy of the statement to every member of the company to whom the notice of the meeting is or has been sent.

(3) Copies of a statement need not be sent out and the statement need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the Court may order the company's costs on an application under this subsection to be paid in whole or in part by the auditor.

(4) An auditor of a company who has resigned his office shall be entitled to attend any such meeting as is mentioned in subsection (2)(a) or (b) and to receive all notices of, and other communications relating to, any such meeting which any member of the company is entitled to receive, and to be heard at any such meeting which he attends on any part of the business of the meeting which concerns him as former auditor of the company.

(5) This section shall not apply to an exempt private company.

#### **170. Exempt private companies.**

(1) An exempt private company shall at each annual general meeting appoint an auditor or auditors who -

(a) need not be a qualified auditor;

(b) shall not be an officer of the company or a related corporation;

(c) shall be ordinarily resident in Mauritius.

(2) The appointment and removal of the auditor of an exempt private company shall be made in accordance with sections 164, 165 and 166, and the auditor shall carry out his audit and report to members in accordance with section 172.

- (3) An auditor of an exempt private company may resign -
- (a) if he is not the sole auditor of the company by written notice to the directors; or
  - (b) at a general meeting of the company.

(4) Where the auditor gives written notice under subsection (3) to the directors of the company that he desires to resign, the directors shall call a general meeting of the company as soon as is practicable for the purpose of appointing an auditor in place of the auditor who desires to resign and on the appointment of another auditor the resignation shall take effect.

#### **171. Auditors' remuneration.**

- (1) The fees and expenses of an auditor of any company -
- (a) shall, in the case of an auditor appointed by the company at a general meeting, be fixed by the company in general meeting, or, if so authorised by the members at the last preceding annual general meeting, by the directors; and
  - (b) may, in the case of an auditor appointed by the directors or by the Registrar, be fixed by the directors or by the Registrar, as the case may be and, if not so fixed, shall be fixed as provided in paragraph (a) as if the auditor had been appointed by the company.

(2) Where a company is served with a notice sent by or on behalf of -

- (a) at least five per cent of the total number of members; or
- (b) the holders in aggregate of not less than five per cent in nominal value of the company's issued share capital,

requiring particulars of all emoluments paid to or receivable by an auditor of the company or any person who is a partner or employer or employee of the auditor, by or from the company or any subsidiary in respect of services other than auditing services rendered to the company, the company shall forthwith -

- (i) prepare or cause to be prepared a statement showing particulars of all emoluments paid to the auditor or other person and of the services in respect of which the payments

have been made for the financial year immediately preceding the service of such notice;

- (ii) forward a copy of the statement to every person entitled to receive notice of general meeting of the company; and
- (iii) lay such statement before the company in general meeting.

## 172. Audit of accounts.

(1) Every company shall not less than fourteen days before each annual general meeting cause the accounts of the company and, any group accounts, to be audited and the auditors' report required by this section shall be attached or endorsed upon the accounts and group accounts.

(2) The auditors of a company shall make a report to the members on the accounts examined by them, and on every balance sheet, every profit and loss account and all group accounts laid before the company in general meeting during their tenure of office.

(3) The auditors' report shall be read before the company in general meeting and shall be open to inspection by any member.

(4) The report shall -

(a) except in the case of a company that is entitled to avail itself, and has availed itself, of the benefit of any of the provisions of Part III of the Sixth Schedule, state whether in the auditors' opinion the company's balance sheet and profit and loss account and (if it is a holding company submitting group accounts) the group accounts have been properly prepared in accordance with the provisions of this Act and whether in their opinion a true and fair view is given -

- (i) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year;
- (ii) in the case of the profit and loss account (if it be not framed as a consolidated profit and loss account), the company's profit or loss for its financial year;

(iii) in the case of group accounts submitted by a holding company, of the state of affairs and profit or loss of the company and its subsidiaries dealt with thereby, so far as concerns members of the company;

(b) in the said excepted case, state whether in the auditors' opinion the company's balance sheet and profit and loss account and (if it is a holding company submitting group accounts) the group accounts have been properly prepared in accordance with the provisions of this Act.

(5) It shall be the duty of the auditors of a company, in preparing their report under this section, to carry out such investigations as will enable them to form an opinion as to the following matters, that is to say, -

(a) whether proper accounting records have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them; and

(b) whether the company's balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account are in agreement with the accounting records and returns;

and if the auditors are of opinion that proper accounting records have not been kept by the company or that proper returns adequate for their audit have not been received from branches not visited by them, or if the balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account are not in agreement with the accounting records and returns, the auditors shall state that fact in their report.

(6) Every auditor of a company shall have a right of access at all times to the accounting and other records of the company, and shall be entitled to require from the officers of the company and from the auditor of any related corporation such information and explanations as he thinks necessary for the performance of his duties.

(7) If the auditors fail to obtain all the information and explanations which, to the best of their knowledge and belief, are necessary for the purposes of their audit, they shall state that fact in their report.

(8) The auditors of a company shall be entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to, any general meeting which any

member of the company is entitled to receive, and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

**173. Duties of auditors towards debenture holders' representative.**

(1) The auditor of a borrowing company shall, within seven days after furnishing the company with any balance sheet or profit and loss account or any report, certificate or other document which he is required by this Act or by the agency deed to give to the company, send a copy by post to every debenture holders' representative.

(2) Where in the performance of his duties as auditor of a borrowing company the auditor becomes aware of any matter which is in his opinion relevant to the exercise and performance of the powers and duties imposed by this Act or by any agency deed on any debenture holders' representative, he shall within seven days after becoming aware of the matter send by post a report in writing on such matter to the borrowing company and a copy to the representative.

(3) The auditor of a borrowing company shall at the request of the debenture holders' representative, furnish to him such further information or particulars relating to the borrowing company as are within his knowledge and which are in his opinion relevant to the exercise or performance of the powers or duties conferred or imposed on the representative by this Act or by the agency deed.

PART VII - ARRANGEMENTS AND RECONSTRUCTION

**174. Compromise or arrangement with creditors or members.**

(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them the Court may, on the application of the company or of any creditor or member 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 or class of members as the case may be to be summoned in such manner as the Court directs.

(2) A meeting held pursuant to an order made under subsection (1) may be adjourned from time to time if the resolution for adjournment is approved by a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members as the case may be, present and voting in

person or by proxy at the meeting.

(3) (a) Where a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members as the case may be, present and voting in person or by proxy at the meeting or the adjourned meeting, agrees to a compromise or arrangement, the Court may subject to such alterations or conditions as it thinks fit approve the compromise or arrangement.

(b) The compromise or arrangement as approved by the Court shall subject to subsection (4), be binding on all the creditors or class of creditors or on the members or class of members, as the case may be, and 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.

(4) An order under subsection (3) shall have no effect until a copy of the order is lodged with the Registrar, and being so lodged, the order shall take effect on and from the date of lodgment or such earlier date as the Court may determine and as may be specified in the order.

(5) Where a compromise or arrangement has been proposed, the directors shall -

- (a) where a meeting of the members of the company by resolution so directs, instruct a qualified auditor or attorney-at-law named in the resolution to report on the proposals and forward his report to the directors; and
- (b) make the report available at its registered office for inspection by the members and creditors of the company not less than seven days before the date of any meeting ordered by the Court to be summoned under subsection (1).

(6) Where no order has been made or no winding up resolution has been passed and a compromise or arrangement has been proposed between the company and its creditors or any class of creditors, the Court may, in addition, on the application of the company or of any member or creditor restrain further proceedings in any action or other civil proceedings against the company except by leave of the Court and on such terms as the Court thinks fit.

#### **175. Summoning of meetings.**

(1) Where a meeting is summoned under section 174 the company shall -

- (a) with every notice summoning the meeting which is sent to a creditor or member, send a statement showing -
- (i) the effect of the compromise or arrangement;
  - (ii) any material interest of the creditors, whether as directors, members or otherwise;
  - (iii) the manner in which, if any, that interest is differently affected by the compromise or arrangement when compared with the interest if material of any other person;
- (b) in every notice summoning the meeting which is given by advertisement, include a statement or notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement.

(2) Where the compromise or arrangement affects the rights of debenture holders, the statement shall give the like explanation with respect to the debenture holders' representative as, under subsection (1), a statement is required to give with respect to the directors.

(3) Where a notice given by advertisement includes a notification that copies of such a statement can be obtained, every creditor or member entitled to attend the meeting shall, on written application, be furnished by the company with a free copy of the statement.

(4) Every director or debenture holders' representative shall, within seven days of the receipt of a request in writing for information as to such matters, give notice to the company of such matters relating to himself as may be necessary for the purposes of this section.

#### **176. Reconstruction and amalgamation of companies.**

(1) Where an application is made to the Court under this Part for the approval of a compromise or arrangement and it is shown to the Court that the compromise or arrangement has been proposed for the purpose of, or in connection with a scheme for the reconstruction of a company or the amalgamation of two or more companies and that under the scheme the whole or any part of the undertaking or the property of a company concerned in the scheme is to be transferred to another company, the Court may make an order to provide for -

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;
- (b) the allotting or appropriation by the transferee company of any share, debentures, policies or other like interests in the transferee company which under the compromise or arrangement are to be allotted or appropriated by the transferee company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;
- (d) the dissolution, without winding up, of the transferor company;
- (e) the interest of any person who, within such time and in such manner as the Court directs, dissents from the compromise or arrangement;
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) (a) Where an order under subsection (1) provides for the transfer of property or liabilities, the property shall, subject to subsection (4), be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company.

(b) The order may further provide that the transfer shall be effected free from any charge which is, by virtue of the compromise or arrangement, to cease to have effect in relation to any property.

(3) Where an order is made under subsection (1) every company in relation to which the order is made shall within seven days of the making of the order -

- (a) lodge with the Registrar a copy of the order; and
- (b) where the order relates to immovable property deliver a copy of the order to the Receiver of Registration Dues.

(4) No order made under subsection (1) shall have effect to transfer or otherwise vest immovable property unless subsection (3) is complied with and the Receiver of Registration Dues agrees to

register the order in accordance with the law in force relating to the transfer of immovable property.

**177. Take-over schemes.**

(1) This section shall not apply to a take-over scheme for the acquisition of -

- (a) shares in a private company, where all the offerees have consented in writing, before the date of the take-over offer, to waive the requirements of this Act; or
- (b) shares in any company, if offers are made to not more than six members of that company.

(2) No take-over offer shall be made unless -

- (a) the offeror has, not earlier than twenty-eight and not later than fourteen days before the offer is made, given or caused to be given to the offeree company a written notice of the take over scheme containing particulars of the terms of the offer together with a statement that complies with, the requirements of Part II of the Seventh Schedule; and
- (b) the offer complies with the requirements of Part I of that Schedule and there is attached to the notice -
  - (i) a copy of the statement given or caused to be given by the offeror to the offeree company under paragraph (a); and
  - (ii) where the offeree company gives or causes to be given to the offeror a statement under subsection (3) (a) or any corresponding law of another country, a copy of that statement.

(3) Where an offeree company receives a notice and statement under subsection (2) or any corresponding law of another country the offeree company shall -

- (a) within fourteen days after the receipt of the notice and statement give or cause to be given to the offeror; or
- (b) within fourteen days after take-over offers are first made to members under the take-over scheme, give or cause to be given to each member of the

offeree company to which the take-over scheme relates.

a statement in writing that complies with the requirements of Part III of the Seventh Schedule.

(4) Where a take-over offer is made, the offeror shall forthwith give written notice in that behalf to the offeree company and of the date of the offer.

**178. Variation of take-over offers.**

(1) An offeror may vary a take-over offer, in relation to the consideration that is offered for the shares proposed to be acquired, by -

- (a) where a cash sum is offered, increasing the amount of that sum;
- (b) where shares are offered, increasing the number of those shares;
- (c) where debentures are offered, increasing the rate of interest payable under those debentures;
- (d) where debentures are offered, increasing the amount of those debentures;
- (e) where an option to acquire unissued shares is offered, varying the option by increasing the number of unissued shares that may be acquired under that option.

(2) An offeror may vary a take-over offer by extending the period during which it remains open.

(3) Where the consideration that is offered for the shares proposed to be acquired under a take-over offer is varied under subsection (1), each person whose shares are acquired before or after the variation under a like take-over offer shall be entitled to receive consideration as varied accordingly.

(4) Where an offeror varies a take-over offer, he shall forthwith give to the offeree company, to the offeree and to every other offeree to whom a like take-over offer has been made in writing, a notice in accordance with subsection (5) and lodge with the Registrar a copy of the notice.

(5) The notice shall set out in an appropriate form the

particulars of such modifications of the statement given under section 177(2) (a) as are necessary having regard to the variation.

**179. Statement as to proposed take-over offers.**

(1) No person shall, unless he intends to make a take-over offer, give notice or publicly announce that he intends to make a take-over offer or an offer in the nature of a take-over offer.

(2) No person shall make a take-over offer or an offer in the nature of a take-over offer, or give notice or publicly announce that he intends to make such an offer, unless he has reasonable or probable ground for believing-

- (a) that he will be able to perform his obligations if the offer is accepted; or
- (b) in the case of a take-over offer, or an offer in the nature of a take-over offer, that is constituted by an invitation that he will be able to perform his obligations if he accepts some or all of the offers that may be made to him in consequence of the invitation.

**180. Orders to protect rights under take-over schemes.**

(1) Where a take-over offer has been made the court may, on the application of the Registrar or of the offeree company, where it is satisfied that this Part has not been complied with, but subject to section 182, make such order as it thinks fit to protect the rights of a person affected by the take-over scheme, including, but without limiting the generality of the foregoing, an order -

- (a) restraining the registration of transfers of shares in the offeree company;
- (b) restraining the disposal of any interest in shares in the offeree company;
- (c) cancelling a contract, arrangement or offer relating to the take-over scheme;
- (d) declaring a contract, arrangement or offer relating to the take-over scheme to be voidable; and
- (e) for the purpose of securing compliance with any other order under this section, directing a person to do or refrain from doing a specified act.

**181. Non-compliance due to inadvertence etc.**

Where a person has failed to comply with this Part and the Court is satisfied that the non-compliance was due to inadvertence, mistake or circumstances beyond his control and that the failure ought to be excused, or is satisfied on any other grounds that the failure ought to be excused, the Court may on the application of an interested person, but subject to section 182, make such order as it thinks fit declaring any act or matter not to be invalid by reason of the failure to comply and declaring any act or matter to have force or effect as if there had been no such failure.

**182. Other powers of Court.**

(1) The Court shall, before making an order under section 180 or 181, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(2) The Court may, before making an order under section 180 or 181, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit.

**183. Acquisition of shares of dissenting members.**

(1) (a) Subject to subsection (4) where a scheme or contract involving a transfer of the shares included in a class of shares in a company to another person has, within four months after the making of the offer in that behalf by that person been approved by the holders of not less than nine-tenths in nominal value of the shares included in that class of shares, other than shares already held at the date of the offer by or by a nominee for that person, or where that person is a company, its subsidiary, the person may at any time within two months after the offer has been so approved give notice to a dissenting member in the form prescribed in the Tenth Schedule that he desires to acquire the shares of that member.

(b) Where a notice is given under paragraph (a), the person shall unless on an application made by a dissenting member within one month after the date on which the notice was given or within fourteen days after a statement is supplied to a dissenting member under subsection (5), whichever is later, the Court thinks fit to order otherwise, be entitled and bound, subject to the other provisions of this section, to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving members are to be transferred to that person.

(2) Where shares are not divided into classes, those shares shall for the purposes of this section be deemed to constitute a class.

(3) (a) Where alternative terms were offered to the approving members, the dissenting member may not later than the expiry of one month after the date on which the notice is given under subsection (1) or fourteen days after the date on which a statement is supplied under subsection (5), whichever is later, elect which of those terms he prefers.

(b) Where the dissenting member fails to make the election within the time allowed by this subsection, that person may, unless the Court otherwise orders, determine which of those terms is to apply to the acquisition of the shares of the dissenting member.

(4) Where shares in the company of the same class as the shares whose transfer is involved are already held in the manner specified in subsection (1), to a nominal value greater than one tenth of the aggregate of their nominal value and that of the shares (other than those already held in the manner specified in subsection (1)) whose transfer is involved, subsection (1) shall not apply unless -

- (a) the transferee offers the same terms to all holders of the shares, other than those already held as mentioned in subsection (1), the transfer of which is involved; and
- (b) the members who approve the scheme or contract, besides holding not less than nine-tenths in nominal value of the shares, other than those already held in the manner specified in subsection (1), the transfer of which is involved, are not less than three-fourths in number of the holders of those shares.

(5) Where the transferee has given notice to a dissenting member that he desires to acquire that member's shares, that member may require the transferee, by written notice served on the transferee within one month after the date on which the notice is given, to furnish to him a statement in writing of the names, and addresses of all other dissenting members as shown in the members' register.

(6) (a) Where, in pursuance of such a scheme or contract, the transferee becomes entitled in his own name or through a nominee to shares in the transferor company which, together with any other shares in the transferor company to which the transferee or, where the transferee is a company, any related corporation is by itself or through a nominee entitled, comprise or include nine-tenths in nominal value of the shares included in the class of shares concerned -

- (i) the transferee shall, within one month after the date on which he becomes entitled by himself or through a nominee to those shares, unless in relation to the scheme or contract he has already complied with this requirement, give notice in the form prescribed in the Tenth Schedule of the fact to the holders of the remaining shares included in that class who, when the notice was given, had not assented to the scheme or contract or been given notice by the transferor under subsection (1);
- (ii) such a holder may, within three months after the giving of the notice to him, require the transferee to acquire his shares and, where alternative terms were offered to the approving members, elect which of those terms he will accept.

(b) Where a member gives notice under paragraph (a) (i) with respect to his shares, the transferee shall be entitled and bound to acquire those shares -

- (i) on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to him and, where alternative terms were offered to these shareholders, on the terms for which the member has elected, or where he has not so elected, for whichever of the terms the transferee determines; or
- (ii) on such other terms as are agreed or as the Court, on the application of the transferee or of the member, thinks fit to order.

(7) Where a notice has been given by the transferee under subsection (1) and the Court has not, on an application made by the dissenting member, ordered to the contrary, the transferee shall, within fourteen days after -

- (a) the expiry of one month after the date on which the notice is given;
- (b) the expiry of fourteen days after a statement under subsection (5) is supplied; or
- (c) where an application has been made to the Court by a dissenting member, the application is disposed of,

whichever occurs last, transmit a copy of the notice to the transferor company together with an instrument of transfer

executed, on behalf of the member, by a person appointed by the transferee and, on his own behalf, by the transferee, and pay, allot or transfer to the transferor company the consideration representing the price payable by the transferee for the shares that, by virtue of this section, the transferee is entitled to acquire and the transferor company shall thereupon register the transferee as the holder of those shares.

(8) All sums received by the transferor company under this section shall be paid into a separate bank account and those sums, and any other consideration so received, shall be held by that company on deposit for the several persons entitled to the shares in respect of which they were respectively received.

(9) Where a sum or other property is held on deposit by a company for another person under this section and has been so held for not less than two years, the company shall, before the expiry of ten years after the date on which the sum was paid, or the consideration was allotted or transferred to the company, pay the sum or transfer the consideration, and any accretions to it and any property that may become substituted for it, to the Official Receiver.

(10) The Official Receiver shall -

- (a) sell or otherwise dispose of any property other than cash transferred to him under this section and any property that becomes substituted for it that he comes to hold in right of any property other than cash received under subsection (9) in such manner as he thinks fit; and
- (b) deal with the proceeds of the sale or disposal and any cash so received and any dividends paid to him in respect of shares in a corporation as if they were monies paid to him under section 278.

(11) Where any property other than cash transferred to the Official Receiver under this section includes shares in a corporation, the Official Receiver shall not be bound -

- (a)
  - (i) to pay any calls;
  - (ii) to make any contribution to the debts and liabilities of the corporation; or
  - (iii) to discharge any other liability, in respect of the shares, whether the obligation arises before or after the date of the transfer; or
  - (iv) to be sued for any calls, contribution or

other liability.

(12) Nothing in subsection (11) shall affect the right of the company to forfeit a share upon which a call or contribution remains unpaid or a liability undischarged.

(13) In this section, "dissenting member" means a member who has not assented to the scheme or contract and a member who has failed or

refused to transfer his shares to the transferee in accordance with the scheme or contract.

#### **PART VIII - PROTECTION OF MINORITIES**

##### **184. Remedy in cases of oppression.**

(1) Any member or, in the case of a declared company, or in a case under section 204(6) the Registrar, may apply to the Court for an order under this section on the ground that -

- (a) the affairs of the company are being conducted or the powers of the directors are being exercised -
  - (i) in a manner which is oppressive or unfairly discriminatory or unfairly prejudicial to the member; or
  - (ii) in disregard of his interest as member whether in his capacity as a member or in any other capacity;
- (b) some act of the company has been done or is threatened or some resolution of the members, or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise unfairly prejudicial to a member;
- (c) in a case under section 204(6) that the control being exercised by the controlling shareholders unfairly discriminates against or is unfairly prejudicial to other members of the company.

(2) Where on an application under this section the Court is of the opinion that the ground thereof is established the Court may, with a view to bringing to an end or remedying the matter complained of, make such order as it thinks fit and without prejudice to the generality of the foregoing the order may -

- (a) direct or prohibit any act or cancel or vary any transaction or resolution;

- (b) regulate the conduct of the affairs of the company in future;
- (c) provide for the purchase of the shares by other members or by the company itself;
- (d) in the case of a purchase of shares by the company, provide for a corresponding reduction of the company's capital; or
- (e) direct that the company be wound up.

(3) Where an order under subsection (2) makes an alteration in or an addition to a company's memorandum or articles, the company shall, notwithstanding sections 29 to 33 and 57 but subject to the provisions of the order, not have power without the leave of the court to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order.

(4) A copy of an order made under subsection (2) shall be lodged with the Registrar by the applicant within fourteen days after the making of the order.

(5) In this section "member" includes the heirs or legal personal representative of a deceased member and a person to whom shares have been transferred by operation of law.

#### **185. Representative actions.**

(1) Subject to subsection (2) a member may, with leave of the Court, maintain an action in a representative capacity for himself and all other members of the company suing for and on behalf of the company to enforce, or obtain a remedy for the breach of, any right, duty or obligation, owed to the company under this Act or under any other law in force that could be enforced by the company itself.

(2) An applicant for leave to commence an action under subsection (1) shall give not less than seven days notice of the application to the company, and, if the Court is satisfied that the applicant -

- (a) was a member at the time of the transaction or other event giving rise to the cause of action;
- (b) has made reasonable efforts to cause the company to commence or diligently prosecute the action on its own behalf; and
- (c) is acting in good faith and it is *prima facie* in the interests of the company and its members that the

action be commenced,

the Court may grant leave to commence an action on such terms as it thinks fit.

(3) An action commenced under this section shall not be discontinued, settled, or withdrawn without leave of the Court and, if the Court determines that the interests of the members or any class thereof may be substantially affected by the discontinuance, settlement or withdrawal, it may, in its discretion, direct that notice in manner, form and content satisfactory to the Court shall be given, at the expense of the company, or any other party to the action as the Court directs, to the members or class thereof, whose interests the Court determines will be so affected.

(4) In any proceedings under the section the Court shall have power to order that any sum found to be payable by a defendant shall be paid to members or former members of the company instead of to the company itself.

#### **186. Restraining orders.**

(1) Subject to subsection (2) the Court may on the application of a member restrain a company from -

- (a) doing any act or entering into any transaction which is unlawful or beyond the powers of the company or which is in breach of the memorandum or articles; or
- (c) acting on any resolution not passed in accordance with the provisions of this Act and the articles,

and may declare any such act or transaction or any such resolution already done or passed to be void.

(2) Subsection (1) shall -

- (a) not affect the right of a third party acquired against the company;
- (b) be subject to sections 23 and 25;
- (c) not affect the right of the applicant to bring proceedings against a director under section 185 or apply to the Court under section 184.

(3) In any proceedings under this section the Court may, if it thinks fit, order that the member shall give security for the costs of the company and may direct that the application be heard in Chambers

#### **187. Order for costs.**

(1) In any proceedings under section 185 or 186 the Court may at any time order the company to pay to the applicant interim costs including legal fees and disbursements but the applicant shall account for any sum paid to him on the final disposition of the proceedings.

(2) Where proceedings under section 185 or 186 are defended by the company and the Court considers that in defending the proceedings the directors of the company acted without reasonable ground, it may order that the applicant's costs shall be paid by the directors personally and that any costs ordered to be paid by the company to the applicant shall be reimbursed to the company by the directors personally.

(3) Any liability incurred by the directors under section (2) shall be the joint liability of all persons who were directors of the company at the time when the company decided to defend proceedings, other than a director who proves that he dissented from the resolution or decision or had no knowledge of and was not a party to the decision.

#### **PART IX - RECEIVERS AND MANAGERS**

##### **188. Appointment of Receiver.**

(1) A receiver, or a receiver and manager of the property of a company may be appointed -

- (a) by the holder of a fixed charge, floating charge or other charge in relation to the property covered by the charge where the instrument creating the charge provides for the appointment of a receiver; or
- (b) by the Court.

(2) Where the Court is satisfied that a person who has acted as receiver or manager of the property of a company under the powers contained in any instrument has incurred liability solely by reason of some defect in his appointment or in the instrument and that in all the circumstances the person ought fairly to be excused, the Court may relieve the person, either wholly or in part, from his liability on such terms and conditions as the Court thinks fit.

(3) Where the Court grants relief from liability pursuant to subsection (2) then, subject to such terms and conditions as the Court thinks fit, the liability shall be that of the person who appointed the receiver or manager; and the Court may give such directions as it thinks proper for the purpose of giving effect to this subsection.

**189. Qualification for appointment as receiver or manager.**

The following persons shall not be qualified to be appointed and shall not act as receiver or manager of the property of a company -

- (a) a corporation;
- (b) an undischarged bankrupt;
- (c) a mortgagee of any property of the company;
- (d) an auditor of the company; or
- (e) an officer of the company or of any corporation which is a mortgagee of the property of the company;
- (f) a person restrained or disqualified from managing a company under sections 117 and 118.

**190. Appointment of liquidator as receiver or manager and application by liquidator.**

(1) A receiver or manager of the property of a company appointed by the Court shall not be an officer of the company and shall act in accordance with any directions issued by the Court.

(2) Where an application is made to the Court to appoint a receiver or manager on behalf of the debenture holders or other creditors of a company which is being wound up by the Court, the liquidator may be so appointed.

(3) On the application of the liquidator of a company that is being wound up (other than by means of a members' voluntary winding up) and in respect of which a receiver or manager has been appointed (whether before or after the commencement of the winding up); the Court may-

- (a) order that the receiver or manager shall cease to act as such from a date specified by the Court, and prohibit the appointment of any other receiver or manager; or
- (b) order that the receiver or manager shall, from a date specified by the Court, act as such only in respect of certain assets specified by the Court.

An order under this subsection may be made on such terms and conditions as the Court thinks fit.

(4) The Court may from time to time, on an application made either by the liquidator or by the receiver or manager, rescind or amend an order made under subsection (3).

(5) A copy of an application made under this section shall be served on the receiver or manager not less than 8 days before the hearing of the application, and the receiver or manager may appear before and be heard by the Court in respect of the application.

(6) Except as provided in subsection (3) of this section, no order made under subsections (3) and (4) of this section shall affect any security or charge over the undertaking or property of the company.

**191. Liability and application to Court and powers of receiver to make calls on shares.**

(1) Any receiver or any other person authorised by debenture holders or creditors who enters into possession of any assets of a company for the purpose of enforcing a charge shall, notwithstanding any agreement to the contrary, but without prejudice to his rights against the company or any other person, be liable for debts incurred by him in the course of the receivership or possession for services rendered, goods purchased or property hired, leased, used or occupied.

(2) Nothing in subsection (1) shall be construed, so as to constitute the person entitled to the charge a mortgagee in possession.

(3) A receiver or manager of the property of a company who sells any of that property shall exercise all reasonable care to obtain the best price reasonably obtainable for the property as at the time of sale.

(4) The duty of a receiver or manager under subsection (3) of this section shall be a duty owed to the company; and notwithstanding any other enactment or rule of law or the provisions of any instrument,-

(a) it shall not be a defence to any action or proceeding brought by the company against a receiver or manager in respect of a breach of his duty under that subsection that the receiver or manager was acting as the agent of the company or under a power of attorney given by the company; and

(b) a receiver or manager shall not be entitled to be

compensated or indemnified by the company for any liability he may incur as a result of a breach of his duty under that subsection.

(5) A receiver or manager of the property of a company may apply to the Court for directions in relation to any matter arising in connection with the performance of his functions.

(6) Where a receiver or manager has been appointed to enforce a charge for the benefit of debenture holders of the company, a debenture holder may apply to the Court for directions in relation to any matter arising in connection with the performance of the functions of the receiver or manager.

(7) Where under a floating charge under which a receiver or manager of the property of a company is appointed, any uncalled capital of the company is charged, the receiver or manager shall have the same powers as the directors of the company have (or, where the company is being wound up, as the directors would have if the company were not being wound up) to make calls on the members of the company in respect of the uncalled capital, and to charge interest on and enforce payment of the calls; and, where a receiver or manager makes a call or exercises any other power pursuant to this section, the call or power shall, as between the members of the company affected and the company, be deemed to be a proper call or power made or exercised by the directors of the company.

## **192. Remuneration of receivers and managers.**

(1) The Court may, on application by the liquidator of a company

and notwithstanding that the receiver or manager has died or ceased to act -

- (a) fix the amount to be paid by way of remuneration to any person who has been appointed as receiver or manager of the property of the company;
- (b) fix remuneration for any period before the making of the order or the application therefor;
- (c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that fixed for that period, subject to subsection (2), require him or his heirs to account for the excess or such part thereof as may be specified in the

order.

(2) The power conferred by subsection (1)(c) shall not be exercised in relation to any period before the making of the application unless in the opinion of the Court there are special circumstances making it proper for the power to be so exercised.

(3) The Court may from time to time, on the application of the liquidator or the receiver or manager, vary or amend an order made under section (1).

**193. Notification of appointment of receiver or manager.**

(1) Where a person -

(a) obtains an order for the appointment of a receiver or manager of the property of a company; or

(b) appoints a receiver or manager under any powers contained in an instrument,

he shall within 7 days after he has obtained the order or made the appointment lodge with the Registrar a notice to that effect.

(2) Where a person appointed as receiver or manager of the property of a company under the powers contained in an instrument ceases to act he shall within 7 days lodge with the Registrar a notice to that effect.

**194. Statement that receiver or manager appointed.**

Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement immediately following the name of the company that a receiver or manager has been appointed.

**195. Information where receiver or manager appointed and use of common seal.**

(1) Where a receiver or manager of the property of a company is appointed -

(a) he shall forthwith send written notice to the company of his appointment;

(b) the company shall within 14 days after receipt of the notice, or such longer period as may be allowed

by the Court or by him, make out and submit a statement as to the affairs of the company; and

- (c) he shall within 28 days after receipt of the statement or such extended period as the Court may allow -
- (i) lodge with the Registrar a copy of the statement and of any comments he sees fit to make thereon;
  - (ii) send to the company a copy of any such comments or if he does not see fit to make any comment, a notice to that effect; and
  - (iii) where he is appointed by or on behalf of debenture holders, send to the debenture holders' representative a copy of the statement and his comments thereon or if he does not see fit to make any comment, a notice to that effect.

(2) Notwithstanding any other enactment or rule of law or any memorandum of association or articles of association of a company, where the instrument under which a receiver or manager of the property of a company is appointed empowers him to execute any documents and to use the company's common seal for that purpose, the receiver or manager may execute those documents in the name and on behalf of the company either by signing in his own name on behalf of the company or by affixing the company's common seal thereto and personally attesting that affixing, and any such document so executed shall be deemed to have been properly executed by the company.

(3) Where -

- (a) the instrument under which a receiver or manager of the property of a company is appointed empowers him to execute any documents and to use the company's common seal for that purpose; and
- (b) the directors of the company have refused to surrender the common seal to the receiver or manager,

the Court may order the directors to surrender the company's common seal to the receiver or manager. Any order under this subsection may be made on such terms and conditions as the Court thinks fit.

#### **196. Statement submitted to receiver or manager.**

- (1) The statement as to the affairs of a company required by

section 195 shall show -

- (a) the particulars of the company's assets;
- (b) debts and liabilities;
- (c) the names and addresses of its creditors;
- (d) charges held by them respectively; and
- (e) the dates when the charges were respectively created.

(2) The statement shall be submitted in the form of an affidavit by a director and a secretary of the company, or by any of the following persons whom the receiver may require -

- (a) a person who is or has been an officer;
- (b) a person who has taken part in the formation of the company at any time within one year before the date of the receiver's appointment;
- (c) a person who is or has been an employee of the company within that year, and is in the opinion of the receiver capable of giving the information required;
- (d) a person who is or has been within that year an officer of or employee of a corporation which is, or within that year was, an officer of the company to which the statement relates.

(3) Any person making a statement shall be allowed and shall be paid by the receiver out of his receipts such costs and expenses incurred in and about the preparation and making of the statement as the receiver may consider reasonable.

(4) Any person aggrieved by a decision of the receiver under subsection (3) may within 10 days appeal to the Court and the Court on hearing the appeal may make such order as it thinks fit.

### **197. Lodging of accounts of receivers and managers.**

(1) Every receiver or manager of the property of a company shall within 28 days after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of six months and within 28 days after he ceases to act as receiver or manager, lodge with the Registrar a detailed return supported by an

affidavit showing -

- (a) his receipts and his payments during each period of 6 months, or, where he ceases to act as receiver or manager, during the period from the end of the period to which the last preceding account related or from the date of his appointment, as the case may be, up to the date of his so ceasing;
- (b) the aggregate amount of those receipts and payments during all preceding periods since his appointment; and
- (c) where he has been appointed pursuant to a power contained in an instrument, the amount owing under that instrument at the time of his appointment, in the case of the first account, and at the expiry of every 6 months after his appointment and, where he has ceased to act as receiver or manager at the date of his so ceasing, and an estimate of the total value of all assets of the company which are subject to that instrument.

(2) The Registrar may of his own motion or on the application of the company or a creditor cause the return to be audited by a qualified auditor appointed by the Registrar and, for the purpose of the audit, the receiver or manager shall furnish the auditor with such accounting records and information as he requires and the auditor may at any time require the production of and inspect any books of account kept by the receiver or manager or any document or other records relating thereto.

(3) Where the Registrar causes the return to be audited on the request of the company or a creditor he may require the applicant to give security for the payment of the cost of the audit.

(4) The cost of an audit under subsection (2) shall be fixed by the Registrar and shall, unless the Registrar otherwise determines, be paid by the receiver.

#### **198. Payment of debts subject to floating charge.**

(1) Where a receiver is appointed on behalf of the holders of debentures of a company secured by a floating charge or possession is taken by or on behalf of debenture holders of any property comprised in or subject to a floating charge, any debt which in every winding up is a preferential debt in accordance with article 2202-55 of the Code Napoléon shall, unless the company is not at the time in the course of being wound up, be paid out of any assets coming to the hands of the receiver or other person taking possession, in priority to any claim for principal or interest in respect of the debentures and shall be paid in the same order of priority as is prescribed by the Code Napoléon.

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

**199. Default by receiver or manager.**

(1) Where a receiver or manager of the property of a company, who has made default in making or lodging with the Registrar a return or other document or in giving any notice required by law, fails to make good the default within 14 days after the service on him by a member or creditor or the debenture holders' representative of a notice requiring him to do so, the Court may, on an application made for the purpose by the person who has given the notice, make an order directing him to make good the default within such time as may be specified in the order.

(2) Where it appears that a receiver or manager of the property of a 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 duty in relation to the company, the Court may on the application of any creditor or contributory or of the liquidator examine the conduct of the receiver or manager and compel him to repay or restore the money or property or any part thereof with interest at such rate as the Court thinks fit 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 or duty as the Court thinks fit.

**PART X - INVESTIGATIONS**

**200. Qualifications of inspectors.**

An inspector designated or appointed under this Part shall be either a qualified auditor of at least 7 years experience or a person who holds or has held judicial office.

**201. Declared companies.**

Where the Minister is satisfied that-

- (a) for the protection of the public, the members or creditors of a company, it is desirable that the affairs of the company should be investigated;
- (b) it is in the public interest that the affairs of a company should be investigated; or
- (c) in the case of a foreign company, the appropriate authority of another country has requested that a

designation be made under this section in respect of the company,

he may, by notice published in the *Gazette*, designate the company or foreign company to be a declared company.

## **202. Investigation of declared companies.**

(1) The Registrar shall require an inspector to investigate the affairs of every declared company and to make a report on his investigation in such form and manner as the Registrar shall direct.

(2) The expenses of and incidental to an investigation of a declared company shall, subject to subsection (3), be paid out of the Consolidated Fund.

(3) Where the Minister is of the opinion that the whole or any part of the expenses of and incidental to the investigation should be paid or refunded-

(a) by the company; or

(b) by the person or authority who requested the designation of a declared company,  
the Minister may direct that the expenses be so paid or refunded.

(4) Where a direction is made for the payment of the whole or part of the expenses by a company and the company is in liquidation or subsequently goes into liquidation the expenses shall, for the purposes of section 279, be part of the costs and expenses of the winding up.

## **203. Investigation of other companies.**

(1) The Registrar may -

(a) in the case of a company having a share capital, on the application of-

(i) not less than fifty members; or

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

(iii) debenture holders holding not less than one-fifth in nominal value of the issued debentures;  
or

(b) in the case of a company limited by guarantee, on the application of not less than one-fifth in number of the persons on the members' register, require an inspector to investigate the affairs of a company or

such aspects of the affairs of a company as are specified in the instrument of appointment and in the case of a debenture agency deed, the conduct of the debenture holders' representative, and to make a report on his investigation in such form and manner as the Registrar shall direct.

(2) An application under this section shall be supported by such evidence as the Registrar requires as to the reasons for the application and the motives of the applicants in requiring the investigation, and the Registrar may, before appointing an inspector, require the applicants to give security in such amount as he thinks fit for payment of the costs of the investigation.

#### **204. Inspector's reports.**

(1) An inspector who makes an investigation under section 202 or 203 may, and if so directed by the Registrar shall, make interim reports to the Registrar.

(2) Subject to section 207(3), a copy of the inspector's final report shall be forwarded to the Registrar and to the registered office of the company, and a further copy shall at the request of the authority who requested the designation of the declared company under section 201(c) or an applicant under section 203, be delivered to him.

(3) The Registrar may, if he is of the opinion that it is necessary in the public interest so to do, cause the report to be published.

(4) Where from a report of an inspector it appears to the Registrar that proceedings ought in the public interest to be brought by a company dealt with by the report-

(a) for the recovery of damages in respect of any fraud, misfeasance or other misconduct-

(i) in connection with the promotion or formation of that company; or

(ii) the management of its affairs; or

(b) for the recovery of any property of the company which has been misapplied or wrongly retained,

he may bring proceedings for that purpose in the name of the company.

(5) Where from a report of an inspector it appears that any qualified auditor has been guilty of misconduct or has conducted an audit in a manner which renders him in the opinion of the inspector unfit to be a qualified auditor, the Registrar shall refer that

matter to the Minister who may take action under section 162(3).

(6) Where from a report of an inspector it appears to the Registrar that in the case of any public company or non-exempt private company-

- (a) The use of-
  - (i) a holding company or subsidiary company or companies; or
  - (ii) shares with restricted voting rights or especial rights; or
  - (iii) any voting trust or arrangement;

has been entered into by any member or members in order to confer or maintain control in that member or those members;

- (b) such control unfairly discriminates against or is unfairly prejudicial to other members of the company,

the Registrar may apply to the Court under section 184 for an order under that section.

#### **205. Investigation at company's request.**

(1) A company other than a declared company may, by ordinary resolution, appoint an inspector to investigate its affairs.

(2) On the conclusion of the investigation the inspector shall report his opinion in such manner and to such persons as the company in general meeting directs.

#### **206. Investigation of related corporation.**

Where an inspector thinks it necessary for the purposes of the investigation of the affairs of a company to investigate the affairs of a related corporation he may, with the Registrar's written consent, investigate the affairs of that corporation.

#### **207. Investigation of financial or other control of corporation.**

(1) The Registrar-

- (a) may, where he is of opinion that there is reasonable ground to do so; and
- (b) shall, unless he is of opinion that the request is vexatious or unreasonable, at the request of a like number of applicants as is specified in section

203(1),

require an inspector to investigate-

- (i) the membership of a corporation;
- (ii) any other matter relating to the corporation for the purpose of determining the true persons who are or have been financially interested in the success or failure, real or apparent, of a corporation or able to control or materially influence its policy,

and to make a report on his investigation in such form and manner as the Registrar may direct.

(2) Subject to subsection (1), the powers of an inspector making an investigation under this section shall extend to the investigation of any circumstances which suggest the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(3) Where the Registrar is of opinion that there is good reason for not divulging the contents of the report or of any part thereof, he shall not be bound to furnish the corporation or any other person with a copy of a report by an inspector making an investigation under this section.

#### **208. Procedure and powers of inspector.**

(1) Every person concerned shall, if required to do so, produce to an inspector every book in his custody, control or possession and give to the inspector all assistance in connection with the investigation which he is reasonably able to give.

(2) An inspector may by written notice require any person concerned to appear for examination on oath in relation to the business of a corporation and the notice may require the production of every book in the custody, control or possession of the person concerned.

(3) Where an inspector requires the production of a book in the custody, control or possession of a person concerned, he-

- (a) may take possession of the book;
- (b) may retain the book for such time as he considers necessary for the purpose of the investigation; and
- (c) shall, where the book is in his possession, permit the corporation to have access, at all reasonable times to the book.

(4) An inspector, on giving seventy two hours notice to the

corporation concerned, may exercise the same powers of inspection as are conferred on the Registrar under section 4(2).

(5) (a) No person concerned shall refuse to answer a question which is relevant or material to the investigation on the ground that his answer might tend to incriminate him.

(b) Where the person concerned claims that the answer to a question might incriminate him and, but for this subsection, he would have been entitled to refuse to answer the question, the answer to the question shall not be used in any subsequent criminal proceedings, except in the case of a charge against him for making a false statement in answer to that question.

(6) An inspector may cause notes of any examination under this Part to be recorded and reduced to writing and to be read to or by and signed by the person examined and the notes may, subject to subsection 5(b), thereafter be used in evidence in any legal proceedings against that person.

#### **209. Costs of investigations.**

(1) Subject to subsection (4) the expenses of and incidental to an investigation by an inspector under sections 203, 205 or 207 including the costs of any proceedings brought by the Registrar in the name of the company, shall be paid by the company investigated or if the Registrar so directs, by the applicant or in part by the company and in part by the applicant.

(2) Where a company fails to pay the whole or any part of the sum which it is liable to pay under subsection (1), the applicant shall make good the deficiency up to the amount by which the security given by him under this Part exceeds any amount which he has been directed to pay under subsection (1).

(3) Any balance of the expenses not paid either by the company or the applicant shall, following reasonable steps to recover the same, be paid out of the Consolidated Fund.

(4) Any person who is convicted on a prosecution instituted by the Director of Public Prosecutions as a result of the investigation may be directed by the Court to pay by way of reimbursement to the Consolidated Fund, the applicant, or the company as the case may be, the said expenses either in whole or in part.

#### **210. Report of inspector admissible in evidence.**

A copy of the report of an inspector certified as a true copy by the Registrar shall be admissible in any legal proceedings as evidence of the opinion of the inspector and of the facts on which his opinion is based in relation to any matter contained in the

report.

**211. Suspension of proceedings in relation to declared company.**

Where an inspector has been required to investigate a declared company, no proceeding shall, until the expiry of one month after the inspector has presented his final report, be commenced or proceeded with in any Court except with the Registrar's consent -

- (a) by the company on or in respect of any contract, bill of exchange or promissory note; or
- (b) by the holder or any other person in respect of any bill of exchange or promissory note made, drawn or accepted by or issued, transferred, negotiated or endorsed by or to the company unless the holder or other person-
  - (i) at the time of the negotiation, transfer, issue, endorsement or delivery gave adequate pecuniary consideration; and
  - (ii) was not at the time of the negotiation, transfer, issue, endorsement or delivery or at any time within three years before that time a member, officer, person concerned or employee or the wife or husband of a member, officer, person concerned or employee.

**212. Power to require information as to person interested in shares or debentures.**

(1) Subject to subsection (2), where the Registrar is of opinion that there is reasonable ground to investigate the ownership of any shares or debentures of any corporation including a banking company, but that it is unnecessary to require an inspector to make an investigation for that purpose, he may require any person whom he has reasonable ground to believe-

- (a) to be or to have been interested in the shares or debentures; or
- (b) to act or to have acted in relation to the shares or debentures as the agent of someone interested therein,

to give him any information which he has or can reasonably be expected to obtain as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) Nothing in subsection (1) shall, subject to the Banking Act, require a banking company to disclose to the Registrar any

information as to the affairs of a customer other than a company of which it is the banker.

**213. Power to impose restrictions on shares or debentures.**

(1) Where in connection with an investigation under section 207 or a request under section 212, it appears to the Registrar that there is difficulty in finding out the relevant facts about any shares, whether issued or to be issued, and that the difficulty is due wholly or mainly to the unwillingness of a person concerned to assist the investigation or the enquiry, the Registrar may, by public notice direct that-

- (a) any transfer of those shares or any exercise of the right to acquire or dispose of those shares or in the case of unissued shares any transfer of the right to be issued therewith and any issue thereof, shall be void;
- (b) no voting rights shall be exercisable in respect of those shares; (c) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof; or
- (d) except in a liquidation, no payment shall be made of any sum due from the corporation on those shares whether in respect of capital or otherwise.

(2) Where the Registrar directs that shares shall cease to be subject to the restrictions specified in subsection (1) and the notice is expressed to be made with a view to permitting a transfer of those shares, he may direct that subsection (1) (c) and (d) shall continue to apply in relation to those shares, either in whole or in part, so far as those paragraphs relate to a right acquired or an offer made before the transfer.

(3) This section shall apply in relation to debentures as it applies in relation to shares.

**214. Inspectors appointed in other countries.**

Where-

- (a) under a corresponding law of another country an inspector has been appointed to investigate the affairs of a corporation; and
- (b) the Registrar is of the opinion that, in connection with that investigation, it is expedient that an investigation be made in Mauritius,

the Registrar may by public notice direct that the inspector so appointed shall have the same powers and duties in Mauritius in relation to the investigation as if the corporation was a declared company.

**PART XI - WINDING UP**

***Sub-Part 1-General***

**215. Modes of winding-up.**

The winding up of a company may be either-

- (a) effected by the Court; or
- (b) voluntary.

***Sub-Part II - Winding up by the Court***

**216. Petition for winding up.**

(1) Subject to subsection (3) and to section 184, a company may, whether or not it is being wound up voluntarily and on petition made in accordance with the other provisions of this section, be wound up under an order of the Court.

(2) A petition may be presented by-

- (a) the company;
- (b) a contributory or any person who is the heir of a deceased contributory or the trustee in bankruptcy of the estate of a contributory;
- (c) a member;
- (d) a creditor, including a contingent or prospective creditor, of the company;
- (e) a liquidator;
- (f) the Registrar.

(3)(a) Only the Registrar may present a petition on any ground specified in subsection (4)(c), (i), (j), (k) and (l).

(b) The Court shall not hear the petition if presented by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and a *prima facie* case for winding up has been established to the satisfaction of the Court.

(4) Subject to the other provisions of this section a petition may be presented if-

- (a) the company has by special resolution resolved that it be wound up by the Court;
- (b) the company has not commenced business within a year from its incorporation or suspends its business for one year or more;
- (c) in the case of a company other than a company the whole of the issued shares in which are held by a holding company, the number of members falls below two;
- (d) the company is unable to pay its debts;
  
- (e) the directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner which is unfair or unjust to other members;
- (f) an inspector has reported that he is of opinion-
  - (i) that the company is unable to pay its debts and should be wound up; or
  - (ii) that it is in the interests of the public or of the members or creditors that the company should be wound up;
- (g) the period, if any, fixed for the duration of the company by the memorandum or articles has expired or the event, if any, on the occurrence of which the memorandum or articles provide that the company is to be dissolved has occurred;
- (h) the Court is of opinion that it is just and equitable to do so;
- (i) a banking company has carried on business in Mauritius in contravention of the Banking Act ;
- (j) an assurance company has carried on business in Mauritius in contravention of the Insurance Act ;
- (k) the company or its officers have persistently made default in complying with any provision of this Act; or
- (l) the company, fails to comply with the requirements of section 12(1).

**217. Commencement of winding up.**

(1) Where before the presentation of a petition a special resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Court on proof of fraud or mistake thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) Where an order directing the winding up of a company is made under section 184, the winding up shall commence on a date specified in the order or if no date is specified, on the date of the order.

(3) In every other case the winding up shall be deemed to have commenced at the time of the presentation of the petition.

**218. Preliminary costs.**

(1) Where a person, other than the company or liquidator, presents a petition, and a winding up order is made, that person shall at his own cost prosecute all proceedings in the winding up until a liquidator has been appointed.

(2) The liquidator shall, unless the Court otherwise directs, reimburse the petitioner out of the assets of the company the taxed costs incurred by the petitioner under subsection (1).

(3) Where the company has no assets or no sufficient assets, and in the opinion of the Registrar a fraud has been committed by any person in the promotion or formation of the company or by any officer in relation to the company since its formation, the taxed costs or so much of them as is not reimbursed may, with the Registrar's written approval to an extent specified by the Registrar but not in any case exceeding three thousand rupees, be reimbursed to the petitioner out of the Consolidated Fund.

(4) Where a winding up order is made on the petition of the company or a liquidator, the costs incurred under subsection (1) shall unless the Court otherwise directs, be paid out of the assets of the company as if they were the costs of any other petitioner.

**219. Powers of Court and effect of winding up order.**

(1) On hearing a petition the Court may dismiss it, adjourn the hearing conditionally or unconditionally or make any interim or other order that it thinks fit, but the Court shall not refuse to make a winding up order by reason that-

- (a) the assets of the company have been charged to an amount equal to or in excess of those assets;

- (b) the company has no assets; or
- (c) in the case of a petition by contributory, there will be no assets available for distribution, amongst the contributories.

(2) The Court may, at the hearing of the petition or at any other time, on the application of the petitioner, the company, or any person who has given notice that he intends to appear on the hearing of the petition-

- (a) direct that notices be given or any other steps be taken before or after the hearing of the petition;
- (b) dispense with any notices being given or steps being taken which are required by this Act, or by any subsidiary enactment made under this Act, or by any previous order of the Court; or
- (c) give such other directions as to the proceedings as the Court thinks fit.

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

#### **220. Proceedings against company.**

(1) At any time after the presentation of a petition and before a winding up order is made, the company, a creditor or a contributory may, where any action or proceeding against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

(2) Where a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except-

- (a) by leave of the Court; and
- (b) on such terms as the Court thinks fit.

#### **221. Property of company.**

(1) A disposition of any property of the company and any transfer of shares or alteration in the status of a member made after the commencement of the winding up shall, unless the Court otherwise directs, be void.

(2) Any attachment, sequestration, distress or execution put in force against the assets of the company after the commencement of the winding up shall be void.

**222. Lodging and service of order.**

The petitioner shall within seven days after the making of a winding up order-

- (a) lodge with the Registrar-
  - (i) a copy of the order; and
  - (ii) the name and address of the liquidator;
- (b) deliver a copy of the order to the Official Receiver;
- (c) cause a copy of the order to be served on the secretary of the company or on such other person or in such manner as the Court directs; and
- (d) deliver a copy of the order to the liquidator with a statement that the requirements of the section have been complied with.

**223. Appointment of liquidator.**

(1) The Court may upon the presentation of a petition and at any time thereafter and before the making of a winding up order appoint the Official Receiver or other person qualified under section 224(1) to be provisional liquidator who shall, subject to such limitations and restrictions as the Court may specify in the order, have and may exercise all the functions and powers of a liquidator.

(2) Upon the appointment of a provisional liquidator under subsection (1), the provisional liquidator shall in accordance with section 227(1) forthwith take into his custody or control all the property movable or immovable to which the company is or appears to be entitled.

- (3) Where a winding up order is made-
  - (a) the Official Receiver shall, unless another person has been appointed as liquidator, become the provisional liquidator and continue to act as such until he or another person becomes liquidator and is capable of acting as such;
  - (b) if no liquidator is appointed, the Official Receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an

application is to be made to the Court for appointing a liquidator in the place of the Official Receiver;

- (c) the Court may appoint a liquidator and, if there is a difference between the determination of the meetings of the creditors and contributories in that respect, make such order as it thinks fit;
- (d) where a liquidator is not appointed by the Court, the Official Receiver shall be the liquidator;
- (e) subject to paragraph (f), the Official Receiver shall be the liquidator during any vacancy in the office of liquidator;
- (f) any vacancy in the office of a liquidator appointed by the Court may be filled by the Court.

**224. Liquidator other than Official Receiver.**

(1) A person other than the Official Receiver who is appointed provisional liquidator or liquidator shall not be qualified for appointment if he is-

- (a) an officer of the company or any related corporation or person who has been an officer of the company or related corporation during the preceding 3 years;
- (b) a minor, bankrupt or person under any disability;
- (c) a person who has made a *cessio bonorum* under the Insolvency Act;
- (d) a person who has been the subject of any order under sections 117 and 118.

(2) Where a person other than the Official Receiver is appointed liquidator, that person-

- (a) shall not act as such until he has given-

and

- (i) written notice of his appointment to the Registrar;
  - (ii) security to the satisfaction of the Official Receiver;
- and

- (b) shall give the Official Receiver such information and such access to and facilities for inspecting the books of the company, and generally such assistance as may be required for enabling that officer to perform his duties under this Act.

**225. Control of liquidators.**

Where a person other than the Official Receiver is the liquidator, the Official Receiver-

- (a) shall take cognizance of his conduct and, if the liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him, or if a complaint is made to the Official Receiver by a creditor or contributory in that behalf, inquire into the matter and take such action as he thinks fit;
- (b) may require the liquidator to answer any inquiry in relation to any winding up in which he is engaged;
- (c) may apply to the Court to examine him or any other person on oath concerning the winding up; and
- (d) may direct an examination to be made of the books and vouchers of the liquidators.

**226. General provisions as to liquidators.**

(1) A liquidator appointed by the Court may resign or, on good cause shown, be removed by the Court.

(2) A provisional liquidator other than the Official Receiver shall be entitled to receive remuneration as the Court may determine subject to any Regulations made under this Act.

(3) A liquidator other than the Official Receiver shall be entitled to receive such remuneration as may be determined subject to any Regulations made under this Act-

- (a) subject to paragraph (b), by agreement between the liquidator and the committee of inspection;
- (b) failing such agreement or where there is no committee of inspection, but subject to subsection (5), by a resolution, passed at a meeting of creditors, by a majority of not less than three fourths in value and one-half in number of the creditors present in person or by proxy and voting at the meeting and whose debts have been admitted for the purpose of voting, to be convened by the liquidator by a notice to each creditor accompanied

by a statement of all his expenses incurred by the liquidator and the amount of remuneration sought by him; or

- (c) failing a determination in a manner referred to in paragraph (a) or (b), by the Court.

(4) Where the remuneration of a liquidator is determined in the manner specified in subsection (3)(a) the Court may, on the application of a member whose shareholding represents not less than ten per cent of the issued capital of the company, confirm or vary the determination.

(5) Where the remuneration of a liquidator is determined in the manner specified in subsection (3)(b) the Court may, on the application of the liquidator or a member referred to in subsection (4), confirm or vary the determination.

6) Subject to any order of the Court the Official Receiver when acting as a provisional liquidator or liquidator shall be entitled to receive remuneration.

(7) Where the Court appoints more than one liquidator it shall declare whether anything by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(8) Subject to the other provisions of this Act, the acts of a liquidator shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

## **227. Custody and vesting of company's property.**

(1) Where a provisional liquidator has been appointed or a winding up order has been made, the provisional liquidator or liquidator shall forthwith take into his custody or under his control all the property to which the company is or appears to be entitled.

(2) The Court may, on the application of the liquidator, order that all or any part of the property of the company shall vest in the liquidator and thereupon the property to which the order relates shall, subject to subsection (4), vest accordingly and the liquidator may, after giving such indemnity, if any, as the Court directs, bring or defend any action which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

(3) Where an order is made under subsection (2) every liquidator in relation to whom the order is made shall within seven days of the making of the order-

- (a) lodge with the Registrar a copy of the order; and
- (b) where the order relates to immovable property, deliver a copy of the order to the Receiver of Registration Dues.

(4) No order under subsection (2) shall have effect to transfer or otherwise vest immovable property until the appropriate entries are made with respect to the vesting by the Receiver of Registration Dues.

**228. Statement of company's affairs.**

(1) There shall be delivered to the liquidator a statement as to the affairs of the company as at the date of the winding up order showing-

- (a) the particulars of its assets, debt and liabilities;
- (b) the names and addresses of its creditors;
- (c) the charges held by them;
- (d) the dates on which the charges were created; and
- (e) such further information as the liquidator may require.

(2) The statement shall be made and supported by affidavit by one or more of the persons who are at the date of the winding up order directors, and by the secretary of the company, or by such of the following persons as the liquidator may, subject to any order made by the Court, require-

- (a) a person who is or has been an officer;
- (b) a person who has taken part in the formation of the company at any time within one year before the date of the winding up order; or
- (c) a person who is or has been within that period an officer of or in the employment of a corporation which is, or within that period was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days after the date of the winding up order or within such extended time as the liquidator or the Court may authorise.

(4) The liquidator shall, within seven days after its receipt, file with the Court and lodge with the Registrar a copy of

the statement and, where the Official Receiver is not the liquidator, cause a copy to be delivered to the Official Receiver.

(5) Any person making or concurring in making a statement required by subsection (1) may, subject to any order made by the Court, be allowed and paid, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement as the liquidator considers reasonable.

## **229. Liquidator's report.**

(1) The liquidator shall as soon as practicable after receipt of the statement of affairs submit a preliminary report to the Court-

- (a) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities;
- (b) where the company is unable to pay its debts, as to the causes of the inability; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or inability to pay debts of the company or the conduct of its business.

(2) The liquidator may if he thinks fit, make further reports stating-

- (a) the manner in which the company was formed;
- (b) whether in his opinion any fraud has been committed or any material fact has been concealed by any person in its promotion or formation or by any officer in relation to the company since its formation; and
- (c) whether any officer of the company has contravened or failed to comply with any provision of this Act; and
- (d) such other matters which in his opinion it is desirable to bring to the notice of the Court.

## **230. Powers of liquidator.**

(1) The liquidator may with the authorisation of the Court or of the committee of inspection-

- (a) carry on the business of the company so far as is necessary for the beneficial winding up, but no authorisation shall be necessary to so carry on the business during the four weeks next after the date of the winding up order;

- (b) subject to section 283 pay any class of creditors in full;
  - (c) 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 claimed to arise only in damages against the company, or whereby the company may be rendered liable;
  - (d) compromise any calls and liabilities to calls, debts and liabilities capable of resulting in debts and any claims present or future, certain or contingent, ascertained or claimed to arise only in damages, subsisting or supposed to subsist between the company and a 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 are agreed, and take any security for the discharge of any such call, debt, liability or claim, and gives a complete discharge in respect thereof;
  - (e) instruct counsel and attorneys at law to assist him in his duties.
- (2) The liquidator may-
- (a) bring or defend any action in the name and on behalf of the company;
  - (b) compromise any debt due to the company other than-
    - (i) calls and liabilities for calls; and
    - (ii) a debt where the amount claimed by the company to be due to it exceeds two thousand rupees.

**231. Company may be required to contribute to debts of related company.**

On the application of the liquidator or any creditor or contributory of any company that is being wound up, the Court, if it is satisfied that the affairs of the company and any such company related or that has been related to it have been conducted in a manner which-

- (a) is or has been designed to defeat the creditors and contributories of the company being wound up; or
- (b) has conferred for inadequate consideration

advantages or benefits on any such company that is or has been related to the company being wound up to the detriment of or at the expense of the company being wound up;

and that it is just and equitable to do so, may order on such terms and conditions it thinks fit that any company or partnership that is or has been related to the company being wound up shall pay to the liquidator of that company the whole or part of any or all of the debts provable in the winding up thereof.

### **232. Pooling of assets of related companies.**

(1) Where 2 or more related companies are being wound up and the Court, on the application of the liquidator of any of the companies, is satisfied that it is just and equitable to make an order under this section, the Court may order that, subject to such terms and conditions as the Court may impose and to the extent that the Court orders, the companies shall be wound up together as if they were one company, and, subject to the provisions of this section, the order shall have effect and all the provisions of this Act shall apply accordingly.

(2) In deciding the terms and conditions of an order under this section, the Court shall have particular regard to the interests of those persons who are members of some, but not all, of the companies.

(3) Where the Court makes an order under subsection (1) of this section-

- (a) it may remove any liquidator of any of the companies, and appoint any person to act as liquidator of any one or more of the companies;
- (b) it may give such directions as it thinks fit for the purpose of giving effect to the order.

(4) Nothing in this section or the order shall affect the rights of any secured creditor or of any person entitled to a privilege over property of any of the companies.

(5) Unless the Court otherwise orders, the claims of all unsecured creditors of the companies shall rank equally among themselves.

(6) An application may be made to the Court under this section as the same time as, or at any time subsequent to, the presentation of a winding up petition in respect of any of the companies to which the application relates.

(7) Notice of an application to the Court for the purposes of this section shall be served on every company specified in the

application, and on such other persons as the Court may direct, not later than the end of the eighth day before the day the application is heard.

**233. Guidelines for orders to contribute or pool assets.**

(1) In deciding whether it is just and equitable to make an order under section 231 of this Act, the Court shall have regard to the following matters-

- (a) the extent to which the related company took part in the management of the company being wound up;
- (b) the conduct of related company towards the creditors of the company being wound up;
- (c) the extent to which the circumstances that gave rise to the winding up of the company are attributable to the actions of the related company.
- (d) such other matters as the Court thinks fit.

(2) In deciding whether it is just and equitable to make an order under section 232 of this Act, the Court shall have regard to the following matters-

- (a) the extent to which any of the companies took part in the management of any of the other companies;
- (b) the conduct of any of the companies towards the creditors of any of the other companies;
- (c) the extent to which the circumstances that gave rise to the winding up of any of the companies are attributable to the actions of any of the other companies;
- (d) the extent to which the business of the companies have been intermingled;
- (e) such other matters as the Court thinks fit.

(3) Notwithstanding any other provision of this Act, it shall not be just and equitable to make an order under section 231 or section 232 of this Act if the only ground for making the order is that creditors of a company being wound up have relied on the fact that another company or partnership is or has been related to the first-mentioned company.

(4) For the purposes of this section and sections 231 and 232 a company or partnership is related to a company being wound up where the first mentioned company or partnership is:

- (a) the holding company or partnership of the company being wound up;
- (b) the subsidiary company or partnership of the company being wound up;
- (c) the subsidiary of the same holding company or partnership as the company being wound up;
- (d) a company or partnership the Board of Directors or managing body of which can be appointed or removed by the exercise of power whether by vote or by contract, by the same persons as those who hold, by themselves or their nominees, not less than half the voting shares in the company being wound up.

#### **234. Modalities of winding up.**

(1) Subject to the other provisions of this Sub-Part, the liquidator shall, in the administration of the assets of the company and in their distribution among its creditors, have regard to any direction given by resolution of the creditors or contributories at a general meeting or by the committee of inspection, and a direction given by the creditors or contributories shall, in case of conflict, override a direction given by the committee of inspection.

(2) The liquidator-

- (a) may summon a general meeting of the creditors or contributories for the purpose of ascertaining their wishes; and
- (b) shall summon a meeting at such time as the creditors or contributories by resolution direct or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories.

(3) The liquidator may apply to the Court for directions in relation to any particular matter arising under the winding up.

#### **235. Payment into bank by liquidator.**

(1) Subject to any order which the Court may make, every liquidator shall pay all money received by him into a bank account.

(2) Where a liquidator retains for more than 10 days a sum exceeding five thousand rupees, or such other amount as the Court in any particular case authorises him to retain, he shall, unless he explains the retention to the satisfaction of the Court, pay interest on the amount so retained in excess with effect from the day following the expiry of the ten days until he has complied with subsection (1), at the ruling Bank Rate and be liable-

- (a) to disallowance of all or such part of his remuneration as the Court thinks fit;
- (b) to be removed from his office by the Court; and
- (c) to pay any expenses occasioned by reason of his default.

(3) A liquidator shall not pay any sums derived by him as liquidator into his private bank account.

**236. Release of liquidator and dissolution of company.**

(1) Where the liquidator has-

- (a) (i) realised all the property of the company or so much as can in his opinion be realised without needlessly protracting the liquidation;
- (ii) distributed a final dividend, if any, to the creditors;
- (iii) adjusted the rights of the contributories among themselves; and
- (iv) made a final return, if any, to the contributories; or

(b) resigned or has been removed from his office; he may apply to the Court for an order that he be released or for an order that he be released and that the company be dissolved.

(2) Where an order is made that the company be dissolved, the company shall from the date of the order be dissolved accordingly.

(3) The Court -

- (a) may cause a report on the accounts of a liquidator, other than the Official Receiver, to be prepared by the Official Receiver or by a qualified auditor appointed by the Court;
- (b) on the liquidator complying with all the requirements of the Court, shall take into consideration the report and any objection which is urged by the Official Receiver, auditor or any creditor or contributory or other person interested against the release of the liquidator; and

(c) shall either grant or withhold the release accordingly.

(4) 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 fit charging the liquidator with the consequence of any act or default which he may have done or made contrary to his duty.

(5) Subject to subsection (6), 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.

(6) Any order under subsection (5) may be revoked on proof that it was obtained by fraud and by suppression or concealment of any material fact.

(7) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal from office.

(8) Where the Court has made-

(a) an order that the liquidator be released, or

(b) an order that the liquidator be released and the company be dissolved;

a copy of the order shall be lodged with the Registrar by the liquidator and delivered to the Official Receiver within fourteen days.

### **237. Committee of inspection.**

(1) The liquidator may, and shall -

(a) in the case of a public company; or

(b) in the case of any other company if requested by any creditor or contributory,

summon separate meetings of the creditors and contributories for the purpose of determining whether or not the creditors or contributories require the appointment of a committee of inspection to act with the liquidator, and if so, who are to be members of the committee.

(2) If the meeting of the creditors requires the appointment of a committee it shall be appointed.

(3) If only the meeting of contributories requires a committee of inspection to be appointed the Court shall decide

whether such a committee should be appointed, and the Court shall also determine any difference as to who are to be members of the committee and make such order as it thinks fit.

**238. Constitution and proceedings of committee of inspection.**

(1) A committee of inspection shall consist of a number of creditors and contributories of the company or of persons holding -

- (a) general powers of attorney from creditors or contributories; or
- (b) special authorities from creditors or contributories authorising the persons named therein to act on such a committee,

appointed by the meetings of creditors and contributories in such proportions as are agreed or in case of difference as are determined by the Court.

(2) The committee shall meet at such time and place as it may appoint, and the liquidator or any member of the committee may also call a meeting.

(3) The committee may act by a majority of its members present at a meeting, but shall not act unless a majority of the committee is present.

(4) A member of the committee may resign by written notice signed by him and delivered to the liquidator.

(5) Where a member of the committee becomes bankrupt, assigns his estate for the benefit of his creditors, makes an arrangement 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, his office shall become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which seven days' notice has been given stating the object of the meeting.

(7) A vacancy in the committee may be filled by the appointment by the committee of another creditor or contributory or person holding a general power or special authority as specified in subsection (1).

(8) The liquidator may at any time on his own motion and shall within seven days on the written request of a creditor or contributory summon a meeting of creditors or of contributories, to consider any appointment made pursuant to subsection (7) and the

meeting may confirm the appointment or revoke the appointment and appoint another creditor or contributory or person holding a general power or special authority as specified in subsection (1), to be a member of the committee.

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

**239. Power to stay winding up.**

(1) Where a winding up order has been made the Court may, on the application of the liquidator or a creditor or contributory and on proof 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.

(2) On application under subsection (1) the Court may, before making an order, require the liquidator to furnish a report with respect to any fact or matter which in his opinion is relevant.

(3) A copy of every order made under this section shall within fourteen days be lodged by the company and delivered to the Official Receiver.

**240. List of contributories.**

(1) As soon as it deems fit after making a winding up order, the Court may settle a list of contributories and rectify the members' register in every case where rectification is required pursuant to this Part and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

(2) In settling a list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

(3) The list of contributories when settled shall be *prima facie* evidence of the liabilities of the persons named therein as contributories.

**241. Liability of present and past members.**

(1) Subject to the other provisions of this section, where a company is wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for the 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.

(2) Subject to subsection (3) -

- (a) a past member shall not be liable to contribute under subsection (1)-
  - (i) if he has ceased to be a member for one year or more before the commencement of the winding up;
  - (ii) in respect of any debts or liability of the company contracted after he ceased to be a member;
  - (iii) unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them under this Act;
- (b) in the case of a company limited by shares, no contribution under subsection (1) shall be required from a member in excess of the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;
- (c) in the case of a company limited by guarantee, no contributions under subsection (1) shall be required from a member in excess of the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
- (d) nothing in this Act shall invalidate a provision contained in any policy of insurance or other contract whereby-
  - (i) the liability of individual members on the policy or contract is restricted; or
  - (ii) the funds of the company are alone made liable in respect of the policy or contract;
- (e) a sum due to a member in that capacity by way of dividend, profits or otherwise shall not be a debt of the company payable to that member in a case of competition between himself and any other creditor who is not a member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(3) Where a company which has been converted from an unlimited to a limited company is wound up-

- (a) a past member of the company who was a member at the time of re-registration shall, if the winding up commences within the period of three years beginning with the day on which the company is re-registered,

be liable to contribute to the assets of the company in respect of its debts and liabilities contracted before that time;

(b) where no person who was a member at the time of re-registration is an existing member, a person who, at the time, was a present or past member shall, subject to subsection (2)(a) and to paragraph (a), be liable to contribute in accordance with paragraph (a);

(c) there shall be no limit on the amount which a person who, at that time, was a past or present member of the company, is liable to contribute in accordance with paragraph (a).

(4)(a) A past director shall not be liable to make a further contribution-

(i) if he has ceased to hold office for a year or more before the commencement of the winding up;

(ii) in respect of any debt or liability of the company contracted after he ceased to hold office.

(b) Subject to the articles, a director shall not be liable to make a further contribution unless it appears to the Court that the director and the other person are unable to satisfy the contributions required to be made by them under subsection (1).

#### **242. Nature of liability.**

The liability of a contributory shall create a debt becoming due from him at the time when this liability commenced but payable at the time when a call is made for enforcing the liability.

#### **243. Death or bankruptcy of contributory.**

(1) Where a contributory dies, either before or after he has been placed on the list of contributories, every heir who has taken possession of his estate shall be liable to contribute to the assets of the company in discharge of his liability and shall accordingly be a contributory to the extent of the inheritance or legacy received by him.

(2) Nothing in subsection (1) shall affect the right of any heir to renounce the estate of a deceased contributory or to accept it under benefit of inventory.

(3) Where a contributory becomes bankrupt or assigns his estate for the benefit of his creditors, either before or after he has been placed on the list of contributories-

- (a) the trustee in bankruptcy or his assignee shall represent him for all the purposes of the winding up and shall accordingly be a contributory; and
- (b) there may be proved against his estate the estimated value of his liability to future calls as well as calls already made.

**244. Payment of debts due by contributory.**

(1) The Court may make an order directing a contributory for the time being on the list of contributories to pay to the company in the manner directed by the order any money due from him or from the estate of the person whom he represents exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act, and may-

- (a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract other than money due to him as a member in respect of any dividend or profit;
- (b) in the case of a limited company, make a similar allowance to a director whose liability is unlimited or to his heir; and
- (c) in the case of any company, when all the creditors are paid in full, allow a contributory by way of set-off against any subsequent call any money due on any account whatever to a contributory from the company.

(2) The Court may either before or after it has ascertained the sufficiency of the assets of the company-

- (a) make calls on all or any of the contributories for the time being on the list of contributories, to the extent of their liability, for-
  - (i) the 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
  - (ii) the adjustment of the rights of the contributories among themselves; and
- (b) make an order for payment of any calls so made, and, in making a call, the Court may have regard to the probability that some of the contributories may partly or wholly fail to pay

the call.

(3) The Court may order any contributory or other person from whom money is due to the company to pay the amount due to the account of the liquidator into a bank named in the order 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.

(4) An order made by the Court under this section shall, subject to any right of appeal, be conclusive evidence that any money thereby appearing to be due or ordered to be paid is due, and that any other relevant fact therein stated is true and correctly stated.

**245. Special manager.**

(1) Where the liquidator is satisfied that the nature of the assets or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager other than himself, he may apply to the Court which may appoint a special manager to act during such time as the Court directs with such powers, including any of the powers of a receiver or manager, as are entrusted to him by the Court.

(2) The special manager-

- (a) shall give such security and account in such manner as the Court directs;
- (b) shall receive such remuneration as is fixed by the Court; and
- (c) may at any time resign after giving not less than one month's written notice to the liquidator of his intention to resign, or on cause shown be removed by the Court.

**246. Receiver for debenture holders or creditors.**

Where an application is made to the Court to appoint a receiver on behalf of debenture holders or other creditors of a company which is being wound up by the Court, the Court may grant the application.

**247. Creditors' claims and distribution of assets.**

(1) The Court may fix a date on or before which creditors are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before those debts are proved.

(2) The Court shall adjust the rights of the contributories among themselves and distribute any surplus among

the persons entitled thereto.

(3) 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 fit.

**248. Other powers of Court.**

(1) The Court may make such order for inspection of the books of the company by creditors and contributories as it thinks fit.

(2) The Court may summon before it-

(a) any officer or other person known or suspected to have in his possession any property of the company or supposed to be indebted to the company; or

(b) any person whom the Court deems capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company.

(3) The liquidator and any creditor or contributory may examine any person summoned by the Court.

(4) A person ordered to be examined under this section shall, before his examination, be furnished with a copy of the liquidator's report.

(5) Where a person directed to attend before the Court under subsection (2) applies to the Court to be exculpated from any charges made or suggested against him, the liquidator shall appear on the hearing of the application and call the attention of the Court to any matters which appear to him to be relevant and the Court may, after hearing any evidence given or witnesses called by the liquidator, grant the application.

(6) Notes of the examination-

(a) shall be reduced to writing;

(b) shall be read over to or by and signed by the person examined;

(c) may thereafter be used in evidence in any legal proceedings against him; and

(d) shall be open to the inspection of any creditor or contributory.

(7) Any money or security paid or delivered into a bank in accordance with this Sub-Part shall in all respects be subject to such order as the Court thinks fit to make.

**249. Powers of arrest.**

Where it has reasonable ground to believe that a contributory or a director or former director of the company is about to leave Mauritius or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of a call or avoiding examination respecting the affairs of the company, the Court may, at any time after the presentation of a petition and before the making of a winding up order, cause the contributory, director or former director to be arrested and his books and other movable property to be seized.

**250. Foreign companies.**

(1) Where a report has been made by an inspector under section 202 in respect of a foreign company the Registrar may apply to the Court for an order for the winding up of the affairs of the company in so far as they relate to its assets in Mauritius.

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

*Sub-Part III - Voluntary winding up*

A-BEFORE WINDING UP

**251. Circumstances for voluntary winding up.**

(1) Subject to subsection (2), a company may be wound up voluntarily if-

- (a) when the period, if any, fixed for its duration by the memorandum or articles expires, or the event, if any, occurs, on the occurrence of which the memorandum or articles provide that the company is to be dissolved, the company in general meeting passes a resolution that it shall be wound up; or
- (b) the company passes a special resolution that it shall be wound up.

(2) Where a petition has been presented on the ground that a company is unable to pay its debts, the company shall not, without the leave of the Court, resolve that it be wound up voluntarily.

(3) A company shall-

- (a) within seven days, lodge with the Registrar a printed copy of the winding up resolution; and

- (b) within ten days, give notice of the winding up resolution in two daily newspapers and in the Government Gazette.

(4) Where it appears to the directors of a company that the company is insolvent, the directors may, prior to the holding of a meeting for the passing of the special resolution referred to in subsection (1), lodge with the Registrar a declaration and deliver a copy thereof to the Official Receiver-

- (a) that the company cannot by reason of its liabilities continue its business; and
- (b) that meetings of the company and of its creditors have been summoned for a date not later than one month of the date of the declaration,

the directors shall forthwith appoint a person to be the provisional liquidator who shall, subject to such limitations and restrictions as may be prescribed, have and may exercise all the functions and powers of a liquidator in a creditors' winding up.

(5) The appointment of a provisional liquidator shall continue for one month from the date of his appointment or for such further period as the Official Receiver may allow or until the appointment of a liquidator, whichever first occurs.

(6) The company shall, within fourteen days, give notice of the appointment of a provisional liquidator and the lodging of the declaration in two daily newspapers and in the Government Gazette.

(7) A provisional liquidator shall be entitled to receive remuneration.

(8) A voluntary winding up shall commence-

- (a) where a provisional liquidator is appointed under subsection (4) before a winding up resolution is passed, at the time when a declaration under subsection (4) is lodged; and
- (b) in every other case, at the time of the passing of the winding up resolution.

## **252. Effect of voluntary winding up.**

(1) The company shall from the commencement of the winding up cease to carry on its business, except so far as is in the opinion of the liquidator required for the beneficial winding up of the company.

(2) The corporate state and corporate powers of the company shall, notwithstanding anything in the articles, continue until it is dissolved.

(3) Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members made after the commencement of the winding up, shall be void.

#### B-MEMBERS' WINDING UP

#### **253. Declaration of solvency.**

(1) Where it is proposed to wind up a company voluntarily as a members' voluntary winding-up, the directors or, in the case of a company having more than two directors, the majority of the directors shall, before the date on which the notices of the meeting at which the winding up resolution is to be proposed are sent out, make a written declaration to the effect that-

- (a) they have made an inquiry into the affairs of the company; and
- (b) at a meeting of directors, they have formed the opinion that the company will be able to pay its debts in full within a period not exceeding twelve months after the commencement of the winding up.

(2) There shall be attached to the declaration a statement of the affairs of the company showing -

- (a) the assets of the company and the total amount expected to be realised therefrom;
- (b) the liabilities of the company; and
- (c) the estimated expenses of winding up, made up to the latest practicable date before the making of the declaration.

(3) A declaration made under subsection (1) shall have no effect for the purposes of this Act unless it is-

- (a) made at the meeting of directors referred to in subsection (1);

- (b) made within twenty-eight days immediately preceding the passing of the winding up resolution; and
- (c) lodged with the Registrar before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out.

**254. Liquidators in members' winding up.**

(1) The company in general meeting shall appoint a liquidator 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.

(2) On the appointment of a liquidator all the powers of the directors shall cease except so far as the liquidator or with his consent the company in general meeting may otherwise determine.

(3) (a) Subject to paragraph (b) the company in a general meeting convened by a contributory may, by special resolution of which special notice has been given to the creditors and the liquidators, remove a liquidator.

(b) A resolution under paragraph (a) shall have no effect if, on the application of the liquidator or a creditor, the Court otherwise directs.

(4) (a) Where a vacancy occurs, by death, resignation, removal or otherwise, in the office of a liquidator the company in general meeting may fill the vacancy by the appointment of a liquidator and fix the remuneration to be paid to him, and for that purpose a general meeting may be convened by a contributory, or, if there were more liquidators than one, by the continuing liquidators.

(b) A general meeting under this subsection shall be held in the manner provided by Sub-Part IV of Part V or by the articles or in such manner as, on the application of a contributory or the continuing liquidators, the Court may direct.

(c) Where at any time the company in general meeting has failed to fill a vacancy under paragraph (a), any creditor or contributory of the company may apply to the Court for the appointment of the Official Receiver as Provisional Liquidator of the company and, if appointed by the Court, the

Official Receiver shall act as Provisional Liquidator of the company until further order of the Court made on application by the company following a resolution in general meeting nominating a liquidator for appointment by the Court.

**255. Insolvency of company.**

(1) Where the liquidator is of opinion that the company will not be able to pay or provide for the payment of its debts in full within the period stated in the declaration made under section 253, he shall forthwith-

- (i) summon a meeting of the creditors; and
  - (ii) lay before the meeting a statement of the assets and liabilities of the company.
- (b) The notice summoning the meeting shall draw the attention of the creditors to the right conferred upon them by subsection (2).

(2) The creditors may at the meeting appoint some other person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company instead of the liquidator appointed by the company.

(3) Where the creditors appoint some other person under subsection (2) the winding up shall proceed as if the winding up were a creditors' winding up.

(4) The liquidator or, if some other person has been appointed by the creditors to be the liquidator, the person so appointed shall within seven days lodge a notice of the holding of the meeting and deliver a copy to the Official Receiver.

- (5) (a) Where at a meeting summoned under subsection (1) the creditors do not appoint another liquidator, the winding up shall proceed as if the winding up were a creditors' voluntary winding up.
- (b) The liquidator shall not be required to summon an annual meeting of creditors at the end of the first year from the commencement of the winding up if the meeting was held less than three months before the end of that year.

C- CREDITORS' WINDING UP

**256. Creditors' meeting.**

(1) The company shall cause-

- (a) a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which a winding up resolution is to be proposed; and
- (b) the notices of the meeting of creditors to be sent by post to the creditors at the same time as the notice of the meeting of the company are sent.

(2) The company shall convene the meeting at a time and place convenient to the majority in value of the creditors and shall-

- (a) give the creditors at least seven days notice of the meeting; and
- (b) sent to each creditor with the notice a statement showing the names of all creditors and the amounts of their claims.

(3) The company shall cause notice of the meeting of the creditors to be advertised at least seven days before the date of the meeting in two daily newspapers.

(4) The directors shall-

- (a) cause a full statement of the company's affairs showing, in respect of assets, the method and manner in which the valuation of the assets was arrived at, together with a list of the creditors and the estimated amount of their claims to be laid before the meeting of creditors; and
- (b) appoint one of their number to attend the meeting.

(5) The director so appointed and the secretary shall attend the meeting and disclose to the meeting the company's affairs and the circumstances leading up to the proposed winding up.

(6) The creditors may appoint one of their number or the director appointed under subsection (4) to preside at the meeting.

(7) The chairman shall at the meeting determine whether the meeting has been held at a time and place convenient to the majority in value of the creditors and his decision shall be final.

(8) Where the chairman decides that the meeting has not been held at a time and place convenient to that majority the meeting shall lapse and a further meeting shall be summoned by the company as soon as is practicable.

(9) Where the meeting of the company is adjourned and the winding up resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors shall have effect as if it had been passed immediately after the passing of the resolution for winding up.

#### **257. Liquidators in creditors' winding up.**

(1) The creditors may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons the person nominated by the creditors shall be the liquidator, and if no person is nominated by the creditors, the person nominated by the company shall be liquidator.

(2) Where different persons are nominated any director, member or creditor may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors.

(3) The committee of inspection or, if there is no such committee, the creditors may fix the remuneration to be paid to the liquidator.

(4) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the committee of inspection or, there is no such committee the creditors, approve the continuance thereof.

(5) Where a liquidator, other than a liquidator appointed by or by the direction of the Court, dies, resigns or otherwise vacates the office, the creditors may fill the vacancy and for the purpose of so doing a meeting of the creditors may be summoned by any two of their number.

#### **258. Committee of inspection.**

(1) (a) The creditors at a meeting summoned pursuant to section 255 or 256 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, whether creditors or not.

(b) Where a committee of inspection is appointed, the

company may, either at the meeting at which the winding up resolution is passed or at any time subsequently in general meeting, appoint such number of persons not being more than five as it thinks fit to act as members of the committee.

(2) The creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as member of the committee, and on any application to the Court under the subsection the Court may if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(3) Section 238(2), (3), (4), (5), (6), (7) and (9) shall apply to a committee of inspection appointed under this section.

#### **259. Property and proceedings.**

(1) Any attachment, sequestration, distress or execution put in force against the assets of the company after the commencement of a creditors' winding up shall be void.

(2) After the commencement of the winding up 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 thinks fit.

#### D. AFTER WINDING UP

#### **260. Distribution of property.**

Subject to section 283 the property of a company shall, on its winding up-

- (a) be applied *pari passu* in satisfaction of its liabilities; and
- (b) unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

#### **261. Appointment, remuneration, acts and removal of liquidator.**

(1) Where there is no liquidator acting, the Court may appoint a liquidator.

(2) The Court may on cause shown remove a liquidator and appoint another liquidator.

(3) A member or creditor or the liquidator may at any time before the dissolution of the company apply to the Court to review the amount of the liquidator's remuneration.

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

(5) Any assignment, transfer, charge or other disposition of a company's property made by a liquidator shall, notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator, be valid in favour of any persons taking the property *bona fide* and for value and without notice of the defect or irregularity.

(6) Any person who makes or permits a disposition of property to a liquidator shall not incur any liability and shall be indemnified out of the property of the company notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator not then known to that person.

## **262. Powers and duties of liquidator.**

(1) The liquidator may-

- (a) exercise any of the powers given by section 230 (1)(b), (c), (d) and (e) to a liquidator in a winding up by the Court-
  - (i) in the case of a members' voluntary winding up, with the approval of a special resolution of the company; and
  - (ii) in the case of a creditors' voluntary winding up, with the approval of the Court or the committee of inspection;
- (b) exercise any other power given by this Act to a liquidator in a winding up by the Court;
- (c) exercise the power of the Court of settling a list of contributories, and the list of the contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories and sections 241, 242 and 243 shall apply to the liability of contributories;
- (d) exercise the power of the Court under section 244(2) of making calls; or

(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution in respect of any matter or for any other purpose he thinks fit.

(2) The liquidator shall pay the debts of the company and adjust the rights of the contributories among themselves.

(3) Where several liquidators are appointed, any power may be exercised by a liquidator designated at the time of their appointment, or in default of such determination, by any number not less than two.

**263. Consideration for sale of company's property.**

(1) Subject to subsection (5) where it is proposed that the business or property of a company be transferred to another corporation, the liquidator may, with the sanction of a special resolution conferring on him a general authority or an authority in respect of a particular arrangement-

(a) receive in compensation or part compensation for the transfer of cash, shares, debentures, policies or other like interests in the corporation for distribution among the members; or

(b) enter into any other arrangement whereby the members may, in lieu of, or in addition to receiving cash, shares, debentures, policies or other like interests, participate in the profits of or receive any other benefit from the corporation, and any such transfer or arrangement shall be binding on the members.

(2) Where a member, within seven days, by written notice addressed to the liquidator and left at his office, dissents from the resolution, he may require the liquidator-

(a) to abstain from carrying the resolution into effect; or

(b) to purchase his interest at a price to be determined by agreement or by the Court.

(3) Where the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved and be raised by the liquidator in such manner as is determined by special resolution.

(4) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before, or concurrently with a winding up resolution or a resolution appointing a liquidator, but if an order for winding up the company

by the Court is made within one year after the passing of the resolution, it shall not be valid unless sanctioned by the Court.

(5) Subsection (1) shall not apply in the case of a creditors' winding up except with the approval of the Court or the committee of inspection.

**264. Annual meeting of members and creditors.**

(1) Where a winding up continues for more than one year, the liquidator shall at the expiry of the first year from the commencement of the winding up and of each succeeding year but not more than three months thereafter, summon a general meeting of the company or in the case of a creditors' voluntary winding up, a meeting of the company and the creditors, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) The liquidator shall cause the notices of the meeting of creditors to be sent at the same time as the notices of the meeting of the company are sent.

**265. Final meeting and dissolution.**

(1) Where the affairs of the company have been fully wound up, the liquidator shall as soon as possible-

- (a) make up an account showing how the winding up has been conducted and the property of the company has been disposed of; and
- (b) call a general meeting of the company, or in the case of a creditors' voluntary winding up a meeting of the company and the creditors, and shall lay the account before the meeting.

(2) A meeting under subsection (1) shall be called by advertisement published in at least two daily newspapers which shall-

- (a) specify the time, place and object of the meeting;  
and
- (b) be published at least one month before the meeting.

(3) The liquidator shall within seven days lodge a notice of the holding of the meeting and of its date together with a copy of the account, and deliver a copy of the notice to the Official Receiver.

(4) The quorum at a meeting of the company shall be two and at

a meeting of the company and the creditors shall be two members and two creditors, and if a quorum is not present at the meeting, the liquidator shall in lieu of the notice specified in subsection (3) lodge a notice together with a copy of the account, that the meeting was summoned and that no quorum was present.

(5) Subject to subsection (6), the company shall be dissolved on the expiry of three months after the notice has been lodged and, if a quorum is reached, a copy of the notice has been delivered to the Official Receiver.

(6) The Court may, on the application of the liquidator or of such other person as the Court thinks fit, direct that the date at which the dissolution of the company is to take effect shall be deferred for such time as the Court thinks fit.

(7) The person on whose application an order of the Court under subsection (6) is made shall, within fourteen days, lodge a copy of the order and deliver a copy to the Official Receiver.

#### **266. Arrangement binding on creditors.**

(1) Any arrangement entered into between a company about to be or in the course of being wound up and its creditors shall, subject to subsection (4), be binding-

(a) on the company if sanctioned by a special resolution; and

(b) on the creditors if acceded to by-

(i) three-fourths in value of the creditors; and

(ii) one half of the number of persons who are creditors for five hundred rupees or more.

(2) A creditor shall be accounted a creditor for such sum as appears to be the balance due to him upon an account fairly stated, after allowing the value of security or liens held by him and the amount of any debt or set-off owing by him to the debtor.

(3) Any dispute with regard to the value of any security or lien or the amount of a debt or set-off may on the application of the company, the liquidator or the creditor, be settled by the Court.

(4) A creditor or contributory may within twenty-one days from the completion of the arrangement appeal to the Court against it, and the Court may amend, vary or confirm the arrangement.

#### **267. Application to Court.**

(1) The liquidator or contributory or creditor may apply to the Court-

- (a) to determine any question arising in the winding up of a company; or
- (b) to exercise all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) Where the Court is satisfied that the determination of the question or the exercise of the power will be just and beneficial, it may accede wholly or partially to the application, or make such other order on such terms and conditions as it thinks fit.

#### **268. Costs.**

All proper costs, charges and expenses of and incidental to the winding up including the remuneration of the liquidator shall be payable out of the assets of the company in priority to all other claims.

#### *Sub-Part IV- Provisions applicable to every winding up*

#### **269. Liquidator.**

(1) Where a liquidator is required to keep a book, a creditor or contributory may, unless the Court otherwise directs, inspect it.

(2) The Court shall take cognizance of the conduct of every liquidator and, if a liquidator does not faithfully perform his duties and observe the requirements of the Court or if a complaint is made in that behalf to the Court by a creditor or contributory or by the Official Receiver, the Court shall inquire into the matter and make such order as it thinks fit.

(3) The Registrar or the Official Receiver may report to the Court any matter which in his opinion is a misfeasance, neglect or omission on the part of the liquidator and the Court may order the liquidator to make good any loss which the estate of the company has sustained and make such other order as it thinks fit.

(4) The Court may-

- (a) require a liquidator to answer an inquiry in relation to the winding up;
- (b) examine him or any other person on oath concerning the winding up;

- (c) require any contributory, receiver, banker, agent or officer of the company to pay, deliver, or transfer to the provisional liquidator or liquidator forthwith or within such time as the Court directs any money, property or book in his possession to which the company appears to be entitled; and
- (d) direct any person to examine the books and vouchers of the liquidator.

(5) Any person aggrieved by any act or decision of the liquidator may appeal to the Court which may confirm, reverse or modify the act or decision complained of and make such order as it thinks fit.

#### **270. Powers of Official Receiver.**

(1) Where a person other than the Official Receiver is the liquidator and there is no committee of inspection, the Official Receiver may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

(2) Where the Official Receiver is the liquidator and there is no committee of inspection, the Official Receiver may in his discretion do any act or thing which is by this Act required to be done by, or subject to any direction or permission given by the committee.

#### **271. Notice of appointment and address of liquidator.**

- (1) Every liquidator shall within fourteen days-
  - (a) lodge a notice of his appointment and of the situation of his office;
  - (b) in the event of any change in the situation of his office lodge a notice to that effect;
  - (c) where he resigns or is removed from office, lodge a notice to that effect; and
  - (d) deliver to the Official Receiver a copy of every such notice.

#### **272. Service on liquidator and company.**

Service made by leaving a document at or sending it by post addressed to the address of the office of the liquidator given in a notice under section 271 shall be good service on the liquidator and on the company.

#### **273. Liquidator's accounts.**

- (1) Every liquidator shall-
- (a) within one month after the expiry of the period of six months from the date of his appointment and of every subsequent period of six months;
  - (b) within one month after he ceases to act as liquidator; and
  - (c) forthwith after obtaining an order of release, lodge an affidavit giving an account of his receipts and payments and stating the steps taken in the winding up, and deliver a copy of the affidavit to the Official Receiver.
- (2)
- (a) The Official Receiver may cause the account to be audited by a qualified auditor.
  - (b) The liquidator shall furnish the auditor with such vouchers and information as he requires, and the auditor may at any time require the production of and inspect any book kept by the liquidator.

(3) A copy of the account or, if audited, a copy of the audited account shall be kept by the liquidator and a copy shall be open to the inspection of any person on request at the office of the liquidator.

(4) Where an account has been made up under subsection (1), the liquidator shall when he forwards any report, notice of meeting, notice of call or dividend to a creditor or contributory-

- (a) include a written notice to that effect; and
- (b) inform the creditors or contributories of the place where a copy of the account may be inspected.

(5) The costs of an audit under this section shall be fixed by the Official Receiver and be part of the expenses of the winding up.

#### **274. Default by liquidator.**

(1) Where a liquidator who has made default in lodging or making any application, return, account or other document or in giving any notice which he is required to lodge, make or give, fails to make good the default within fourteen days after the service on him of a notice issued by the Registrar or the Official Receiver requiring him to do so, the Court may, on the application of a contributory or creditor of the company or the Official Receiver or the Registrar, make an order directing the liquidator to make good the default within such time as is specified in the

order.

(2) An order under subsection (1) may provide that all costs of and incidental to the application shall be borne by the liquidator.

#### **275. Notification of liquidation.**

Where a company is being wound up, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company or a receiver or manager of the property of the company, being a document on or in which the name of the company appears shall have the words "in liquidation" added after the name of the company where it first appears.

#### **276. Books of company .**

(1) Every book of the company and of a liquidator that is relevant to the affairs of the company at or subsequent to the commencement of a winding up shall, as between the contributories, be *prima facie* evidence of the truth of all matters purporting to be recorded therein.

(2) Subject to subsection (3), where a company has been wound up, the liquidator shall retain every book referred to in subsection (1) for a period of six years from the date of the dissolution of the company.

(3) Where a company has been wound up, every book referred to in subsection (1) may be destroyed-

- (a) in the case of a winding up by the Court, in accordance with the directions of the Court;
- (b) in the case of a members' voluntary winding up, as the company may by ordinary resolution direct; and
- (c) in the case of a creditors' voluntary winding up, as the committee of inspection, or, if there is no committee, as the creditors of the company may direct.

#### **277. Investment of surplus funds.**

(1) Whenever the cash balance standing to the credit of a company which is being wound up is in excess of the amount which, in the opinion of the committee of inspection or, if there is no committee, of the liquidator, is required for the time being to answer demands in respect of the estate of the company, the liquidator may, subject to any written directions of the committee of inspection, if any, and unless the Court on application by a

creditor otherwise directs, invest the sum or any part thereof in securities issued by the Government or place it on deposit at interest with any banking company, and any interest received in that respect shall form part of the assets of the company.

(2) Where any money as invested is, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, required to answer any demands in respect of the company's estate, the committee of inspection may direct, or, if there is no committee of inspection, the liquidator may arrange for the sale or realization of that part of the securities as is necessary.

### **278. Unclaimed assets.**

(1) Where a liquidator has in his possession, custody or control-

(a) any unclaimed dividend or other money which has remained unclaimed for more than six months from the date when the dividend or other money became payable; or

(b) after making a final distribution, any unclaimed or undistributed money arising from the property of the company, he shall forthwith pay those moneys to the Official Receiver to be placed to the credit of a Companies Liquidation Account and, on such payment, he shall be entitled to a certificate issued by the Official Receiver which shall be an effectual discharge to him in that behalf.

(2) The Court may on the application of the Official Receiver-

(a) order a liquidator to submit an affidavit of the account of any unclaimed or undistributed dividend or other money in his possession, control or custody;

(b) direct an audit thereof; or

(c) direct the liquidator to pay the money to the Official Receiver to be placed to the credit of the Companies Liquidation Account.

(3) The interest arising from the investment of the money standing to the credit of the Companies Liquidation Account shall be paid into the Consolidated Fund.

(4) Subject to any subsidiary enactment made under this Act, the Court may for the purposes of this section exercise all powers conferred by section 248 with respect to the discovery and realisation of the property of the company.

(5) Where a person makes a claim to any money placed to the credit of the Companies Liquidation Account, the Official Receiver shall, on being satisfied that the claimant is the owner of the money, authorise payment to be made to him accordingly out of the Companies Liquidation Account or the Consolidated Fund, as the case may be.

(6) Any person aggrieved by a decision of the Official Receiver in respect of a claim under subsection (5) may appeal to the Court which may confirm, reverse or modify the decision and make such order as it thinks fit.

(7) Where any money paid to a claimant is afterwards claimed by another person, that other person shall not be entitled to any payment out of the Companies Liquidation Account or the Consolidated Fund but may have recourse against the claimant to whom the money has been paid.

(8) Any unclaimed money paid to the credit of the Companies Liquidation Account to the extent to which the money has not under this section been paid out of the account shall, after the expiry of seven years from the date of the payment of the moneys to the credit of the account, be paid into the Consolidated Fund.

#### **279. Expenses of winding up where assets insufficient.**

(1) A liquidator shall not, unless expressly directed to do so by the Official Receiver, be liable to incur any expense in relation to the winding up of a company unless there are sufficient available assets.

(2) The Official Receiver may, on the application of a creditor or a contributory, direct a liquidator to incur a particular expense on condition that the creditor or contributory indemnifies the liquidator in respect of the recovery of the amount expended and, if the Official Receiver so directs, gives such security to secure the amount of the indemnity as the Official Receiver thinks fit.

#### **280. Resolutions at adjourned meetings of creditors and contributories.**

Subject to section 256 (9) where a resolution is passed at an adjourned meeting of creditors or contributories of a company, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

#### **281. Meetings to ascertain wishes of creditors or contributories.**

(1) The Court may, in the winding up of a company, have regard to the wishes of the creditors or contributories and, 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) For the purposes of subsection (1) regard shall be had-

- (a) in the case of creditors to the value of each creditor's debt;
- (b) in the case of contributories, to the number of votes conferred on each contributory by this Act or the articles.

### **282. Proof of debts.**

(1) (a) Subject, in the case of insolvent companies, to the application of the Bankruptcy Act in accordance with subsection (2), every debt payable on a contingency, and every claim against the company, present or future, certain or contingent, ascertained or claimed to arise only in damages, shall be admissible in evidence against the company.

(b) For the purposes of paragraph (a) a just estimate shall be made of the value of any debt or claim which is subject to a contingency or is claimed to arise in damages, or for some other reason does not bear a certain value.

(2) In the winding up of an insolvent company, sections 36,37, 75 and the Third Schedule of the Bankruptcy Act shall subject to sections 2 and 8 apply with regard to the respective rights of secured and unsecured creditors and debts provable and the valuation of annuities and future and contingent liabilities, and any person who under that Act 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 it respectively is entitled to by virtue of this section.

### **283. Priorities.**

In a winding up the debts of the company shall be paid according to the laws of Mauritius with respect to privileges and priorities of claims, subject to the retention of such sums as are required to cover the costs and expenses of the winding up including the cost of the petitioner payable under section 218, the remuneration of the liquidator and the costs of any audit under section 273.

### **284. Undue preference.**

(1) Any transfer, charge, delivery of goods, payment, execution or other act relating to property made or done by or

against a company which would if it had been made or done by or against an individual, be void or voidable in his bankruptcy under the Bankruptcy Act, shall in the event of the company being wound up be void or voidable in like manner.

(2) For the purposes of this section the date which corresponds with the date of presentation of the bankruptcy petition in the case of an individual shall be -

(a) in the case of a winding up by the Court-

(i) the date of the presentation of the petition; or

(ii) where, before the presentation of the petition, a winding up resolution has been passed, the date on which the resolution is passed,

whichever is the earlier; and

(b) in the case of a voluntary winding up, the date on which the winding up is deemed by section 251(8) to have commenced.

(3) Any transfer or assignment by a company being wound up of all its property to agents or nominees for the benefit of all its creditors shall be void.

**285. Liquidators' right in respect of certain sales to or by company.**

(1) Where any property, business or undertaking has within a period of 2 years before the commencement of its winding up been acquired by a company for a cash consideration -

(a) from a person who was a director at the time of the acquisition; or

(b) from a company of which, at the time of the acquisition, a person was a director who was also a director of the first mentioned company,

the liquidator may recover from the person or company any amount by which the cash consideration exceeded the value of the property, business or undertaking at the time of its acquisition.

(2) Where any property, business or undertaking has within a period of 2 years before the commencement of its winding up been sold by a company for a cash consideration -

(a) to a person who was at the time of the sale a

director; or

(b) to a company of which, at the time of the sale, a person was a director who was also a director of the first mentioned company, the liquidator may recover from the person or company any amount by which the value of the property, business or undertaking at the time of the sale exceeded the cash consideration.

(3) In this section "Cash consideration", in relation to an acquisition or sale by a company, means consideration for the acquisition or sale payable otherwise than by the issue of shares in the company.

(4) For the purposes of this section the value of the property, business or undertaking includes the value of any goodwill, any profit which might have been made from the business or undertaking, or any similar asset.

#### **286. Disclaimer of onerous property.**

(1) Where the property of a company consists of -

- (a) an interest in land which is burdened with onerous covenants;
- (b) shares in a corporation;
- (c) unprofitable contracts; or
- (d) any other property that cannot or cannot readily be sold because the possessor is bound to the performance of an onerous act, or the payment of a sum of money,

the liquidator, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may with the leave of the Court or the committee of inspection but subject to the other provisions of this section, by writing, signed by him, disclaim the property-

- (a) at any time within 12 months after the commencement of the winding up or such extended period as the Court may allow, or
- (b) where the property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, at any time within 12 months after he has become aware of its existence or such extended period as the Court may allow.

(2) The disclaimer shall operate to determine, as from the date of the disclaimer, the rights, interest and liabilities of the

company and the property of the company in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court or committee of inspection may before or on granting leave to disclaim require such notices to be given to persons interested in the property, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court or committee thinks fit.

(4) The liquidator shall not be entitled to disclaim if a written application is made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not within a period of 28 days after the receipt of the application or such further period as is allowed by the Court or the committee given notice to the applicant that he intends to apply to the court or the committee for leave to disclaim, and, in the case of a contract, if the liquidator after such an application in writing does not within that period or further period disclaim the contract, the liquidator shall be deemed to have adopted it.

(5) The Court may, on the application of a person who is, as, against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract or otherwise as the Court thinks fit, and any damages payable under the order to that person may be proved by him as a debt in the winding up.

(6) The Court may, on the application of a person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing such person at it thinks fit but subject to subsection (7), make an order for the vesting of the property in, or the delivery of the property to, any person entitled thereto or to whom it seems just that the property should be delivered by way of compensation for such liability and on such terms as the Court thinks fit, and on any such order being made and a copy being lodged and delivered to the Official Receiver and if the order relates to immovable property with the Receiver of Registration Dues, the property comprised therein shall vest accordingly in the person therein named in that behalf without any further formality.

(7) (a) Where the property disclaimed comprises an interest in a lease the Court shall not make a vesting order in favour of any person claiming under the company, whether as sub-lessee or as mortgagee except on condition that person shall be -

(i) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(ii) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date, and in either event, if the case so requires, as if the lease had comprised only the property comprised in the vesting order.

(b) A mortgagee or sub-lessee who declines to accept a vesting order on the terms specified in paragraph (a) shall be excluded from all interest in and security upon the property.

(c) Where no person claiming under the company is willing to accept an order on those terms, the Court may vest the estate and interest of the company in the property in any person liable personally or in a representative character, and either alone or jointly with the company to perform the lessee's covenants in the lease, free and discharged from all incumbrance and interest created therein by the company.

(8) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury; and may accordingly prove the amount as a debt in the winding up.

#### **287. Rights of creditors as execution or attachment.**

(1) Where a creditor has issued execution against any property of a company or has attached any debt due to the company and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator unless he has completed the execution or attachment before the date of the commencement of the winding up, but -

(a) where a creditor has had notice of a meeting having been called at which a winding up resolution is to be proposed, the date on which the creditor had such notice shall for the purposes of this section be substituted for the date of the commencement of the winding up;

(b) a person who purchases in good faith, under a sale by authority of the Court or the Master, any property of a company on which an execution has been levied shall in all cases acquire a good title to it against the liquidator; and

(c) the rights conferred by this subsection on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such

terms as the Court thinks fit.

(2) For the purposes of this section -

- (a) an execution against movables is completed by seizure and sale;
- (b) an attachment of a debt is completed by receipt of the debt; and
- (c) an execution against immovable property is completed by sale.

**288. Movables taken in execution.**

(1) Subject to subsection (3) where any movables of a company are taken in execution and, before the sale or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the usher that -

- (a) a provisional liquidator has been appointed;
- (b) a winding up order has been made; or

(c) a winding up resolution has been passed, the usher shall, if so required, deliver the movables and any money seized in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the movables or monies so delivered, and the liquidator may sell the movables or a sufficient part thereof for the purpose of satisfying that charge.

(2) Subject to subsection (3), where under an execution in respect of a judgment for a sum exceeding two hundred rupees the movables of a company are sold or money is paid in order to avoid sale, the usher shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days and, if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which a winding up resolution is to be proposed and an order is made or a resolution is passed for the winding up, the usher shall pay the balance to the liquidator who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the Court of the creditor to such extent and subject to such terms as the court thinks fit.

**SUB-PART V - DISSOLUTION**

289. **Powers of Court.**

- (1) Where a company has been dissolved the Court may, at any time within 2 years after the date of dissolution, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order on such terms as the Court thinks fit declaring the dissolution to have been void, and thereupon any proceedings may be taken that might have been taken if the company had not been dissolved.
- (2) The person on whose application an order under subsection (1) is made shall, within 7 days or such extended period as the Court may allow, lodge a copy of the order and deliver a copy to the Official Receiver.

290. **Striking defunct company off register.**

(1) Where the Registrar by reason of the company's failure to file any annual return, or for any other reason has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by post a notice to that effect stating that if an answer showing cause to the contrary is not received within one month from the date of issue of the notice, a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

(2) Unless the Registrar receives an answer within one month from the date of the notice, he may publish in the *Gazette* and send to the company by registered post a notice that at the expiry of 3 months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(3) Where a company is being wound up and the Registrar has reasonable cause to believe that -

- (a) no liquidator is acting ; or
- (b) the affairs of the company are fully wound up and -
  - (i) for a period of 6 months the liquidator has been in default in lodging a return required to be made by him; or
  - (ii) there are no assets or the assets available are not sufficient to pay the costs of obtaining an order of the Court dissolving the company,

he may publish in the *Gazette* and send to the company by registered

post or the liquidator, if any, a notice to the same effect as that referred to in subsection (2).

(4) (a) At the expiry of the time mentioned in the notice the Registrar -

(i) may, unless cause to the contrary is previously shown, strike the name of the company off the register; and

(ii) shall publish a notice to that effect in the *Gazette*,

and on the publication in the *Gazette* of this notice the company shall be dissolved.

(b) The liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not been dissolved.

(c) Nothing in this subsection shall affect the power of the Court to wind up a company the name of which has been struck off the register.

(5) (a) Where a person is aggrieved by the striking off of the name of a company, the Court, on an application made at any time within 10 years after the name of the company has been so struck off, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is fit that the name of the company be restored to the register, order the name of the company be restored to the register, and on a copy of the order being lodged the company shall be deemed to have continued in existence as if its name had not been struck off.

(b) The Court may by the order give such directions and make such provisions as it thinks fit 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, and the Court may impose a condition requiring the company to pay to the Registrar by way of penalty (in any case where the company was in breach of any provision of the Act when it was struck off) a sum not exceeding the maximum amount that the company could have been fined in respect of that breach.

(6) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office or, if no office has been registered to the care of some officer of the company, or if there is no officer of the company whose name and address are known to the Registrar to each

of the persons who subscribed the memorandum addressed to him at the address mentioned in the memorandum.

**291. Official Receiver to act in lieu of defunct company.**

(1) Where after a company has been dissolved it is proved to the satisfaction of the Official Receiver -

(a) that the company if still existing would be bound to carry out, complete or give effect to some dealing, transaction or matter; and

(b) that in order to carry out, complete or give effect thereto, some purely administrative act, which is not discretionary, should have been done by or on behalf of the company, or should be done by or on behalf of the company if still existing,

the Official Receiver may do or cause to be done any such act in the name of the company or its liquidator.

(2) The Official Receiver may execute or sign any relevant instrument or document adding a memorandum stating that he has done so under this section, and such execution or signature shall have the same force, validity and effect as if the company if existing had duly executed such instrument or document.

**292. Vesting of outstanding assets of defunct company.**

(1) Where, after a company has been dissolved, there remains any outstanding property, in or outside Mauritius, which was vested in the company or to which it was entitled, or over which it had a disposing power at the time it was so dissolved, but which was not dealt with by the company or its liquidator, such property except called and uncalled capital shall, for the purpose of the following sections of this Sub-Part and notwithstanding any other law, be and become vested in the Official Receiver for all the interest therein of the company or its liquidator at the date the company was dissolved, together with all claims, rights and remedies which the company or its liquidator then had in respect thereof.

(2) Where any claim, right or remedy of the liquidator may under this Act be made, exercised or availed of only with the approval or concurrence of the Court or some other person, the Official Receiver may for the purposes of this section make, exercise or avail himself of that claim, right or remedy without such approval or concurrence.

**293. Disposal of outstanding interest.**

(1) Where the Official Receiver is satisfied that any beneficial interest in property whether solely or together with any other person, is vested in him under section 292 or by the operation of a law of a designated country corresponding with section 301 he may sell or otherwise dispose of or deal with such interest as he thinks fit.

(2) The Official Receiver may sell or otherwise dispose of or deal with such property either solely or together with any other person in such manner, for such consideration, by public auction or private contract, and on such terms and conditions as he thinks fit, with power to rescind any contract and resell or otherwise disposed of or deal with such property as he thinks fit, and may make, execute, sign and give such contract, instrument and document as he thinks fit.

(3) The Official Receiver shall receive remuneration in respect of the exercise of the powers conferred upon him by subsection (1).

(4) Any money received by the Official Receiver in the exercise of any of the powers conferred on him by this Sub-Part shall be applied in defraying all costs, expenses, commission and fees incidental thereto and thereafter to any payment authorized by this Sub-Part and the surplus, if any, shall be dealt with as if it were unclaimed money paid to the Official Receiver under section 278.

#### **294. Liability of Official Receiver as to property.**

(1) Any property vested in the Official Receiver under this Sub-Part shall be liable and subject to all charges, claims and liabilities imposed thereon or affecting such property by the operation of any other law relating to rates, taxes, charges or any other matter or thing to which such property would have been liable or subject had such property continued in the possession, ownership or occupation of the company.

(2) No duty, obligation or liability whatsoever shall be imposed on the Official Receiver to do or suffer any act or thing required by any such law to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims or liabilities out of the assets of the company so far as they are in the opinion of the Official Receiver properly available for and applicable to such payment.

#### **295. Accounts and audit.**

The Official Receiver shall -

(a) record in a register a statement of any property coming

- into his custody, possession or control or which to his knowledge is vested in him under this Sub-Part and of his dealing therewith;
- (b) keep accounts of any moneys arising therefrom and how it has been disposed of; and
  - (c) keep all accounts, vouchers, receipts and papers relating to such property and moneys.

***Sub-Part VI - Alternate simplified procedure for voluntary winding  
up  
of solvent companies.***

**296. Alternative simplified procedure for voluntary winding up of solvent companies.**

(1) Where a company has ceased to operate and has discharged all its debts and liabilities, any officer or member of the company may, after giving notice in accordance with subsection (3) of this section, apply to the Registrar, for a declaration of dissolution of the company.

(2) An application for a declaration of dissolution shall be in writing and shall be accompanied by -

- (a) an affidavit made by an officer or member of the company stating -
    - (i) that the company has ceased to operate and has discharged all its debts and liabilities (other than those owed to its members); and
    - (ii) that the notice required by subsection (3) of this section has been given in accordance with that subsection and the date the last such notice was published or posted, as the case may be; and
  - (b) a copy of the notice given under subsection (3) of this section; and
  - (c) written notice from the Commissioner of Income Tax stating that the Commissioner has no objection to the Registrar making a declaration of dissolution of the company.
- (3) Before making an application to the Registrar under this

section, the applicant shall ensure that there has been -

- (a) published in the *Gazette* and in 2 issues of a newspaper; and
- (b) sent by registered post to each director and (except in the case of a company that has more than 25 members) to each member of the company at the last address of which the company has notice,

a notice to the effect that the applicant proposes to apply to the Registrar for a declaration of dissolution of the company and that, unless written objection is made to the Registrar within 30 days of the date the notice was posted, the Registrar may dissolve the company.

(4) The Registrar shall not make a declaration of dissolution of a company earlier than 30 days after the date of publication or posting, as the case may be, of the last notice published or posted for the purposes of subsection (3) of this section.

(5) On receipt of any written objection to the dissolution of the company, the Registrar shall forthwith notify the applicant for the declaration of dissolution of the receipt of the objection and of the identity of the objector. Where any director, member, or creditor of a company has objected to the dissolution of the company the Registrar shall not declare the dissolution thereof unless -

- (a) the director, member, or creditor, as the case may be, withdraws the objection; or
- (b) the Registrar decides that the objection is completely without justification, and the objector has not appealed against the Registrar's decision within the time specified in section 7(1) or the Court has upheld the Registrar's decision.

(6) If the Registrar is not prohibited from declaring the dissolution of a company pursuant to this section and agrees to the dissolution, he shall notify the company that, subject to the company's memorandum of association and articles of association, it is entitled to distribute its surplus assets among its members according to their respective rights and, notwithstanding any other provision of this Act or any rule of law, the company may distribute its surplus assets accordingly.

(7) On receipt of notification from a company that its surplus assets have been distributed in accordance with subsection (6) of this section, the Registrar may, by notice in the *Gazette*, declare that the company is dissolved and, on the publication in the *Gazette* of the notice, the company shall be dissolved -

Provided that -

- (a) the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) notwithstanding that a company has been dissolved, or that its surplus assets have been distributed in accordance with this section, the Court may wind up the company as if it had not been dissolved, or its surplus assets had not been distributed, as the case may be.

(8) Where a company has been dissolved pursuant to this section, the Court, on an application made by the Registrar or a member or creditor of the company before the expiration of 20 years from the publication in the *Gazette* of the notice of dissolution, may, if satisfied that at the time of dissolution of the company it was in operation or had not discharged all its debts and liabilities or otherwise that it is just that the dissolution of the company be revoked, order that the dissolution of the company be revoked and upon a sealed copy of the order being delivered to the Registrar for registration the company shall be deemed to have continued in existence as if it had not been dissolved; and the Court may by the order give such directions and make such provision as seem just for placing the company and all other persons in the same position as nearly as may be as if the company has not been dissolved.

#### **Sub Part VII - Winding of unregistered corporations**

##### **297. Application of this Part.**

This Sub-part shall be in addition to and not in derogation of any provision of Sub-Parts I,II,IV,V and VI and the Court or liquidator may, subject to section 298, exercise any powers or do any act in the case of an unregistered corporation which might be exercised or done by it or him in the winding up of a company.

##### **298. Circumstances of winding up.**

(1) Subject to the other provision of this Sub-Part an unregistered corporation may be wound up in accordance with this Part.

(2) (a) The principal place of business of the corporation in Mauritius shall for all the purposes of the winding up be its registered office.

(b) No unregistered corporation shall be wound up

voluntarily.

- (c) The corporation may be wound up if -
- (i) the corporation is dissolved or has ceased to have a place of business in Mauritius or has a place of business in Mauritius only for the purpose of winding up its affairs or has ceased to carry on business in Mauritius;
  - (ii) the corporation is unable to pay its debts;
  - (iii) the Court is of opinion that it is just and equitable that the corporation should be wound up.

### 299. **Contributories.**

(1) Where an unregistered corporation is wound up, every person shall be a contributory who -

- (a) is liable to pay or contribute to the payment of -
  - (i) any debt or liability of the corporation;
  - (ii) any sum for the adjustment of the rights of the members among themselves; or
  - (iii) the costs and expenses of winding up; or
- (b) where the corporation is dissolved in the place in which it is formed or incorporated, was so liable immediately before the dissolution,

and every contributory shall be liable to contribute to the assets of the corporation all sums due from him in respect of any such liability.

(2) On the death or bankruptcy or a contributory section 243 shall with such adaptations and modifications as may be necessary apply to an unregistered corporation as it applies to a corporation.

### 300. **Power of Court.**

(1) Section 220 shall, in the case of an unregistered corporation apply to actions and proceedings against any contributory of the corporation where the application to stay or restrain is made by a creditor.

(2) Where an order has been made for winding up an unregistered corporation, no action shall be proceeded with or commenced against any contributory of the corporation in respect of any debt of the corporation except by leave of the Court and subject to such terms as the Court thinks fit.

### **301. Outstanding assets.**

(1) Where the place of incorporation or origin of an unregistered corporation is in a designated country and the corporation has been dissolved and there remains in Mauritius any outstanding property which was vested in the corporation or to which it was entitled or over which it had a disposing power at the time it was dissolved, but which was not dealt with by the corporation or the liquidator before the dissolution, the property, except called and uncalled capital, shall be and become vested for the interest of the corporation or its liquidator in the property at the date the corporation was dissolved, in such person as is entitled thereto according to the law of the place of incorporation or origin of the corporation.

(2) Where the place of origin of an corporation is Mauritius sections 290 to 294 shall with such adaptations and modifications as may be necessary, apply in respect of that corporation.

## **PART XII - FOREIGN COMPANIES**

### **302. Application of this Part.**

This part applies to a foreign company only if it has a place of business or is carrying on business in Mauritius.

### **303. Registration of Foreign companies.**

(1) Every foreign company shall, within one month after it establishes a place of business or commences to carry on business in Mauritius, lodge with the Registrar -

- (a) a duly authenticated copy of the certificate of its incorporation or registration in its place of incorporation or origin or a document of similar effect;
- (b) a duly authenticated copy of its charter, statute or memorandum and articles or other instrument constituting or defining its constitution;

- (c) a list of its directors containing similar particulars with respect to directors as are by this Act required to be contained in the register of the directors, managers and secretaries of a company;
- (d) where the list includes directors resident in Mauritius who are members of the local board of directors of the company, a memorandum duly executed by or on behalf of the foreign company stating the powers of the local directors;
- (e) a memorandum of appointment or power of attorney under the seal of the foreign company or executed on its behalf in such manner as to be binding on the company, stating the names and addresses of two or more persons resident in Mauritius, not including a foreign company, authorized to accept on its behalf service of process and any notices required to be served on the company;
- (f) notice of the situation of its registered office in Mauritius and, unless the office is open and accessible to the public during ordinary business hours on each day, other than Saturdays and public holidays, the days and hours during which it is open and accessible to the public; and
- (g) a declaration made by the authorized agents of the company.

(2) Where a memorandum of appointment or power of attorney lodged under subsection (1)(e) is executed by a person on behalf of the company, a duly authenticated copy of the deed or document by which that person is authorized to execute the memorandum of appointment or power of attorney shall be lodged.

(3) Where a foreign company has complied with subsection (1) the Registrar shall subject to section 4(5), register the company under this Part and shall issue a certificate in the form prescribed in the Tenth Schedule.

#### **304. Registered office and authorized agents.**

(1) A foreign company shall have a registered office in Mauritius to which all communications and notices may be addressed and which shall be open and accessible to the public for not less than four hours on every day other than a Saturday or a public holiday.

(2) An authorized agent shall, until he ceases to be such in accordance with subsection (4) -

- (a) continue to be the authorized agent of the company;
- (b) be answerable for the doing of all such acts, matters and things as are required to be done by the company by or under this Act.

(3) A foreign company or its authorized agent may lodge with the Registrar a written notice stating that the authorized agent has ceased to be the authorized agent or will cease to be the authorized agent on a date specified in the notice.

(4) The authorized agent in respect of whom the notice has been lodged shall cease to be an authorized agent -

- (a) on the expiry of a period of twenty-one days after the date of lodging of the notice or on the date of the appointment of another authorized agent the memorandum of whose appointment has been lodged in accordance with subsection (5), whichever is earlier; or
- (b) if the notice states a date on which he is to so cease and the date is later than the expiry of that period, on that date.

(5) Where an authorized agent ceases to be the authorized agent and the company is then without an authorized agent in Mauritius, the company shall, it continues to carry on business or has a place on Mauritius, within twenty-one days after the authorized agent ceased to be one, appoint an authorized agent.

(6) On the appointment of a new authorized agent the company shall lodge with the Registrar a memorandum of the appointment in accordance with section 303(1) and, if not already lodged in pursuance of section 303(2), a copy of the deed or document or power of attorney referred to in that subsection.

### **305. Return of alterations.**

- (1) Where any change or alteration is made in -
  - (a) the charter, statutes, memorandum or articles or other instrument lodged;
  - (b) the directors;
  - (c) the authorized agents or the address of an authorized agent;
  - (d) the situation of the registered office in Mauritius

or of the days or hours during which it is open and accessible to the public;

- (e) the address of the registered office in its place of incorporation or origin;
- (f) the name of the company; or
- (g) the powers of any directors resident in Mauritius who are members of the local board of directors,

the foreign company, shall within one month, lodge with the Registrar particulars of the change or alteration.

(2) Where a foreign company increases its authorized share capital it shall, within one month, lodge with the Registrar a notice of the amount from which and of the amount to which it has been so increased.

(3) Where a foreign company not having a share capital increases the number of its members beyond the registered number it shall, within one month, lodge with the Registrar a notice of the increase.

(4) Where an order is made by a Court under any law in force in the country in which a foreign company is incorporated which corresponds to section 174, the company shall, within one month, lodge with the Registrar a copy of the order.

### **306. Registrar's Certificate.**

On the registration of a foreign company under this Part or the lodging with the Registrar of particulars of a change or alteration in a matter referred to in section 305(1)(c), (a), or (f) the Registrar shall issue a certificate to that effect.

### **307. Balance Sheets.**

(1) Subject to the other provisions of this section, a foreign company shall, within three months of its annual general meeting, lodge with the Registrar -

- (a) a copy of its balance sheet made up to the end of its last preceding financial year in such form and containing such particulars and accompanied by copies of such documents as the company is required to annex, attach or send with its balance sheet by the law for the time being applicable to that company in the place of its incorporation or origin; and
- (b) a declaration certifying that the copies are true

copies of the documents so required.

(2) (a) Where the Registrar is of the opinion that the balance sheet and other documents referred to in subsection (1) do not sufficiently disclose the company's financial position, he may by written notice to the company require the company to lodge a balance sheet within such period, in such form and containing such particulars and to annex thereto such documents as he requires.

(b) Nothing in paragraph (a) shall authorize the Registrar to require a balance sheet to contain any particulars, or the company to annex, attach or to send, any document, that would not be required to be furnished if the company were a public company.

(3) Where a foreign company is not required by the law of the place of its incorporation or origin to hold an annual general meeting and prepare a balance sheet, the company shall prepare and lodge with the Registrar a balance sheet within such period, in such form and containing such particulars and annex thereto such documents as the directors of the company would have been required to prepare or obtain if the company were a public company.

(4) Subject to subsection (6), a foreign company shall, in addition to the balance sheet and other documents required to be lodged by subsections (1), (2) and (3), lodge with such balance sheet and other documents -

- (a) a duly audited statement showing its assets employed in and liabilities arising out of its operations conducted in or from Mauritius as at the date to which its balance sheet was made up; and
- (b) a duly audited profit and loss account, which, in so far as is practicable complies with the requirements of the Sixth Schedule and which gives a true and fair view of the profit or loss arising out of the company's operations conducted in or from Mauritius for the last preceding financial year of the company.

(5) The statement and profit and loss account referred to in subsection (4) shall be lodged with the Registrar within 8 months after the end of the company's financial year.

(6) (a) The company shall be entitled to make such apportionments of expenses incurred in connection with operations or administration affecting both Mauritius and elsewhere and to add such notes and explanations as in its opinion are necessary or desirable in order to give a true and fair view of the profit or loss of its operations in Mauritius.

- (b) The Registrar may waive compliance with subsection (4) in relation to any foreign company if he is satisfied that -
- (i) it is impracticable to comply with this subsection having regard to the nature of the company's operations in Mauritius;
  - (ii) it would be of no real value having regard to the amount involved;
  - (iii) it would involve expense unduly out of proportion to its value; or
  - (iv) it would be misleading or harmful to the business of the company or to any related corporation.

(7) The statement and profit and loss account referred to in subsection (4) shall be deemed to have been duly audited for the purpose of that subsection if it is accompanied by a qualified auditor's report which complies, so far as is practicable, with section 172.

### **308. Lodging of notice by foreign company relating to business activity**

(1) A company shall, lodge with the Registrar in each year at the time when a copy of its balance sheet is lodged, a notice containing particulars with respect to the business being carried on in Mauritius by the company.

(2) Where a foreign company commences to carry on business in Mauritius otherwise than by reason of establishing or using a share transfer or share registration office, the company shall within fourteen days, lodge with the Registrar a notice to that effect.

### **309. Name and country of incorporation.**

(1) Except with the Minister's written consent, a foreign company shall not be registered by a name or an altered name that, in the opinion of the Registrar, is undesirable or is a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration.

(2) No foreign company shall use in Mauritius any name other than that under which it is registered.

(3) A foreign company shall -

- (a) conspicuously exhibit outside its registered office and every place of business established by it in

Mauritius, its name and the place where it is formed or incorporated;

- (b) cause its name and the place where it is formed or incorporated to be stated on all its bill heads and letter paper and in all its notices, prospectuses and other official publications; and
- (c) where the liability of its members is limited, unless the last word of its name is the word 'Limited' or 'Limitee' or the abbreviation 'Ltd' or "Ltée" cause notice of that fact -
  - (i) to be stated in legible characters in every prospectus issued by it and in all its bill heads, letter paper, notices, and other official publications in Mauritius; and
  - (ii) except in the case of a banking company, to be exhibited outside its registered office and every place of business established by it in Mauritius.

(4) Where the name of a foreign company is indicated on the outside of its registered office or any place of business established by it in Mauritius or on any of the documents referred to in subsection (3) in characters or in any other way than by the use of romanised letters, the name of the company shall also be exhibited outside such office or place of business or stated on such document in romanised letters not smaller than any of the characters so exhibited or stated on the relevant office, place of business or document.

### 310. **Service of notices.**

Any document required to be served on a foreign company shall be deemed to have been served -

- (a) if addressed to the foreign company and left at or sent by post to its registered office in Mauritius;
- (b) if addressed to an authorized agent and left at or sent by post to his registered address; or
- (c) in the case of a foreign company which has ceased to maintain a place of business in Mauritius, if addressed to the foreign company and left at or sent by post to its registered office in the place of its incorporation.

### 311. **Branch registers.**

- (1) Subject to the other provisions of this section, a

foreign company which has a share capital and has a member resident in Mauritius shall keep at its registered office in Mauritius or at some other place in Mauritius a branch register for the purpose of registering shares of members resident in Mauritius who apply to have the shares registered therein.

(2) The company shall not be obliged to keep a branch register until after the expiry of 2 months from the receipt by it of a written application by a member resident in Mauritius for registration of his shares.

(3) This section shall not apply to a foreign company which by its constitution prohibits an invitation to the public to subscribe for shares in the company.

(4) (a) Every branch register shall be kept in the manner provided by Sub-Part V of Part V and transfers shall be effected in the same manner.

(b) Every transfer registered at its registered office in Mauritius shall be binding on the company and the Court shall have the same powers in relation to rectification of the register as it has under section 143.

(5) Where a foreign company opens a branch register it shall within fourteen days lodge with the Registrar a notice to that effect specifying the address where the register is kept.

(6) Where any change is made in the place where the register is kept or where the register is discontinued, the company shall within fourteen days lodged with the Registrar a notice to that effect.

(7) Where a company or corporation is entitled under a law of the place of incorporation of a foreign company corresponding with section 183 to give notice to a dissenting shareholder in that foreign company that it desires to acquire any of his shares registered on a branch register kept in Mauritius, this section shall cease to apply to that foreign company until -

(a) the shares have been acquired; or

(b) the company or corporation has ceased to be entitled to acquire the shares.

(8) On application made in that behalf by a member resident in Mauritius, the foreign company shall register in its branch register the shares held by a member which are registered in any other register kept by the company.

(9) On application made in that behalf by a member holding shares registered in a branch register, the foreign company shall remove the shares from the branch register and register them in such other register within Mauritius as is specified in the application.

(10) Sections 140, 141, 142 and 143 shall, with such adaptations and modifications as may be necessary, apply respectively to the index of persons holding shares in a branch register and to the inspection and the closing of the register.

(11) Sections 86, 87, 88 and 143 shall with such adaptations and modifications as may be necessary, apply with respect to the transfer of shares on, and the rectification of, the branch register.

(12) A branch register shall be *prima facie* evidence of any matters by this Part directed or authorized to be inserted therein.

(13) A certificate under the seal of a foreign company specifying any shares held by any member of that company and registered in the branch register shall be *prima facie* evidence of the title of the member to the shares and the registration of the share in the branch register.

**311A. Cessation of business in Mauritius.**

(1) Where a foreign company ceases to have a place of business or to carry on business in Mauritius, it shall within seven days lodge with the Registrar a notice to that effect, and as from the day on which the notice is lodged its obligation to lodge any document other than a document that ought to have been lodged shall cease, and the Registrar shall on the expiry of three months after the lodging of the notice remove the name of the company from his register.

(2) Where a foreign company goes into liquidation or is dissolved in its place of incorporation or origin -

- (a) every person who immediately before the commencement of the liquidation proceedings was an authorized agent shall within one month after the commencement of the liquidation or the dissolution lodge or cause to be lodged with the Registrar a notice to that effect and, where a liquidator is appointed, notice of the appointment; and
- (b) the liquidator shall, until a liquidator for Mauritius is appointed by the Court, have the powers and functions of a liquidator for Mauritius.

(3) A liquidator of a foreign company appointed for Mauritius by the Court or a person exercising the powers and functions of such a liquidator shall -

- (a) before any distribution of the foreign company's assets is made, by advertisement in a newspaper circulating generally in each country where the foreign company had been carrying on business before the liquidation and where no liquidator has been appointed for that place, invite all creditors to make their claims against the foreign company within a reasonable time before the distribution;
- (b) not, subject to subsection (7), without leave of the Court, pay out any creditor to the exclusion of any other creditor;
- (c) unless the Court otherwise directs, only recover and realize the assets of the foreign company in Mauritius and shall, subject to paragraph (b) and to subsection (7), pay the net amount so recovered and realized to the liquidator of that foreign company for the place where it was formed or incorporated after paying any debts and satisfying any liabilities incurred in Mauritius by the foreign company.

(4) Where a foreign company has been wound up so far as its assets in Mauritius are concerned and there is no liquidator for the place of its incorporation or origin, the liquidator may apply to the Court for directions as to the disposal of the net amount recovered under subsection (3).

(5) On receipt of a notice from an authorized agent that the company has been dissolved the Registrar shall remove the name of the company from his register.

(6) Where the Registrar has reasonable cause to believe that a foreign company has ceased to carry on business or to have a place of business in Mauritius, sections 290 to 294 shall, with such adaptations and modifications as may be necessary, apply to a foreign company as they apply to a company.

(7) Section 283 shall, with such adaptations and modifications as may be necessary, apply to a foreign company as it applies to a company under this Act.

### **311B Offshore Business**

(1) A company registered under this Act or a foreign company may be granted an Offshore Certificate under Section 311 B.

(2) A company to which an Offshore Certificate has been granted shall not carry on banking business or any business other than business conducted with non-residents in currencies other than the Mauritian rupee except for such activities as may be incidental to its business and as may be allowed under the terms and conditions set out in the Certificate.

(3) No Company to which an Offshore Certificate has been granted shall, except with the approval of the Minister-

- (a) be merged or consolidated with any other company or foreign company;
- (b) cause or permit any interest in any class of voting capital, which would entitle the holder thereof to 15 per cent or more of the voting strength of that class, to be acquired directly or indirectly by any person;
- (c) make any alteration to the instrument under which it is incorporated.

### **311C Offshore Companies Committee.**

(1) There is established for the purposes of this Act an Offshore Companies Committee.

(2) The Committee shall consist of-

- (i) a Chairman to be appointed by the Minister;
- (ii) a representative of the Prime Minister's Office;
- (iii) a representative of the Attorney-General's Office;
- (iv) a representative of the Ministry of Finance;
- (v) a representative of the Bank of Mauritius; and
- (vi) such other persons, not exceeding three in number, as the Minister may appoint.

(3) The Minister shall designate a public officer, who shall be known as the Secretary for Offshore Companies, to act as Secretary to the Committee.

(4) (a) Subject to subsection 6 the Committee shall examine every application made pursuant to section 311D, and make recommendations to the Minister.

(b) In the exercise of its functions under paragraph (a), the Committee shall, having regard to the nature of any

application before it, consult the Controller of Insurance, the Stock Exchange Commission or any other relevant authority, as appropriate.

(5) The Committee shall publish from time to time, with the approval of the Minister, guidelines as it thinks fit relating to applications for Offshore Certificates.

(6) The Committee shall not recommend the granting of an Offshore Certificate unless it is satisfied as to-

- (i) the technical knowledge, experience, financial conditions and history of the applicant;
- (ii) the adequacy of its capital structure;
- (iii) the character of its business and its management and market potential;
- (iv) the adequacy of its accounting and control systems and records;
- (v) the ability and willingness of the applicant to comply with such other conditions as may be imposed pursuant to this Act or any other enactment.

### **311D. Offshore Certificate.**

(1) Every application for an Offshore Certificate shall be made to the Secretary for Offshore Companies in such form as may be prescribed

(2) The Secretary for Offshore Companies shall inform the Chairman of the Offshore Companies Committee of any application.

(3) Every Applicant shall furnish such information as may be required by the Committee for Offshore Companies in connection with its application

(4) The Minister may, on the recommendation of the Offshore Companies Committee-

- (a) grant an Offshore Certificate subject to such terms and conditions as he may deem necessary;
- (b) vary, suspend or revoke part or whole of the

certificate.

(5) Where the Minister considers that a Certificate issued under subsection (4) should be revoked or that the terms of the Certificate should be varied the Secretary for Offshore Companies shall-

(a) serve on the offshore company a written notice to that effect; and

(b) invite the offshore company to make, within a period of one month from the date of service of the notice, any representation it may wish to make with respect to the proposed revocation or variation.

(6) The Minister may revoke or vary the Certificate after the expiration of the period specified in subsection (5), but shall before deciding whether or not to revoke or vary the Certificate, take into consideration any representation made under subsection 5(b) by the offshore company.

### **PART XIII - MISCELLANEOUS**

#### **312. Service of documents.**

Any document or notice required to be served on or given to a company may be left at or sent by registered post to, the registered office.

#### **313. Prohibition of large partnerships.**

(1) No company, association or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of any other enactment or of letters patent.

(2) Nothing in this section shall affect civil partnerships (societes civiles) formed under the Code Napoleon and those civil partnerships shall continue to be governed by that Code.

### 314. Disposal of unclaimed shares.

(1) Where by the exercise of reasonable diligence a company is unable to discover the whereabouts of a member for a period of not less than 6 years, the company may cause an advertisement to be published in two daily newspapers stating that the company after the expiry of one month from the date of the last advertisement intends to transfer the shares to the Official Receiver.

(2) Where after the expiry of one month from the date of the last advertisement the whereabouts of the member remain unknown, the company may transfer the shares held by the member in the company to the Official Receiver and for that purpose may execute for and on behalf of the owner a transfer of those shares to the Official Receiver.

(3) The Official Receiver shall sell or dispose of any shares so received in such manner and at such time as he thinks fit and shall deal with the proceeds of the sale or disposal as if they were unclaimed moneys paid to him pursuant to section 278.

### 315. Civil liability.

(1) Where a company which is not authorized to do so carries on business in a particular manner, every officer and member who has knowledge of the fact shall be jointly and severally liable for the payment and discharge of every debt and liability incurred by the company in carrying on such business.

(2) Every officer who willfully pays or permits to be paid any dividend or bonus to a member otherwise than out of profits shall be jointly and severally liable to the creditors of the company for the amount of any debt due by the company to the extent by which the dividend or bonus paid exceeds the profits.

(3) Where in the course of the winding up of a company or in any proceedings against a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or of any other person or for any fraudulent purpose the Court may, on the application of the liquidator or any creditor or contributory of the company, if it thinks fit, declare that any person who was knowingly a party to the carrying on of the business in that manner shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court may direct.

(4) Where a person has been convicted of an offence under section 324 (*contracting debt with no reasonable prospect of payment*) the Court may, on the application of the liquidator or any creditor or contributory of the company, if it thinks fit, declare

that the person shall be personally responsible without any limitation of liability for the payment of the whole or any part of that debt.

(5) Where the Court makes a declaration under subsection (3) or(4), it may give such further directions as it thinks fit, for the purpose of giving effect to that declaration, including provision for making the liability of any person under the declaration a charge on any debt or obligation due from the company to him, or on any charge or any interest in any charge on any assets of the company held by or vested in him or any corporation or person acting on his behalf, or any person claiming as assignee from or through the person liable or any corporation acting on his behalf, and may from time to time make such further order as is necessary for the propose of enforcing any charge imposed under this subsection.

(6) For the purpose of subsection (5) "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation or charge, was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration, given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(7) Where it appears that a person who has taken part in the formation or promotion or winding up of a company to which this subsection applies or any past or present liquidator or officer has misapplied or retained or become liable or accountable for any money or property of the company or been guilty of any negligence, default, or breach of duty in relation to the company, the Court may on the application of the liquidator or of any creditor or contributory examine the conduct of such person, liquidator or officer and compel him to repay or restore the money or property or any part thereof with interest at such rate as the Court thinks fit, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, negligence, default or breach of duty as the Court thinks fit.

(8) Subsection (7) shall apply to and in respect of the receipt of any money or property by any officer during the 2 years preceding the commencement of the winding up whether by way of salary or otherwise appearing to the Court to be unfair or unjust to other members of the company.

(9) Where the Court is satisfied that an application was made under subsection (7) without reasonable cause, it may order the whole or any part of the costs incurred by the person against whom the order was sought, to be paid by the applicant.

(10) Subsection (7) shall apply to a company -

- (a) which is in the course of being wound up;
- (b) in respect of which an inspector is making an investigation;
- (c) in respect of which a receiver or manager has been appointed; or
- (d) which has ceased to carry on business or is unable to pay its debts.

### 316. Power to grant relief.

(1) Where in any proceedings before any Court for negligence, default or breach of duty against a person to whom this section applies it appears to the Court that he is or may be liable in respect thereof, but that he has acted honestly and reasonably and that, having regards to all the circumstances of the case including those connected with his appointment, he ought fairly to be excused for the negligence, default or breach, the Court may relieve him either wholly or partly from his liability on such terms as the Court thinks fit.

(2) Where a person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, or breach of duty he may apply to the Court for relief, and the Court shall have the same power to relieve him as under this section it would have had if it had been a Court before which proceedings against him for negligence, default, or breach or duty had been brought.

(3) The section shall apply to -

- (a) an officer;
- (b) a person employed by a company as auditor;
- (c) an expert;
- (d) a person who is a receiver or manager or liquidator appointed or directed by the Court to carry out any duty under this Act in relation to a company and any other persons so appointed or so directed; and
- (e) a debenture holder's representative.

### 317. Irregularities in proceedings.

(1) No proceeding under this Act shall be invalidated by any defect, irregularity or deficiency of notice or time unless the

Court is of opinion that substantial injustice has been or may be caused thereby which cannot be remedied by any order of the Court.

(2) The Court may if it thinks fit make an order declaring that such proceeding is valid notwithstanding any such effect, irregularity or deficiency.

(3) Notwithstanding subsections (1) and (2) or any other provision of this Act, where an omission, defect, error or irregularity, including the absence of a quorum at any meeting of the company or of the directors, has occurred in the management or administration of a company whereby a provision of this Act has been contravened, or whereby there has been default in the observance of a memorandum or articles or whereby any proceedings at or in connection with any meeting of the company or of the directors or any assembly purporting to be such a meeting have been rendered ineffective, including the failure to make or lodge with the Registrar any declaration of solvency, the Court -

- (a) may, either of its own motion or on the application of any interested person, make such order as it thinks fit to rectify or cause to be rectified or to nullify or modify or cause to be modified the consequences in law of any such omission, defect, error or irregularity, or to validate any act, matter or thing rendered or alleged to have been rendered invalid by or as a result of any such omission, defect, error or irregularity;
- (b) shall before making any such order satisfy itself that such an order would not do injustice to the company or to any member or creditor;
- (c) where any such order is made, may give such ancillary or consequential directions as it thinks fit; and
- (d) may determine what notice or summons is to be given to other persons of the intention to make any such application or of the intention to make such an order, and whether and how it should be given or served and whether it should be advertised in any newspaper.

(4) The Court may, whether a company is in process of being wound up or not, on good cause being shown, enlarge or abridge any time for doing any act or taking any proceeding allowed or limited by this Act or any subsidiary enactment made under this Act on such terms as the justice of the case may require and any such enlargement may be ordered although the application for the same is not made until after the time originally allowed or limited.

### 318. Inspection of documents.

(1) Any register, minute book or document of a corporation which is by this Act required to be available for inspection shall, subject to and in accordance with section 37, 40, 78, 85, 102, 115, 139, 142, 144, 146, 151, or 311 be available for inspection at the place where in accordance with that provision it is kept, during the hours in which the registered office of the corporation is accessible to the public.

(2) Any person permitted by this Act to inspect any register, minute book or document of a corporation may enter the relevant premises under subsection (1) and make copies of or take extracts from the register, minute book or document.

### **319. Translations of instruments.**

(1) Where under this Act a corporation is required to lodge with the Registrar any instrument, certificate, contract, statement or document or a certified copy thereof and the same is not written in the English or French language the corporation shall lodge at the same time with the Registrar a certified translation in the English or French language.

(2) Where under this Act a corporation is required to make available for public inspection any instrument, certificate, contract, statement or document and the same is not written in the English or French language, the corporation shall keep at its registered office in Mauritius a certified translation in the English or French language.

(3) Where any account, minute book or other record of a corporation required by this Act to be kept is not kept in the English or French language, the directors shall cause -

- (a) a true translation in the English or French language of such account, minute book or record to be made at intervals of not more than seven days; and
- (b) the translation to be kept with the original account, minute book or record for so long as the original account, minute-book or record is required by this Act to be kept.

### **320. Offences relating to liquidation.**

(1) Every person who being a past or present officer or a contributory of a company which is being wound up -

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property of the company and how and to whom and for what consideration and when the company disposed of

any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;

(b) does not deliver up to the liquidator, as he directs -

(i) all the property of the company in his custody, control or possession and which he is required to deliver up; or

(ii) all books and papers in his custody, control or possession belonging to the company and which he is required to deliver up;

(c) within twelve months preceding the commencement of the winding up or at any time thereafter -

(i) has concealed any part of the property of the company to the value of five hundred rupees or more, or has concealed any debt due to or from the company;

(ii) has fraudulently removed any part of the property of the company to the value of five hundred rupees or more;

(iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company;

(iv) has made or has been privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;

(v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulently parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;

(vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not subsequently paid for;

(vii) has obtained on credit, for or on behalf of the company, under the false pretence that the

company is carrying on its business, any property which the company has not subsequently paid for; or

- (viii) has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing was in the ordinary way of the business of the company;
- (d) makes any material omission in any statement relating to the affairs of the company;
- (e) knowing or believing that a false debt has been proved by any person fails for a period of one month to inform the liquidator thereof;
- (f) prevents the production of any book or paper affecting or relating to the property or affairs of the company;
- (g) within twelve months preceding the commencement of the winding up or at any time thereafter has attempted to account for any part of the property of the company by fictitious losses or expenses; or
- (h) within twelve months preceding the commencement of the winding up or at any time thereafter has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

shall commit an offence.

(2) It shall be a good defence to a charge under subsection (1)(a), (b) or (d) or subparagraph (i), (vii) or (viii) of subsection (1)(c) if the accused proves that he had no intent to defraud, and to a charge under subsection (1)(e) or subparagraph (iii) or (iv) of subsection (1)(c) if he proves that he had no intent to conceal the state of affairs of the company or to defeat the purpose of this Act.

(3) Where a person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(c)(viii), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances shall commit an offence.

**321. Inducement to be appointed liquidator.**

Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall commit an offence.

### **322. Interference with books.**

Every officer or contributory or any company being wound up who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register or book of account or document belonging to the company with intent to defraud or deceive any person shall commit an offence.

### **323. Failure to keep accounts.**

(1) Where on an investigation under Part X or where a company is wound up, it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the investigation or winding up or the period between the registration of the company and the commencement of the investigation or winding up, whichever is less, every officer who is in default shall, unless he acted honestly and shows that in the circumstances in which the business of the company was carried on the default was excusable, commit an offence.

(2) For the purpose of this section, proper books of account shall be deemed not to have been kept in the case of any company -

- (a) where there have not been kept such books of account as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stock takings and except in the case of goods sold by way of ordinary retail trade, of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified;
- (b) where such books or accounts have not been kept in such manner as to enable them to be conveniently and properly audited, whether or not the company has appointed an auditor.

### **324. Contracting debt with no reasonable or probable ground of**

**expectation of ability to pay.**

Where in the course of the winding up of a company or in any proceedings against a company it appears that an officer who was knowingly a party to the contracting of a debt had, at the time the debt was contracted, no reasonable or probable ground of expectation, after taking into consideration the other liabilities, if any, of the company at the time, of the company being able to pay the debt, the officer shall commit an offence.

**325. Offers of Shares or debentures.**

(1) Except with the Registrar's written consent given on the recommendation of the Company Law Advisory Committee any person who goes about or from door to door-

- (a) offering shares for subscription or purchase to the public or any member of the public; or
- (b) seeking or receiving offers to subscribe for or purchase shares from the public or any member of the public,

shall commit an offence.

(2) Subject to subsection (3), any person who offers to sell shares to the public, or to a member of the public, other than a person whose business authorizes him to purchase or sell shares, shall commit an offence.

(3) Subsection (2) shall not apply -

- (a) where the shares to which the offer relates are shares of a class which are quoted on, or in respect of which permission to deal has been granted by, any stock exchange and the offer so states and specifies the stock exchange.
- (b) where the shares to which the offer relates are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public and such offer is accompanied by a document that complies with the requirements of the Act as to prospectuses;
- (c) to any application for shares in or debentures or to any invitation to deposit money with or lend money to a company which is issued, circulated, distributed or made subject to and in accordance with this Act;

(d) where the offer relates to deposits or loans to a company of the kind referred to in section 37(5).

(4) Subject to the other provisions of this section a person shall not make any oral invitation or offer to the public or to any member of the public to subscribe for or to purchase shares.

(5) In this section "shares" means shares of a company whether the company is in existence or is about to be formed and includes debentures and all such documents as confer or purport to confer on the holder thereof any claim against a company, whether such claim is present or future or certain or contingent or ascertained or is to arise only in damages.

(6) In this section a reference to an offer or offering of shares for subscription or purchase shall include an offer of shares by way of barter or exchange, and a reference to an offer of shares shall include an offer by means of broadcasting, television or cinematograph, but where an offer is made by means of broadcasting, television or cinematograph, the prospectus by which the offer is required to be accompanied by virtue of this section shall be deemed to accompany the offer if -

- (a) the prospectus is prepared by the person on whose behalf the offer is made;
- (b) the public is informed at the same time and by the same means as that by which the offer is made that a copy of the prospectus will be supplied on request being made at a specified address;
- (c) where a request for a copy of a prospectus is made at that address within one month after the offer was made the person making the request is supplied with a copy within seven days after the request was made; and
- (d) the offer contains no more information or matter than the information or matter referred to in paragraphs (a) and (b) of section 38(1).

(7) For the purposes of subsection (1) a person shall not in relation to a company be regarded as not being a member of the public by reason that he is a member of the company or a purchaser of goods from the company.

### **326. False and misleading statement.**

(1) Every company which advertises, circulates or publishes any statement of the amount of its capital which is misleading or in which the amount of nominal or authorized capital is stated without the words "nominal" or "authorized" or in which the amount

of capital or authorized or subscribed capital is stated but the amount of paid-up capital or the amount of any charge or uncalled capital is not stated as prominently as the amount of authorized or subscribed capital is stated, shall commit an offence.

(2) Every person who in any return, report or certificate or in accounts or in any other document required by or for the purposes of this Act willfully makes or authorises the making of a statement which is false or misleading in a material respect knowing it to be false or misleading or willfully omits or authorizes the omission of any matter or thing without which the document is misleading in a material respect and in known by him to be misleading shall commit an offence.

(3) For the purposes of subsection (2), where a person at a meeting votes in favour of the making of a statement referred to in that subsection, he shall be deemed to have authorized the making of the statement.

### **327. Statement by Officers.**

An officer who, with intent to deceive, makes or furnishes, or knowingly and wilfully authorizes or permits the making or furnishing of, any false or misleading statement or report relating to the affairs of a company to -

- (a) a director, auditor, member, receiver, debenture holder or debenture holders' representative;
- (b) in the case of a company that is a subsidiary, an auditor of the holding company; or
- (c) a stock exchange or an officer of the stock exchange,

shall commit an offence.

### **328. Deceptive inducements.**

(1) Any person who, by any statement, promise or forecast which he knows to be misleading, false or deceptive or by any dishonest concealment of material facts or by the reckless making of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into or offer to enter into -

- (a) any agreement for or with a view to acquiring, disposing of, subscribing to or underwriting

marketable securities or lending or depositing money to or with any company; or

- (b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of marketable securities or by reference to fluctuations in the value of marketable securities,

shall commit an offence.

(2) Any officer or authorized agent who by any deceitful means or false promise and with intent to defraud, causes or procures any money to be paid or any movable, to be delivered to that company or to himself or any other person for the use of benefit or on account of that company shall commit an offence.

### 329. Use of word "Limited".

Where any person carries on business under any name or title of which "Limited" or "Limitee" or any abbreviation thereof is the final word or abbreviation the person shall unless registered with limited liability commit an offence.

### 330. Fraud by officers.

Every person who while an officer of a company -

- (a) has by deceitful, fraudulent or dishonest means or by means of any other fraud induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company, has made or cause to be made any gift or transfer of or charge on, or has cause or connived at the levying of any execution against, the property of the company; or
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since or within two months before the date of any unsatisfied judgement or order for payment of money obtained against the company-

shall commit an offence.

### 331. Other offences.

Every person who -

- (a) issues or makes use of a document or certificate kept or given under this Act which does not comply with this Act;
- (b) fails to do any act within the time within which it is required by this Act to be done;
- (c) fails to comply with a request, direction or order issued under this Act by a Court, by the Registrar or by any other person;
- (d) makes use of any name or title which he is not under the Act authorized to use;
- (e) divulges or makes use of any information obtained under this Act which he is not otherwise authorized to disclose;
- (f) personates a member or debenture holder for the purpose of obtaining an advantage;
- (g) uses the seal of a company or issues any letter, bill or document relating to a company otherwise than in accordance with this Act;
- (h) in the exercise of any powers or functions conferred upon him by this Act or by any subsidiary enactment made under this Act, fails to act in accordance with the instrument which confers the function or power;
- (i) in making any statement required by this Act to be made by way of declaration, knowingly or in breach of section 334(3) makes a statement which is untrue or misleading;
- (j) otherwise contravenes this Act or any subsidiary enactment made under this Act,

shall commit an offence.

### 332. **Jurisdiction.**

Notwithstanding -

- (a) section 114 of the Courts Act; and
- (b) section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act,

a Magistrate shall have jurisdiction to try an offence under this Act and any subsidiary enactment made under this Act.

### 333. **Penalties.**

A person who commits an offence under this Act shall be liable on conviction -

- (a) in respect of an offence against the sections specified in the Ninth Schedule, to imprisonment for a term not exceeding five years and a fine not exceeding fifty thousand rupees ;
- (b) in any other case, to a fine not exceeding ten thousand rupees.

Where a person is convicted for an offence of

- (a) failure to pay the registration fee under Section 340; or
- (b) failure to lodge the annual return, he shall, in addition to any fine imposed under subsection (1) be ordered by the Court to pay the registration fee or to lodge the annual return as the case may be within such time as the Court may determine.

### 334. Liability of certain persons.

(1) Where an offence is committed in respect of an obligation which is placed by this Act on the directors, every director shall commit an offence.

(2) Where a foreign company to which Part XII applies commits an offence every authorised agent shall commit the like offence unless he proves that the offence was committed without his knowledge or that he had exercised due diligence to ensure that the offence was not committed.

(3) Where in any document issued under this Act there is any untrue or misleading statement or wilful non-disclosure, every person who authorised or was concerned with the issue of the document shall commit an offence unless he proves that -

- (a) the statement or non-disclosure was immaterial; or
- (b) he had reasonable ground to believe and did believe that the statement was true or the non-disclosure immaterial.

(4) Where a company is authorized under this Act to allow any person to do any act on its behalf and the company contravenes this Act as a result of the default of that person, that person shall commit an offence.

(5) In any proceedings against a person for failing to take

all reasonable steps to secure compliance by a company with this Act, it shall be a defence to prove that he had reasonable grounds to believe and did believe that a person was charged with the duty of seeing that the Act was complied with and was in a position to discharge that duty.

**335. Reports of offences.**

Where the Court, the Official Receiver, the Registrar or a liquidator is of opinion that an offence against the Act has been committed by any person, it shall forthwith refer the matter to the Director of Public Prosecutions.

**336. Production and inspection of books where offence suspected.**

(1) If on application made to the Court by the Registrar or a police officer of or above the rank of Assistant Superintendent, there is shown to be reasonable cause to believe that any person has, while a director or other officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, the Court may make an order -

- (a) authorizing any person named therein to inspect the said books or papers or any of them for the purposes of investigating and obtaining evidence of the offence; or
- (b) requiring the secretary of the company or such other officer thereof as may be named in order to produce the said books or papers or any of them to a person named in the order at a place so named by a special date.

(2) An auditor of a company shall for the purposes of this section be deemed to be an officer of the company.

**337. Costs in actions by limited companies.**

Where a company or a foreign company is a plaintiff in any action or other legal proceeding, the Court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company or foreign 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.

**338. Copies of documents.**

Where a copy of an order or other document is required to be lodged with the Registrar or served under this Act, the copy shall be certified to be a true copy by a person authorized by the person or authority making the order or issuing the document.

### 339. Arbitration.

(1) A company may, by writing under the hands of two directors agree to refer and may refer, to arbitration, in accordance with the Code of Civil Procedure, any existing or future dispute between itself and any other company or person.

(2) Every company which is a party to an arbitration may delegate to the arbitrator power to settle any term or to determine any matter capable of being lawfully settled or determined by the company itself or by its directors or other governing body.

### 340. Fees.

(1) There shall be paid to the Registrar-

- (a) in the case of a foreign company, at the time of its registration, and in respect of every subsequent year, not later than 20 January in that year. the registration fee specified in item 1 of Part 1 of the Eighth Schedule.
- (b) in the case of a company limited by a guarantee or a company with limited liability but without the word "limited" in its name-
  - (i) at the time of its incorporation, the processing fee specified in item 2(a) of Part I of the Eighth Schedule and the registration fee referred to in subparagraph (ii); and
  - (ii) in respect of every subsequent year, not later than 20 January in that year, the registration fee specified in item 2(b) of Part I of the Eighth Schedule;
- (c) in the case of any other company -
  - (i) at the time of its incorporation, the processing fee specified in item 3(a) of Part I of the Eighth Schedule and the registration fee referred to in subparagraph (ii); and
  - (ii) in respect of every subsequent year, not later than 20 January in that year, the registration

fee corresponding to its issued share capital specified in item 3(b) of Part I of the Eighth Schedule.

- (d) in the case of a commercial partnership (*société commerciale* including *société commerciale de fait*), at the time of its registration with the Registrar under the code de Commerce and in respect of every subsequent year, not later than 20 January in that year, the registration fee specified in item 4 of Part I of the Eighth Schedule;
- (e) in respect of the matters specified in the first column of Part 1A of the Eighth Schedule, the fee corresponding to that matter specified in the second column of that Schedule.

(2) For the purposes of subsection (1), "year" includes part of a year.

(3) Subject to section 340A, the registration fee payable under subsection (1) shall be paid so long as the company or commercial partnership, as the case may be, remains registered with the Registrar.

(4) Where at any time during the year, the issued share capital of company referred to in item 3 of Part I of the Eighth Schedule is increased, that company shall, at the time the return of allotment of shares is lodged under section 49 or 50 pay, in respect of that year, the difference between the registration fee corresponding to its new share capital and the registration fee already paid.

(5) Where a company or commercial partnership fails to pay the registration fee payable under subsection (1) on or before the last day on which it is payable under that subsection, it shall be liable to pay, in addition to the registration fee, a surcharge of 50 percent of the registration fee payable.

(6) Where a time limit is prescribed under any provision of this Act for the lodging of any document with the Registrar a penalty fee shall be payable to the Registrar at the rate prescribed by Part II of the Eighth Schedule on any document lodged after the expiration of the prescribed time limit in addition to payment of the fee prescribed under subsection (1).

(7) The Registrar may accept the payment of a penalty fee as purging the offence committed under section 331(b) of failing to do an act within the time which it is required by this Act to be done, but in the case of repeated offending or of excessive delay he may report the matter to the Director of Public Prosecutions under

section 335.

**340A. Registration fee not payable in case of cessation of business**

Where a company or commercial partnership has ceased to carry on business and in respect of which a winding-up resolution or striking-off procedure or a dissolution procedure, as the case may be, has been initiated, no registration fee under section 340 shall be required to be paid as from the year immediately following the year in which the procedure has been initiated.

**340B. Publication of names of companies not paying registration fees**

(1) Without prejudice to any other action which the Registrar may take under the Act, where a company fails to pay the registration fee under section 340 or fails to lodge its annual return, the Registrar may, subject to subsection (2), cause to be published, not later than 3 months after the due date, in 2 newspapers in circulation in Mauritius, the name of the company, the name and address of its directors and the year in respect of which the registration fee has not been paid or the annual return has not been lodged, as the case may be.

(2) The Registrar shall, prior to the publication referred to in subsection (1), notify the company in writing of his intention to publish the name of the company in accordance with subsection (1), unless the company pays the registration fee due or lodges its annual return, as the case may be, within 7 days of the date of the notice.

**340C Use of computer system**

(1) Notwithstanding the other provisions of this Act and any regulations made thereunder, the Registrar may authorise -

- (a) the incorporation or registration of a company or the registration of a commercial partnership (*société commerciale* including *société commerciale de fait*);
- (b) the payment of processing fee, registration fee and other fees under section 340;
- (c) the submission of annual return and the lodging of any notice or document; or

- (d) the performance of any act or thing which is required to be done in relation to paragraphs (a) to (c),

to be made, submitted or done electronically through such computer system as may be approved by him.

(2) with effect from such date as may be notified in the *Gazette*, the Registrar may direct that any matter, act or thing referred to in subsection (1) shall be made, submitted or done electronically or otherwise.

### **341. Rules.**

- (1) The judges of the Supreme Court may make rules -
- (a) with respect to proceedings and the practice and procedure of the Court under this Act; and
  - (b) generally with respect to the winding up of companies.
- (2) (a) Subject to paragraph (b) until rules have been made under this section, the rules of procedure regulating in England the winding up of companies shall, except as to fees and costs, be followed in the Court as nearly as may be applicable, and the table and costs provided by the Bankruptcy Rules shall be observed as nearly as may be in the Court.
- (b) The Companies Winding up Rules made under the Bankruptcy Act shall remain in force in so far as applicable until repealed or replaced by rules under this Act.

### **342. Prescribed forms.**

(1) The forms set out in the Tenth Schedule shall be the prescribed forms to be used for the purposes of the sections referred to in each form.

(2) Where no form is given in the Tenth Schedule for any matter, the forms to be used shall, until rules covering the matter are made under section 341 be, as nearly as may be applicable, the forms prescribed in regulations made under the Companies Acts enforced in the United Kingdom.

### 343. Regulations.

(1) The Minister may make such regulations as he deems necessary for carrying into effect the provisions of this Act.

(2) Any regulations made under this section may provide for the payment of fees or remuneration and the levying of charges.

### 344. Amendment of Schedules.

The Minister may, by regulations published in the Gazette, amend or replace the provisions of any of the Schedules other than the Ninth Schedule.

### 345. Fees paid to company.

(1) Where under this Act a fee is payable to a company for inspecting or obtaining a copy of, any book or document, the company may by resolution provide that a lesser fee shall be paid.

(2) The maximum fee payable for the inspection or obtaining of copies of any book or document is the fee payable in the Eleventh Schedule.

### 346. Repeals.

The following enactments are repealed -

- (a) Companies (Designation Act);
- (b) Companies Act 1913.

### 347. Transitional provisions.

(1) (a) Any person appointed under an Act repealed by section 346 and holding office at the commencement of this Act, shall remain in office as if he had been appointed under this Act.

(b) Any act made, executed, issued or passed under an Act repealed by section 346 and in force and operative at the commencement of this Act, shall so far as it could have been made, executed, issued or passed, under this Act have effect as if made, executed, issued or passed, under this Act.

(c) Subject to the provisions of this section, the memorandum of association and articles of association of an existing company in force and operative at the commencement of this Act, and the provisions of Table A in the First Schedule to the Companies Act 1913 if adopted as all or part of the articles of a company at the commencement of this

Act, shall have effect as if made or adopted under this Act.

(2) Any register, fund and account kept under any provision of an Act repealed by this Act shall be deemed to be part of the register, fund and account kept under the corresponding provision of this Act.

(3) Subject to the other provisions of this Act, a company registered under an Act repealed by section 346 or any enactment repealed by that Act shall be deemed to be registered under this Act and this Act shall extend and apply to the company accordingly and any reference in this Act, express or implied, to the date of registration of such a company shall be construed as a reference to the date upon which the company was registered under the repealed Act or any enactment repealed by that Act.

(4) The provisions of this Act with respect to winding up, shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not been passed and for the purposes of the winding up of the Act under which the winding up commenced and any rules made thereunder shall be deemed to remain in full force.

(5) In the case of a fixed or floating charge or debenture given by a company and inscribed before the commencement of this Act, the instrument creating the charge may be varied so as to provide for the appointment of a receiver and manager in the event of default, and such variation may be inscribed without affecting the priority of the said charge or debenture.

(6) (a) Any extraordinary resolution duly passed before the commencement of this Act shall be deemed to be a special resolution.

(b) Any matter which in the case of a company registered before the commencement of this Act was authorised to be done by extraordinary resolution may be done by special resolution.

(7) (a) A private company having more than twenty-five members shall on the commencement of this Act be converted by operation of this subsection into a public company and the Registrar shall without fee issue the company with a certificate under section 28(3).

(b) The company so converted into a public company shall within 3 months of the commencement of this Act lodge a statement in lieu of prospectus.

(8) Where a company registered before the commencement of this Act, other than an unlimited company, does not satisfy the requirement of section 12(1)(a) it shall within six months of the commencement of this Act, comply with the requirements of section 12(1).

(9) (a) Subject in the case of a participating preference share to subsection (13), where at the commencement of this Act any designated share carries voting rights which differ from the voting rights attaching under section 67 to a share, other than a preference share, of the company in respect of which the same amount of capital has been paid up, the company shall within a period of one year from the commencement of this Act bring such voting rights on the designated share into conformity with the said voting rights attaching under section 67 either -

(i) by increasing the voting rights on the designated share where this is necessary to bring them into conformity with the voting rights attaching to such share under section 67; or

(ii) by increasing the voting rights on other voting shares of the company to the extent necessary to confer on such other voting shares an equal number of voting rights in proportion to the paid up capital on each of such shares as is carried by the designated share.

(b) A "Designated Share" under paragraph (a) means any share other than a preference share -

(i) in a public company, including a company converted under subsection (7), or

(ii) a subsidiary or holding company of any such public company.

(10) Before the voting rights are brought into conformity under subsection (9), the holder of the share shall not exercise in respect of the share any voting rights in excess of the voting rights which attach to the share under section 67 in respect of a resolution placed before the company which -

(a) relates to the appointment or re-appointment of a director or any variation in the terms of an agreement between the company and a director of the company; or

(b) relates to the appointment of buying or selling agents.

(11) Where subsection (9) is not complied with, the company shall, within one month of the expiry of the period of one year mentioned in that subsection, apply to the Court for an order specifying the manner in which that subsection shall be complied with, and any order under subsection (12) made by the Court in this behalf shall bind the company and all its members.

(12) Where on an application under subsection (11), it is established by a member that substantial hardship would be caused to him if the shares held by him were forthwith to be brought into compliance with section 67 the Court may, if it considers it to be just and equitable to all the other members of the company make an order -

- (a) enlarging up to date not later than 5 years after the commencement of this Act the time within which the voting rights on the shares must be brought in conformity with section 67; or
- (b) directing that the company enter into contract of service with a member holding shares carrying special voting rights who holds office or employment with the company, such contract to be on terms and conditions approved by the Court as giving effect to the reasonable expectations of the member and the company at the time the member took office.

(13) (a) Where at the commencement of this Act a participating preference share of a public company or subsidiary or holding company of a public company carries no voting rights or carries voting rights which are more restricted than those carried by the ordinary shares of the company, the holder of such share shall, whether or not the holder receives a notice under paragraph (b), within two months of the commencement of this Act give notice of election to the company -

- (i) to have his share converted into an ordinary share of the company carrying the same right to vote as an ordinary share; or
  - (ii) to retain his participating preference share with such restricted right to vote or absence of vote as such share carried immediately prior to the commencement of this Act.
- (b) Within one month of the commencement of this Act, every company having participating preference shares affected by paragraph (a) of this subsection shall give to each holder of such shares notice of his right of election.

- (c) A participating preference shareholder who elects under paragraph (a)(i) shall, subject to section 84, forward to the company together with his notice of election any share certificate in relation to the share issued to him by the company.
- (d) A shareholder coming within paragraph (a) who fails within the time prescribed in that paragraph (a) to give any notice of election to the company shall be deemed to have elected to have his share converted into an ordinary share.
- (e) Upon the expiry of the period specified in paragraph (a) all such participating preference shares shall be converted into ordinary shares except where the shareholder has elected to retain his participating preference share under paragraph (a)(ii), and each converted share shall carry the same right to vote as is carried by an ordinary share of the company.
- (f) The company shall issue to the holder of such share a share certificate in accordance with section 90, but before issuing such certificate the company shall be entitled to call for surrender of any certificate for the participating preference share or evidence under section 84.
- (g) During the period referred to in paragraph (a) no ordinary or special resolution of the general meeting or resolution of the Board of Directors shall without the leave of the Court be effective which relates to either of the matters covered in paragraphs (a) and (b) of subsection (10) and the Court shall only grant such leave where it is satisfied that the rights conferred on participating preference shareholders by this subsection are not prejudiced and that the interest of the company as a whole require such resolutions to be implemented before expiry of the said period of two months.

(14) On the expiry of 2 years from the commencement of this Act every share in a public company or a subsidiary or holding company of a public company other than -

- (i) a preference share; or
- (ii) a participating preference share the holder of which has elected to retain such participation preference share under subsection (13)

shall carry the voting rights prescribed by section 67 except to the extent that an order of the Court on different terms has been granted under subsection (12) or an application is pending before

the Court and in the case of such pending application the period of 2 years above referred to shall be extended to 3 years.

(15) Every company which, before the commencement of this Act, has created a charge specified in section 81(1) shall, within 3 months of the commencement of this Act, lodge with the Registrar a statement giving, with respect to every such charge, the particulars specified in section 81(3) or (4).

(16) Any corporation which holds office as a director of a company at the commencement of this Act shall cease to hold office and the vacancy may be filled as a casual vacancy in accordance with the articles.

(17) Every company which at the date of the commencement of this Act has less than 2 directors shall within one year of the commencement of this Act appoint an additional director so as to comply with section 95 and shall lodge with the Registrar the prescribed notice under section 115(6).

(18) Nothing in section 110(1) shall prevent a corporation which was acting as the secretary of a company immediately before the commencement of this Act from continuing to act as secretary of that company for a period of 12 months after that date and within that time the corporation shall seek the approval of the Registrar to its acting as secretary, and in the event of no approval being obtained within such period its appointment shall lapse.

(19) Every person who became a substantial shareholder before the commencement of this Act shall, within 6 months after that date, give the notice required by section 146(3).

(20) Notwithstanding section 189, a person may act as receiver or manager of the property of a company if his appointment was validly made before the commencement of this Act.

(21) Every foreign company which was not registered under an Act repealed by section 346 but which, immediately before the commencement of this Act, had a place of business or was carrying on business in Mauritius and, on that date, has a place of business or is carrying on business in Mauritius shall be deemed to have established that place of business or commenced to carry on that business on that date, and shall comply with section 303(1) accordingly.

(22) Nothing in Part XII shall require a foreign company which was registered under an Act repealed by section 346 as a foreign company to register under that Part, but the company shall comply with paragraphs (d) and (f) of section 303(1) within one month after the date.

**348. Company law Advisory Committee.**

- (1) The Minister may appoint a Company Law Advisory Committee to assist the Registrar in the exercise of certain powers entrusted to him specified in subsection (4) and to make recommendations to the Minister on amendments to the Schedules and on amendments to the Act.
- (2) The Committee shall have not less than 3 and not more than 5 members with relevant experience.
- (3) The Advisory Committee may -
  - (a) meet from time to time as required in order to carry out their functions;
  - (b) organize their own procedure; and
  - (c) with the consent of the Minister co-opt persons with specialized qualification and experience to assist the Committee at any of its meetings.
- (4) The Registrar may refer the matters arising under the following sections to the Advisory Committee for it to consider and make recommendations to him -
  - (a) section 40(7) and (10) (*Exemption from Second Schedule*);
  - (b) section 44 (*Applications for Stop-Trading Orders*);
  - (c) section 159 (*Exemption from Accounting Requirements*);
  - (d) section 152(2) (*Authorising subsidiary to have different accounting year from holding company*);
  - (e) section 180(1) (*Application to Court to protect rights under take over scheme*);
  - (f) section 203 (*Investigations*);
  - (g) section 206 (*Investigation of Related Corporation*);
  - (h) section 207 (*Investigation of financial or other control of Corporation*);
  - (i) section 214 (*Inspectors appointed in other countries*);
  - (j) section 307(6) (*Waiving compliance by Foreign Company with accounting requirements*);

(k) section 325(1) (*Offering of shares or debentures from door to door*).

**349. Commencement.**

This Act shall come into force on a day to be fixed by Proclamation, and different days may be fixed in respect of different provisions of the Act.

Passed in the Legislative Assembly on the twenty-seventh day of November one thousand nine hundred and eighty-four.

G.MAURICE BRÛ  
Clerk of the Legislative Assembly

**CONTENTS OF SCHEDULES**

**FIRST SCHEDULE**

*(Sections 2, 16, 17, 33)*

**TABLE A**

**Articles regulating the management of a public company limited by shares**

*Paragraph*

	1	Interpretation
2 --	8	Share Capital and Variation of Rights
	9	Lien
10 --	16	Calls on Shares
17 --	20	Transfer of Shares
21 --	24	Transmission of Shares
25 --	32	Forfeiture of Shares
33 --	35	Alteration of Capital
36 --	39	General Meetings
40 --	55	Proceedings at General Meetings
56 --	65	Directors
66 --	71	Powers and Duties of Directors
72 --	83	Proceedings of Directors
84 --	87	Executive and Managing Directors
	88	Associate Directors
	89	Secretary
	90	Seal
	91	Accounts
92 --	99	Dividends and Reserves
100--	101	Capitalisation of Profits
102--	105	Notices
	106	Winding Up
	107	Indemnity

**TABLE B**

**Articles regulating the management of a private company limited by shares**

*Paragraph*

	1	Interpretation and Application of Table A
	2	Transfer of Shares
	3	Alteration of Capital
	4	General Meetings
5 --	13	Directors
	14	Managing Director
	15	Capitalisation of Profits

## TABLE C

**Memorandum of Association of a Company limited by shares**

## TABLE D

**Memorandum and Articles of Association of a Company limited by guarantee***Paragraph*

1 --	2	Number of Members
	3	Definition of Members
4 --	9	General Meetings
10 --	18	Proceedings at General Meetings
19 --	24	Votes of Members
25 --	26	Directors
	27	Powers of Directors
	28	Election of Directors
	29	Business of Company
	30	Audit
31 --	32	Notices

## TABLE E

**Memorandum and Articles of Association of an unlimited company having a share capital**

-----

SECOND SCHEDULE  
(sections 2, 37, 39 to 43)

**Prospectus**

PART	I	- Matters to be stated in prospectus
PART	II	- Reports to be set out
PART	III	- Provisions applying to Parts I and II

-----

THIRD SCHEDULE  
(Section 46)

**Statement in lieu of prospectus**

- PART I - Particulars to be given  
 PART II - Reports to be set out  
 PART III - Provisions applying to Parts I and II

-----

FOURTH SCHEDULE  
(Section 74)

**Provisions relating to Debenture holders' representative and Agency Deed**

*Paragraph*

- 1 Qualification to act as debenture holders' representative
- 2 Agency Deed
- 3 Powers of Debenture holders' representative
- 4 Right of debenture holders' representative to obtain information
- 5 Meetings on Request
- 6 Duties of debenture holders' representative
- 7 Repayment of loans and deposits
- 8 Release of agent from obligations

FIFTH SCHEDULE  
(Section 147)

**Annual Return**

- PART I -- Contents of Return  
 PART II -- Form of Return  
 PART III -- Financial Summary

-----

SIXTH SCHEDULE  
(Sections 156, 157, 159 and 307)

PART I -- Preliminary  
PART II -- Balance Sheet and Profit and Loss Account

*Paragraph*

2 -- 15 Balance Sheet  
16 -- 22 Profit and Loss Account

PART III -- Exceptions

*Paragraph*

23 -- 30 Subpart I -- Holding companies and subsidiaries  
31 -- 32 Subpart II -- Banking and Insurance Companies

PART IV -- Interpretation

Paragraphs 33 - 35

-----

SEVENTH SCHEDULE  
(Section 177)

PART I -- Requirements for take-over offers  
PART II -- Requirements for statement given by offeror corporation  
PART III -- Requirements for statement given by offeree corporation

-----

EIGHTH SCHEDULE

(Sections 308 and 340)

PART I -- Company having a share capital  
 Company not having a share capital  
 Other fees

PART II -- Penalty fees payable in addition to fees under Part I

-----

NINTH SCHEDULE  
 (Section 333)

**Penalties**

TENTH SCHEDULE  
 (Section 432)

**Prescribed Forms**

Form 1 -- Section 11(6) -- Notice of Reservation of Name

Form 2 -- Section 19 -- Declaration of Compliance with the Requirements of the Companies Act

Form 3 -- Section 115 -- Notice of First Directors, Secretary, Chairman and Manager and situation of Registered Office

Form 4 -- Section 96 -- Consent to act as Director

Form 5 -- Section 96 -- Undertaking by Director to take and pay for qualification shares

Form 6 -- Section 96 -- Statement by Director of Registration of qualification shares

Form 7 -- Section 115 -- Notice of Change in Director, Secretary, Manager or Chairman

Form 8 -- Section 92 -- Notice of Change of Registered office

Form 9 -- Section 49 -- Return of Allotments of Shares

Form 10 -- Section 49 -- Statement containing particulars of shares allotted otherwise than for cash

- Form 11 -- Section 50 -- Affidavit of Director providing estimate of value of consideration where shares issued other than for cash
- Form 12 -- Section 81(1) - Notice of particulars of charge
- Form 13 -- Section 81(5) - Notice of assignment of charge
- Form 14 -- Section 81(5) - Notice of valuation in terms of charge
- Form 15 -- Section 81(6)(a) --Memorandum of Payment or Discharge of debt or liability Memorandum of release of property or part of property from charge
- Form 16 -- Section 19 -- Certificate of Incorporation
- Form 17 -- Section 303 -- Certificate of local Registration as a foreign company
- Form 18 -- Section 28 -- Certificate confirming conversion of private company into public company
- Form 19 -- Section 47 -- Certificate that a public company is entitled to commence business
- Form 20 -- Declaration that the conditions of section 47(1) have been complied with
- Form 21 -- Declaration that the provisions of section 47(2) have been complied with
- Form 22 -- Section 166 -- Notice of resignation or removal of Auditor
- Form 23 -- Section 183(1) -- Notice to dissenting share-holder
- Form 24 -- Section 183(6) -- Notice to remaining shareholder

ELEVENTH SCHEDULE  
*Fees under Section 345(2)*

FIRST SCHEDULE  
*(Sections 2, 16, 17 and 33)*

**TABLE A**

**ARTICLES REGULATING THE MANAGEMENT OF A PUBLIC COMPANY LIMITED BY SHARES**

**Interpretation**

1. In these articles the "Act" means the Companies Act.

### Share capital and variation of rights

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Act, preference shares in the company may be issued by the directors and any such share may be issued with such preferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital, or otherwise, as the directors, subject to any ordinary resolution of the company and to the provisions of the Act, determine.

3. Subject to the Act, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are liable to be redeemed.

4. (1) Where at any time the share capital is divided into different classes the rights attached to any class may, whether or not the company is being wound up, 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 a special resolution passed at a separate general meeting of the holders of the shares of the class.

(2) (a) Subject to paragraph (b), the provisions of these articles relating to general meetings shall apply to each separate general meeting.

(b) The quorum for such a meeting shall be 2 persons at least holding or representing by proxy one third of the issued shares of the class and any holder of shares of the class present in person or by proxy may demand a poll.

(3) To every such special resolution section 134 of the Act shall, with such adaptations and modifications as may be necessary, apply.

5. The rights conferred on the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking equally with them.

6. (a) Subject to paragraph (b), the company may exercise the power of paying commissions referred to by the Act.

(b) The rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the Act and the commission shall not exceed the rate of 10 per cent of the price at which the shares in respect of which the same is paid are issued, or an amount equal to 10 per cent of the price as the case may be.

(c) The commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other.

(d) The company may also on any issue of shares pay such brokerage as may be lawful.

7. The company shall not even when it has notice of the fact, be bound by, or be compelled in any way to recognise, any contingent, future or partial interest in any share or, except as is otherwise provided by these articles or by any other law, any

other right in respect of any share, except an absolute right to the entirety thereof in the registered holder.

8. (a) Subject to paragraph (b), every person whose name is entered as a member in the members' register shall be entitled without payment to receive a certificate under the seal of the company in accordance with the Act.

(b) When a share is 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 joint holder shall be sufficient delivery to all the holders.

#### **Lien**

9. (1) (a) The company shall in accordance with section 83 of the Act have a privilege or lien independently of and without the necessity for inscription in priority to any other claim whatsoever over every share, not being a fully paid share, for all money, whether presently payable or not, called or payable at a fixed time in respect of that share, and the company shall also have a like privilege or lien on all shares, other than fully paid shares, registered in the name of a single person for all money presently payable by him or his heir to the company.

(b) The directors may at any time declare any share to be wholly or in part exempt from the provisions of this article.

(2) The company's privilege or lien, if any, on a share shall extend to all dividends payable on the share.

#### **Calls on shares**

10. (1) (a) Subject to paragraph (b), the directors may make calls upon the members in respect of any money unpaid on their shares, whether on account of the nominal value of the shares or by way of premium, which is not by the conditions of allotment made payable at fixed times.

(b) No call shall exceed one fourth of the nominal value of the shares or be payable at less than one month from the date for the payment of the last preceding call.

(c) Every member shall subject to receiving at least 14 days' notice specifying the time or times and place of payment, pay to the company, at the time or times and place specified, the amount called on his shares.

(2) A call may be revoked or postponed as the directors may determine.

11. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.

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

13. (a) Where a sum called in respect of a share is not paid before or on the day appointed for payment, the person from whom the sum is due shall pay interest on

the sum from the day appointed for payment to the time of actual payment at such rate not exceeding the ruling Bank Rate per annum as the directors may determine.

(b) The directors may waive payment of that interest wholly or in part.

14. Any sum which by the terms of issue of a share becomes payable on allotment or at fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these articles be deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable and, in case of non-payable, all the relevant provisions of these articles as to payment of interest and expense, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

15. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

16. The directors may, if they think fit, receive from any member willing to advance it all or any part of the money uncalled and unpaid on any shares held by him, and on all or any part of the money so advanced may, until the sum would but for the advance become payable, pay interest at such rate as may be agreed between the directors and the member paying the sum in advance but which shall not unless the company in general meeting otherwise directs, exceed 10 per cent per annum.

#### **Transfer of Shares**

17. (1) Subject to these articles any member may transfer all or any of his shares by instrument in writing in the form set out in the Third Schedule of the Registration Duty Act.

(2) The instrument shall be executed by or on behalf of the transferor and the transferee and the transferor shall remain the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the members' register in respect thereof.

18. The instrument of transfer must be left for registration at the registered office of the company together with such fee not exceeding 5 rupees as the directors from time to time may require 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, and thereupon the company shall, subject to the powers vested in the directors by these articles, register the transferee as a member and retain the instrument of transfer.

19. The directors may decline to register any transfer of shares not being fully paid shares to a person of whom they do not approve and may also decline to register any transfer of shares on which the company has a lien.

20. The registration of transfers may be suspended at such times and for such periods as the directors may determine not exceeding in the aggregate 30 days in any year.

#### **Transmission of Shares**

21. In case of the death of a member the heirs of the deceased shall be the only persons recognised by the company as having any title to his interest in the shares, but nothing in this article shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

22. (1) Any person becoming entitled to a share in consequence of the death or bankruptcy or insolvency of a member may, on such evidence being produced as may properly be required by the directors but subject to article 23, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof.

(2) The director 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 that member before his death or bankruptcy.

23. (1) Where the person so becoming entitled elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects.

(2) Where he elects to have another person registered he shall testify his election by executing to that person a transfer of the share.

(3) All the limitations, restrictions, and provisions of these articles relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as if the death or bankruptcy or insolvency of the member had not occurred and due notice of transfer signed by that member.

24. (1) Where the registered holder of any share dies or becomes bankrupt or insolvent, his heir or the trustee in bankruptcy of his estate or his assignee as the case may be, shall, on production of such evidence as may be properly required by the directors, be entitled to the same dividend and other advantages, and to the same rights, whether in relation to meetings of the company or to voting or otherwise, as the registered holder would have been entitled to if he had not died or become bankrupt or insolvent.

(2) Where 2 or more persons are jointly entitled to any share in consequence of the death of the registered holder they shall for the purposes of these articles be deemed to be joint holders of the share.

#### **Forfeiture of shares**

25. Where a member fails to pay any call or instalment of a call on the day appointed for payment, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, served 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.

26. The notice shall name a further day, not earlier than the expiry of 14 days from the date of service 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.

27. (1) Where the requirements of a notice referred to in article 26 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.

(2) Such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

28. 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.

29. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall remain liable to pay to the company any money which, at the date of forfeiture were payable by him to the company in respect of the shares, but his liability shall cease if and when the company receives payment in full of all such money in respect of the shares.

30. An affidavit that the declarant is a director or the secretary 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.

31. The company may receive the consideration, if any, given for a forfeited share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and that person shall thereupon be registered as the holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings relating to the forfeiture, sale, or disposal of the share.

32. The provisions of these articles 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 nominal value of the share or by way of premium, as if the sum had been payable by virtue of a call duly made and notified.

#### **Alteration of capital**

33. The company may by ordinary resolution-

- (a) increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall specify;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (c) subdivide its share or any of them into shares of a smaller amount than is fixed by the memorandum in such manner 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;

- (d) 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 or which have been forfeited, and diminish the amount of its share capital by the amount of the shares so cancelled.

34. (1) Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to existing members or to all the holders of the shares of the class or classes being issued in proportion as nearly as may be to their existing holdings.

(2) 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 expiry of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company.

(3) The directors may likewise 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, by reason of the fractional entitlement of the person concerned, be conveniently offered under this article.

35. The company may by special resolution reduce its share capital, any capital redemption reserve or any share premium account in any manner and with, but subject to, any incident authorised, and consent required, by any other law.

#### **General meetings**

36. (1) An annual general meeting of the company shall be held in accordance with the Act.

(2) All general meetings other than the annual general meetings shall be called extraordinary general meetings.

37. A director may whenever he thinks fit convene an extraordinary general meeting, and extraordinary general meetings shall be convened on such requisition or in default may be convened by such requisitionists as provided by the Act.

38. Subject to the provisions of the Act relating to special resolutions and agreements for shorter notice, 14 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 to such persons as are entitled to receive such notices from the company.

39. All business shall be special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of the declaration of a dividend, the consideration of the accounts, balance-sheets, and the report of the directors and auditors, the election of directors in the place of those retiring and the appointment and fixing of the remuneration of the auditors.

#### **Proceedings at general meetings**

40. (1) 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.

(2) Except as may be otherwise provided by these articles, 2 members present in person shall form a quorum.

(3) For the purposes of this article "member" includes a person attending as a proxy or as representing a corporation which is a member.

41. Where within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened on the requisition of members, shall be dissolved and in any other case shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the directors may determine.

42. The chairman, if any, of the Board of Directors shall preside at every general meeting of the company, or if there is no such chairman, or if he is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present shall elect one of their number to be chairman of the meeting.

43. (1) 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.

(2) Where a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(3) Subject to paragraph (2), it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

44. (1) 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-

(a) by the chairman;

(b) by at least 2 members present in person or by proxy;

(c) by any member present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the rights to vote at the meeting; or

(d) by a member holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one tenth of the total sum paid up on all the shares conferring that right.

(2) Unless a poll is 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 containing the minutes 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 the resolution.

(3) The demand for a poll may be withdrawn.

45. (a) Subject to paragraph (b), where a poll is duly demanded it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

(b) A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.

46. 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 casting vote.

47. Subject to any rights or restrictions for the time being attached to any class of shares, at meetings of members or classes of members each member entitled to vote may vote in person or by proxy or by attorney or other duly authorised representative and on a show of hands every person present who is a member or a representative of a member shall have one vote, and on a poll every member present in person or by proxy or by attorney or other duly authorised representative shall have one vote for each share he holds.

48. 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 members' register.

49. A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental disorder may vote, whether on a show of hands or on a poll, by the person who has the management of his estate, and any such person may vote by proxy.

50. 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.

51. (1) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

(2) Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

52. (1) The instrument appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorised in writing or, if the appointer is a corporation, either under seal or under the hand of an officer or agent duly authorised.

(2) A proxy need not be a member of the company.

(3) The instrument appointing a proxy shall be deemed to confer authority, to demand or join in demanding a poll.

53. Where it is desired to afford members an opportunity of voting for or against a resolution, the instrument appointing a proxy shall be in the following form:

I/We ....., of .....

being a member/members of the above-named company, hereby appoint .....

.....of.....

or failing him,..... of .....

as my/our proxy to vote for me/us on my/our behalf at the (annual or extraordinary, as the case may be) general meeting of the company, to be held on the.....day of ..... 19... and at any adjournment thereof.

Signed this ..... day of ..... 19....

This form is to be \*in favour of the resolution.

\_\_\_\_\_ against

\_\_\_\_\_  
\*Strike out whichever is not desired (unless otherwise instructed, the proxy may vote as he thinks fit.)

54. 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, or at such other place in Mauritius as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

55. A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, or the transfer of the share in respect of which the instrument is given, if no confirmation in writing of such death, unsoundness of mind, revocation, or transfer as aforesaid has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

**Directors**

56. (1) The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them.

(2) At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one third of the directors for the time being, or, if their number is not 3 or a multiple of 3, then the number nearest one-third, shall retire from office.

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

58. 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.

59. The company at the meeting at which a director so retires may fill the vacated office by electing a person thereto, and in default the retiring directors shall, if offering himself for re-election and not being disqualified under the Act from holding office as a director, be deemed to have been re-elected, unless at that meeting it is expressly resolved not to fill the vacated office or unless a resolution for the re-election of that director is put to the meeting and lost.

60. The company may by ordinary resolution increase or reduce the number of directors, and may determine in what rotation the increased or reduced number is to go out of office.

61. (1) (a) Subject to paragraph (b), the directors may appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors.

(b) The total number of directors shall not at any time exceed the number fixed in accordance with these articles.

(2) Any director so appointed shall hold office only until the next following annual general meeting, and shall be then eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at that meeting.

62. The company may by ordinary resolution remove a director before the expiry of his period of office, and may by an ordinary resolution appoint another person in his stead and 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.

63. (1) The remuneration of the directors shall be determined by the company in general meeting.

(2) The remuneration shall be deemed to accrue from day to day.

(3) The directors may also be paid all travelling, hotel and other expenses

properly incurred by them in attending and returning from meetings of the company or in connection with the business of the company.

64. The shareholding qualification for directors may be fixed by the company in general meeting and unless and until so fixed no qualification shall be required.

65. The office of director shall become vacant if the director-

- (a) ceases to be a director by virtue of the Act;
- (b) becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (c) becomes prohibited from being a director by reason of any order made under the Act;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental disorder;
- (e) resigns his office by notice in writing to the company;
- (f) for more than 6 months is absent without permission of the directors from meetings of the directors;
- (g) without the consent of the company in general meeting, holds any other office of profit under the company except that of managing director or of manager ; or
- (h) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare the nature of his interest in the manner required by the Act.

#### **Powers and duties of directors**

66. The business of the company shall be managed by the directors who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act, or by these articles, required to be exercised by the company in general meeting.

67. The directors may exercise all the powers of the company to borrow money and to mortgage or charge its undertaking, property, and uncalled capital, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt, liability, or obligation of the company or of any third party.

68. The directors may exercise all the powers of the company in relation to any official seal for use outside Mauritius in relation to branch registers.

69. The directors may by power of attorney appoint any corporation, firm, or person or body of persons, whether nominated directly or indirectly by the directors, to be the agent of the company for such purposes and with such powers, authorities, and discretions, not exceeding those vested in or exercisable by the directors under

these articles, and for such period and subject to such conditions as they think fit, and any such power of attorney may contain such provision for the protection and convenience of persons dealing with any such attorney as the directors think fit and may also authorise any such agent to delegate any power, authority, or discretion vested in him.

70. All cheques, promissory notes, drafts, bills of exchange, and other negotiable instruments, and all receipts for money paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed as the case may be, by any 2 directors or in such other manner as the directors may determine.

71. (1) The directors shall cause minutes to be made-

(a) of all appointments of officers to be engaged in the management of the company's affairs;

(b) of names of directors present at all meetings of the company and of the directors; and

(c) of all proceedings at all meetings of the company and of the directors.

(2) Such minutes shall be signed by the chairman of the next succeeding meeting.

#### **Proceedings of directors**

72. (1) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.

(2) A director may, at any time, and the secretary shall, on the requisition of a director, summon a meeting of the directors.

73. (1) Subject to these articles questions arising at any meeting of directors shall be decided by a majority of votes and a determination by a majority of directors shall for all purposes be deemed a determination of the directors.

(2) In case of an equality of votes the chairman of the meeting shall have a casting vote.

74. A director shall not vote in respect of any contract or proposed contract with the company in which he is interested, or any matter arising therefrom, and if he does so vote his vote shall not be counted.

75. (1) Any director may, with the approval of the directors appoint any person, whether a member of the company or not, to be an alternate or substitute director in his place during such period as he thinks fit.

(2) While a person is holding office as an alternate or substitute director, he shall be entitled to notice of meetings of the directors and to attend and vote thereat accordingly and to exercise all the powers of the appointer in his place.

(3) An alternate or substitute director shall not require any share qualification, and shall vacate office if the appointer vacates office as a director

or removes the appointee from office.

(4) Any appointment or removal under this article shall be effected by notice in writing under the hand of the director affecting the appointment or removal.

76. The quorum necessary for the transaction of the business of the directors may be fixed by the directors and, unless so fixed, shall be 2.

77. 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 articles 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.

78. The directors may elect a chairman of their meeting and determine the period for which he is to hold office and if no chairman is elected, or if at any meeting the chairman is not present within 10 minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

79. The directors may delegate any of their powers to committees consisting of such number of members of their body as they think fit and any committee so formed shall in the exercise of the powers so delegated conform to any limitations that may be imposed on it by the directors.

80. A committee may elect a chairman of its meetings and if no chairman is elected, or if at any meeting the chairman is not present within 10 minutes after the time appointed for holding the meetings, the members present may choose one of their number to be chairman of the meeting.

81. (1) A committee may meet and adjourn as it thinks fit.

(2) Questions arising at any meeting shall be determined by a majority of votes of the members present and in the case of an equality of votes, the chairman shall have a casting vote.

82. 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 is afterwards discovered that there was some defect in the appointment of any director or person acting as such or that any of them was disqualified, be as valid as if the person had been duly appointed and was qualified to be a director.

83. (1) A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

(2) Any such resolution may consist of several documents in like form, each signed by one or more directors.

#### **Executive and managing directors**

84. The directors may appoint one or more of their body to be a manager or

executive director for such period and on such terms as they think fit and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment.

85. (1) The directors may appoint one or more of their body to the office of managing director for such period and on such terms as they think fit and, subject to the terms of any agreement entered into any particular case, may revoke any such appointment.

(2) A director so appointed shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall be automatically determined if he ceases from any cause to be a director.

86. A managing director shall, subject to the terms of any agreement entered into in any particular case, receive such remuneration whether by way of salary, commission, or participation in profits, or partly in one way and partly in another, as the directors may determine.

87. The directors may entrust to and confer upon a managing director any of the powers exercisable by them with such restrictions as they may think fit, and either generally with or to the exclusion of their own powers, and may revoke, withdraw, alter, or vary all or any of those powers.

#### **Associate directors**

88. (1) The directors may appoint any person to be an associate director and may cancel any such appointment.

(2) The directors may fix, determine and vary the powers and remuneration of any person so appointed, but a person so appointed shall not be required to hold any shares to qualify him for appointment nor have any right to attend or vote at any meeting of directors except by the invitation and with the consent of the directors.

(3) An associate director may be removed from office at any time by ordinary resolution of the general meeting.

#### **Secretary**

89. The secretary shall in accordance with the Act be appointed by the directors for such term, at such remuneration, and upon such conditions as they think fit, and any secretary so appointed may be removed by them.

#### **Seal**

90. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf, and every instrument to which the seal is affixed shall be signed by a director and shall be countersigned by the secretary

or by a second director or by some other person appointed by the directors for the purpose.

#### **Accounts**

91. The directors shall cause proper accounting and other records to be kept and shall distribute copies of balance-sheets and other documents as required by the Act, and shall determine whether and to what extent and at what time, place and under what condition the accounting and other records 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 paper of the company except as conferred by law or authorised by the directors or by the company in general meeting.

#### **Dividends and reserves**

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

93. The directors may pay to the members such interim dividend as appear to the directors to be justified by the profits of the company.

94. No dividend shall be paid otherwise than out of profits or shall bear interest against the company.

95. (1) The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think fit as reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending any 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 in the company, as the directors think fit.

(2) The directors may also, without placing them to reserve, carry forward any profits which they think fit not to divide.

96. (1) Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this article as paid on the share.

(2) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but if any share is issued on terms providing that it shall rank for dividend as from a particular date, that share shall rank for dividend accordingly.

97. The directors may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

98. Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets and in particular of paid-up shares, debentures or debenture stock of any other company or

in any one or more of such ways and the directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so paid in order to adjust the rights of all parties, and may vest any such specific assets in such persons as may seem expedient to the directors.

99. (1) Any dividend, interest, or other money payable in cash in respect of shares may be paid by cheque or postal or money order sent through the post directed to the registered address of the holder, or in the case of joint holders, to the registered address of that one of the joint holders who is first named on the members' register or to such person and to such address as the holder or joint holders may in writing direct.

(2) Every such cheque or postal or money order shall be made payable to the order of the person to whom it is sent.

(3) Any one of the 2 or more joint holders may give effectual receipts for any dividends, bonuses, or other money payable in respect of the shares held by them as joint holders.

#### **Capitalisation of Profits**

100. (1) The company in general meeting may, on the recommendation of the directors, resolve that it is desirable to capitalize any part of the reserves for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account not otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions, on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted, distributed and credited as fully paid up to and amongst such members in the proportion aforesaid, or partly in the one way and partly in the other, and the directors shall give effect to such resolution.

(2) A share premium account and a capital redemption reserve may, for the purposes of this article, be applied only in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

101. Where a resolution is passed under article 100 the directors shall make all appropriations and applications of the undivided profits resolved to be capitalized by the resolution, and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required.

- (a) to give effect to the resolution, with full power to the directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions; and
- (b) to authorise any person to enter on behalf of all the members entitled thereto into an agreement with the company providing for the allotment to them respectively credited as fully paid up, of any further shares or

debentures to which they may be entitled upon such capitalization, or, as the case may require, for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalized, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

### **Notices**

102. (1) A notice may be given by the company to any member either personally or by sending it by post to him at his registered address, or, if he has no registered address in Mauritius, to the address, if any, in Mauritius supplied by him to the company for the giving of notices to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting on the day after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

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

104. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy or insolvency of a member by sending it through the post in a prepaid letter, addressed to them by name, or by the title of the heirs of the deceased, or trustee of the bankrupt or assignee of the insolvent or by any like description, at the address, if any, in Mauritius 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 it might have been given if the death or bankruptcy or insolvency had not occurred.

105. (1) Notice of every general meeting shall be given in any manner by these articles authorised to-

(a) every member;

(b) every person entitled to a share in consequence of the death or bankruptcy or insolvency of a member who, but for his death or bankruptcy or insolvency, would be entitled to receive notice of the meeting; and

(c) the debenture holders' representative;

(d) the auditor of the company.

(2) No other person shall be entitled to receive notices of general meetings.

### **Winding Up**

106. (1) Where the company is wound up the liquidator may, with the sanction of a

special resolution of the company, divide in kind amongst the members the assets of the company, whether they consist of property of the same kind or not, and may for the purpose set such value as he deems fair upon any property to be divided and may determine how the division shall be carried out as between the members or different classes of members.

(2) (a) The liquidator may, with the like sanction, vest any such assets in such persons for the benefit of the contributories as the liquidator, with the like sanction, thinks fit.

(b) Nothing in subparagraph (a) shall require a member to accept any share or other security on which there is any liability.

#### **Indemnity**

107. Every director, managing director, agent, auditor, secretary, or other office of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under the Act in which relief is granted to him by the Court in respect of any negligence, default, or breach of duty.

#### **TABLE B**

##### **ARTICLES REGULATING THE MANAGEMENT OF A PRIVATE COMPANY LIMITED BY SHARES**

1. (1) In these articles, "the Act" means the Companies Act.

(2) The articles contained in Table A of the First Schedule to the Act, other than articles 19, 34, 46, 56 to 63, 68, 70, 76 and 85, shall apply to the company.

#### **Transfer of shares**

2. (1) The directors may refuse to register any transfer of a shares-

(a) where the company has a lien on the share;

(b) where the share is not fully paid up;

(c) where any call is due and unpaid on the share;

(d) where the directors have notice of any agreement by the shareholder to transfer only to some specified person or subject to some specified condition.

(2) The directors may also in their absolute discretion and without assigning any reason or specifying any ground decline to register any transfer of shares to any person whether a member or not.

#### **Alteration of capital**

3. Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be at the disposal of the directors who may allot or otherwise dispose of them to such persons, including any directors, and for such consideration and on such terms and conditions as the directors think fit.

#### **General meetings**

4. (1) Anything that may be done by the company under the Act or under these articles by ordinary resolution or special resolution may be done either at a meeting of the shareholders convened in accordance with these articles or in the manner provided by section 124 of the Act.

(2) Where any act or thing is done in accordance with section 124 of the Act it shall not be necessary to call a meeting of the members of the company or to give any previous notice and the provisions of these articles and of Table A of the First Schedule to the Act shall be read so as to give full effect to section 124.

(3) Where no annual general meeting is held everything required to be done at that meeting shall be done by entry in the minute-book within the time prescribed by section 125 of the Act for the holding of the annual general meeting.

#### **Directors**

5. (1) Where any difference or dispute arises between the directors touching the interpretation of these articles or any provision to be substituted for or added to these articles or the conduct, affairs, business or interests of the company and a complete or temporary deadlock in the management by the directors of the affairs of the company is hereby created, the matter in difference or dispute shall be immediately referred to the members of the company at an extraordinary general meeting of the company called for the purpose.

(2) Where at such extraordinary general meeting there is a deadlock between the members, the difference or dispute causing the deadlock shall be referred to the Court.

6. The number of directors shall be not more than 3 and the first directors shall be appointed by the subscribers to the memorandum.

7. (1) The directors may appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors but so that the total number of directors shall not at any time exceed the number fixed in accordance with these articles.

(2) Any director so appointed shall hold office only until the next following annual general meeting and shall then be eligible for election by the company at that meeting as an additional director.

8. (1) The directors shall be paid out of the funds of the company such sum or at such rate per annum, by way of remuneration for their services, as the company may at any general meeting by resolution determine, and any such determination shall apply to the year for which the resolution is passed and to all subsequent years until the company in general meeting shall by resolution alter the determination.

(2) Such remuneration may be fixed for all or any of the directors individually or collectively or partly by the one and partly by the other of such means, and any remuneration payable to the directors collectively shall be divided among them in such proportion and in such manner as they may determine, and in default of such determination, shall be divided among them in equal proportions.

9. The directors shall be entitled to be paid reasonable travelling, hotel, entertaining and other expenses incurred in attendance at board meetings and when in any other manner engaged on the business of affairs of the company.

10. All directors of the company shall hold office until they or any of them are removed by special resolution in accordance with article 11, or until they vacate office.

11. (1) The company may by special resolution remove any director notwithstanding anything in any agreement between the company and that director.

(2) Any such removal shall be without prejudice to any claim that the director may have for damages for breach of any contract of service between him and the company.

12. (a) The company may by ordinary resolution appoint another person in the place of a director removed from office under article 11, and without prejudice to the powers of the directors under article 7, the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director.

(b) The total number of directors shall not at any time exceed the number fixed in accordance with these articles.

13. The quorum necessary for the transaction of the business of directors may be fixed by the directors, and unless so fixed shall be 2.

#### Managing Director

14. (1) The directors may appoint one or more of their body to the office of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke any such appointment.

(2) A director so appointed shall be subject to the same provisions as to vacation of office as shall apply to the other directors, and if he ceases from any cause to hold office as a director he shall thereupon vacate and immediately cease to hold the office of managing director.

#### TABLE C

#### MEMORANDUM OF ASSOCIATION OF A PUBLIC/PRIVATE COMPANY LIMITED BY SHARES

1. The name of the company is .....
2. The objects for which the company is established are .....  
..... and the doing all such other things  
as are incidental or conducive to the attainment of the above objects.
3. The liability of the members is limited.
4. The share capital of the company is .....rupees  
Divided into .....shares of.....  
Rupees each.

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 they respectively agree to take the number of shares in the capital of the company set opposite their respective names.

\_\_\_\_\_  
Name in full ..... Address ..... Description ..... Signature .....

Dated the ..... day of ..... 19 .....

#### TABLE D

#### MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE

##### Memorandum of Association

1. The name of the company is.....
2. The objects for which the company is established are .....  
..... and the doing of such other things  
as are incidental or conducive to the above objects.
3. The liability of the members is limited.
4. 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 contributories among themselves.

such amount as may be required not exceeding ..... rupees.

We, the several persons whose names, addresses, and descriptions are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

\_\_\_\_\_

Name in full	Address	Description	Signature
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Dated the ..... day of ..... 19.....

**ARTICLES OF ASSOCIATION**

**Number of Members**

1. The company is declared to consist of ..... 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 in pursuance of the articles to have agreed to become a member of the company who .....

**General Meetings**

4. The first general meeting shall be held at such time, not being less than one month nor more than 3 months after the registration of the company, and at such place, as the directors think fit.
5. (1) A general meeting shall be held once in every year at such time, not being more than 15 months after the holding of the last preceding general meeting, and place as may be determined 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 registration occurs, and at such place, as the directors shall appoint.  
  
 (2) 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 2 members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.
6. The abovementioned general meetings shall be called ordinary meetings and all other general meetings shall be called extraordinary.

7. The directors may, where they think fit, and shall, on a requisition made in writing by any 5 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, and where they do not proceed to cause a meeting to be held within 21 days from the date of the requisition being so deposited, the requisitionists or any other 5 members may themselves convene a meeting.

#### **Proceedings at General Meetings**

10. (1) Not less than 7 days' notice, 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 accordance with these articles, or in such other manner, if any, as may be determined by the company in general meeting.

(2) 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 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. (1) 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.

(2) (a) Subject to sub-paragraph (b), the quorum shall-

(i) unless the members of the company at the company at the time of the meeting do not exceed 10 in number, be 5;

(ii) where they exceed 10, one for every 5 additional members up to 50, and one for every 10 additional members after 50;

(b) No quorum shall in any case exceed 30.

13. Where within one hour from the time appointed for the meeting a quorum of members is not present, the meeting-

(a) if convened on the requisition of the members, shall be dissolved;

(b) in any other case, 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 at every general meeting of the company.

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

16. The chairman may, with the consent of 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 3 members, a declaration by the chairman that a resolution has been carried and an entry to that effect in the minute-book 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. Where a poll is 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.

#### **Votes of members**

19. Every member shall have one vote.

20. Where any member is of unsound mind he may vote by his guardian or other local representative.

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

22. (1) On a poll, votes may be given either personally or by proxy.

(2) A proxy shall be appointed in writing under the hand of the appointer.

23. The instrument appointing a proxy shall be deposited at the registered office of the company not less than 48 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-

I, ..... of .....  
 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 .....

**Directors**

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

26. Until directors are appointed the subscribers of the memorandum shall be deemed to be directors.

**Powers of Directors**

27. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company and may exercise any power not required by the Act or these articles to be exercised by the company in general meeting.

**Election of directors**

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

**Business of company**

29. (Here insert Rules as to the manner in which the business is to be conducted)

**Audit**

30. Auditors shall be appointed and their duties regulated in accordance with the Act.

**Notices**

31. 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.

32. 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.

Name in full	Address	Description	Signature
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Dated the ..... day of..... 19.....

**TABLE E**

**MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL**

**Memorandum of Association**

1. The name of the company is .....
2. The objects for which the company is established are.....  
and the doing of all such other things as are incidental or conducive to the above objects.
3. The liability of the members is unlimited.
4. The share capital of the company is ..... rupees divided into ..... shares of ..... rupees each.

We, the several persons whose names, addresses, and descriptions are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Name in full	Address	Description	Signature
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Dated the ..... day of ..... 19....

\_\_\_\_\_

**Articles of Association**

1. The share capital of the company is ..... rupees divided into ..... shares of ..... rupees each.
2. The articles contained in Table A of the First Schedule to the Act shall apply to the company.

Name in full	Address	Description	Signature
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Dated the ..... day of ..... 19.....

SECOND SCHEDULE

(Sections 2, 37, 39 to 43)

**PART I**

**Matters to be stated in prospectus**

1. The number of preference or participating preference shares or other shares conferring special rights, if any, and the nature and extent of the interest of the holders of those shares in the property and profits of the company.
2. The number of shares, if any, fixed by the articles or in the case of a foreign company, the constitution of the company, as the qualification of a director, and any provision in the articles or constitution as to the remuneration of the directors.
3. The names, descriptions and addresses of all the directors or proposed directors.
4. Where the prospectus relates to shares, particulars as to-
  - (a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of-
    - (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
    - (ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;
    - (iii) the repayment of any money borrowed by the company in respect of any matter specified in subparagraph (a) (i) or (ii); and
    - (iv) working capital; and
  - (b) the amounts to be provided in respect of the matters specified in paragraph (a) otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.
5. The nature of the company's business and the names of all related corporations.
6. The time of the opening of the subscription lists.
7. The amount payable on application and allotment on each share or, where such amount may vary during the currency of the offer, the basis of calculation of the amount so payable and, in the case of a second or subsequent offer of shares, the number, description and amount offered for subscription on each previous allotment made within the two preceding years, the number actually allotted, and the amount, if any, paid on the shares so allotted.
8. The number, description, and amount of any shares in or debentures of the company which any person has, or is entitled to be given an option to subscribe for, together with-

- (a) the period during which it is exercisable;
- (b) the price to be paid for shares or debentures subscribed for under it;
- (c) the consideration, if any, given or to be given for it or for the right to it;
- (d) the names and addresses of the persons to whom it or the right to it was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.

9. 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.

10. (1) With respect to any property to which this paragraph applies-

- (a) the names and addresses of the vendors;
- (b) 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;
- (c) short particulars of any transaction relating to the property completed within the two preceding years in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company had any interest direct or indirect.

(2) The property to which this paragraph applies is property purchased or acquired by the company or by any subsidiary of 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 the issue of the prospectus, other than property the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's or the subsidiary's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract.

11. The amount, if any, paid or payable as purchase money in cash, shares, or debentures for any property to which paragraph 10 applies, specifying the amount, if any, payable for goodwill.

12. The amount, if any, paid within the two preceding years, or payable, as commission, but not including commission to sub-underwriters, for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the company, or the rate of any such commission, and the names of any directors or promoters or experts or proposed directors who are entitled to receive any such commission and the amount or rate thereof.

13. The amount or estimated amount of preliminary expenses and the persons by whom

any of these expenses have been paid or are payable and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

14. Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter, and the consideration for the payment or the giving of the benefit.

15. The date of, parties to, and general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus.

16. The names and addresses of the auditors of the company.

17. (1) Full particulars of the nature and extent of the interest, direct or indirect, if any, of every director and of every expert in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director or such an expert consists in being a partner in a firm or a holder of shares or debentures in a corporation, the nature and extent of the interest of the firm, or corporation and, where the interest of such a director or such an expert consists in a holding of shares or debentures in a corporation, a statement of the nature and extent of the interest of the director or expert in the corporation, 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 in the case of a director either to induce him to become or to qualify him as, a director, or otherwise for services rendered by him or by the firm or corporation in connection with the promotion or formation of the company or (in the case of an expert), for services rendered by him or the firm or corporation in connection with the promotion or formation of the company.

(2) For the purposes of this paragraph a director or expert shall be deemed to have an indirect interest in a corporation if he has any beneficial interest in shares or debentures of a corporation which has an interest in the promotion of, or in the property proposed to be acquired by, the company or if he has any beneficial interest in shares or debentures in a related corporation.

18. Where the prospectus relates to shares, if the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

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

## **PART II**

### **Reports to be set out**

20. (1) A report by a qualified auditor, who shall be named in the prospectus,

with respect to-

- (a) profits and losses and assets and liabilities of the company and of any guarantor company referred to in the prospectus in accordance with sub-paragraph (2) or (3) as the case requires; and
- (b) the rates of the dividends, if any, paid by the company in respect of each class of shares in respect of each of the five financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years, and, if no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

(2) Where the company or the guarantor company has no subsidiaries, the report shall-

- (a) so far as regards profits and losses deal with the profits or losses of the company and of the guarantor company referred to in the prospectus in respect of the five financial years immediately preceding the last date to which the accounts of the company or the guarantor company were made up;
- (b) so far as regards assets and liabilities, deal with the assets and the liabilities of the company and of the guarantor company referred to in the prospectus at the last date to which the accounts of the corporation and the guarantor company were made up,

which date shall in no case be more than six months before the issue of the prospectus.

(3) Where the company or the guarantor company has subsidiaries, the report shall-

- (a) so far as regards profits and losses-
  - (i) deal separately with the profits and losses of the company and of every guarantor company which is not a subsidiary in accordance with sub-paragraph (2) and in addition deal-
    - (A) as a whole with the combined profits or losses of the subsidiaries; or
    - (B) individually with the profits or losses of each subsidiary; or
  - (ii) deal as a whole with the profits or losses of the company and of the guarantor company and with the combined profits or losses of their subsidiaries;
- (b) so far as regards assets and liabilities, deal separately with the assets and liabilities of the company and of every guarantor company which is not a subsidiary in accordance with sub-paragraph (2) and in addition deal-

- (i) as a whole with combined assets and liabilities of the subsidiaries, with or without the guarantor company's assets and liabilities; or
- (ii) individually with the assets and liabilities of each subsidiary; and
- (c) indicate as respects the profits or losses and assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company or corporation.

(4) Where the prospectus relates to shares in or debentures of a borrowing company the report shall state separately estimates of the amounts of moneys owing and payable to the company and the amounts of all liabilities payable by the borrowing company-

- (a) not later than two years;
- (b) later than two years but not later than five years; and
- (c) later than five years.

calculated from the last date to which the accounts of the borrowing company were made up.

21. Where the proceeds, or any part of the proceeds, of the issue of the shares or debentures are to be applied directly or indirectly in the purchase of any business, a report by a qualified auditor who shall be named in the prospectus with respect to-

- (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the last date to which the accounts of the business were made up; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up,

which date shall in no case be more than six months before the issue of the prospectus.

22. (1) Where-

- (a) the proceeds, or any part of the proceeds of the shares or debentures, are to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other corporation; and
- (b) by reason of that acquisition or anything to be done in consequence thereof or in that connection that corporation will become a subsidiary of the company,

a report by a qualified auditor who shall be named in the prospectus with respect

to-

(i) the profits or losses of the other corporation in respect of each of the five financial years immediately preceding the last date to which the accounts of the company were made up; and

(ii) the assets and liabilities of the other corporation at the last date to which the accounts of the corporation were made up,

which date shall in no case be more than six months before the issue of the prospectus.

(2) The report shall-

(a) indicate how the profits or losses of the other corporation dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired; and

(b) where the other corporation has subsidiaries, deal with the profits or losses and the assets and liabilities of the corporation and its subsidiaries in the manner provided by paragraph 20(3) in relation to the company and its subsidiaries.

23. A report by the directors as to whether after due inquiry by them in relation to the interval between the date to which the last accounts have been made up and a date not earlier than fourteen days before the issue of the prospectus-

(a) the business of the company and its subsidiaries has in their opinion been satisfactorily maintained;

(b) there have in their opinion arisen since the last annual general meeting of the company any circumstances adversely affecting the trading or the value of the assets of the company or any of its subsidiaries;

(c) the current assets of the company and of its subsidiaries appear in the books at values which are believed to be realizable in the ordinary course of business;

(d) there are any contingent liabilities by reason of any guarantees given by the company or any of its subsidiaries; and

(e) there are, since the last annual report, any changes in published reserves or any unusual factors affecting the profit of the company and its subsidiaries;

and where any report is required pursuant to this paragraph it shall contain full details of all matters required to be dealt with in the report.

**PART III****Provisions applying to Parts I and II**

24. Paragraphs 2, 13 (so far as it relates to preliminary expenses) and 17 shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.
25. Every person shall for the purposes of this Schedule be deemed to be a vendor who has entered into any contract absolute or conditional, for the sale or purchase or for any option of purchase, of any property to be acquired by the company in any case where-
- (a) the purchase money is not fully paid at the date of the issue of the prospectus;
  - (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus, or
  - (c) the contract depends for its validity or fulfilment on the result of that issue.
26. Where any property to be acquired by the company is to be taken on lease this Schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.
27. References in paragraph 8 to an option to subscribe for shares or debentures shall include an option to acquire them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale, but shall not include an option to subscribe for or acquire shares pursuant to a *bona fide* underwriting or sub-underwriting agreement.
28. For the purposes of paragraph 10 where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.
29. Where, in the case of a company which has been carrying on business, or of a business which has been carried on, for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years, or one year, Part II shall have effect as if references to four years, three years, two years, or one year, as the case may be, were substituted for references to five years.
30. Any report required by Part II shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

## THIRD SCHEDULE

(Section 46)

## STATEMENT IN LIEU OF PROSPECTUS

## PART I

## Particulars to be given

Name of company .....

The share capital of the company named in the memorandum.	Rs
Divided into ..... shares of	Rs
Amount (if any) of above capital which consist of redeemable preference shares	Rs

The date on or before which these shares are, or are  
liable, to be redeemed

Names, descriptions and addresses of directors or proposed  
directors

When the share capital of the company is divided into  
different classes of shares, the right of voting at  
meetings of the company conferred by, and the rights in  
respect of capital and dividends attached to, the several  
classes of shares respectively

Shares of

Number and amount of shares and debentures issued within the 2 years preceding the date of this statement or proposed or agreed to be issued as fully or partly paid up otherwise than in cash	Rs	fully paid
		Shares on
	Which Rs	
	Per shares	Credited as
	Paid.	

The consideration for the issue or intended issue of those shares and debentures	Rs	Debentures of
---	----	---------------

Number, description, and amount of any shares or debentures which any person has or is entitled to be given an option or to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering for sale.	Rs	Shares of and
		debentures of

Period during which option is exercisable

Price to be paid for shares or debentures subscribed for or acquired under option.	Rs
---	----

Consideration for option or right to option.	Rs
--	----

Names and addresses of persons to whom option or right to option was given or, if given to existing shareholders or holders of debentures as such, the relevant shares or debentures.

Names and addresses of vendors of property purchased or acquired or proposed to be purchased or acquired by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material.

Amount (in cash, shares or debentures) payable to each separate vendor.	Total purchase Price	Rs
Amount (if any) paid or payable (in cash, shares or debentures)	Cash Shares	Rs Rs
For any such property, specifying amount (if any) paid or payable for goodwill.	Debentures Goodwill	Rs Rs

Short particulars of any transaction relating to any such property which was completed within the 2 preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director, or proposed director of the company had any interest direct or indirect.

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.	Amount paid: Amount payable	Rs Rs
---	--------------------------------	----------

Rate of the commission	Per cent
------------------------	----------

Amount or rate of brokerage

Number of shares, (if any) which persons have agreed for a commission to subscribe absolutely.

Amount or estimated amount of preliminary expenses. By whom those expenses have been paid or are payable. Amount paid or intended to be paid to any promoter.	Rs  Name of promoter: Amount: Rs
---	---

Consideration for the payment	Rs
-------------------------------	----

Any other benefit given or intended to be given to any promoter.	Name of promoter: Nature and value of benefit:
--	---

Consideration for giving of benefit.	Rs
--------------------------------------	----

Dates of, parties to, and general nature of 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 2 years before the delivery of this statement).

Time and place at which the contracts or copies thereof or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a language other than English or French, a copy of a certified translation thereof in English or French embodying a translation in English or French of the parts in a language other than English or French as the case may be, may be inspected.

Names and addresses of the auditors of the company.

Full particulars of the nature and extent of the interest, direct or indirect of every director, and of every expert, in the promotion of or in the property proposed to be acquired by the company, or where the interest of such a director or expert consists in being a partner in a firm or a holder of shares or debentures in a corporation, the nature and extent of the interest of the firm or corporation and where the interest of such a director or such an expert consists in a holding of shares or debentures in a corporation, a statement of the nature and extent of the interest of the director or expert in the corporation, with a statement of all sums paid or agreed to be paid to him or to the firm or corporation, in cash or shares or otherwise, by any person, in the case of a director, either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm or corporation in connection with the promotion or formation of the company, or in the case of an expert, for services rendered by him or the firm or corporation in connection with the promotion or formation of the company. For the purposes of this item a director or expert shall be deemed to have an indirect interest in a corporation if he has any interest in shares or debentures of a corporation which has an interest in the promotion of, or in the property proposed to be acquired by the company or if he has an interest in shares or debentures in a related corporation.

Rates of the dividends, if any, paid by the company in respect of each class of shares in the company in each of the 5 financial years immediately preceding the date of this statement or since the registration of the company, whichever period is the shorter.\*

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.\*

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\*Applicable only to a private company converted to a public company.

**PART II**

**Reports to be set out**

1. Where it is proposed to acquire a business, a report by a qualified auditor who shall be named in the statement with respect to--
  - (a) the profits or losses of the business in respect of each of the 5 financial years immediately proceeding the lodging of the statement; and
  - (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.
  
2. (1) Where it is proposed to acquire shares in a corporation which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report by a qualified auditor who shall be named in the statement with respect to the profits and losses and assets and liabilities of the other corporation in accordance with subparagraph (2) or (3), as the case requires, indicating how the profits and losses of the other corporation dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.
  - (2) Where the other corporation has no subsidiaries, the report referred to in subparagraph (1) shall--
    - (a) so far as regards profits and losses, deal with the profits or losses of the other corporation in respect of each of the 5 financial years immediately preceding the lodging of the statement; and
    - (b) so far as regards assets and liabilities, deal with the assets and liabilities of the other corporation at the last date to which the accounts of the corporation were made up.
  - (3) Where the other corporation has subsidiaries, the report referred to in subparagraph (1) shall--
    - (a) so far as regards profits and losses--
      - (i) deal separately with the other corporation's profits or losses in accordance with subparagraph (2), and in addition deal--
        - (A) as a whole with the combined profits or losses of its subsidiaries; or
        - (B) (i) individually with the profits or losses of each subsidiary;

or

(ii) deal as a whole with the profits or losses of the other corporation and with the combined profits or losses of its subsidiaries; and

(b) so far as regards assets and liabilities, deal separately with the other corporation's assets and liabilities in accordance with subparagraph

(2) and, in addition deal-

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other corporation's assets and liabilities; or

(ii) individually with the assets and liabilities of each subsidiary,

and shall indicate as respects the profits or losses and the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

3. Where a company is not required to furnish any of the reports referred to in

this Part, a statement to that effect giving the reasons therefor should be furnished.

Signatures of the persons abovenamed as directors or proposed directors or of their agents authorised in writing-

Date:

### **PART III**

#### **Provisions applying to Parts I and II**

4. In this Schedule the expression "vendor" includes any person who is a vendor for the purposes of the Second Schedule.

5. Where in the case of a business which has been carried on, or of a corporation which has been carrying on business, for less than 5 years, the accounts of the business or corporation have only been made in respect of 4 years, 3 years, 2 years, or one year, Part II shall have effect as if references to 4 years, 3 years, 2 years or one year, as the case may be, were substituted for references to 5 years.

6. Any report required by Part II shall either indicate by way of note adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

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FOURTH SCHEDULE  
(Section 74)

PROVISIONS RELATING TO DEBENTURE HOLDERS'  
REPRESENTATIVE AND AGENCY DEED

**1. Qualification to act as debenture holders' representative**

(1) Subject to subclause (2) and (3), no person shall be qualified to act as a debenture holders' representative unless he is-

- (a) a notary;
- (b) a banking company;
- (c) an attorney-at-law;
- (d) an insurance company;
- (e) a qualified auditor;

(f) an investment trust company, finance corporation or other corporation or person approved in writing by the Minister for the purposes of section 74, either generally, or in respect of a particular issue.

(2) A person shall not be qualified for appointment as a debenture holders' representative if he is-

- (a) a director, officer, or employee of the company which issues debentures covered by the deed; or
- (b) a substantial shareholder of the company.

(3) A debenture holders' representative shall be disqualified from acting as such and shall vacate office if he-

- (a) ceases to be qualified under subclause (1) or becomes disqualified under subclause (2);
- (b) is adjudged bankrupt or, in the case of a body corporate, goes into liquidation or makes an arrangement or composition with its creditors;
- (c) becomes insane; or
- (d) is convicted of an offence involving fraud or dishonesty.

(4) (a) Where the debenture holders' representative is a person other than a body corporate, a successor to him shall be named in the agency deed.

(b) Where the successor dies or becomes disqualified during the term of office of the representative, a meeting of debenture holders shall be convened by the representative within twenty-eight days to appoint another person as successor.

(c) On the disqualification of the representative under subclause (3) or on his death or resignation the successor shall immediately and without special appointment assume office, and shall within twenty-eight days of assuming office convene a meeting of debenture holders to name his successor in accordance with subclause (4)(b).

(5) Where the debenture holders' representative is a body corporate it shall not without the consent of the Court be discharged or retire from office until another representative has been appointed to and taken office in accordance with the agency deed.

## 2. Agency deed

(1) A company may, as security for a debenture, but subject to any other laws create over any of its assets or property a charge, of whatever nature, in favour of the debenture holders' representative.

(2) Every agency deed shall state-

- (a) the maximum sum which the company may raise by issuing debenture of the same class;
- (b) the maximum discount which may be allowed on the issue or reissue of the debentures, and the maximum premium at which the debentures may be made redeemable;
- (c) where debenture stock is to be issued under the deed, that-
  - (i) the company is indebted to the debenture holders' representative for the amounts from time to time payable in respect of the debentures; and
  - (ii) except for his own remuneration and indemnity against expenses incurred by him, the debenture holders' representative holds on behalf of the debenture holders any amount from time to time issued under the deed and remaining outstanding in accordance with their respective rights;
- (d) the nature of any assets over which any charge is created by the deed in favour of the debenture holders' representative for the benefit of the debenture holders equally, and except where such a charge is a floating charge, the identity of the assets subject to it;
- (e) the nature of any assets over which any charge has been or will be created in favour of any person other than the debenture holders' representative for the benefit of the debenture holders equally, and except where such a charge is a floating charge, the identity of the assets subject to it;

- (f) whether the company has created or will have power to create a charge for the benefit of some, but not all, of the holders of debentures issued under the deed;
- (g) any prohibition or restriction on the power of the company to issue debentures or to create charges on any of its assets ranking in priority to, or equally with, the debentures issued under the deed;
- (h) whether the company will have power to-
  - (i) acquire debentures issued under the deed before the date for their redemption;
  - (ii) re-issue such debentures;
- (i) the date on which interest on the debentures issued under the deed will be paid and the manner in which payment will be made;
- (j) the date on which the principal of the debentures issued under the deed will be repaid and, unless the whole principal is to be repaid to all the debenture holders at the same time, the manner in which repayment will be effected;
- (k) in the case of convertible debentures, the date and terms on which the debentures may be converted into shares and the amounts which will be credited as paid up on such shares, and the date and terms on which the debenture holders may exercise any right to subscribe for shares in place of the debentures held by them;
- (l) the circumstances in which the debenture holders will be entitled to realise any charge vested in the debenture holders' representative or any other person for their benefit;
- (m) the circumstances in which the debenture holders' representative may appoint a receiver or manager and the power and duties of the receiver or manager.
- (n) the powers of the company and the debenture holders' representative to call meetings of the debenture holders, and the rights of debenture holders to require the company or the debenture holders' representative to call such meetings;
- (o) whether the rights of debenture holders may be altered or abrogated and if so, the conditions which must be fulfilled and the procedure which must be followed to effect such an alteration or abrogation;
- (p) the amount or rate of remuneration to be paid by the company to the debenture holders' representative and the period for which it will be paid, and whether it will be paid in priority to the principal, interest and costs in respect of debentures issued under the deed.

### **3. Powers of debenture holders' representative**

- (1) On the execution of an agency deed the debenture debt shall, where the deed

so provides, vest as it is created in the debenture holders' representative and thereupon he shall-

- (a) have power to act in his own name on behalf of the debenture holders;
- (b) be entitled to represent them in all matters affecting the debentures and their rights and obligations under the deed; and
- (c) notwithstanding the generality of the foregoing powers, be able to-
  - (i) take title in his own name to any property charged by the borrowing company under the deed;
  - (ii) require inscription of the deed in accordance with section 80;
  - (iii) notwithstanding any other law be registered on behalf of the debenture holders in any register of movable or immovable property, the entry in the register to be made in his own name followed by the words "as the debenture holders' representative under an agency deed dated the ....."
  - (iv) hold any document of title, certificate or other security conferring or evidencing the title or interest of the borrowing company in or otherwise relating to the property charged by the deed;
  - (v) take or defend legal proceedings in his own name on behalf of the debenture holders in relation to any matter connected with the protection of their interest in the assets of the borrowing company and their rights and obligations under the deed;
  - (vi) enter into any contract, compromise or arrangement in his own name on behalf of the debenture holders;
  - (vii) represent the debenture holders, in person or by proxy, at a meeting of the borrowing company, or of creditors of the borrowing company or at any other meeting which the debenture holders have a right to attend;
  - (viii) appoint, in terms of the deed, a receiver with power-
    - (A) to take possession of the assets of the borrowing company which are subject to the charge;
    - (B) to sell such assets and otherwise enforce any claim against the assets of the borrowing company; and
    - (C) to carry on any part of the business of the company with a view to preserving any part of the business of the company and selling it or realising the assets on favourable terms.

(2) Every company shall at the request of a debenture holder and on payment of a fee of-

- (a) one rupee for every page or part thereof, where the copy has to be specially made to meet his request; or
- (b) five rupees in every other case,

forward to him a copy of an agency deed relating to or securing any issue of debentures held by him.

#### 4. Right of debenture holders' representative to obtain information

(1) A debenture holders' representative shall be entitled to receive all notices of and other communications relating to any general meeting of the borrowing company which a member is entitled to receive.

(2) A borrowing company shall on the written request of the debenture holders' representative-

- (a) make available for his inspection any book of the company;
- (b) provide him with such information as he requires with respect to any matter relating to such book.

#### 5. Meetings on request

(1) A borrowing company shall, on the written request of the debenture holders' representative or on that of persons holding not less than one-tenth in nominal value of the issued debentures to which the agency deed relates, summon a meeting of the holders of those debentures for the purpose of-

- (i) considering the accounts and balance sheet of the company for its last preceding financial year; and
- (ii) giving directions to the debenture holders' representative in relation to the exercise of his powers.

(2) (a) Every meeting under subclause (1) shall be summoned by sending a notice by post, specifying the time and place of the meeting, to every holder of the debentures at his last known address not later than fourteen days before the date of the proposed meeting.

(b) The meeting shall be held under the chairmanship of a person nominated by the debenture holders' representative, or such other person as may be appointed in that behalf by the debenture holders present at the meeting.

#### 6. Duties of debenture holders' representative

- (1) Every debenture holders' representative shall-
  - (a) exercise reasonable diligence to ascertain whether or not the borrowing company has committed a breach of the terms of the agency deed;
  - (b) except where he is satisfied that the breach will not materially

prejudice any security conferred by the deed or the interests of the debenture holders, do all such things as he is empowered to do to cause the borrowing company to remedy a breach of those terms of conditions;

- (c) exercise reasonable diligence to ascertain whether or not the assets of the borrowing company that are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the amounts of the debentures as they become due;
- (d) hold for the benefit of the debenture holders, and account to them for, any money or property coming into his hands by way of payment of principal or interest under the agency deed or on a realisation of the security conferred by the deed.

(2) Where, after due inquiry, a debenture holders' representative is of the opinion that the assets of the company are insufficient or likely to be insufficient to discharge the amounts of the debentures as they become due, he may, having regard to-

- (a) any other powers or remedies available to him for the protection of the interests of the debenture holders;
- (b) the availability, by way of security or otherwise, of any assets of any corporation that has guaranteed or agreed to guarantee the repayment of the amounts of the debentures;
- (c) the possible effects on the borrowing company's affairs of any application to the Court under this subclause; and
- (d) all other relevant circumstances,

apply to the Court for an order under subclause (3).

(3) On an application for an order under this clause the Court may, after giving the borrowing company an opportunity of being heard, and having regard to the rights of all creditors of the borrowing company, give such directions as it thinks fit to protect the interests of the debenture holders, the members of the borrowing company, or the public, whether by way of-

- (a) staying any proceedings by or against the borrowing company;
- (b) restraining the payment by it of any money to any holders of debentures or to any class of such holders; or
- (c) appointing a receiver of such of its property as constitutes the security for the debentures, or otherwise.

## **7. Repayment of Loans and deposits**

(1) Where, in a prospectus issued in connection with an invitation to subscribe for or to purchase debentures, there is a statement as to any particular purpose or project for which the moneys received by the company in response to the invitation are to be applied, the company shall report to the debenture holders' representative

as to the progress that has been made towards achieving the purpose or completing the project.

(2) Where it appears to the debenture holders' representative that the purpose or project referred to in the prospectus has not been achieved or completed within the time stated in the prospectus or, where no time is stated, within a reasonable time, he may and shall, if in his opinion it is necessary for the protection of the interests of the debenture holders give written notice to the company requiring it to repay the money received and, subject to subclause (3) within one month, lodge a copy of the notice.

(3) The debenture holders' representative shall not give a notice under subclause (2) if he is satisfied that-

- (a) the purpose or project has been substantially achieved or completed;
- (b) the interests of the debenture holders have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time; or
- (c) the failure to achieve or complete the purpose or project was due to circumstances beyond the control of the company that could not reasonably have been foreseen at the time the prospectus was issued.

(4) On receipt by the company of a notice referred to in subclause (2), the company shall be liable to repay any money owing as the result of a loan or deposit made in response to the invitation unless-

- (a) before the money was accepted, the company had given written notice to the person from whom the money was received specifying the purpose or project for which the money would in fact be used and the money was accepted by the company accordingly; or
- (b) the company by written notice given to the debenture holders-
  - (i) has specified the purpose or project for which the money would in fact be applied by the company; and
  - (ii) has offered to repay the money to the debenture holders and they have not within fourteen days after the receipt of the notice, or such longer time as is specified in the notice, demanded in writing from the company repayment of the money.

(5) Where the company has given written notice under subclause (4), specifying the purpose or project for which the money will in fact be applied by the company, this clause shall apply and have effect as if the purpose or project so specified in the notice was the particular purpose or project specified in the prospectus as the purpose or project for which the money was to be applied.

#### **8. Release of agent from obligations**

- (1) Subject to subclause (2) and (3) a provision in an agency deed or in a

contract with debenture holders secured by an agency deed, shall be void in so far as it would have the effect of exempting the debenture holders' representative from, or indemnifying him against, liability for exercising reasonable diligence and care in the carrying out of his duties under the deed or observing any of the provisions of clauses 6 and 7.

(2) Subclause (1) shall not invalidate a provision enabling release to be given-

(a) with the concurrence of a majority of not less than three-fourths in nominal value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and

(b) with respect to specific acts or omissions or on the debenture holders' representative ceasing to act.

(3) A debenture holders' representative may rely on a certificate or report given or statement made by any person who is an attorney-at-law for or auditor or officer of the borrowing company, if he has reasonable ground for believing that the person was competent to give the certificate or report or to make the statement.

FIFTH SCHEDULE  
(Section 147)

**PART 1**

**Contents of return**

1. The address of the registered office of the company.
2. In a case in which the members' register is kept elsewhere than at the registered office, the address of the place where it is kept.
3. A summary, distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, specifying-
  - (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 up from the incorporation of the company to the date of the return;
  - (c) the amount called up on each share;
  - (d) the total amount of calls received, including payments on application and allotment;
  - (e) the total amount, if any, agreed to be considered as paid on shares which have been issued as fully or partly paid up otherwise than in cash;

- (f) the total amount of calls unpaid;
- (g) the total amount of the sums, if any, paid by way of commission in respect of any shares or debentures since the date of the last return;
- (h) particulars of the discount allowed on the issue of any shares issued at a discount, or of so much of that discount as has not been written off at the date of the return;
- (i) the total amount of the sums, if any, allowed by way of discount in respect of any debentures since the date of the last return;
- (j) the total number of shares forfeited; and
- (k) the total amount, if any, paid on shares forfeited.

4. Particulars of the total amount of the indebtedness of the company in respect of all charges which are required to be registered with the Registrar.

5. Except in the case of a company to which section 150 applies, a list as at the date of the return or as at such other date as the Registrar authorises-

- (a) containing the full names and addresses of all persons who on such date are members of the company;
- (b) stating the number of shares held by each member at the date of the list; and
- (c) if the names are not arranged in alphabetical order, having annexed thereto an index sufficient to enable the name of any person in the list to be easily found.

6. In the case of a company keeping a branch register-

- (a) references in paragraph 5 to particulars required shall be taken as not including any such particulars contained in the branch register, in so far as copies of the entries containing those particulars are not received at the registered office of the company before the date of the list in question; and
- (b) where an annual return or a list of members is dated between the date when any entries are made in the branch register and the date when copies of those entries are received at the registered office of the company, the particulars contained in those entries, so far as relevant to an annual return shall be included in the next or a subsequent annual return as may be appropriate having regard to the particulars included in that return with respect to the company's members' register.

7. All such particulars with respect to the persons who at the date of the return are, or are deemed to be, directors of the company and any person who at that date is a manager or secretary of the company are by the Act required to be contained in the register of directors, managers and secretaries.

8. Name and address of the auditor of the company.

9. (1) Subject to sub-paragraph (2), unless the following particulars are included in the balance-sheet or in a note on or statement annexed to the balance sheet, particulars of-

- (a) the names, countries of incorporation and nature of the business of all subsidiaries of the company and of all corporations in which the company is entitled by itself or a nominee to exercise more than 25 per cent of the votes exercisable at a general meeting of the company; and
- (b) where the company is a subsidiary of another company or corporation, the name of a company or corporation regarded by the directors as being the ultimate holding company of the first-mentioned company, and if known to them, the country in which it is incorporated.

(2) The information required by this paragraph need not be given if the Registrar so directs and for this purpose the Registrar shall have the same powers as are given to him for the purposes of the annual accounts under paragraph 14(4) and 23(5) of the Sixth Schedule.

## PART II

### Form of return

Annual return of the ..... Company made up to the ..... day of ..... 19..... being the date or a date not later than the fourteenth day after the date of the Annual General Meeting in 19.....

The date of the annual general meeting of the company was .....  
..... 19.....

The address of the registered office of the company is.....

The address of the place at which the members' register is kept if other than the registered office is .....

### Summary of share capital and shares

Nominal share capital Rs..... divided into (... shares of  
( Rs .....  
(each

Total number of shares taken up to the day of .....

..... 19..... (being the date of the return or other authorised date).

Number of shares issued subject to payment wholly in cash.

Number of shares issued as fully paid up otherwise than in cash.

Number of shares issued as partly paid up to the extent of .....  
per share otherwise than in cash.

Number of shares, if any, of each class issued at a discount

Total amount of discount on the issue of shares which has  
not been written off at the date of this return.

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  
fully otherwise than in cash. Rs

Total amount of calls unpaid Rs

Total amount of the sums, if any, paid by way of commis-  
sion in respect of any shares or debentures since the  
date of the last return Rs

Total amount of the sums, if any, allowed by way of  
discount in respect of any debenture since the date of  
the last return Rs

Total number of shares forfeited Rs

Total amount paid if any, on shares forfeited Rs

Total amount of the indebtedness of the company in  
respect of all charges which are required to be  
registered with the Registrar. Rs

#### **Copy of last audited balance-sheet and profit and loss account**

1. This return must except in the case of an exempt private company include a copy, certified by a director or by the manager or the secretary of the company to be a true copy of the last balance-sheet and of the last profit and loss account which have respectively been audited by the company's auditors including every document required by law to be annexed or attached thereto together with a copy of

the report of the auditors thereon certified in the same manner as the copy of the balance sheet as aforesaid. An exempt private company must attach a financial summary as set out in Part III.

2. Where the balance-sheet or account did not comply with the requirements of the law as in force at the date of the audit there must be made such additions to and corrections in the copy as would have been required to be made therein in order to make it comply with those requirements, and the fact that the said copy has been so amended must be stated.

3. Where a company has more than one such audited balance-sheet or profit and loss account since the date of the last return, every such balance-sheet and profit and loss account must be included.

**Certificate to be given by all private companies**

I/We after having made due inquiries certify-

(a) having made an inspection of the share register, that transfers have not been registered since the date of the last annual return\*

or

the registration of the company\*

(b) that the company has not since the date of the last annual return issued any invitation to the public to subscribe for any shares in or debentures of the company or to deposit moneys for fixed periods or payable at call;

Signature .....  
Director

Signature .....  
Secretary

Note

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\* Strike out if inapplicable

4. In the case of the first annual return of a private company strike out the words "last annual return" and substitute therefore the words "incorporation of the company".

**Certificate to be given by all public companies**

I/We having made due inquiries certify that-

having made an inspection of the share register, transfers have not been registered since the date of the last annual return\*

or

the registration of the company\*

Signature .....

Director

Signature .....

Secretary

(a certificate signed by the same person in the capacity of both director and secretary will not be accepted)

\_\_\_\_\_  
\*Strike out whichever is inapplicable.

**Particulars of the directors, managers, secretaries and auditors**

Present full name	Any former names	Usual Residential address in full	Other business occupation and, in the case of directors, particulars of other directorships required to be shown by section 115(2) b (3)  (If none state so)
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Directors  
Manager  
Secretary  
Auditor  
for current  
financial year

**List of shareholders**

Folio in register ledger containing particulars	Name and addresses	Number of shares held by existing members
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## STATEMENT OF ASSETS AND LIABILITIES

Fixed Assets	...	...	...	...	...	...
Current Assets	..	...	...	...	...	...
Stock	...	...	...	...	...	...
Debtors	..	...	...	...	...	...
Cash and Bank	...	...	...	...	...	...
Other	...	...	...	...	...	...
<hr/>						
Total Fixed and Current Assets	...	...	...	...	...	...
<hr/>						
Issued and paid up capital	..	...	...	...	...	...
Reserves (other shareholders funds)	...	...	...	...	...	...
Long Term Liabilities	...	...	...	...	...	...
Current Liabilities	...	...	...	...	...	...
<hr/>						
Total Capital and Liabilities	...	...	...	...	...	...
<hr/>						
Dated this ..... day of ..... 19.....						
Signature of two directors .....						

.....  
AUDITOR'S CERTIFICATE

(Here follows the auditor's certificate)

## SIXTH SCHEDULE

(Sections 156, 157, 159, 307)

## PART I

## Preliminary

1. Subject to Part III, paragraphs 2 to 15 of Part II apply to every balance sheet and paras. 16 to 22 of Part II shall apply to every profit and loss account.

## PART II

## Balance Sheet and Profit and Loss Account

### Balance Sheet

2. The authorized share capital, issued share capital, liabilities and assets shall be summarised, with such particulars as are necessary to disclose the general nature of the assets and liabilities and there shall be specified-

- (a) any part of the issued capital that consists of redeemable preference shares, the earliest and latest dates on which the company has power to redeem those shares, whether those shares must be redeemed in any event or are liable to be redeemed at the option of the company and whether any and, if so, what premium is payable on redemption;
- (b) so far as the information is not given in the profit and loss account, any share capital on which interest has been paid out of capital during the financial year, and the rate at which interest has been so paid;
- (c) the amount of the share premium account;
- (d) particulars of any redeemed debentures which the company has power to reissue.

3. There shall be stated under separate headings, so far as they are not written off-

- (a) the preliminary expenses;
- (b) any expenses incurred in connection with any issue of share capital or debentures;
- (c) any sums paid by way of commission in respect of any shares or debentures;
- (d) any sums allowed by way of discount in respect of any debentures; and
- (e) the amount of the discount allowed on any issue of shares at a discount.

4. (1) Subject to the other provisions of this paragraph, the reserves, provisions, liabilities and assets shall be classified under headings appropriate to the company's business.

(2) (a) Where the amount of any item is not material, it may be included under the same heading as some other class.

(b) Where any item of assets is not separate from any other item of assets, those assets may be included under the same heading.

(3) Fixed assets, current assets and assets that are neither fixed nor current shall be separately identified.

(4) The method or methods used to arrive at the amount of the fixed assets under each heading shall be stated.

5. (1) The method of arriving at the amount of any fixed asset shall, subject to sub-paragraph (2), be to take the difference between-

- (a) its cost or, if it stands in the company's books at a valuation, the amount of the valuation; and
- (b) the aggregate amount provided or written off since the date of acquisition or valuation, as the case may be, for depreciation or diminution in value, and for the purposes of this paragraph the net amount at which any assets stand in the company's books at the commencement of this Act, after deduction of the amounts previously provided or written off for depreciation or diminution in value, shall, if the figures relating to the period before the commencement of this Act cannot be obtained without unreasonable expense or delay, be treated as if it were the amount of a valuation of those assets made at the commencement of this Act and, where any of those assets are sold, the said net amount less the amount of the sales shall be treated as if it were the amount of a valuation so made of the remaining assets.

(2) Sub-paragraph (1) shall not apply-

- (a) to assets for which the figures relating to the period beginning with the commencement of this Act cannot be obtained without unreasonable expense or delay;
- (b) to assets the replacement of which is provided for wholly or partly-
  - (i) by making provision for renewals and charging the cost of replacement against the provision so made; or
  - (ii) by charging the cost of replacement direct to revenue;
- (c) to any quoted investments or to any unquoted investments of which the value as estimated by the directors is shown either as the amount of the investments or by way of note; or
- (d) to goodwill, patents or trade marks.

(3) Where the amount of any assets is arrived at in accordance with sub-paragraph (1), there shall be shown under each heading-

- (a) the aggregate of the amounts referred to in sub-paragraph (1) (a); and
- (b) the aggregate of the amounts referred to in sub-paragraph (1) (b).

(4) Where the amount of any assets is not arrived at in accordance with sub-paragraph (1) because their replacement is provided for in accordance with sub-paragraph (2) (b), there shall be stated under each heading-

- (a) the means by which their replacement is provided for; and
- (b) the aggregate amount of the provision, if any, made for renewals and not used.

6. Unquoted investments consisting in share capital of other corporation shall be shown at a separate valuation estimated by the directors with respect to each class of shares and there shall be shown (whether by way of note or otherwise) the date of the valuation, and a brief statement of the basis on which the valuation is made, and where the aggregate amount of the company's income from such investments in any one corporation or a related corporation of that corporation exceeds 40 per cent of its total net income for the year there shall also be shown in relation to those corporations-

- (a) the aggregate amount of the company's income for the financial year that is ascribable to the investments in those corporations;
- (b) the amount of the company's share before taxation, and the amount of that share after taxation, in the net aggregate amount of the profits of those corporations, being profits for the several periods to which accounts sent by them during the financial year to the company related, after deducting those corporations' losses for those periods or vice versa;
- (c) the amount of the company's share in the net aggregate amount of the undistributed profits accumulated by those corporations in which the investments are held since the time when the investments were acquired, after deducting the losses accumulated by them since that time or vice versa; and
- (d) the manner in which any losses incurred by those corporations have been dealt with in the company's accounts.

7. (1) Subject to sub-paragraph (2), the respective aggregate amounts of reserves and provisions, other than provisions for depreciation, renewals or diminution in value of assets, shall be stated under separate headings.

- (2) (a) Sub-paragraph (1) shall not require a separate statement of either of the amounts which is not material; and
- (b) The Registrar may direct that a separate statement of the amount of provisions is not required where he is satisfied that that is not required in the public interest and would prejudice the company, subject to the condition that any heading stating the amount arrived at after taking into account a provision, other than a provision for depreciation, renewals or diminution in value of assets, shall be so framed or marked as to indicate that fact.

8. (1) Subject to sub-paragraph (2), there shall be shown, unless it is shown in the profit and loss account or a statement or report annexed thereto, or the amount involved is not material-

- (a) where the amount of the reserves or of the provisions, other than provisions for depreciation, renewals or diminution in value of assets, shows an increase as compared with the amount at the end of the immediately preceding financial year, the source from which the amount of the increase has been derived; and
- (b) where-

- (i) the amount of the reserves shows a decrease as compared with the amount at the end of the immediately preceding financial year; or
- (ii) the amount at the end of the immediately preceding financial year of the provisions, other than provisions for depreciation, renewals or diminution in value of assets, exceeded the aggregate of the sums since applied and amounts still retained for the purposes thereof, the application of the amounts derived from the difference.

(2) Where the heading showing the reserves or the provisions is divided into sub-headings, sub-paragraph (1) shall apply to each of the separate amounts shown in the sub-headings instead of applying to the aggregate amount thereof.

9. Where an amount is set aside for the purpose of its being used to prevent undue fluctuations in charges for taxation, the fact shall be stated.

10. (1) There shall be shown under separate headings-

- (a) the respective aggregate amounts of the company's quoted investments and unquoted investments;
- (b) where the amount of the goodwill and of any patents and trade mark, is shown as a separate item in, or is otherwise ascertainable from the books of the company, from any contract for the sale or purchase of any property to be acquired by the company or from any document in the possession of the company relating to the stamp duty or registration duty payable in respect of the contract or the conveyance of the property, that amount as shown or ascertained, so far as it is not written off or, as the case may be, that amount in so far as it is so shown or ascertainable and as so shown or ascertained, as the case may be;
- (c) the aggregate amount of any outstanding loans made pursuant to section 105 of this Act;
- (d) the aggregate amount of loans made to the company which--
  - (i) are repayable otherwise than by instalments and fall due for repayment after the expiration of periods of one year and five years respectively beginning with the day next following the expiration of the financial year; or
  - (ii) are repayable by instalments any of which fall due for payment after the expiration of those respective periods, not being in either case, bank overdrafts;
- (e) the aggregate amount of debts of the company (other than debts falling under (c) and (d) of this sub-paragraph) which--
  - (i) are payable otherwise than by instalments and fall due for payment after the expiration of one year beginning with the day

next following the expiration of the financial year; or

- (ii) are payable by instalments any of which fall due for payment after the expiration of that period;
- (f) the aggregate amount, which is recommended for distribution by way of dividend;
- (g) the amount outstanding of any loan made, guaranteed or secured by the company, being a loan made to a director of the company or of a related corporation or a loan made to another corporation in which a director of the company or of a related company owns a controlling interest.

(2) Nothing in sub-paragraph (1)(b) shall be taken as requiring the amount of the goodwill, patents and trade marks to be stated otherwise than as a single item.

(3) Subject to sub-paragraph (4), in relation to each loan falling within sub-paragraph (1)(d), other than a bank overdraft, there shall be stated by way of note, if not otherwise stated, the terms on which it is repayable and the rate at which interest is payable thereon.

(4) Where the number of loans is such that, in the opinion of the directors, compliance with sub-paragraph (3) would result in a statement of excessive length, it shall be sufficient to give a general indication of the terms on which the loans are repayable and the rates at which interest is payable thereon.

11. Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the fact that that liability is so secured shall be stated, but it shall not be necessary to specify the assets on which the liability is secured.

12. Where any of the company's debentures are held by a nominee of the company, the nominal amount of the debentures and the amount at which they are stated in the books of the company shall be stated.

13. There shall be stated by way of note, or in a statement or report annexed, if not otherwise shown-

- (a) the number, description and amount of any share in the company which any person has an option to subscribe for, together with-
  - (i) the period during which it is exercisable;
  - (ii) the price to be paid for shares subscribed for under it;
- (b) the amount of any arrears of fixed cumulative dividends on the company's shares and the period for which the dividends or, if there is more than one class, each class of them are in arrear, the amount to be stated before deduction of income tax, except that, in the case of tax free dividends, the amount shall be shown free of tax and the fact that it is so shown shall also be stated;

- (c) particulars of any charge on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured,
- (d) the general nature of any other contingent liabilities not provided for and, where practicable, the aggregate amount or estimated amount of those liabilities, if it is material;
- (e) where practicable the aggregate amount or estimated amount, if it is material, of contracts for capital expenditure, so far as not provided for and, where practicable, the aggregate amount or estimated amount, if it is material, of capital expenditure authorized by the directors which has not been contracted for;
- (f) in the case of fixed assets under any heading whose amount is required to be arrived at in accordance with paragraph 5(1), other than unquoted investments, and is so arrived at by reference to a valuation, the years, so far as they are known to the directors, in which the assets were severally valued and the several values, and, in the case of assets that have been valued during the financial year, the names of the persons who valued them or particulars of their qualifications for doing so and, whichever is stated, the bases of valuation used by them;
- (g) where there are included amongst fixed assets under any heading, other than investments, assets that have been acquired during the financial year, the aggregate amount of the assets acquired as determined for the purpose of making up the balance sheet, and if during that year any fixed assets included under a heading in the balance sheet made up with respect to the immediately preceding financial year, other than investments, have been disposed of or destroyed, the aggregate amount thereof as determined for the purpose of making up that balance sheet;
- (h) of the amount of fixed assets consisting of land, how much is ascribable to land in full ownership and how much to land held on lease, and, of the latter, how much is ascribable to land held on long lease and how much to land held on short lease;
- (i) where in the opinion of the directors any of the current assets do not have a value, on realisation in the ordinary course of the company's business, at least equal to the amount at which they are stated, the fact that the directors are of that opinion;
- (j) the aggregate market value of the company's quoted investments where it differs from the amount of the investments as stated, and the stock exchange value of any investments of which the market value is shown, whether separately or not, and is taken as being higher than their stock exchange value;
- (k) where a sum set aside for the purpose of its being used to prevent undue fluctuations in charges for taxation has been used during the financial year for another purpose, the amount thereof and the fact that it has been so used;

- (l) where the amount carried forward for stock in trade or work in progress is material for the appreciation by its members of the company's state of affairs or of its profit or loss for the financial year, the manner in which that amount has been computed.
- (m) the basis on which foreign currencies have been converted into Mauritius currency, where the amount of the assets or liabilities affected is material;
- (n) except in the case of the first balance sheet laid before the company after the commencement of this Act, the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet;
- (o) the aggregate amounts paid by the company during the financial year for the acquisition of:-
  - (a) quoted investments; and
  - (b) unquoted investments;

and the aggregate amounts received by the company during the financial year on disposing of each of these classes of investments.

14. (1) Subject to the other provisions of this paragraph, where at the end of its financial year, a company holds shares of any class comprised in the equity share capital of another corporation, not being its subsidiary, exceeding in nominal value one tenth of the nominal value of the issued shares of that class, there shall be stated in, or in a note on, or statement annexed to, the balance sheet of the company-

- (a) the name of that other corporation and, if it is incorporated outside Mauritius, the country in which it is incorporated;
- (b) the identity of the class and the proportion of the nominal value of the issued shares of that class represented by the shares held; and
- (c) where the company also holds shares in that other corporation of another class, whether or not comprised in its equity share capital, or of other classes, whether or not so comprised, the like particulars as respects that other class or, as the case may be, each of these other classes.

(2) Where, at the end of its financial year, a company holds shares in another corporation, not being its subsidiary and the amount of all the shares therein which it holds, as stated or included in its accounts laid before it in general meeting, exceeds one tenth of the amount of its assets, as so stated, there shall be stated in, or in a note on, or statement annexed to, those accounts-

- (a) the name of that other corporation and, if it is incorporated outside Mauritius, the country in which it is incorporated; and

- (b) in relation to shares in that other corporation of each class held, the identity of the class and the proportion of the nominal value of the issued shares of that class represented by the shares held.

(3) Where, at the end of its financial year, a company is the subsidiary of another company or corporation, there shall be stated in, or in a note on, or a statement annexed, to the balance sheet of the company, the name of the company or corporation regarded by the directors as being the ultimate holding company of the first-mentioned company, and if known to them, the country in which it is incorporated, and there shall also be stated the ultimate holding company in Mauritius of the company.

(4) Sub-paragraphs (1), (2) and (3) shall not operate so as to require the disclosure by a company of information with respect to another corporation incorporated outside Mauritius or, being incorporated in Mauritius which carries on business outside Mauritius, if the disclosure would, in the opinion of the directors of the company, be harmful to the business of the company or of that other corporation and the Registrar agrees that the information need to be disclosed.

(5) Where at the end of its financial year a company falls within sub-paragraph (1) in relation to more corporations than one, and the number of them is such that, in the opinion of the directors, compliance with that sub-paragraph would result in particulars of excessive length being given, compliance with that sub-paragraph shall not be required except in the case of the corporation carrying on the business the results of the carrying on of which, in the opinion of the directors, principally affected the amount of the profit or loss of the company or the amount of its assets.

(6) Where subparagraph (5) applies to a company-

- (a) there shall be included in the statement dealing with the corporation whose business principally affected the company the information that it deals only with that corporation; and
- (b) the particulars given in compliance with subparagraph (1), together with those which, but for the fact that subparagraph (5) applies would have to be so given, shall be annexed to the annual return first made by the company after its accounts have been laid before it in general meeting.

15. In the fifth and subsequent balance sheets laid before the company after the coming into force of this Act, there shall be shown in tabular form in a note or in a statement or report annexed (unless it is otherwise shown in that form, or is shown in, or in a note on, or statement or report annexed to, the balance sheet) the following matters as at the end of the financial year and of each of the four immediately preceding financial years (or, if the number of financial years that have elapsed since the company was registered is less than five, as at the end of each financial year that has so elapsed):

- (a) the amount of the issued share capital of the company;
- (b) the amount paid up on the issued and outstanding shares of the company;

- (c) the amount of the company's capital reserve, revenue reserves and profits carried forward respectively.

**Profit and Loss Account**

16. (1) There shall be shown-
- (a) the amount charged to revenue by way of provision for depreciation, renewals or diminution in value of fixed assets;
  - (b) the amount of the interest on loans of the following kinds made to the company (whether on the security of debenture or not) namely bank loans, overdrafts and loans which, not being bank overdrafts,
    - (i) are repayable otherwise than by instalments and fall due for repayment before the expiration of the periods of one year and five years respectively beginning with the day next following the expiration of the financial year; or
    - (ii) are repayable by instalments the last of which falls due for payment before the expiration of each of those respective periods, and the amount of the interest on loans of other kinds so made (whether on the security of debentures or not);
  - (c) the amount of the charge to revenue for Mauritius income tax and, if that amount would have been greater but for relief from double taxation, the amount which it would have been but for such relief, and the amount of the charge for taxation imposed outside Mauritius of profits, income and, so far as charge to revenue, capital gains;
  - (d) the amounts respectively provided for redemption of share capital and for redemption of loans;
  - (e) the amount, if material, set aside or proposed to be set aside to, or withdrawn from, reserves;
  - (f) subject to sub-paragraph (2), the amount, if material set aside to provisions other than provisions for depreciation, renewals or diminution in value of assets or, as the case may be, the amount, if material withdrawn from such provisions and not applied for the purposes thereof;
  - (g) the amounts respectively of income from quoted investments and income from unquoted investments;
  - (h) where a substantial part of the company's revenue for the financial year consists in rents from lands, the amount thereof, after deduction of ground rents, rates and other out-goings;

- (i) the amount, if material, charged to revenue in respect of sums payable in respect of the hire of plant and machinery; and
- (j) the aggregate amount, of the dividends paid and proposed.

(2) The Registrar may direct that a company shall not be requested to show an amount set aside to provisions in accordance with subparagraph (1)(f), when he is satisfied that it is not required in the public interest and would prejudice the company, subject to the condition that any heading stating an amount arrived at after taking into account the amount set aside to provisions in accordance with subparagraph (1)(f) shall be so framed or marked as to indicate that fact.

(3) Where, in the case of any assets in whose case an amount is charged to revenue by way of provision for depreciation or diminution in value, an amount is also so charged by way of provision for renewal of the assets, the last mentioned amount shall be shown separately.

(4) Where the amount charged to revenue by way of provision for depreciation or diminution in value of any fixed assets, other than investments, has been determined otherwise than by reference to the amount of those assets as determined for the purpose of making up the balance sheet, that fact shall be stated.

17. (1) There shall be stated under a separate note the total of the emoluments received, or due and receivable, whether from the company or from a related corporation by-

- (a) directors of the company engaged in the full time employment of the company and its related corporations including all bonuses and commissions received or receivable by them as employees, and
- (b) other directors of the company,

including in each case, commissions for subscribing for, or agreeing to procure subscriptions for, any shares in or debentures of the company or any related corporation, and the portion, if any, of the total amount contributed or to be contributed otherwise than by the company.

(2) There shall be shown in a separate note to the accounts the amount paid to the directors by way of commission on profits of the company, in addition to such amount being included in the total described above.

18. The amount of any charge arising in consequence of the occurrence of an event in a preceding financial year and of any credit so arising shall, if not included in a heading relating to other matters, be stated under a separate heading.

19. The amount of the remuneration of the auditors shall be shown under a separate heading and, for the purposes of this paragraph, any sum paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

20. There shall be stated by way of note, if not otherwise shown-

- (a) the turnover for the financial year, except in so far as it is attributable to the business of banking or discounting or to business

of such other class as may be prescribed for the purposes of this subparagraph;

- (b) where some or all of the turnover is omitted in accordance with subparagraph (a), the fact that it is so omitted;
- (c) the method by which turnover stated is arrived at.

21. There shall be stated by way of note, if not otherwise shown-

- (a) where depreciation or replacement of fixed assets is provided for by some method other than a depreciation charge or provision for renewals, or is not provided for, the method by which it is provided for or the fact that it is not provided for, as the case may be;
- (b) the basis on which the charge for Mauritius income tax is computed.
- (c) any special circumstances which affect liability in respect of taxation for the financial year or liability in respect of taxation for succeeding financial years;
- (d) except in the case of the first profit and loss account laid before the company after the commencement of this Act, the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account;
- (e) any material respect in which any item shown in the profit and loss account is affected-
  - (i) by transactions of a kind not usually undertaken by the company or otherwise by circumstances of an exceptional or non-recurrent nature; or
  - (ii) by any change in the basis of accounting.

22. In the fifth and subsequent profit and loss accounts laid before the company after the coming into operation of this Act, there shall be shown in tabular form in a note or in a statement or report annexed (unless it is otherwise shown in that form, or is so shown in, or in a note on, or statement annexed to, the profit and loss account) the following matters in respect of the financial year and of each of the four immediately preceding financial years that have elapsed since the company was incorporated is less than five, in respect of each financial year that has so elapsed:

- (a) the amount of the profit or loss for the year before deduction of all charges, for taxation of profits and income and the amount of the said profit or loss after deduction of all such charges; and
- (b) the aggregate amount of the dividends paid and proposed.

### Holding companies and subsidiaries

23. (1) This paragraph shall apply to a company which is a holding company, whether or not it is itself a subsidiary of another corporation.

(2) The aggregate amount of assets consisting of shares in, or amounts owing, whether on account of a loan or otherwise, from the company's subsidiaries, distinguishing shares from indebtedness, shall be set out in the balance sheet separately from all the other assets of the company, and the aggregate amount of indebtedness, whether on account of a loan or otherwise, to the company's subsidiaries shall be so set out separately from all its other liabilities and-

(a) a reference in Part II to a company's investments, other than those in paragraphs 13(g) and 16 (4), shall not include investments in the company's subsidiaries required by this paragraph to be separately set out; and

(b) paragraph 5, paragraph 16(1)(a) and paragraph 21 (a) shall not apply in relation to fixed assets consisting of interests in the company's subsidiaries.

(3) There shall be shown by way of note on the balance sheet or in a statement or report annexed thereto the number, description and amount of the shares in and debentures of the company held by its subsidiaries or their nominees.

(4) Subject to sub-paragraphs (5) and (6), where group accounts are not submitted, there shall be annexed to the balance sheet a statement showing-

(a) the reasons why subsidiaries are not dealt with in group accounts;

(b) the net aggregate amount, so far as it concerns members of the holding company and is not dealt with in the company's accounts, of the subsidiaries' profits after deducting the subsidiaries' losses or vice versa-

(i) for the respective financial years of the subsidiaries ending with or during the financial year of the company; and

(ii) for their previous financial years since they respectively became the holding company's subsidiary;

(c) the net aggregate amount of the subsidiaries' profits after deducting the subsidiaries' losses or vice versa-

(i) for the respective financial years of the subsidiaries ending with or during the financial year of the company; and

(ii) for their other financial years since they respectively became the holding company's subsidiary, so far as those profits are dealt with, or provision is made for those losses, in the company's accounts;

(d) any qualifications contained in the report of the auditors of the

subsidiaries on their accounts for their respective financial years ending at the time specified in sub-paragraph (4)(b)(i) or (c)(i), and any note or saving contained in those accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, in so far as the matter which is the subject of the qualification or note is not covered by the company's own accounts and is material from the point of view of its members, or, in so far as the information required by this sub-paragraph is not obtainable, a statement that it is not obtainable.

(5) The Registrar may, on the application or with the consent of the company's directors, direct that in relation to any subsidiary sub-paragraph (4) shall not apply or shall apply only to such extent as may be provided by the direction.

(6) Sub-paragraph (4)(b) and (c) shall apply only to profits and losses of a subsidiary which may properly be treated in the holding company's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the holding company or any other of its subsidiaries shall not, for that, be treated in accordance with sub-paragraph (4) so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the company or any of its subsidiaries, except that they may in a proper case be so treated where-

(a) the company is itself the subsidiary of another corporation; and

(b) the shares were acquired from that corporation or a subsidiary of it, and for the purpose of determining whether any profits or losses are to be treated as profits or losses for that period the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly.

(7) Where group accounts are not submitted, there shall be annexed to the balance sheet a statement showing, in relation to the subsidiaries, if any, whose financial years did not end with that of the company-

(a) the reasons why the company's directors consider that the subsidiaries' financial years should not end with that of the company; and

(b) the dates on which the subsidiaries' financial years ending last before that of the company respectively ended or the earliest and latest of those dates.

24. (1) The balance sheet of a company which is a subsidiary of another corporation, whether or not it is itself a holding company, shall show the aggregate amount of its indebtedness to all corporations of which it is a subsidiary or a fellow subsidiary and the aggregate amount of indebtedness of all such corporations to it, distinguishing in each case between indebtedness in respect of debentures and otherwise, and the aggregate amount of assets consisting of shares in fellow subsidiaries.

(2) For the purposes of this paragraph a company shall be deemed to be a fellow subsidiary of another corporation if both are subsidiaries of the same corporation but neither is the other's.

25. (1) Subject to sub-paragraph (4), group accounts of a holding company shall be by way of note or otherwise-

- (a) the name and place of incorporation of each subsidiary and if any business of the subsidiary is carried on in a country other than Mauritius, the name of that country;
- (b) the amount of the holding company's investment in each class of the share capital of each subsidiary;
- (c) the percentage of each class of the shares in each subsidiary held by the holding company; and
- (d) where the financial year of a subsidiary does not coincide with the financial year of the holding company, the date on which the financial year of the subsidiary ends.

(2) Subject to sub-paragraph (4), where separate accounts of a subsidiary are to be laid before the holding company at its annual general meeting as part of the group accounts, the accounts of the subsidiary shall as far as practicable be in the same form as the accounts of the holding company.

(3) For the purposes of this paragraph shares of a corporation shall be treated as not being held by the company if the ordinary business of the company includes the lending of money and the shares are held by way of security or charge only for the purposes of a transaction entered into in the ordinary course of that business.

(4) Sub-paragraphs (1) and (2) shall not require the disclosure of information with respect to a corporation which is the subsidiary of another corporation and is incorporated outside Mauritius or, being incorporated in Mauritius, carries on business outside Mauritius if the disclosure would in the opinion of the directors of that other corporation, be harmful to the business of that other or of any of its subsidiaries and the Registrar agrees that the information need not be disclosed.

26. Subject to paragraphs 27 to 30, the consolidated balance sheet and profit and loss account shall combine the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiaries dealt with by the consolidated accounts, but with such adjustments, if any, as are necessary:

- (a) to eliminate the effect of current transactions between any of the companies whose accounts are consolidated;
- (b) to eliminate shares in the company or its subsidiaries which are held by or by nominees for any of its subsidiaries, except shares which are held by a subsidiary as a nominee for persons other than another subsidiary and shares which are held by or by nominees for a subsidiary by way of security for money lent, guaranteed or secured by it; and

- (c) to show the extent of the interests of persons other than shareholders and debenture holders of the holding company in the assets, net assets, capital reserves, revenue reserves and profit of the subsidiaries.

27. Subject to paragraphs 24 and 25, the consolidated accounts shall, in giving the said information, comply so far as practicable, with the requirements of the Act as if they were the accounts of an actual company.

28. Paragraph 8 shall not apply for the purpose of any consolidated accounts laid before a company with the first balance sheet so laid after the commencement of this Act.

29. In relation to any subsidiaries of the holding company not dealt with by the consolidated accounts-

- (a) paragraph 23(2) and (3) shall apply for the purpose of those accounts as if those accounts were the accounts of an actual company of which they were subsidiaries; and
- (b) there shall be annexed the like statement as is required by paragraph 23(4) where there are no group accounts, but as if reference therein to the holding company's accounts were references to the consolidated accounts.

30. In relation to any subsidiaries, whether or not dealt with by the consolidated accounts, whose financial years did not end with that of the company, there shall be annexed the like statement as is required by paragraph 23(7) where there are no group accounts.

## SUB PART II

### **Banking and Insurance Companies**

31. (1) A banking company shall not be subject to the requirements of Part II other than-

- (a) as respects its balance sheet, those of paragraph 2 and 3, paragraph 4 (so far as it relates to assets), paragraph 10 (except sub-paragraphs (1)(d) and (4)), paragraphs 11 and 12 and paragraph 13(except sub-paragraphs (f), (g), (h),j) and (k)); and
- (b) as respects its profit and loss account, those of paragraph 16(1) (b) and (j), paragraphs 18 and 19 and paragraph 21 (d),

but where in its balance sheet reserves or provisions, other than provisions for depreciation, renewals or diminution in value of assets, are not stated separately, any heading stating an amount arrived at after taking into account a reserve or such a provision shall be so framed or marked as to indicate that fact, and its profit and loss account shall indicate by appropriate words the manner in which the amount stated for the company's profit or loss has been arrived at.

(2) The accounts of a banking company shall not be deemed, by reason only that they do not comply with any requirement of Part II from which the company is exempt by virtue of this paragraph, not to give the true and fair view required by this Act.

32. (1) Subject to sub-paragraph (2), an insurance company shall not be subject to the requirements of Part II specified in-

- (a) as respects its balance sheet, paragraphs 4 to 8, paragraph 10(1) (a) and (3), and paragraph 13(c), (d), and (f) to (j);
- (b) as respects its profit and loss account, paragraph 16 (except sub-paragraph (1) (b),(c), (d) and (j) and paragraph 21(a),

but where in its balance sheet reserves or provisions, other than provisions for depreciation, renewals or diminution in value of assets, are not stated separately, any heading stating an amount arrived at after taking into account a reserve or such a provision shall be so framed or marked as to indicate that fact, and its profit and loss account shall indicate by appropriate words the manner in which the amount stated for the company's profit or loss has been arrived at.

(2) The Registrar may direct that any insurance company, whose business includes to a substantial extent business other than insurance business, shall comply with all the requirements of Part II or such of them as may be specified in the direction and shall comply therewith as respects either the whole of its business or such part thereof as may be so specified.

(3) Where an insurance company is entitled to the benefit of this paragraph' any wholly owned subsidiary thereof shall also be so entitled if its business consist only of business which is complementary to insurance business of the classes carried on by the insurance company.

(4) The accounts of an insurance company shall not be deemed, by reason only that they do not comply with any requirement of Part II from which the company is exempt by virtue of this paragraph, not to give the true and fair view required by this Act.

(5) For the purposes of this paragraph a company shall be deemed to be the wholly owned subsidiary of an insurance company if it has no members except the insurance company and the insurance company's wholly owned subsidiaries and its or their nominees.

#### **PART IV**

##### **Interpretation**

33. (1) For the purposes of this Schedule, unless the context otherwise requires-

- (a) "provision" (subject to sub-paragraph (2) means any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability of which the amount cannot be determined with

substantial accuracy;

- (b) "reserve" shall not, subject to sub-paragraph (1)(a), include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability or any sum set aside for the purpose of its being used to prevent undue fluctuations in charges for taxation; and
- (c) "liability" includes all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.

(2) Where-

- (a) any amount written off or retained by way of providing depreciation, renewals or diminution in value of assets, not being an amount written off in relation to fixed assets before the commencement of the Act; or
- (b) any amount retained by way of providing for any known liability;

is in excess of that which in the opinion of the directors is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision.

34. For the purposes of this Schedule - "quoted investment" means an investment as respects which there has been granted a quotation or permission to deal on a stock exchange whether in Mauritius or abroad; "Long lease" means a lease in the case of which the portion of the term for which it was granted remaining unexpired at the end of the financial year is not less than fifty years; "short lease" means a lease which is not a long lease and the expression "lease" includes an agreement for a lease.

35. For the purposes of this Schedule, a loan shall be deemed to fall due for repayment, and an instalment of a loan shall be deemed to fall due for payment, on the earliest date on which the lender could acquire repayment or, as the case may be, payment if he exercised all options and rights available to him.

SEVENTH SCHEDULE  
(Section 177)

PART I

**Requirements for take-over offers**

1. The offer shall be dated and shall be despatched to the offeree company within three days, excluding Public Holidays, of its date and shall state that, except in so far as it and all other take-over offers made under the take-over scheme may be totally withdrawn and every person released from any obligation incurred thereunder, it will remain open for acceptance by the offeree company for at least one month from that date.

2. The offer shall not be conditional on the offeree company approving or

consenting to any payment or other benefit being made or given to any director of the offeree company or of any related corporation as compensation for loss of the office or as consideration for, or in connection with, his retirement from office.

3. The offer shall state-

- (a) whether or not the offer is conditional on acceptance of offers made under the take-over scheme being received in respect of a minimum number of shares and, if so, that number;
- (b) where the shares are to be acquired for cash, the period within which payment will be made and the method of payment; and
- (c) where the shares are to be acquired for a consideration other than cash, the period within which the offeree will receive that consideration.

4. Where the offer is conditional on acceptances in respect of a minimum number of shares being received, the offer shall specify-

- (a) a date not being a date later than forty-two days after the date of the offer as the latest date on which the offeror company can declare the offer to have become free from that condition; and
- (b) a further period of not less than seven days during which the offer will remain open for acceptance after it has been declared unconditional.

PART II

**Requirements for statement given by offeror corporation**

1. The statement shall-

- (a) specify the names, descriptions and addresses of all the directors of the offeror corporation;
- (b) contain a summary of the principal activities of the offeror corporation;
- (c) specify the number and description and amount of marketable securities in the offeree company held by or on behalf of the offeror corporation, or if none are so held contain a statement to that effect;
- (d) where the shares are to be acquired for a consideration which consists of shares or debentures in the offeror corporation or in a related corporation-
  - (i) set out the reports which, if the statement were a prospectus issued on the date on which notice of the take-over scheme is given to the offeree company, would be required to be set out in it under paragraphs 20 and 23 in Part II of the Second Schedule; and

- (ii) specify details of any alterations in the capital structure of the offeror corporation or of any subsidiary of that corporation during the period of five years immediately preceding the date on which notice of the take-over scheme is given to the offeree company and particulars of the source of any increase in capital;
- (e) where the shares are to be acquired for a consideration other than wholly in cash or other than for a consideration such as is referred to in subparagraph (d), contain sufficient information and details of the consideration to adequately inform the offeree of the nature and value of such consideration.

2. The statement shall contain particulars of any restriction on the right to transfer the shares to which the take-over scheme relates contained in the memorandum or articles or other instrument constituting or defining the constitution of the offeree company which has the effect of requiring the holders of the shares, before transferring them, to offer them for purchase to members of the offeree company or to any other person and, if there is any such restriction, the arrangements, if any, being made to enable the shares to be transferred in pursuance of the take-over scheme.

3. Where the consideration for the acquisition of shares under the take-over scheme is to be satisfied in whole or in part by the payment of cash, the statement shall contain details of the arrangements that have been, or will be, made to secure payment of the cash consideration and, if no such arrangements have been or will be made, shall contain a statement to that effect.

4. The statement shall set out-

- (a) whether or not it is proposed in connection with the take-over scheme that any payment or other benefit shall be made or given to any director of the offeree company or of any related corporation as compensation for loss of office or as consideration for, or in connection with, his retirement from office and if so, particulars of the proposed payment or benefit in respect of each such director;
- (b) whether or not there is any other agreement or arrangement made between the offeror corporation and any of the directors of the offeree company in connection with or conditional upon the outcome of the scheme, and, if so, particulars of any such agreement or arrangement;
- (c) whether or not there has been within the knowledge of the offeror corporation any material change in the financial position or prospects of the offeree company since the date of the last balance sheet laid before the company in general meeting, and, if so, particulars of any such change; and
- (d) whether or not there is any agreement or arrangement whereby any shares acquired by the offeror corporation in pursuance of the scheme will or may be transferred to any other person, and, if so-
  - (i) the names of the persons who are a party of the agreement or arrangement and the number, description and amount of the shares which will or may be so transferred; and

- (ii) the number, if any, and description and amount of shares of the offeree company held by or on behalf of each of these persons, or if no such shares are so held, a statement to that effect.

5. Paragraphs 6 and 7 apply only where the consideration to be offered in exchange for shares of the offeree company consists in whole or in part of marketable securities issued or to be issued by the offeror corporation or by any other corporation.

6. Where the marketable securities are quoted or dealt in on a stock exchange, the statement shall state this fact and specify the stock exchanges concerned and specify-

- (a) the latest available market sale price prior to the date on which notice of the take-over scheme is given to the offeree company;
- (b) the highest and lowest market sale price during the three months immediately preceding that date and the respective dates of the relevant sales; and
- (c) where the take-over scheme has been the subject of a public announcement in newspapers or by any other means before notice of the scheme was given to the offeree company, the latest market sale price immediately before the public announcement.

7. Where the take-over scheme relates to securities which are not quoted or dealt in on a stock exchange, the statement shall contain all the information which the offeror corporation may have as to the number, amount and price at which the securities have been sold in the three months immediately preceding the date on which notice of the scheme is given to the offeree company and, if the offeror corporation has no such information, a statement to that effect.

### **PART III**

#### **Requirements for statement given by offeree company**

1. The statement shall indicate-

- (a) whether or not the directors of the offeree company recommend to shareholders the acceptance of take-over offers made, or to be made, by the offeror corporation under the take-over scheme; or
- (b) that the directors of the offeree company do not desire to make a recommendation or consider themselves not justified in making a recommendation.

2. The statement shall set out-

- (a) the number, description and amount of marketable securities in the offeree company held by or on behalf of each director of that company or, in the case of a director where none are so held, that fact;

- (b) in respect of every such director of the offeree company by whom, or on whose behalf, shares to which the take-over scheme relates are held-
  - (i) whether or not the present intention of the director is to accept any take-over offer that may be made in pursuance of the take-over scheme in respect of those shares; or
  - (ii) that the director has not decided whether he will accept such a take-over offer;
- (c) whether or not any marketable securities of the offeror corporation are held by, or on behalf of, any director of the offeree company and, if so, the number, description and amount of the marketable securities so held;
- (d) whether or not it is proposed in connection with the take-over scheme that any payment or other benefit shall be made or given to any director of the offeree company or of any related corporation as compensation for loss of office or as consideration for, or in connection with, his retirement from office and, if so, particulars of the proposed payment or benefit;
- (e) whether or not there is any other agreement or arrangement made between any director of the offeree company and any other person in connection with or conditional upon the outcome of the take-over scheme and, if so, particulars of any such agreement or arrangement;
- (f) whether or not any director of the offeree company has any direct or indirect interest in any contract entered into by the offeror corporation and, if so, particulars of the nature and extent of such interest;
- (g) where the shares to which the scheme relates are not quoted or dealt in on a stock exchange all the information which the offeree company may have as to the number, amount and price at which any such shares have been sold in the six months preceding the date on which notice of the take-over scheme was given to the offeree company;
- (h) whether or not there has been any material change in the financial position of the offeree company since the date of the last balance sheet laid before the company in general meeting and if so, particulars of such change;
- (i) whether information is available to the directors as to the intention of the offeror corporation in respect of the future employment of the directors and of the employees of the offeree company.

-----

**EIGHTH SCHEDULE**

**(Section 340)**

PART I  
Processing fee and registration fee

Rs CS

- |   |           |
|---|-----------|
| 1. For registration of a foreign company, a registration fee..... | 20,000.00 |
|---|-----------|

2.	For incorporation and registration of a company limited by guarantee or a company with limited liability but without the word "limited" in its name.	
	(a) a processing fee .....	2,000.00
	(b) a registration fee .....	2,000.00
3.	For incorporation and registration of any other company-	
	(a) a processing fee .....	2,000.00
	(b) a registration fee corresponding to the amount of its issued share capital -	
	(i) not exceeding Rs 250,000.....	2,000.00
	(ii) exceeding Rs 250,000 but not exceeding Rs 500,000 .....	6,000.00
	(iii) exceeding Rs 500,000 but not exceeding Rs 1,000,000 .....	9,000.00
	(iv) exceeding Rs 1,000,000 but not exceeding Rs 3,000,000 .....	12,000.00
	(v) exceeding Rs 3,000,000 but not exceeding Rs 10,000,000 .....	15,000.00
	(vi) exceeding Rs 10,000,000 but not exceeding Rs 20,000,000 .....	20,000.00
	(vii) exceeding Rs 20,000,000 but not exceeding Rs 50,000,000 .....	30,000.00
	(viii) exceeding Rs 50,000,000 but not exceeding Rs 100,000,000 .....	40,000.00
	(ix) exceeding Rs 100,000,000 but not exceeding Rs 200,000,000 .....	60,000.00
	(x) exceeding Rs 200,000,000 but not exceeding Rs 500,000,000 .....	70,000.00
	(xi) exceeding Rs 500,000,000 .....	100,000.00
4.	For registration of a commercial partnership ( <i>société commerciale</i> including <i>société commerciale de fait</i> ), Registration fee .....	6,000.00

**PART 1A**  
**Other Fees**

	Rs cs
1. For lodging an annual return .....	500.00
2. For lodging any document required to be lodged under the Act ...	200.00
3. For any certificate issued by the Registrar or for certifying any copy or extract of any document in the custody of the Registrar .....	100.00
4. For lodging any other document .....	50.00
5. For search of information in respect of every company or commercial partnership .....	50.00
6. For a copy or extract of any document in the custody of the Registrar .....	20.00 per page

**PART II**  
**Penalty fee**

1. For lodging an annual return after 1,000 rupees per month or part of the the expiration of the prescribed time month until the annual return is lodged. limit.
2. For lodging any other document after 100 rupees per month or part of the month the expiration of the prescribed time until the document is lodged. limit.

-----  
**NINTH SCHEDULE**  
**(Section 333)**

Sections 36, 37(1), 40, 42(8), 47(8), 74(1), 106(1), 320, 321, 322, 323, 325, 326, 327, 328, 330, 331(c), (e), (f) or (i).

-----  
**TENTH SCHEDULE**  
**(Section 342)**

**PRESCRIBED FORMS**  
**FORM 1**  
**Notice of Reservation of Name**  
**(Section 11(6))**

To: (Name of applicant): .....

The name (here state name):.....  
is available for registration of a company under the Companies Act, and is reserved  
for the applicant for a period of three months from the date of this notice.

Dated this ..... day of ..... 19....

Signature.....  
Registrar of Companies

**FORM 2**

**Declaration of compliance with the requirements of the Companies Act**  
**(Section 19)**

Name of Company : .....

I, (full name) : .....

of (address) : .....

do swear or solemnly affirm and sincerely declare that I am the notary involved in  
the formation of the above-named company and that all the requirements of the  
Companies Act relating to the registration of the company have been complied with.

Dated this..... day of..... 19.....

Signature:.....

-----

**FORM 3**

**(Section 115)**

**Notice of First Directors, Secretary, Chairman and Manager and Situation of  
Registered Office**

*for lodging with Registrar on Registration*

Name of Company : .....

File Number : .....

Type of Company : .....  
(State whether public, private or limited by guarantee or unlimited)

Full Address of Registered Office : .....

(A Post Office Box is not sufficient but may be provided in addition to ..... full address) .....

**Name, Address and Description of Directors, Secretary, Manager and Chairman**

Full names	Full residential address	Other occupations and other directorships
Directors ...	.....	.....
Secretary ...	.....	.....
Manager ...	.....	.....
Chairman ...	.....	.....

Dated this ..... day of ..... 19....

.....  
Signature of Director/Secretary/Notary

-----  
\* Strike out whichever is inapplicable.

FORM 4  
(Section 96)

**Consent to Act as Director**

Name of Company : ..... Limited

File No. : .....

\*I/\*We consent to act as director(s) of the company

Full Name	Address	Business Occupation	Signature
-----------	---------	---------------------	-----------

Dated this ..... day of ..... 19.....

Presented for filing by .....

.....  
Signature of Director/Secretary/Notary

-----  
\*Strike out whichever is inapplicable.

-----  
**FORM 5**  
**(Section 96)**

**Undertaking by Director to take and Pay for Qualification Shares**

Name of Company : ..... Limited

File No. : .....

I, ..... of .....  
undertake to take from the company and to pay for ..... shares of  
Rs..... each in the capital of the company, being the number of shares  
required by the provisions of the articles of association of the company to qualify  
as a director of the company.

Dated this ..... day of ..... 19.....

Signature:.....

-----  
**FORM 6**  
**(Section 96)**

**Statement by Director of Registration of Qualification Shares**

Name of Company : ..... Limited

File No : .....

I, ..... of ..... state--

1. I am a director of the company
2. The articles of association of the company provide that a director's  
shareholding qualification shall be the holding of at least .....  
shares in the Company.

3. .... shares in the company are registered in my name in the register of members of the company.

Dated this..... day of ..... 19.....

Signature:.....

**FORM 7**  
**(Section 115)**

**Notice of Change in Director, Secretary, Manager or Chairman**

Name of Company : .....

File Number : .....

Full Names	Full Address	Particulars of Change and relevant date
Directors:		
.....	.....	.....

.....	.....	.....
.....	.....	.....
Secretary:		
.....	.....	.....
.....	.....	.....
.....	.....	.....
Manager:		
.....	.....	.....
.....	.....	.....
.....	.....	.....
Chairman:		
.....	.....	.....
.....	.....	.....
.....	.....	.....

Dated this..... day of ..... 19.....

.....  
Signature of Director/Secretary

\*(Strike out whichever is inapplicable)

**NOTE :**

**FORM 8  
(Section 92)**

**Notice of Change of Registered Office**

Name of Company : .....  
File Number : .....

TAKE NOTICE that the Registered Office of the Company is now at (full address

must be given, post office box number is not sufficient but may be provided in addition to full address):

.....  
 .....

Dated this ..... day of ..... 19.....

.....  
 Signature of Director/Secretary

-----  
 (Strike out whichever is inapplicable)

**FORM 9**  
**(Section 49)**

**Return of Allotments of shares**

Name of Company : ..... Limited

File Number : .....

The shares referred to in this return were allotted on the ..... day of ..... 19.....

Shares allotted	Ordinary	Preference	Other class (Specify)
-----------------	----------	------------	--------------------------

1. For cash consideration

- |   |    |    |    |
|---|----|----|----|
| (a) Number of shares  |    |    |    |
| (b) Nominal amount of each share ...                              | Rs | Rs | Rs |
| (c) Amount (if any) paid in cash on each share ....               | Rs | Rs | Rs |
| (d) Amount (if any) due and payable on each share                 | Rs | Rs | Rs |
| (e) Amount of premium (if any) paid or payable on each share .... | Rs | Rs | Rs |

2. For consideration other than cash

- |                        |     |
|------------------------|-----|
| (a) Number of shares   |     |
| (i) as fully paid up   | ... |
| (ii) as partly paid up |     |
| (b) Nominal amount of  |     |

each share ...	Rs	Rs	Rs
(c) If partly paid up- amount paid up on each share ... ..	Rs	Rs	Rs
(d) Amount of premium (if any) paid or payable on each share ...	Rs	Rs	Rs

(e) The consideration for which the shares have been allotted is as follows:  
(here describe the consideration)

3. The names and addresses of the allottees of the shares in the company and the number and classes of shares allotted to them are as follows :

Surname	Given names	Full Address	Description	Number of shares allotted			
				Ordinary		Preference or other (Specify)	
				Cash	Otherwise	Cash	Otherwise

4. State whether any part of the above consideration has been provided by way of previous donation by any person. If so, provide particulars of donor, amount of donation and date.

Dated this ..... day of ..... 19....

Signature of Directors/Secretary .....  
(Strike out whichever is inapplicable)

NOTE: 1. Where shares are allotted for consideration other than cash, the return should be accompanied by the contract or if there is no contract the particulars set out in Form 10. (See section 49).

2. Shares subscribed for in the Memorandum are deemed to have been allotted

as at the date of incorporation and must be included in the first return.

-----  
**FORM 10**  
 (Section 49)

**Statement Containing Particulars of Shares Allotted Otherwise Than for Cash**

Name of Company ..... Limited

File No.....

1. The allotment of ..... shares to ..... of ..... on the ..... day of ..... 19.... was made pursuant to a contract not reduced to writing.

2. The particulars of the consideration in respect of which the allotment of shares was made are as set out in the Schedule.

Dated ..... day of ..... 19....

Signature of Director/Secretary/Manager .....  
 (Strike out if inapplicable)

**SCHEDULE**

The particulars to be given are as follows:

1. If the consideration for the allotment of the shares is services or any consideration other than that mentioned in paragraph 2, state the nature of that consideration.
2. If the allotment is made in satisfaction or part satisfaction of the purchase price of property, give a brief description of that property and the following particulars of the manner in which the purchase price is to be satisfied:

Rs

Total amount deemed as paid in shares allotted otherwise than in cash ...	
Cash ... ..	
Amount of debt released or liabilities assumed (including mortgages on property) ... ..	
Total purchase price ...	-----

3. Give full particulars in the form of the following table of the property

referred to in this footnote which is the subject of the sale, showing in detail how the total purchase price is apportioned between each item :

Rs

Freehold property and fixed plant and machinery and other fixtures ...	
Leasehold property ...	...
Fixed plant and machinery on leasehold property (including tenant's trade and other fixtures) ...	...
Equitable interests in freehold or leasehold property ...	...
Loose plant and machinery, stock in trade, and other chattels ...	...
Goodwill and benefit of contracts	
Patents, designs and trade marks, licences, copyrights, etc ...	...
Book and other debts ...	...
Cash in hand and at bank on current account, bills, notes, etc ...	...
Cash on deposit at bank and elsewhere	
Shares, debentures and other investments ...	...
Other property, viz: ...	...

-----  
NOTE: This statement is to be lodged with the Return of Allotment of Shares (Form 9).

**FORM 11**  
**(Section 50)**

**Affidavit of Director Providing Estimate of Value of Consideration**  
**Where Shares Issued Other Than for Cash**

Name of Company .....

File No .....

I, (full name) .....

of (address) .....

make oath and say as follows:

1. That I am a director of the abovenamed company.

2. That the consideration provided for the shares subscribed for/allotted\* for a consideration other than cash referred to in the annexed Statement of Particulars is not less than the amount by which the shares have been paid up otherwise than in cash.

3. That the particulars of the consideration for the allotment are truly and fully described in the annexed Statement of Particulars and the amount of such consideration stated in the said Statement is a reasonable estimate made by me of the value of such consideration.

4. That the basis on which I made my estimate of the Value is as follows-- (Here set out details of the basis on which the director has valued the consideration)

-----  
SWORN at etc.

NOTE: \*Strike out whichever is not applicable.

The completed Statement of Particulars must be annexed to the affidavit.

-----  
**FORM 12**  
**(Section 81(1))**

**Notice of Particulars of Charge**

Name of Company .....

File No.....

Take notice that a charge\* was created by/\* exists on property acquired by ..... Limited, particulars of which are set out below.

- 1. (a) The\*charge was created on.....  
\*property the subject of a charge was acquired on .....
- (b) The nature of charge is fixed/floating/mortgage/other (specify)
- (c) The creation of subsequent charges \*is/\*is not restricted or prohibited.
- (d) The liability (whether present or prospective)secured by the charge is:  
(describe briefly)
- (e) The property charged is:(describe briefly)
- (f) The charge is created or evidenced by \*a resolution/\* an instrument/\* a

deposit/\* dated

(g) The name of the charge holder is:

(h) (To be used if the charge is constituted by a debenture or debentures) The name of the Debenture Holders' Representative is

Dated this ..... day ..... 19....

Signature .....

-----

\*Strike out if inapplicable.

**FORM 13  
(Section 81(5))**

**Notice of Assignment of Charge**

Name of Company .....

File No.....

1. Take notice that on the ..... day of ..... 19..... \*I ..... of ...../\* became the holder of a registrable charge on the property of ..... the holder of a registrable charge on the property of ..... Limited.

2. Particulars of the charge are as follows:

Dated this ..... day of ..... 19....

Signature.....

-----

\*Strike out whichever is inapplicable

**NOTE:**

(1) Set out sufficient particulars to enable the charge to be identified, including the date on which the charge was created, the registered number (if any) of the charge, the date on which any notice was lodged and the name and address of any previous holder of the charge.

(2) State capacity in which person signs. If a corporation has acquired the charge, a director or secretary or the principal executive officer of the corporation or, in the case of a foreign company, the agent of the foreign company, may sign the notice.

-----

## (Section 81 (5))

**Notice of Variation in Terms of Charge**

Name of Company.....

File No.....

1. Take notice that on the ..... day of 19..... the term of a registrable charge on the property of ..... Limited were varied
2. Particulars of the charge are as follows:
3. Particulars of the variation in terms of the charge are as follows:
4. \*The\*instrument/\* effecting the variation is dated  
\*The variation was not effected by an instrument.

Dated this..... day of..... 19.....

Signature.....

-----

\*Strike out if inapplicable.

## NOTE:

(1) Set out sufficient particulars to enable the charge to be identified, including the date on which the charge was created, the registered number (if any) of the charge, the date on which any notice was lodged and the name and address of any previous holder of the charge.

(2) Particulars are required of any variation that the effect of-

- (a) increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge; or
- (b) prohibiting or restricting the creation of subsequent charges on the property.

(3) State capacity in which person signs. If a corporation has acquired the charge, a director or secretary or the principal executive officer of the corporation, or in the case of a foreign company the agent of the foreign company, may sign the notice.

**FORM 15**  
**(Section 81 (6)(a))**

**\*Memorandum of Payment or Discharge of Debt or Liability**

**\*Memorandum of Release of Property or Part of Property from Charge**

Name of Company.....

File No.....

(1)..... in relation to the (2)..... dated the  
 ..... day of ..... 19..... and created by  
 (3)..... Limited in favour of..... gives  
 notice that-

\*the charge mentioned above was on the ..... day of .....  
 19.... paid or satisfied \*in whole/\* in part to the extent of  
 Rs.....\*the \*property/\*part of the property described in the  
 Schedule was released from the charge.

-----

**SCHEDULE**

Dated this..... day of..... 19....

Signature of holder of charge (4).....

-----

\*Strike out if inapplicable.

( ) Insert name of person last entitled to the benefit of the charge.

( ) Insert description of instrument creating or evidencing the charge,  
 e.g. "agency deed", "mortgage", "debenture".

( ) Insert name of chargor corporation. If the name of the chargor corporation  
 has changed since the creation of the charge, then also insert the name of the  
 chargor corporation when the charge was created.

( ) If the holder of the charge is a company, the memorandum may be signed by a  
 director or secretary or the principal executive officer.

**NOTE:**

A reference to the person last entitled to the benefit of the charge shall, if the  
 charge was constituted by a debenture or debentures and there was a debenture  
 holders' representative, be construed as a reference to the person who was the  
 debenture holders' representative.

-----

**FORM 16**

**Certificate of Incorporation**  
**(under section 19 of the Companies Act)**

File No.....

This is to certify that

(company name).....

is on and from the ..... day of ..... 19..... incorporated as a public/private\* company limited by shares/guarantee\*

GIVEN under my hand in Port Louis, Mauritius, this ..... day of ..... 19.....

.....  
Registrar of Companies

-----

\*Delete whichever is not applicable

**FORM 17**

File No.....

**Certificate of Local Registration as a Foreign Company**  
(under section 303 of the Companies Act)

I HEREBY CERTIFY that the Company

"....."

has this day been registered in Mauritius under the Companies Act as a FOREIGN COMPANY.

GIVEN under MY HAND and SEAL of Office in Port Louis, Mauritius on the..... day of..... 19.....

.....  
Registrar of Companies  
Mauritius

-----

**FORM 18**

File No.....

**Certificate**  
(under Section 28 of the Companies Act)

THIS IS TO CERTIFY that the PRIVATE COMPANY (here state name of company) ..... has converted itself into a PUBLIC COMPANY on the

..... in accordance with a Special Resolution passed on the .....

Given under MY HAND and SEAL of Office at Port Louis, Mauritius on the .....

.....  
Registrar of Companies  
Mauritius

-----

**FORM 19**

File No.....

**Certificate**

(under section 47 of the Companies Act)

I HEREBY CERTIFY that the Company (here state full name of Company) ..... is entitled to commence business as a PUBLIC COMPANY.

GIVEN under MY HAND and SEAL of Office in Port Louis, Mauritius, on the ..... day of ..... One thousand Nine Hundred and .....

.....  
Registrar of Companies  
Mauritius

**FORM 20**

**Declaration that the Conditions of Section 47(1) of the Companies Act have been Complied with**

*To be used by a company which issued a prospectus on or with reference to its formation*

Name of Company :

File No. :

I, ..... of ....., being the secretary (a director) of ..... Limited, do solemnly and sincerely declare-

- 1. That the amount of the share capital of the company offered to the public for

subscription is Rs.....

2. That the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 4 in Part I of the Second Schedule to the Companies Act is Rs.....

3. That shares held subject to the payment of the whole amount thereof in cash have been allotted to the amount of Rs.....

\*4. That 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,\* except the following director(s) namely ....., who has (have) not taken or contracted to take any shares for which he is (they are) liable to pay in cash.

\*4. That no director of the company has taken or contracted to take any shares for which he is liable to pay in cash.

Dated this ..... day of ..... 19.....

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\*Delete if not applicable.

#### FORM 21

#### Declaration that the Provisions of Section 47 (2) of the Companies Act have been Complied with

*To be used by a company which has delivered to the Registrar of Companies a statement in lieu of prospectus*

Name of Company :

File No. :

I, ....., of ....., being the secretary (a director) of ..... Limited, do solemnly and sincerely declare-

\*That 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 payable in cash \* except the following director(s) namely ..... who has (have) not taken or contracted to take any

shares for which he is (they are) liable to pay in cash.

\*That no director of the company has taken or contracted to take any shares for which he is liable to pay in cash.

Declared at ..... this ..... day of 19.....

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\*Delete if not applicable.

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**FORM 22**  
**(Section 166)**

**Notice of Resignation or Removal of Auditor**

..... Limited, being

- \*a public company
- \*non-exempt private company
- \*an exempt private company

gives notice that--

\*on the ..... day of..... 19...., notice was received of the resignation of \*( ) ..... \*an auditor/\*auditors of the company to take effect from the ..... day of..... 19.....

\*( ) ..... \*an auditor/\*auditors of the company was/\*were removed from office on the ..... day of ..... 19.....

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Signature of \*Director/\*Secretary

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\*Strike out if inapplicable.  
( ) Insert name of auditor or auditors.

**FORM 23**  
**(Section 183(1))**

**Notice of Dissenting Shareholder**

To ..... of .....

Whereas..... ("the transferee") on the ..... day of ..... 19.... made an offer to the holders of \*shares in ..... Ltd./\*shares included in ..... class of shares in ..... Ltd. for the transfer of those shares to the transferee, not being an offer made pursuant to a scheme or contract arising out of the making of take-over offers or a take-over announcement under the law relating to the acquisition of shares; and

the scheme or contract involving the transfer of those shares to the transferee was on or before the

..... day of ..... 19.... approved by the holders of not less than nine-tenths in nominal value of the shares \* in that company/\*included in that class of shares, other than shares already held at the date of the offer by, or by a nominee for, the transferee or, where the transferee is a company, its subsidiary; and

you are a dissenting shareholder of the shares \*in the company/\*included in that class of shares, that is to say a shareholder who has not assented to the scheme or contract or has failed or refused to transfer your shares to the transferee in accordance with the scheme or contract.

Now therefore the tranferee gives you notice under sub-section 183 (1) that the transferee desires to acquire those shares held by you. You are entitled under sub-section 183 (5) to require the transferee, by a demand in writing served on the transferee within one month after the date on which this notice is given, to furnish to you a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members.

\*You are entitled not later than the expiration of one month after the date on which this notice is given or 14 days after the date on which a statement is supplied to you in pursuance of sub-section 183 (5) whichever is the later, to elect by notice to the transferee which of the alternative terms offered to the approving shareholders under the scheme or contract you prefer. The alternative terms are as follows:

Unless, on application made by you within one month after the date on which this notice is given or within 14 days after a statement is supplied to you in pursuance of sub-section 183 (5), the Supreme Court of Mauritius thinks fit to order otherwise, the transferee will be entitled and bound subject to sub-section 183 (5) to acquire your shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee or, where alternative terms were offered, on the terms for which you have elected or, where you have not so elected, on whichever of those terms the transferee determines unless the Court otherwise orders.

Dated this..... day of ..... 19...

.....  
Signature of transferee

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\*Strike out if inapplicable.

**FORM 24**  
**(Section 183(6)(a))**

**Notice to Remaining Shareholder**

To..... of .....  
Take notice that ..... (" the transferee") on the ..... day of ..... 19..... made offers to the holders of shares\* in ..... Ltd./ \*included in

..... class of shares in  
 ..... Ltd. for the transfer of shares to the transferee, not being offers made pursuant to a scheme or contract arising out of the making of take-over offers or a take-over announcement under the law relating to the acquisition of shares; and

in pursuance of the scheme or contract the transferee became on the ..... day of ..... 19..... beneficially entitled to shares in that company which together with any other shares in that company to which the transferee, or the transferee and any corporation related to the transferee, is beneficially entitled, comprise or include nine-tenths in nominal value of the shares\* in ..... Ltd./\* included in that class of shares in ..... Ltd; and

you are the holder of remaining shares\* in that company/\*included in that class of shares in that company and have not assented to the scheme or contract or been given notice in respect of those shares by the transferee on the ..... day of ..... 19..... became beneficially entitled to shares in ..... Ltd. and those shares together with any other shares in that company to which the transferee or the transferee and any corporation related to the transferee, is beneficially entitled, comprise or include nine-tenths in nominal value of the shares\* in that company/\*included in that class of shares in that company.

You are entitled under sub-section 183(6) within 3 months after the date on which this notice is given by notice to the transferee to require the transferee to acquire your shares.

\*You are entitled under sub-section 183 (6) within 3 months after the date on which this notice is given to elect by notice to the transferee which of the alternative terms offered to the approving shareholders under the scheme or contract you will accept. The alternative terms are as follows:

If you require the transferee so to acquire the shares held by you the transferee will be entitled and bound to acquire those shares on the terms that under the scheme or contract were offered to the approving shareholders or, where alternative terms were offered, on the terms for which you have elected or, where you do not so elect, on whichever of the terms the transferee determines, or on such other terms as are agreed or as the Supreme Court of Mauritius on the application of the transferee or of yourself thinks fit to order.

Dated this ..... day of ..... 19.....

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\*Strike out if inapplicable.

Signature of transferee.....

**ELEVENTH SCHEDULE**  
**(Section 21, 78, 84, 115, 142, 345, (2))**

Rs

Fee for providing copies of document where  
 a fee per page is allowed .... 2 per page

Fee for providing copy of document in other cases . . . . .	5
Fee for providing copy of memorandum . . . . .	10
Fee for providing copy of articles . . . . .	25
Fee for inspection of register by a person other than a member . . . . .	5