

# **LAWS OF BRUNEI**

## **CHAPTER 39 COMPANIES ACT**

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**REVISED EDITION 2015**



**LAWS OF BRUNEI**

**REVISED EDITION 2015**

**CHAPTER 39**

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## COMPANIES ACT

**An Act to provide for the incorporation and registration of companies in Brunei Darussalam, to control and regulate the relation between the company and its members and between the company and its creditors and the public, to provide for the conditions under which companies incorporated outside Brunei Darussalam may carry on business in Brunei Darussalam and generally to control the functioning within Brunei Darussalam of companies registered locally or carrying on business within Brunei Darussalam**

*Commencement: 1st January 1957*  
*[S 3/1957]*

### PRELIMINARY

#### **Citation**

1. This Act may be cited as the Companies Act.

#### **Interpretation**

2. (1) In this Act —

“accounting standards” means the accounting standards made or formulated by the Accounting Standards Council under Part III of the Accounting Standards Order, 2010 (S 116/2010) and applicable to companies and to companies to which Part IX applies in respect of their operations in Brunei Darussalam for the purposes of this Act;

*[S 118/2010]*

“annual general meeting”, in relation to a company, means a meeting of the company required to be held by section 111(1);

*[S 118/2010]*

“annual return” means the return required to be made, in the case of a company having a share capital, under section 107, and in the case of a company not having a share capital, under section 108;

“articles” means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained in Table A in the First Schedule;

“book and paper” and “book or paper” include accounts, deeds, writings and documents;

“certified”, in relation to a copy of a document, means certified in the prescribed manner to be a true copy of that document and, in relation to a translation of a document, means certified in the prescribed manner to be a correct translation of that document into the English language;

[S 118/2010]

“charge” includes a mortgage and any agreement to give or execute a charge or mortgage whether upon demand or otherwise;

[S 118/2010]

“Clerk of Council” means the person appointed to the position of Clerk to the Legislative Council;

“company” means a company formed and registered under this Act;

“company limited by guarantee” means a company referred to in section 4(2)(b);

“company limited by shares” means a company referred to in section 4(2)(a);

“corporation” means any body corporate formed, incorporated or existing in Brunei Darussalam or outside Brunei Darussalam and includes any company to which Part IX applies and any limited liability partnership but does not include —

(a) any body corporate incorporated in Brunei Darussalam which is by notification published in the *Gazette* declared to be a public body or agency of the Government or a body corporate which is not incorporated for commercial purposes;

(b) any corporation sole;

(c) any co-operative society;

(d) any registered trade union;

[S 118/2010]

“Court” used in relation to a company means the Court having jurisdiction to wind up the company;

“debenture” includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

“default fine” means a default fine within the meaning of section 314;

[S 118/2010]

“director” includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act and an alternate or substitute director;

[S 118/2010]

“document” includes summons, notice, order, and other legal process, and registers;

“financial year”, in relation to any corporation, means the period in respect of which any profit and loss account of the corporation laid before it in general meeting is made up, whether that period is a year or not;

[S 118/2010]

“general rules” means general rules made under section 281 and includes forms;

“manager”, in relation to a company, means the principal executive officer of the company for the time being by whatever name called and whether or not he is a director;

[S 118/2010]

“memorandum” means the memorandum of association of a company, as originally framed or as altered in pursuance of any written law;

“Minister” means the Minister of Finance;

[S 31/2012]

“officer”, in relation to a corporation, includes —

(a) any director or secretary of the corporation or a person employed in an executive capacity by the corporation;

(b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and

(c) any liquidator of a company appointed in a voluntary winding up,

but does not include —

(i) any receiver who is not also a manager;

(ii) any receiver and manager appointed by the Court;

(iii) any liquidator appointed by the Court or by the creditors; and

(iv) an Executive Manager appointed by the Minister under section 149B(1);

[S 118/2010]

“Permanent Secretary” means the Permanent Secretary, Ministry of Finance;

“prescribed” means as respects the provisions of this Act relating to the winding up of companies, prescribed by general rules, and as respects the other provisions of this Act, prescribed by His Majesty the Sultan and Yang Di-Pertuan in Council;

“private company” means —

(a) any company which immediately prior to 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010), was a private company;

(b) any company incorporated as a private company by virtue of section 29; or

(c) any company converted into a private company pursuant to section 30,

being a company which has not ceased to be a private company under section 30;

[S 118/2010]



“prospectus” means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase of any shares or debentures of a company;

“public company” means a company other than a private company;  
*[S 118/2010]*

“Registrar” means the Registrar of Companies appointed under section 288, and includes any Deputy Registrar or Assistant Registrar;

*[S 31/2012]*

“resident in Brunei Darussalam” has the same meaning as in section 2 of the Income Tax Act (Chapter 35);

*[S 118/2010]*

“resolution for voluntarily winding up” means a resolution passed under any of the provisions of section 213;

“share” means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied;

“statutory report” means the report referred to in section 112(2);

“Table A” means Table A in the First Schedule;

*[S 118/2010]*

“unlimited company” means a company formed on the principle of having no limit placed on the liability of its members.

*[S 118/2010]*

(2) A person shall not be deemed, within the meaning of any provision in this Act, to be 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.

### **Application**

**3.** This Act applies to every company registered in Brunei Darussalam irrespective of the place or places where the business of such company may be carried on.

## PART I

INCORPORATION OF COMPANIES AND MATTERS  
INCIDENTAL THERETO

## MEMORANDUM OF ASSOCIATION

**Mode of forming incorporated company**

4. (1) Any seven or more persons or, where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.

(2) Such a company may be either —

(a) a company having the liability of its members limited by the memorandum of the amount, if any, unpaid on the shares respectively held by them;

(b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up; or

(c) a company not having any limit on the liability of its members (in this Act referred to as an unlimited company).

(3) No company, association or partnership consisting of more than twenty 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 written law in Brunei Darussalam or letters patent.

[S 118/2010]

(4) So much of subsection (3) as prohibits the formation of an association or partnership consisting of more than twenty persons shall not apply to an association or a partnership formed solely or mainly for the purpose of carrying on any profession or calling which under the provisions of any written law may be exercised only by persons who possess the

qualifications laid down in such written law for the purpose of carrying on that profession or calling.

[S 118/2010]

### **Requirements with respect to memorandum**

5. (1) The memorandum of every company incorporated after 1st January 1957, being the date of commencement of this Act, must state —

(a) the name of the company with “Berhad” or the abbreviation “Bhd” as the last word of the name in the case of a company limited by shares or by guarantee;

(b) in the case of a private limited company, with the word “Sendirian” or the abbreviation “Sdn” as part of its name inserted immediately before the word “Berhad” or before the abbreviation “Bhd” or, in the case of a private unlimited company, at the end of its name.

[S 118/2010]

(2) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee must also state 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 costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(4) In the case of a company having a share capital —

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

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

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

**Capacity and powers of company** [S 118/2010]

**5A.** (1) Subject to the provisions of this Act and any other written law and its memorandum or articles, a company has —

(a) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and

(b) for the purposes of paragraph (a), full rights, powers and privileges.

(2) A company may have the objects of the company included in its memorandum.

(3) The memorandum or articles of a company may contain a provision restricting its capacity, rights, powers or privileges.

**Ultra vires transactions** [S 118/2010]

**5B.** (1) No act or purported act of a company (including the entering into of an agreement by the company and including any act done on behalf of a company by an officer or agent of the company under any purported authority, whether expressed or implied, of the company) and no conveyance or transfer of property, whether removable or immovable, to or by a company shall be invalid by reason only of the fact that the company was without capacity or power to do such act or to execute or take such conveyance or transfer.

(2) Any such lack of capacity or power may be asserted or relied upon only in —

(a) any proceedings against the company by any member of the company or, where the company has issued debentures secured by a floating charge over all or any of the company's property, by the holder of any of those debentures or the trustee for the holders of those debentures to restrain the doing of any act or acts or the conveyance or transfer of any property to or by the company;

(b) any proceedings by the company or by any member of the company against the present or former officers of the company; or

(c) any application by the Minister of Finance to wind up the company.

(3) If the unauthorised act, conveyance or transfer sought to be restrained in any proceedings under subsection (2)(a) is being or is to be performed or made pursuant to any contract to which the company is a party, the Court may, if all the parties to the contract are parties to the proceedings and if the Court considers it to be just and equitable, set aside and restrain the performance of the contract and may allow to the company or to the other parties to the contract, as the case requires, compensation for the loss or damage sustained by either of them which may result from the action of the Court in setting aside and restraining the performance of the contract but anticipated profits to be derived from the performance of the contract shall not be awarded by the Court as a loss or damage sustained.

**No constructive notice** [S 118/2010]

**5C.** Notwithstanding anything in the memorandum or articles of a company, a person is not affected by, or deemed to have notice or knowledge of the contents of, the memorandum or articles of, or any other document relating to, the company merely because —

(a) the memorandum, articles or document is registered by the Registrar; or

(b) the memorandum, articles or document is available for inspection at the registered office of the company.

**Stamp and signature of memorandum**

**6.** The memorandum must bear the same stamp as if it were a deed and must be signed by each subscriber in the presence of at least one witness who must attest the signature.

**Restriction on alteration of memorandum**

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

**Mode in which and extent to which objects of company may be altered**

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

(a) to carry on its business more economically or more efficiently;

(b) to attain its main purpose by new or improved means;

(c) to enlarge or change the local area of its operations;

(d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company;

(e) to restrict or abandon any of the objects specified in the memorandum;

(f) to sell or dispose of the whole or any part of the undertaking of the company; or

(g) to amalgamate with any other company or body of persons.

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

(3) Before confirming the alteration, the Court must be satisfied that —

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

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

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

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

(5) The Court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company shall be expended in any such purchase.

(6) An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within 15 days from the date of the order, be delivered by the company to the Registrar and he shall register the copy so delivered and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum as so altered shall be the memorandum of the company. The Court may by order at any time extend the time for the delivery of documents to the Registrar under this section for such period as the Court may think proper.

(7) If a company makes default in delivering to the Registrar any document required by this section to be delivered to him, the company shall be liable to a fine of \$50 for every day during which the default continues.

## ARTICLES OF ASSOCIATION

### **Articles prescribing regulations for companies**

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

**Regulations required in case of unlimited company or company limited by guarantee**

**10.** (1) In the case of an unlimited company, if the company has a share capital, the articles must state the amount of share capital with which the company proposes to be registered.

(2) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles must state the number of members with which the company proposes to be registered.

(3) Where a company not having a share capital has increased the number of its members beyond the registered number, it shall, within 15 days after the increase was resolved on or took place, give to the Registrar notice of the increase, and the Registrar shall record the increase. If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

**Adoption and application of Table A**

**11.** (1) Articles of association may adopt all or any of the regulations contained in Table A.

(2) In the case of a company limited by shares and registered after 1st January 1957, being the date of commencement of this Act, if articles are not registered or, if articles are registered, in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

**Printing, stamp and signature of articles**

**12.** Articles must —

- (a) be printed;
- (b) be divided into paragraphs numbered consecutively;
- (c) bear the same stamp as if they were contained in a deed;



(d) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature.

### **Alteration of articles by special resolution**

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

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

## FORM OF MEMORANDUM AND ARTICLES

### **Statutory forms of memorandum and articles**

**14.** The form of —

(a) the memorandum of association of a company limited by shares;

(b) the memorandum and articles of association of a company limited by guarantee and not having a share capital;

(c) the memorandum and articles of association of a company limited by guarantee and having a share capital;

(d) the memorandum and articles of association of an unlimited company having a share capital,

shall respectively be in accordance with the forms set out in Tables B, C, D and E in the First Schedule, or as near thereto as circumstances admit.

## REGISTRATION

### **Registration of memorandum and articles**

**15.** The memorandum and the articles, if any, shall be delivered to the Registrar and the Registrar shall retain and register them.

**Certificate of incorporation**

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

**Effect of registration**

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

*[S 62/2014]*

**Conclusiveness of certificate of incorporation**

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

**Declaration to Registrar** *[S 62/2014]*

19. A declaration by a person entitled to practise as an advocate, who is engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company to the Registrar that —

(a) all the requirements of the Act relating to the formation of the company have been complied with; and

(b) he has verified the identities of the subscribers to the memorandum, and of the persons named in the memorandum or articles as officers of the proposed company,

and the Registrar may accept such declaration as evidence of compliance.

**Power to refuse registration** [S 118/2010]

**19A.** Notwithstanding anything in this Act or any other written law, the Registrar shall refuse to register the memorandum and the articles of a proposed company where he is satisfied that —

(a) the proposed company is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Brunei Darussalam; or

(b) it would be contrary to national security or interests for the proposed company to be registered.

GENERAL PROVISIONS WITH RESPECT TO  
NAMES OF COMPANIES

**Restriction on registration of companies by certain names**

**20.** (1) No company shall be registered by a name which —

(a) is identical with that by which a company in existence is already registered under any of the provisions of this Act or so nearly resembles that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar requires;

(aa) is identical to that of any limited liability partnership;  
[S 118/2010]

(b) is identical with the name of any company incorporated outside Brunei Darussalam and carrying on business within Brunei Darussalam which has duly complied with the requirements of Part IX or, in the opinion of the Registrar, so nearly resembles that name as to be calculated to deceive, except where the said company is about to cease carrying on business in Brunei Darussalam and signifies its consent in such manner as the Registrar requires;

(c) is identical with any name registered under any written law providing for the registration of business names, or in the opinion of the Registrar, so nearly resembles that name as to be calculated to deceive:

Provided that if the Registrar is satisfied that a company is being registered for the purpose of taking over any business which is carried on under a registered business name, and will be entitled as against the proprietor of that name to use that name, he may register the company by that name;

(d) in the opinion of the Registrar is likely to mislead the public as to the nature or the objects of the company;

(e) contains the words “*Chamber of Commerce*”, unless the company is a company which is to be registered under a licence granted in pursuance of section 21 without the addition of the word “*Berhad*” to its name;

(f) contains the words “*Building Society*”;

(g) in the opinion of the Registrar is undersirable; or  
[S 118/2010]

(h) is a name of a kind that the Minister of Finance has directed the Registrar not to accept for registration.

[S 118/2010]

(2) Except with the consent of His Majesty the Sultan and Yang Di-Pertuan\*, no company shall be registered by a name which —

(a) contains the words “*Royal*” or “*Di-Raja*” or, in the opinion of the Registrar suggests or is calculated to suggest the patronage of His Majesty the Sultan and Yang Di-Pertuan or connection with the Government of Brunei Darussalam or any department thereof;

(b) in the opinion of the Registrar suggests or is calculated to suggest, connection with any municipality or other local authority;

(c) contains the words “*Co-operative*”;

(d) contains the word “*Brunei Darussalam*”;

(e) contains the word “*Savings*”;

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\* Transferred to the Minister of Law\*\* with effect from 31st December 1988 — [S 31/1988]

\*\*Transferred further to the Registrar of Companies with effect from 16th September 1998 — [S 32/1998]

(f) contains the word “Trust” or “Trustee”.

(3) Notwithstanding anything in this section and section 22, where the Registrar is satisfied that the company has been registered (whether through inadvertence or otherwise and whether before, on or after 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010), by a name which is referred to in subsections (1) and (2), the Registrar may direct the first mentioned company to change its name, and the company shall comply with the direction within 6 weeks after the date of the direction or such longer period as the Registrar may allow.

[S 118/2010]

(4) Any person may apply, in writing, to the Registrar to give a direction to a company under subsection (3) on a ground referred to in that subsection, but the Registrar shall not consider any application to give a direction to a company on the ground referred to in subsections (1) and (2) unless the Registrar receives the application within 12 months from the date of incorporation of the company.

[S 118/2010]

(5) If the company fails to comply with subsection (1), the company and every officer is guilty of an offence and liable on conviction to a fine not exceeding \$2,000 and a default fine.

[S 118/2010]

(6) Prior to the registration of —

(a) an intended company or a foreign company; or

(b) the change of name of a company or a foreign company,

the applicant for registration shall apply to the Registrar for a search as to the availability of the proposed name of the intended company, company or foreign company and for reservation of that name, if available.

[S 118/2010]

(7) If the Registrar is satisfied that the application is *bona fide* and that the proposed name is a name by which the intended company, company or a foreign company could be registered without contravention of subsection (1), he shall reserve the proposed name for a period of one month from the date of the lodging of the application.

[S 118/2010]

(8) If, at any time during a period for which a name is reserved, application is made to the Registrar for an extension of that period and the Registrar is satisfied that the application is *bona fide*, he may extend that period for a further period of 3 months.

[S 118/2010]

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

[S 118/2010]

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

[S 118/2010]

### **Power to dispense with “*Berhad*” in name of charitable and other companies**

**21.** (1) Where it is proved to the satisfaction of His Majesty the Sultan and Yang Di-Pertuan\* that an association about to be formed as a religion, charity or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects and to prohibit the payment of limited company is to be formed for promoting commerce, art, science, any dividend to its members, His Majesty the Sultan and Yang Di-Pertuan\* may by licence direct that the association may be registered as a company with limited liability, without the addition of the word “*Berhad*” to its name, and the association may be registered accordingly.

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\* Transferred to the Minister of Law\*\* with effect from 31st December 1988 — [S 31/1988]

\*\*Transferred further to the Registrar of Companies with effect from 16th September 1998 — [S 32/1998]

(2) A licence by His Majesty the Sultan and Yang Di-Pertuan\* under this section may be granted on such conditions and subject to such regulations as he may think fit, and those conditions and regulations shall be binding on the association and shall, if His Majesty the Sultan and Yang Di-Pertuan\* so direct, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word “*Berhad*” as any part of its name, and of publishing its name, and of sending lists of members to the Registrar.

(4) A licence under this section may at any time be revoked by His Majesty the Sultan and Yang Di-Pertuan\* and upon revocation, the Registrar shall enter the word “*Berhad*” at the end of the name of the association upon the register and the association shall cease to enjoy the exemptions and privileges granted by this section:

Provided that, before a licence is so revoked, His Majesty the Sultan Yang Di-Pertuan\* shall give to the association notice in writing of his intention and shall afford the association an opportunity of being heard in opposition to the revocation.

(5) Where the name of the association contains the words “*Chamber of Commerce*”, the notice to be given as aforesaid shall include a statement of the effect of the provisions of section 22(3).

### **Change of name**

**22.** (1) A company may, by special resolution and with the prior approval of His Majesty the Sultan and Yang Di-Pertuan\* signified in writing, change its name.

(1A) If the Registrar approves the name which the company has resolved should be its new name, he shall register the company under the new name and issue to the company a notice of incorporation of the company under the new name and, upon the issue of such notice, the change of name shall become effective.

[S 118/2010]

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\* Transferred to the Minister of Law\*\* with effect from 31st December 1988 — [S 31/1988]

\*\*Transferred further to the Registrar of Companies with effect from 16th September 1998 — [S 32/1998]

(2) If the name of a company is (whether through inadvertence or otherwise and whether originally or by change of name) a name by which the company could not be registered without contravention of section 20(1) and (2), the company may by special resolution change its name to a name by which the company could be registered without contravention of that subsection and, if the Registrar directs, shall so change it within 6 weeks after the date of the direction or such longer period as the Registrar allows.

[S 118/2010]

(3) Where a licence granted in pursuance of section 21 to a company the name of which contains the words “*Chamber of Commerce*” is revoked, the company shall, within a period of 6 weeks from the date of the revocation or such longer period as His Majesty the Sultan and Yang Di-Pertuan\* may think fit to allow, change its name to a name which does not contain those words. If a company makes default in complying with the requirements of this subsection, it shall be guilty of an offence: Penalty, a fine of \$250 for every day during which the default continues.

(4) Any person may apply in writing to the Registrar to give a direction to a company under section 20(1) and (2) on a ground referred to in that subsection, but the Registrar shall not consider any application to give a direction to a company on the ground referred to in section 20(1) and (2) unless the Registrar receives the application within 12 months from the date of change of name of the company.

[S 118/2010]

(5) If the company fails to comply with subsection (2), the company and every officer is guilty of an offence and liable on conviction to a fine not exceeding \$2,000 and a default fine.

[S 118/2010]

(6) Upon the application of a company and payment of the prescribed fee, the Registrar shall issue to the company a certificate, under his hand and seal, confirming the incorporation of the company under the new name.

[S 118/2010]

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\* Transferred to the Minister of Law\*\* with effect from 31st December 1988 — [S 31/1988]

\*\*Transferred further to the Registrar of Companies with effect from 16th September 1998 — [S 32/1998]



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

[S 118/2010]

## GENERAL PROVISIONS WITH RESPECT TO MEMORANDUM AND ARTICLES

### **Effect of memorandum and articles**

**23.** Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.

### **Moneys payable to be speciality debt**

**24.** All money payable by any member of the company under the memorandum or articles shall be a debt due from him to the company and be of the nature of a speciality debt.

### **Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent**

**25.** Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company:

Provided that this section shall not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby.

**Copies of memorandum and articles to be given to members**

**26.** (1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, and a copy of any written law which alters the memorandum, subject to payment, in the case of a copy of the memorandum and of the articles, of 50 cents or such sum as the company may with the prior approval of the Registrar prescribe, and in the case of a copy of a written law, of such sum not exceeding the published price thereof as the company may require.

(2) If a company makes default in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of \$100.

**Issued copies of memorandum to embody alterations**

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

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it shall be liable to a fine of \$15 for each copy so issued, and every officer of the company who is in default shall be liable to the like penalty.

**MEMBERSHIP OF COMPANY****Definition of member**

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

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

## PRIVATE COMPANIES

**Meaning of private company**

**29.** (1) For the purposes of this Act, “private company” means a company which by its articles —

(a) restricts the right to transfer its shares;

(b) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be such members after the determination of that employment; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

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

**Circumstances in which company ceases to be, or to enjoy privileges of, private company**

**30.** (1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section 29, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of 14 days after the said date, deliver to the Registrar for registration a prospectus or a statement *in lieu* of prospectus in the form and containing the particulars set out in the Second Schedule.

(2) If default is made in complying with subsection (1), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine of \$500.

(3) Where the articles of a company include the provisions aforesaid but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in

sections 31, 109(3), 129(1) and 162(d), and thereupon those provisions shall apply to the company as if it were not a private company:

Provided that the Court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the Court just and expedient, order that the company be relieved from such consequences as aforesaid.

#### REDUCTION OF NUMBER OF MEMBERS BELOW LEGAL MINIMUM

##### **Prohibition of carrying on business with fewer than seven or, in case of private company, two members**

**31.** If at any time the number of members of a company is reduced, in the case of a private company, below two or, in the case of any other company, below seven, and it carries on business for more than 6 months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those 6 months and is cognisant of the fact that it is carrying on business with fewer than two members or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time and may be severally sued therefor.

#### CONTRACTS ETC.

##### **Ratification by company of contracts made before incorporation** *[S 118/2010]*

**31A.** (1) Any contract or other transaction purporting to be entered into by a company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound and entitled to the benefit thereof as if it had been in existence at the date of the contract or other transaction and had been a party thereto.

(2) Prior to ratification by the company, the persons or persons who purported to act in the name or on behalf of the company shall, in the absence of any express agreement to the contrary, be personally bound by the contract or other transaction and entitled to the benefit thereof.

**Form of contracts**

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

(a) a contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company;

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

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

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

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

**Bills of exchange and promissory notes**

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

**Execution of deeds abroad**

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

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

### **Power for company to have official seal for use abroad**

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

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

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

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

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

## AUTHENTICATION OF DOCUMENTS

### **Authentication of documents**

**36.** 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.

## PART II

## SHARE CAPITAL AND DEBENTURES

## PROSPECTUS

**Date and registration of prospectus**

37. (1) A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

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

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

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

(5) If a prospectus is issued without a copy thereof being so delivered, the company and every person who is knowingly a party to the issue of the prospectus is guilty of an offence and liable on conviction to a fine of \$25 for every day from the date of the issue of the prospectus until a copy thereof is so delivered.

**Specific requirements as to particulars in prospectus**

38. (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state the matters specified in Part I of the Third Schedule and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

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

(3) It shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section:

Provided that this subsection does not apply if it is shown that the form of application was issued either —

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

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

If any person acts in contravention of the provisions of this subsection, he is guilty of an offence and liable on conviction to a fine of \$5,000.

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

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

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

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

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

(5) This section does not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for



shares or debentures will or will not have the right to renounce in favour of other persons, but subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

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

### **Restriction on alteration of terms in prospectus or statement *in lieu* of prospectus**

**39.** (1) A company limited by shares or a company limited by guarantee and having a share capital shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus or statement *in lieu* of prospectus, except subject to the approval of the statutory meeting.

(2) This section does not apply to a private company.

### **Liability for statement in prospectus**

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

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

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

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

(d) every person who has authorised the issue of the prospectus,

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

- (i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent;
- (ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent;
- (iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or
- (iv) that —
  - (A) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true;
  - (B) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement or it was a correct and fair copy of or extract from the report or valuation; and
  - (C) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that a person shall be liable to pay the compensation if it is proved that he had no reasonable ground to believe that the person making any such statement, report or valuation as is mentioned in paragraph (iv)(B) was competent to make it.

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

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

(4) For the purposes of this section —

“expert” includes an engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him;

“promoter” means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

### **Document containing offer of shares or debentures for sale deemed to be prospectus**

**41.** (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the

offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all written laws and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise in respect thereof.

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

(a) an offer of the shares or debentures or of any of them 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 shares or debentures had not been so received.

(3) Section 37 as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and section 38 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus —

(a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and

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

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less

than half of the partners, as the case may be, and any such director or partner may sign by his agent authorised in writing.

## ALLOTMENT

### **Prohibition of allotment unless minimum subscription received**

42. (1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors must be raised by the issue of share capital in order to provide for the matters specified in paragraph 5 in Part I of the Third Schedule, has been subscribed and the sum payable on application for the amount so stated has been paid to and received by the company. For the purposes of this subsection, a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as the minimum subscription.

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

(4) If the conditions aforesaid have not been complied with on the expiration of 40 days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest and, if any such money is not so repaid within 48 days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 5 *per cent per annum* from the expiration of the 48th day:

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

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

(6) This section, except subsection (3), does not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

**Prohibition of allotment in certain cases unless statement *in lieu* of prospectus delivered to Registrar**

43. (1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least 3 days before the first allotment of either shares or debentures there has been delivered to the Registrar for registration a statement *in lieu* of prospectus, signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in the Fourth Schedule.

(2) This section does not apply to a private company.

(3) If a company acts in contravention of this section, the company and every director of the company who knowingly authorises or permits the contravention is guilty of an offence and liable on conviction to a fine of \$5,000.

**Effect of irregular allotment**

44. (1) An allotment made by a company to an applicant in contravention of the provisions of sections 42 and 43 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later or, in any case where the company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment and not later, and shall be so voidable notwithstanding that the company is in the course of being wound up.

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

Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of 2 years from the date of allotment.

**Return as to allotments**

45. (1) Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall within 8 weeks thereafter deliver to the Registrar for registration —

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

(b) in the case of shares allotted as fully or partly paid-up otherwise than in cash, a contract in writing constituting the title of allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid-up and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned in section 45(1)(b) is not reduced to writing, the company shall within 8 weeks after the allotment deliver to the Registrar for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Act (Chapter 34), and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under that Act.

(3) If default is made in complying with this section, every director, manager, secretary or other officer of the company who is knowingly a party to the default is guilty of an offence and liable on conviction to a fine of \$250 for every day during which the default continues:

Provided that, in case of default in delivering to the Registrar any document required to be delivered by this section within 8 weeks after the allotment, the company or any person liable for the default may apply to the Court for relief, and the Court, if satisfied that the omission to deliver the document was accidental or due to inadvertence or that it is just and

equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the Court may think proper.

### COMMISSIONS AND DISCOUNTS

#### **Power to pay certain commissions, and prohibition of payment of all other commissions, discounts etc.**

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

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

(b) the commission paid or agreed to be paid does not exceed 10 *per cent* of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less;

(c) the amount or rate *per cent* of the commission paid or agreed to be paid —

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

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

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



(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

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

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

(5) If default is made in complying with the provisions of this section relating to the delivery to the Registrar of the statement in the prescribed form, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of \$5,000.

#### **Statement in balance sheet as to commissions and discounts**

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

(2) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

#### **Prohibition of provision of financial assistance by company for purchase of own shares**

48. (1) Subject as provided in this section, it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial

assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company:

Provided that nothing in this section shall be taken to prohibit —

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

(b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase by trustees of fully-paid shares in the company to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;

(c) the making by a company of loans to persons, other than directors, genuinely in the employment of the company with a view to enabling those persons to purchase fully-paid shares in the company to be held by themselves by way of beneficial ownership.

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

(3) If a company acts in contravention of this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of \$5,000.

#### ISSUE OF REDEEMABLE PREFERENCE SHARES AND SHARES AT DISCOUNT

##### **Power to issue redeemable preference shares**

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

Provided that —

(a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or

out of the proceeds of a fresh issue of shares made for the purposes of the redemption;

(b) no such shares shall be redeemed unless they are fully paid;

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

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

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

If a company fails to comply with the provisions of this subsection, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of \$5,000.

(3) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any written law relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subsection:

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

(5) Where new shares have been issued in pursuance of subsection (4), the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, up to an amount equal to the nominal amount of the shares so issued, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

### **Power to issue shares at discount**

**50.** (1) Subject as provided in this section, it shall be lawful for a company to issue, at a discount, shares in the company of a class already issued:

Provided that —

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

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

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

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

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

(3) Every prospectus relating to the issue of the shares and every balance sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the document in question. If default is made in complying with this subsection, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

## MISCELLANEOUS PROVISIONS AS TO SHARE CAPITAL

### **Power of company to arrange for different amounts paid on shares**

**51.** A company, if so authorised by its articles, may do any one or more of the following things —

(a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;

(b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;

(c) pay dividend in proportion to the amount paid-up on each share where a larger amount is paid-up on some shares than on others.

### **Reserve liability of limited company**

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

### **Power of company limited by shares to alter share capital**

**53.** (1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its memorandum as follows —

(a) increase its share capital by new shares of such amount as it thinks expedient;

(b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(c) convert all or any of its paid-up shares into stock, and re-convert that stock into paid-up shares of any denomination;

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

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section must be exercised by the company in general meeting.

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

**Notice to Registrar of consolidation of share capital, conversion of shares into stock etc.**

54. (1) If a company having a share capital has —

(a) consolidated and divided its share capital into shares of larger amount than its existing shares;

(b) converted any shares into stock;

(c) re-converted stock into shares;

(d) subdivided its shares or any of them;

(e) redeemed any redeemable preference shares; or

(f) cancelled any shares, otherwise than in connection with a reduction of share capital under section 58,

it shall within one month after doing so give notice thereof to the Registrar specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock re-converted.

(2) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

### **Notice of increase of share capital**

55. (1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall within 15 days after the passing of the resolution authorising the increase, give to the Registrar notice of the increase, and the Registrar shall record the increase.

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

(3) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

### **Power of unlimited company to provide for reserve share capital on re-registration**

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

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

(b) provide that a special portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

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

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

Provided that —

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

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

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

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

(e) the rate of interest shall in no case exceed 4 *per cent per annum* or such other rate as may for the time being be prescribed by the Court;

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



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

(2) If default is made in complying with proviso (g) to subsection (1), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of \$5,000.

## REDUCTION OF SHARE CAPITAL

### **Special resolution for reduction of share capital**

**58.** (1) Subject to confirmation by the Court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may —

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid-up;

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

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

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

(2) A special resolution under this section is referred to in this Act as a resolution for reducing share capital.

### **Application to Court for confirming order, objections by creditors and settlement of list of objecting creditors**

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

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, the following provisions shall have effect, subject nevertheless to subsection (3) —

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

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

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

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

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Court may, if having regard to any special circumstances of the case it thinks proper to do so,

direct that subsection (2) shall not apply as regards any class or any classes of creditors.

### **Order confirming reduction and powers of Court on making order**

**60.** (1) The Court, if satisfied, with respect to every creditor of the company who under section 59 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has been determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

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

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

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

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

### **Registration of order and minute of reduction**

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

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

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

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

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

(6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section 27.

### **Liability of members in respect of reduced shares**

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

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

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

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

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

### **Penalty on concealment of name of creditor**

**63.** If any director, manager, secretary or other officer of the company —

(a) wilfully conceals the name of any creditor entitled to object to the reduction;

(b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

(c) aids, abets or is privy to any such concealment or misrepresentation as aforesaid,

he is guilty of an offence and liable on conviction to a fine and imprisonment for one year.

## VARIATION OF SHAREHOLDERS' RIGHT

### **Rights of holders of special classes of shares**

**64.** (1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than 15 *per cent* of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the Court to

have the variation cancelled and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the Court.

(2) An application under this section must be made within 7 days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

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

(5) The company shall, within 15 days after the making of an order by the Court on any such application, forward a copy of the order to the Registrar and, if default is made in complying with this provision, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

(6) In this section, “variation” includes abrogation and “varied” shall be construed accordingly.

#### TRANSFER OF SHARES AND DEBENTURES, EVIDENCE OF TITLE

##### **Nature of shares**

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

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

(3) Where shares in a company are held by a nominee, such nominee shall disclose the identity of each person on whose behalf those shares are held.

*[S 61/2014]*

(4) The disclosure as required in subsection (3) shall be made in writing to the company within one month of the acquisition of nominee shares.

*[S 61/2014]*

(5) The company is required to maintain a register of disclosure of nominee shareholdings.

*[S 61/2014]*

(6) Notwithstanding subsections (3), (4) and (5), all companies that know or have reasonable cause to believe that any of their shares are held by a nominee, shall require such nominee to disclose the identity of each person for whom the shares are held. The nominee shall provide this information within 10 days of the receipt of notice to this effect.

*[S 61/2014]*

(7) A nominee shareholder who fraudulently provides information to the company which he knows or has reason to believe to be false or misleading is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 2 years or both.

*[S 61/2014]*

### **Transfer not to be registered except on production of instrument of transfer**

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

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

**Transfer by personal representative**

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

**Registration of transfer at request of transferor**

68. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

**Notice of refusal to register transfer**

69. (1) If a company refuses to register a transfer of any shares or debentures, the company shall, within 2 months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default is guilty of an offence and liable on conviction to a fine of \$25 for every day during which the default continues.

**Duties of company with respect to issue of certificates**

70. (1) Every company shall, within 2 months after the allotment of any of its shares, debentures or debenture stock, and within 2 months after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

For the purposes of this subsection, “transfer” means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company who is



knowingly a party to the default is guilty of an offence and liable on conviction to a fine of \$25 for every day during which the default continues.

(3) If any company on whom a notice has been served requiring the company to make good any default in complying with the provisions of subsection (1) fails to make good the default within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificate or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

### **Certificate to be evidence of title**

71. A certificate, under the common seal of the company, specifying any shares held by any member, shall be evidence until the contrary be proved of the title of the member to the shares.

### **Evidence of grant of probate**

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

### **Share warrants [S 61/2014]**

73. A company shall not issue any share warrant stating that the bearer of the warrant is entitled to the shares specified therein and which enables the shares to be transferred by delivery of the warrant.

### **Penalty for personation of shareholder**

74. If any person falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner, he is guilty of a seizable offence and liable on conviction to imprisonment for 15 years.

## SPECIAL PROVISIONS AS TO DEBENTURES

**Right of debenture holders and shareholders to inspect register of debenture holders and to have copies of trust deed**

75. (1) Every register of holders of debentures of a company shall, except when duly closed, be open to the inspection of the registered holder of any such debentures and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than 2 hours in each day shall be allowed for inspection. For the purposes of this subsection, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole 30 days in any year, as may be therein specified.

(2) Every registered holder of debentures and every holder of shares in a company may require a copy of the register of the holders of debentures of the company or any part thereof on payment of 50 cents for every 100 words required to be copied.

(3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request, in the case of a printed trust deed, on payment of the sum of \$1 or such less sum as may be prescribed by the company, or where the trust deed has not been printed, on payment of 50 cents for every 100 words required to be copied.

(4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of \$500 and a default fine of \$20.

(5) Where a company is in default as aforesaid, the Court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

**Perpetual debentures**

76. A condition contained in any debentures or in any deed for securing any debentures shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a

contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

**Power to re-issue redeemed debentures in certain cases**

77. (1) Where after 1st January 1957, being the date of commencement of this Act, a company has redeemed any debentures previously issued, then —

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

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

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

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

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

(4) Where a company has after the passing of this Act deposited any of its debentures to secure advances from time to time on current account or other rent account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

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

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

### **Specific performance of contracts to subscribe for debentures**

**78.** A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

### **Payment of certain debts out of assets subject to floating charge in priority to claims under charge**

**79.** (1) Where, in the case of a company registered in Brunei Darussalam, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts, which in every winding up are under Part V relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The period of time mentioned in Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

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

## PART III

## REGISTRATION OF CHARGES

## REGISTRATION OF CHARGES WITH REGISTRAR OF COMPANIES

**Registration of charges created by companies registered in Brunei Darussalam**

**80.** (1) Subject to the provisions of this Part, every charge created by a company registered in Brunei Darussalam and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, are delivered to or received by the Registrar for registration in manner required by this Act within 5 weeks after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under this section the money secured thereby shall immediately become payable.

(2) The section applies to the following charges —

(a) a charge for the purpose of securing any issue of debentures;

(b) a charge on uncalled share capital of the company;

(c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;

(d) a charge on land, wherever situate, or any interest therein;

(e) a charge on book debts of the company;

(f) a floating charge on the undertaking or property of the company;

(g) a charge on calls made but not paid;

(h) a charge on a ship or any share in a ship;

(i) a charge on goodwill, on a patent or a licence under a patent, on a trademark or on a copyright or a licence under a copyright.

(3) In the case of a charge created out of Brunei Darussalam comprising solely property outside Brunei Darussalam, the delivery to and the receipt by the Registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and 5 weeks after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in Brunei Darussalam shall be substituted for 5 weeks after the date of the creation of the charge, as the time within which the particulars and instrument or copy are to be delivered to the Registrar.

(4) Where a charge is created in Brunei Darussalam but comprises property outside Brunei Darussalam, the instrument creating or purporting to create the charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

(5) Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a charge on those book debts.

(6) The holding of debentures entitling the holder to a charge on land shall not for the purposes of this section be deemed to be an interest in land.

(7) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled in equal degree is created by a company, it shall for the purposes of this section be sufficient if there are delivered to or received by the Registrar within 5 weeks after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars —

(a) the total amount secured by the whole series;

(b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined;

(c) a general description of the property charged; and

(d) the names of the trustees, if any, for the debenture holders,

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

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

(8) Where any commission, allowance or discount has been paid or made either directly by a company to any person in consideration of this subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount of rate *per cent* of the commission, discount or allowance so paid or made, but omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this subsection be treated as the issue of the debentures at a discount.

(9) In this Part, “charge” includes mortgage.

### **Duty of company to register charges created by company**

**81.** (1) It shall be the duty of a company to send to the Registrar for registration the particulars of every charge created by the company and of the issues of debentures of a series, requiring registration under section 80, but registration of any such charge may be effected on the application of any person interested therein.

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar on the registration.

(3) If any company makes default in sending to the Registrar for registration the particulars of any charge created by the company, or of the issues of debentures of a series, requiring registration as aforesaid, then, unless the registration has been effected on the application of some other person, the company and every director, manager, secretary or other person, who is knowingly a party to the default is guilty of an offence and liable on conviction to a fine of \$250 for every day during which the default continues.

### **Duty of company to register charges existing on property acquired**

**82.** (1) Where after 1st January 1957, being the date of commencement of this Act, a company registered under this Act acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the Registrar for registration in manner required by this Act within 5 weeks after the date on which the acquisition is completed:

Provided that, if the property is situate and the charge was created outside Brunei Darussalam, 5 weeks after the date on which the copy of the instrument could, in due course of post and if despatched with due diligence, have been received by Brunei Darussalam shall be substituted for 5 weeks after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the Registrar.

(2) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine of \$250.

### **Register of charges to be kept by Registrar**

**83.** (1) The Registrar shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part and shall, on payment of the prescribed fee, enter in the register with respect to such charges the following particulars —



(a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in section 80(7);

(b) in the case of any other charge —

- (i) 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;
- (ii) the amount secured by the charge;
- (iii) short particulars of the property charged; and
- (iv) the persons entitled to the charge.

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

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding \$5 for each inspection.

(4) The Registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the charges entered in the register.

### **Endorsement of certificate of registration on debentures**

**84.** (1) The company shall cause a copy of every certificate of registration given under section 83 to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered:

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

(2) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which under the

provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he is, without prejudice to any other liability, guilty of an offence and liable on conviction to a fine of \$5,000.

### **Entry of satisfaction**

**85.** The Registrar may, on evidence being given to his satisfaction that the debt for which any registered charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register and shall, if required, furnish the company with a copy thereof.

### **Rectification of register of charges**

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

### **Registration of enforcement of security**

**87.** (1) If any person obtains an order for the appointment of a receiver or manager of the property of a company or appoints such a receiver or manager under any powers contained in any instrument, he shall, within 7 days from the date of the order or of the appointment under such powers, give notice of the fact to the Registrar, and the Registrar shall, on payment of the prescribed fee, enter the fact in the register of charges.

(2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the Registrar notice to that effect, and the Registrar shall enter the notice in the register of charges.

(3) If any person makes default in complying with the requirements of this section, he is guilty of an offence and liable on conviction to a fine of \$25 for every day during which the default continues.

PROVISIONS AS TO COMPANY'S REGISTER OF CHARGES AND  
AS TO COPIES OF INSTRUMENTS CREATING CHARGES

**Copies of instruments creating charges to be kept by company**

**88.** Every company shall cause a copy of every instrument creating any charge requiring registration under this Part to be kept at the registered office of the company:

Provided that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

**Company's register of charges**

**89.** (1) Every limited company shall keep at the registered office of the company a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge and, except in the case of securities to bearer, the names of the persons entitled thereto.

(2) If any director, manager or other officer of the company, knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he is guilty of an offence and liable on conviction to a fine of \$5,000.

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

**90.** (1) The copies of instruments creating any charge requiring registration under this Part with the Registrar, and the register of charges, kept in pursuance of section 89, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day shall be allowed for inspection) to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding \$5 for each inspection, as the company may prescribe.

(2) If inspection of such copies or register is refused, any officer of the company refusing inspection and every director and manager of the company authorising or knowingly and wilfully permitting the refusal, is

guilty of an offence and liable on conviction to a fine of \$500, and a further fine of \$20 for every day during which the refusal continues.

(3) If any such refusal occurs in relation to a company registered in Brunei Darussalam, the Court may by order compel an immediate inspection of the copies or register.

#### APPLICATION OF PART III TO COMPANIES INCORPORATED OUTSIDE BRUNEI DARUSSALAM

#### **Application of Part III to company incorporated outside Brunei Darussalam**

**91.** The provisions of this Part shall extend to charges on property in Brunei Darussalam which are created, and to charge on property in Brunei Darussalam which is acquired, after 1st January 1957, being the date of commencement of this Act, by a company (whether a company within the meaning of this Act or not) incorporated outside Brunei Darussalam which has an established place of business in Brunei Darussalam.

#### PART IV

#### MANAGEMENT AND ADMINISTRATION

#### REGISTERED OFFICE AND NAME

#### **Registered office of company**

**92.** (1) A company shall, as from the day on which it begins to carry on business or as from the twenty-eighth day after the date of its incorporation, whichever is the earlier, have a registered office in Brunei Darussalam to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of any change therein shall be given within 28 days after the date of the incorporation of the company or of the change, as the case may be, to the Registrar, who shall record the same. The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection.

(3) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

### **Publication of name by company**

93. (1) Every company shall —

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

(b) have its name engraven in legible characters on its seal; and

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

(2) If a company does not paint or affix its name in manner directed by this Act, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of \$250, and if a company does not keep its name painted or affixed in manner so directed, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

(3) If a company fails to comply with any of the provisions of subsections (1) and (2), the company is guilty of an offence and liable on conviction to a fine of \$500.

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

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

(b) issues or authorises the issue of any notice, advertisement or other official publication of the company, or signs or authorises

to be signed on behalf of the company any bill of exchange, promissory note, indorsement, cheque, or order for money or goods, wherein its name is not mentioned in manner aforesaid; or

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

he is guilty of an offence and liable on conviction to a fine of \$500 and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless it is duly paid by the company.

[S 118/2010]

## RESTRICTIONS ON COMMENCEMENT OF BUSINESS

### **Restrictions on commencement of business**

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

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

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

(c) there has been delivered to the Registrar for registration a declaration by a person entitled to practise as an advocate, who is engaged in the formation of the company, or the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with.

[S 62/2014]

(2) Where a 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 powers unless —

(a) there has been delivered to the Registrar for registration a statement *in lieu* of prospectus;

(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 delivered to the Registrar for registration a declaration by a person entitled to practise as an advocate, who is engaged in the formation of the company, or the secretary or one of the directors in the prescribed form that paragraph (b) has been complied with.

[S 62/2014]

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

[S 62/2014]

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

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

(6) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention is, without prejudice to any other liability, guilty of an offence and liable on conviction to a fine of \$250 for every day during which the contravention continues.

(7) If a company fails to obtain a certificate to commence business within one year of the date of its incorporation, the Registrar shall send by registered post to the company at its registered office a letter calling upon the company to apply for such certificate.

(8) If the company fails to obtain such certificate within one month of the posting of such letter, the Registrar shall publish in the *Gazette* a notice to the effect that the company will be struck off the register if it fails to obtain such certificate within 2 months after the publication of such notice.

(9) If the company fails to obtain such certificate within 2 months of the publication of such notice, the Registrar shall strike the company off the register and shall publish in the *Gazette* a notification to the effect that the company has been struck off the register.

(10) Upon the publication in the *Gazette* of such notification, the company shall be deemed to be dissolved.

(11) If any company is struck off the register or dissolved under the provisions of this section, the Court, on the application of the company or of any member or creditor thereof may, on any ground which may seem fit to the Court, order that the company be restored to the register, either permanently or temporarily, and may make such restoration subject to any condition which may seem fit to the Court.

(12) Upon the making of any such order, the company shall be restored to the register and shall, subject to any order which the Court may make, be deemed to have continued in existence as if it had not been struck off the register, and the Court may give any directions which may seem necessary in the circumstances.

(13) If no office of the company has been registered, copies of the letter referred to in subsection (7) shall be sent by the Registrar by registered post to each of the persons who subscribed the memorandum of the company at the respective addresses given therein.

(14) Nothing in this section shall apply to a private company.

## REGISTER OF MEMBERS

### **Register of members**

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



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

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

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

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

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

### **Index of members of company**

**96.** (1) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

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

(3) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

### **Provisions as to entries in register in relation to share warrants**

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

(a) the fact of the issue of the warrant;

(aa) name and particulars of the holder of the warrant;

*[S 61/2014]*

(b) a statement of the shares included in the warrant, distinguishing each share by its number; and

(c) the date of the issue of the warrant.

(2) The holder of a share warrant is required to surrender the warrants for cancellation by 31st December 2015 and have his name entered as a member in the register of members.

*[S 61/2014]*

(3) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a holder of a share warrant in respect of the shares there in specified without the warrant being surrendered and cancelled.

*[S 61/2014]*

(4) Until the warrant is surrendered, the particulars specified in subsection (1) shall be deemed to be the particulars required by this Act to be entered in the register of members, and on the surrender, the date of the surrender must be entered.

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

*[S 61/2014]*

### **Inspection of register of members**

**98.** (1) The register of members, commencing from the date of the registration of the company, and the index of the names of members, shall be kept at the registered office of the company, and except when the register is closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day be allowed for inspection) be open to the inspection of any member without charge and of any other person on payment of \$5 or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register or of any part thereof, on payment of 50 cents or such less sum as the company may prescribe, for every 100 words or fractional part thereof required to be copied. The company shall cause any copy so required by any person to be sent to that person within a period of 10 days commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to, in respect of each offence, a fine of \$200 and a default fine of \$20.

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

### **Power to close register**

**99.** A company may, on giving notice by advertisement in some newspaper in Brunei Darussalam, close the register of members for any time or times not exceeding in the whole 30 days in each year.

### **Power of Court to rectify register**

**100.** (1) If —

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

(b) default is made or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member,

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

(2) Where an application is made under this section, the Court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

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

(4) In the case of a company required by this Act to send a list of its members to the Registrar, the Court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the Registrar.

### **Trusts not to be entered on register**

**101.** No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the Registrar, in the case of companies registered in Brunei Darussalam.

### **Register to be evidence**

**102.** The register of members shall, unless and until the contrary be proved, be evidence of any matters by this Act directed or authorised to be inserted therein.

## LOCAL OR BRANCH REGISTERS

### **Power for company to keep local or branch register**

**103.** (1) The Registrar may, subject to instruction from His Majesty the Sultan and Yang Di-Pertuan\* issue an annual licence, available for the period of one year, to any company whose objects comprise the transaction of business outside Brunei Darussalam, empowering such company, if it is authorised so to do by its regulations as originally framed or as altered by special resolution, to keep in any place in which it transacts business a register or registers of members:

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\* Transferred to the Minister of Law\*\* with effect from 31st December 1988 — [S 31/1988]

\*\*Transferred further to the Registrar of Companies with effect from 16th September 1998 — [S 32/1998]

Provided that a company applying for such licence must satisfy the Registrar, by a statutory declaration to be filed with him or otherwise, that a substantial part of the business of the company is carried on, at or near the place where it desires to keep such register.

Every such licence shall be valid only until the 31st day of December next following the date on which it is issued:

Provided always that where the period between the date of the issue of the first annual licence to a company and the 31st day of December next following is less than a year, a proportionate part only of the fee mentioned in subsection (2) shall be charged.

(2) An annual fee at the rate of 2 cents for every \$100 of the paid-up capital of the company to which the licence is issued shall be paid by such company in respect of such licence. Such fees shall be paid to the Registrar within 4 months of the date of the licence.

(3) When the Registrar has reasonable cause to believe that a company is keeping, in any place where it transacts business outside Brunei Darussalam, a register of members without having a valid licence under this Act, he shall publish in the *Gazette* and send to the company a notice that at the expiration of 2 months from the date of such notice the name of the company mentioned therein will, unless cause to the contrary is shown, be struck off the register and the company will be dissolved.

(4) At the expiration of the time mentioned in the notice, the Registrar may, unless cause to the contrary is previously shown by the company, strike the name of the company off the register and shall publish notice thereof in the *Gazette*, and on such publication the company whose name is so struck off shall be dissolved:

Provided that the liability, if any, of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved.

(5) If any company or member thereof feels aggrieved by the name of such company having been struck off the register in pursuance of this section, the company or member may apply to the Court, and the Court, if it is satisfied that it is just to do so, may order the name of the company to be restored to the register and thereupon the company shall be deemed to have continued in existence as if the name had never been struck off, and the

Court may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the name of the company had never been struck off.

(6) A letter or notice under this section may be addressed to the company as its registered office, or if no office has been registered, to the care of some director or officer of the company, or if there is no director or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

(7) If default is made in complying with subsection (2), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

#### **Regulations as to branch register**

**104.** (1) A local or branch register shall be deemed to be part of the company's register of members (in this section and in section 105 referred to as the principal register).

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in Brunei Darussalam.

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

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

(5) A company may discontinue to keep a local or branch register, and thereupon all entries in that register shall be transferred to some other local or branch register kept by the company or to the principal register.

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

(7) If default is made in complying with subsection (3), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

### **Exemption from certain duties in case of shares registered in local branch registers**

**105.** (1) An instrument of transfer of a share registered in a local or branch register, shall be deemed to be a transfer of property situate out of Brunei Darussalam, and unless executed in any part of Brunei Darussalam, shall be exempt from stamp duty chargeable in Brunei Darussalam.

(2) No estate duty shall be payable in respect of the share or other interest of a deceased member registered in a local or branch register kept out of Brunei Darussalam under this Act.

### **Provisions as to or branch registers of companies kept in Brunei Darussalam**

**106.** If by virtue of the law in force in any foreign country, companies incorporated under the law of that foreign country and registered in Brunei Darussalam under Part IX of the Act, have power to keep in the Brunei Darussalam local or branch registers of their members resident in Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan in Council\* may by order direct that sections 98 and 100 shall, subject to any modifications and adaptations specified in the order, apply to and in relation to any such local or branch registers kept in Brunei Darussalam as they apply to and in relation to the registers of companies within the meaning of this Act.

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\* Transferred to the Minister of Law\*\* with effect from 31st December 1988 — [S 31/1988]

\*\*Transferred further to the Registrar of Companies with effect from 16th September 1998 — [S 32/1998]

## ANNUAL RETURN

**Annual return to be made by company having share capital**

**107.** (1) Every company having a share capital shall once at least in every year make a return containing a list of all persons who, on the day of the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or, in the case of the first return, of the incorporation of the company.

(2) The list must state the names, addresses and occupations of all the past and present members therein mentioned and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or, in the case of the first return, of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and if the names therein are not arranged in alphabetical order, must have annexed to it an index sufficient to enable the name of any person in the list to be readily found:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the list must state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares herein before required.

(3) The return must also state the address of the registered office of the company and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid-up otherwise than in cash, and specifying the following particulars —

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

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

(c) the amount called up on each share;

(d) the total amount of calls received;

(e) the total amount of calls unpaid;



(f) the total amount of the sums, if any, paid by way of commission in respect of any shares or debentures;

(g) 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 on which the return is made;

(h) 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;

(i) the total number of shares forfeited;

(j) the total amount of shares for which share warrants are outstanding at the date of the return;

(k) the total amount of share warrants issued and surrendered respectively since the date of the last return;

(l) the number of shares comprised in each share warrant;

(m) all such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Act required to be contained with respect to directors in the register of the directors of a company;

(n) the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be, registered with the Registrar under this Act.

(4) The return shall be in accordance with the form set out in the Fifth Schedule or as near thereto as circumstances admit.

(5) In the case of a company keeping a branch register, the particulars of the entries in that register shall, so far as they relate to matters which are required to be stated in the return, be included in the return made next after copies of those entries are received at the registered office of the company.

**Annual return to be made by company not having share capital**

**108.** (1) Every company not having a share capital shall once at least in every year make a return stating —

(a) the address of the registered office of the company;

(b) all such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Act required to be contained with respect to directors in the register of directors of a company.

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar under this Act.

**General provisions as to annual returns**

**109.** (1) The annual return must be contained in a separate part of the register of members and must be completed within 28 days after the first or only general meeting in the year, and the company shall forthwith forward to the Registrar a copy signed by a director or by the manager or by the secretary of the company.

(2) Section 98 applies to the annual return as it applies to the register of members.

(3) Except where the company is a private company, the annual return shall include a written copy, certified by a director or the manager or secretary of the company to be a true copy, of the last balance sheet which has been audited by the company's auditors, including every document required by law to be annexed thereto, together with a copy of the report of the auditors thereon certified as aforesaid, and if any such balance sheet is in a foreign language there shall also be annexed to it a translation thereof in such language as may be prescribed by the Registrar, certified in the prescribed manner to be a correct translation:

Provided that, if such last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets, there shall be made such additions to and corrections in such copy as would have been required to be made in such balance sheet

in order to make it comply with such requirements, and the fact that such copy has been so amended shall be stated thereon.

(4) If a company contravenes this section or, section 107 or 108, the company and every officer of the company who is in default shall be liable to a default fine.

(5) For the purposes of subsection (4) “officer”, and for the purposes of sections 107 and 108 “director”, shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

### **Certificates to be sent by private company with annual return**

**110.** A private company shall send with the annual return required by section 107 a certificate signed by a director or the secretary of the company that the company has not issued, since the date of the last return, or in the case of a first return, since the date of the incorporation of the company, any invitation to the public to subscribe for any shares or debentures of the company, and where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who, under section 29(1)(b), are not to be included in reckoning the number of fifty.

## MEETINGS AND PROCEEDINGS

### **Annual general meetings** [S 118/2010]

**111.** (1) A general meeting of every company, to be called the annual general meeting, shall in addition to any other meeting be held once in every calendar year and not more than 15 months after the holding of the last preceding annual general meeting, but so long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(2) Notwithstanding subsection (1), the Registrar, on the application of the company, may, if for any special reason he thinks fit to do so, extend the period of 15 months or 18 months referred to in that subsection, notwithstanding that such period is so extended beyond the calendar year.

(3) Subject to notice being given to all persons 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.

(4) If default is made in holding an annual general meeting —

(a) the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 and a default fine; and

(b) the Court may on the application of any member order a general meeting to be called.

### **Statutory meeting and statutory report**

**112.** (1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than 3 months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called the statutory meeting.

(2) The directors shall, at least 7 days before the day on which the meeting is held, forward a report to every member of the company.

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

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

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

(c) an abstract of the receipts of the company and of the payments made thereout, up to a date within 7 days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the

payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

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

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

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

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

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

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

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

(9) In the event of any default in complying with the provisions of this section, every director of the company who is guilty of or who

knowingly and wilfully authorises or permits the default is guilty of an offence and liable on conviction to a fine of \$2,500.

(10) This section does not apply to a private company.

### **Convening of extraordinary general meeting on requisition**

**113.** (1) The directors of a company, notwithstanding anything in its articles shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit, carries the right of voting at general meetings of the company, or in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at such date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

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

(3) If the directors do not within 21 days from the date of the deposit of the requisition proceed duly 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 convene a meeting, but any meeting so convened shall not be held after the expiration 3 months from such date.

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

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid 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) For the purposes of this section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section 116.

### Provisions as to meetings and votes

**114.** (1) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf —

(a) a meeting of a company, other than a meeting for the passing of a special resolution, may be called by 7 days' notice in writing;

(b) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A, and for the purpose of this paragraph the expression "Table A" means that table as for the time being in force;

(c) two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than 5 *per cent* in number of the members of the company may call a meeting;

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

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

(f) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each \$100 of stock held by him, and in any other case every member shall have one vote.

(2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act, the Court may, either of its own motion or on the application of any director of the company or of any member of the company

who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit, and where any such order is made, may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

### **Representation of companies at meetings of other companies and of creditors**

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

(a) if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;

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

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

### **Provisions as to extraordinary and special resolutions**

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

(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than 21 days' notice,



specifying the intention to propose the resolution as a special resolution, has been duly given:

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given.

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

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

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

(b) if no provision is made by the articles with respect to the right to demand the poll, by three members so entitled or by one member or two members so entitled, if that member holds or those two members together hold not less than 15 *per cent* of the paid-up share capital of the company.

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

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

### **Registration and copies of certain resolutions and agreements**

**117.** (1) A printed copy of every resolution or agreement to which this section applies shall, within 15 days after the passing or making thereof, be forwarded to the Registrar and recorded by him.

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

(3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request, on payment of one dollar or such sum as the company with the approval of the Registrar direct.

(4) This section applies to —

(a) special resolutions;

(b) extraordinary resolutions;

(c) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special resolutions or as extraordinary resolutions;

(d) resolutions or agreements which have been agreed to by all the members of some class of shareholders, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;

(e) resolution requiring a company to be wound up voluntarily, passed under section 213(1)(a).

(5) If a company fails to comply with subsection (1), the company and every officer of the company who is in default shall be liable to a default fine of \$50.

(6) If a company fails to comply with subsection (2) or (3), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of \$15 for each copy in respect of which default is made.

(7) For the purposes of subsections (5) and (6), a liquidator of the company shall be deemed to be an officer of the company.

### **Resolutions passed at adjourned meetings**

**118.** Where a resolution is passed at an adjourned meeting of —

- (a) a company;
- (b) the holders of any class of shares in a company;
- (c) the directors of a company,

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

### **Minutes of proceedings of meeting and directors**

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

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

(3) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers or liquidators shall be deemed to be valid.

### **Inspection of minute books**

**120.** (1) The books containing the minutes of proceedings of any general meeting of a company held after 1st January 1957, being the date of commencement of this Act, shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose,

so that no less than 2 hours in each day be allowed for inspection) be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished with, within 7 days after he has made a request in that behalf to the company, a copy of any such minutes as aforesaid at a charge not exceeding 50 cents for every 100 words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of each company who is in default is guilty of an offence and liable on conviction to, in respect of each offence, a fine of \$200 and a default fine of \$20.

(4) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

## ACCOUNTS AND AUDIT

### **Keeping of books of account**

**121.** (1) Every company shall cause to be kept proper books of account with respect to —

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

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

(c) the assets and liabilities of the company.

And for this purpose every company shall cause to be kept the following books —

(i) a cash book or books which shall contain a full and complete record of all sums of money paid to the company or to any agent of the company and of all sums of money expended by the company or by any

agent of the company and of the matters in respect of which such receipt and expenditure take place:

Provided that, there shall also be kept a book which shall contain a daily summary of all the receipts and payments which are recorded in the cash book or books. There shall be set out in such summary under appropriate heads the daily totals of receipts and payments in such a manner as to show clearly their respective sources and the accounts in respect of which they are made, and full particulars shall be given in respect of all receipts and payments on account of capital and of all payments made to directors of the company. The entries in such book shall in every case be made at a date not later than one month from the date under which the transactions of which they are a record are entered in the cash book or books;

- (ii) a journal or other book or books in which shall be recorded all financial transactions of the company other than cash transactions and all transactions which in any way affect the accretions and diminutions on capital and revenue accounts of the company with full explanations of such transactions; and
- (iii) a ledger or other book or books in which shall be entered each to its proper account the transactions recorded in the cash book and journal so as to show the financial relations of the company with every party with whom it has dealings and the financial position of the company itself.

(1A) The company shall retain the records referred to in subsection (1) for a period of not less than 7 years from the end of the financial year in which the transaction or operations to which those records relate, are completed.

*[S 61/2014]*

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

(3) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he is guilty of an offence and liable on conviction to, in respect of each offence, a fine of \$5,000 or imprisonment for 2 years:

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the Court dealing with the case, the offence was committed wilfully.

### **Profit and loss account and balance sheet**

**122.** (1) The directors of every company shall, at some date not later than 18 months after the incorporation of the company and subsequently once at least in every calendar year, lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than 9 months or, in the case of a company carrying on business or having interests abroad, by more than 12 months:

Provided that the Court, if for any special reason they think fit so to do, may, in the case of any company, extend the period of 18 months and in the case of any company and with respect to any year extend the periods of 9 and 12 months.

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

(2A) The report to which subsection (2) relates shall state with appropriate details —

(a) the names of the directors in office during the period under report;

(b) whether during the financial year under report, the company was party, to any arrangements whose objects were, (or one of whose objects was), to enable directors of the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company. If so, the report shall contain —

- (i) a statement explaining the effect of the arrangements;
- (ii) the names of the persons who at any time during that year were —
  - (A) directors of the company; and
  - (B) had held (or whose nominees held) shares or debentures acquired in pursuance of the arrangements; and

(c) the following information —

- (i) whether or not any director of the company was interested (at the end of the year under report) in shares in (or debentures of) the company or any other body corporate (being the company's subsidiary, holding company or subsidiary of company's holding company). If so, the number and amount of shares in (and debentures of) each body (specifying it) in which he was then interested; and
- (ii) whether or not, any director of the company was interested, at the beginning of the year under report (or if he was not then a director, when he became a director) in shares in (or debentures of) the company or any other body corporate (being the company's subsidiary, holding company or subsidiary of company's holding company). If so, the number and amount of shares in (and debentures of) each body (specifying it) in which he was then interested.

*[S 6/2015]*

(2B) The directors of a company shall state in the report whether since the end of the previous financial year a director of the company has

received or become entitled to receive a benefit (other than a benefit included in the aggregate amount of emoluments received or due and receivable by the directors shown in the accounts; if the company is a holding company, the consolidated accounts in accordance with the applicable accounting standards or the fixed salary of a full-time employee of the company) by reason of a contract made by the company or a related corporation with the director or with a firm of which he is a member, or with a company in which he has a substantial financial interest and, if so, the general nature of the benefit.

*[S 6/2015]*

(2C) The Minister may prescribe additional information to be provided in the report under this section. The additional information shall be such as considered necessary by the Minister to facilitate understanding of the business of the company (or group of companies of the holding company, as the case may be) by members of the company (or holding company, as the case may be).

*[S 6/2015]*

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he is guilty of an offence and liable on conviction to, in respect of each offence, a fine of \$5,000 or imprisonment for 2 years:

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the Court dealing with the case, the offence was committed wilfully.

### **Contents of balance sheet**

**123.** (1) Every balance sheet of a company shall contain a summary of the authorised share capital and of the issued share capital of the company, its liabilities and its assets, together with such particulars as are necessary to disclose the general nature of the liabilities and the assets of the company and to distinguish between the amounts respectively of the fixed assets and of the floating assets, and shall state how the values of the fixed assets have been arrived at.

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

(a) the preliminary expenses of the company;



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

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

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

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

#### **Assets consisting of shares in subsidiary companies to be set out separately in balance sheet**

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

#### **Balance sheet to include particulars as to subsidiary companies**

**125.** (1) Where a company (in this section referred to as the holding company) holds shares either directly or through a nominee in a subsidiary company or in two or more subsidiary companies, there shall be annexed to the balance sheet of the holding company a statement, signed by the persons by whom in pursuance of section 128 the balance sheet is signed, stating how the profits and losses of the subsidiary company or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies have, so far as they concern the holding company, been dealt

with, in or for the purposes of, the accounts of the holding company, and in particular how and to what extent —

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

(b) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the holding company as disclosed in accounts:

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company, or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner.

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

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

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

**Meaning of subsidiary company**

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

(a) the amount of the shares so held is at the time when the accounts of the holding company are made up, more than 50 *per cent* of the issued share capital of that other company or such as to entitle the company to more than 50 *per cent* of the voting power in that other company; or

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

that other company shall be deemed to be a subsidiary company within the meaning of this Act, and “subsidiary company” in this Act means a company in the case of which the conditions of this section are satisfied.

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

**Accounts to contain particulars as to loans to, and remuneration of directors etc.**

**127.** (1) The accounts which in pursuance of this Act are to be laid before every company in general meeting shall, subject to the provisions of this section, contain particulars showing —

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

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

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

(2) The provisions of subsection (1) with respect to loans do not apply —

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

(b) to a loan made by the company to any employee of the company if the loan does not exceed \$20,000 and is certified by the directors of the company to have been made in accordance with any practice adopted or about to be adopted by the company with respect to loans to its employees.

(3) The provisions of subsection (1) with respect to the remuneration paid to directors shall not apply in relation to a managing director of the company, and in the case of any other director who holds any salaried employment or office in the company there shall not be required to be included in that total amount any sums paid to him except sums paid by way of directors' fees.

(4) If in the case of any such accounts as aforesaid the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

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

**Signing of balance sheet**

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

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

(3) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published, or if any copy of a balance sheet is issued, circulated or published without having a copy of the auditors' report attached thereto, the company and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, is guilty of an offence and liable on conviction to a fine of \$5,000.

**Right to receive copies of balance sheets and auditors' report**

**129.** (1) In the case of a company not being a private company —

(a) a copy of every balance sheet including every document required by law to be annexed thereto which is to be laid before the company in general meeting, together with a copy of the auditors' report shall, not less than 7 days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company;

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

If default is made in complying with paragraph (a), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of \$200, and if, where any person makes a demand for a document with which he is by virtue of paragraph (b) entitled

to be furnished, default is made in complying with the demand within 7 days after the making thereof, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default is guilty of an offence and liable on conviction to a fine of \$25 for every day during which the default continues, unless it is proved that person has already made a demand for and been furnished with a copy of the document.

(2) In the case of a company being a private company, any member shall be entitled to be furnished with, within 7 days after he has made a request in that behalf to the company, a copy of the balance sheet and auditors' report at a charge not exceeding 50 cents for every 100 words. If default is made in furnishing such a copy to any member who demands it and tenders to the company the amount of the proper charge therefor, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

**130.** *(Repealed by S 118/2010).*

### **Appointment and remuneration of auditors**

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

(2) If an appointment of auditors is not made at an annual general meeting, the Court may, on the application of any member of the company, appoint an auditor of the company for the current year.

(3) (a) The Clerk of Council\*\* shall publish annually, by notification published in the *Gazette*, a list in two parts containing the names of all persons who are authorised by His Majesty the Sultan and Yang Di-Pertuan in Council\* to perform the duties required by this Act to be performed by an auditor, and shall from time to time similarly publish the names of persons added to or removed from any part of the last published annual list by order of His Majesty the Sultan and Yang Di-Pertuan in Council\*. The last published annual list as so amended shall be deemed the current authorised list.

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\* Transferred to the Minister of Finance with effect from 31st December 1988 — [S 31/1988]

\*\*Transferred to the Permanent Secretary, Ministry of Finance with effect from 31st December 1998 — [S 31/1988]

(b) His Majesty the Sultan and Yang Di-Pertuan in Council\* shall not order the insertion of the name of any person in any part of any such list unless he deems him in all respects fit and suitable to be authorised.

- (c) (i) His Majesty the Sultan and Yang Di-Pertuan in Council\* may in his absolute discretion by order remove the name of any authorised auditor who has ceased to practise in Brunei Darussalam.
- (ii) His Majesty the Sultan and Yang Di-Pertuan in Council\* may also on any ground which he may deem sufficient, remove the name of any person he may consider unfit or unsuitable to continue to be authorised. In such case, notice shall be given, if practicable, to the person whose name it is proposed to remove and he may, if so required, be heard by His Majesty the Sultan and Yang Di-Pertuan in Council\* either in person or by advocate, before such removal is made.
- (d) (i) The first part of the current authorised list shall contain the names of persons authorised to audit accounts, kept in English and the second part shall contain the names of persons authorised to audit accounts kept in a language other than English.
- (ii) Where the accounts of a company are kept in English, no person shall be appointed auditor unless his name appears in the first part of the current authorised list, and where the accounts of a company are kept in a language other than English, no person shall be appointed auditor unless his name appears in the second part of the current authorised list as a person authorised to audit accounts in such language.

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\* Transferred to the Minister of Finance with effect from 31st December 1988 — [S 31/1988]

\*\*Transferred to the Permanent Secretary, Ministry of Finance with effect from 31st December 1998 — [S 31/1988]

(iii) Every company which keeps its accounts partly in English and partly in a language other than English shall have its accounts audited as to that part which is kept in English by a person whose name appears in the first part of the current authorised list and as to that part which is kept in a language other than English by a person whose name appears in the second part of the current authorised list as a person authorised to audit accounts in such language.

(e) Nothing herein shall be deemed to prevent His Majesty the Sultan and Yang Di-Pertuan in Council\* authorising the inclusion of a name in both parts of the current authorised list; and nothing herein shall be deemed to require a second auditor for the daily summary in the English language referred to in the proviso in section 121(1)(i).

(f) In this subsection, “person” shall include a firm.

(4) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member to the company not less than 14 days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor and shall give notice thereof to the members, either by advertisement or in any other mode allowed by articles, not less than 7 days before the annual general meeting:

Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date 14 days or less after the notice has been given, the notice, though not given within the time required by this subsection, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this subsection, be sent or given at the same time as the notice of the annual general meeting.

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\* Transferred to the Minister of Finance with effect from 31st December 1988 — [S 31/1988]



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

Provided that —

(a) the company may, at a general meeting of which notice has been served on the auditors in the same manner as on members of the company, remove any such auditors and appoint in their place any other persons being persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than 7 days before the date of the meeting; and

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

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

(7) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of an auditor appointed before the first annual general meeting or of an auditor appointed to fill a casual vacancy, may be fixed by the directors, and that the remuneration of an auditor appointed by the Court may be fixed by the Court.

(8) The provisions of this section relating to the appointment of auditors do not apply to any company in relation to which the Government has the power to secure, by means of the holding of shares or the possession of voting power in or in relation to that company or by virtue of any powers conferred by the articles of that company, that the affairs of that company are conducted in accordance with its directions.

*[S 10/2003]*

(9) The accounts of any company to which subsection (8) refers shall be audited annually by —

(a) the Auditor General; or

(b) any person who has been authorised to perform the duties required by this section to be performed by an auditor, who shall be appointed annually by the company:

Provided that where the accounts of such a company have been audited by a person appointed under paragraph (b), they may be verified by the Auditor General.

[S 10/2003]

### **Disqualification for appointment as auditor**

**132.** None of the following persons shall be qualified for appointment as auditor of a company —

(a) a director or officer of the company;

(b) except where the company is a private company, a person who is a partner of or in the employment of an officer of the company;

(c) a body corporate.

### **Auditors' report and auditors' right of access to books and right to attend general meetings**

**133.** (1) The auditors shall make a report to the members on the accounts examined by them and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state —

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

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

(2) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company and shall be entitled to require from the directors and officers of the company such

information and explanation as may be necessary for the performance of the duties of the auditors:

Provided that, in the case of a banking company which has branch banks beyond the limits of Brunei Darussalam, it shall be sufficient if the auditor is allowed access to such copies and extracts from such books and accounts of any such branch as have been transmitted to the head office of the company in Brunei Darussalam.

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

**Certain companies exempt from obligation to appoint auditors**  
*[S 62/2014]*

**133A.** (1) Notwithstanding section 131, a company which is exempt from audit requirements under section 133B or 133C, and its directors, shall be exempt from section 131(1).

(2) Where a company ceases to be so exempt, the company shall appoint a person or persons to be auditor or auditors of the company at any time before the next annual general meeting and the auditors so appointed shall hold office until the conclusion of that meeting.

(3) If default is made in complying with subsection (2), the company and every director of the company who is in default is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

**Dormant company exempt from audit requirements** *[S 62/2014]*

**133B.** (1) A company shall be exempt from audit requirements if it has been dormant —

(a) from the time of its formation; or

(b) since the end of the previous financial year.

(2) A company is dormant during a period in which no accounting transaction occurs and the company ceases to be dormant on the occurrence of such a transaction.

(3) For the purposes of subsection (2), there shall be disregarded transactions of a company arising from any of the following —

- (a) the taking of shares in the company by a subscriber to the memorandum in pursuance of his undertaking in the memorandum;
- (b) the appointment of an auditor under section 131;
- (c) the maintenance of a registered office under sections 92 and 93;
- (d) the keeping of registers and books under sections 83, 98, 120 and 143;
- (e) the payment of any fee specified in the Eighth Schedule or an amount of any fine or penalty paid to the Registrar under Part XI;
- (f) other matters as may be prescribed.

(4) Where a company is, at the end of a financial year, exempt from audit requirements under subsection (1) —

- (a) a copy of balance sheet of the company, including every document required by law to be annexed thereto to be sent under section 129, need not be audited;
- (b) section 129 has effect with the omission of any reference to the auditor's report or a copy of the report;
- (c) a copy of an auditor's report need not be laid before the company in a general meeting; and
- (d) the annual return of the company to be lodged with the Registrar shall be accompanied by a statement by the directors —
  - (i) that the company is a company referred to in subsection (1)(a) or (b) as at the end of the financial year;
  - (ii) that no notice has been received under subsection (6) in relation to that financial year; and

- (iii) as to whether the books of account required by this Act to be kept by the company have been kept in accordance with section 121.

(5) Where a company which is exempt from audit requirements under subsection (1) ceases to be dormant, it shall thereupon cease to be so exempt; but it shall remain so exempt in relation to accounts for the financial year in which it was dormant throughout.

(6) Member or members holding in the aggregate —

(a) not less than 5 *per cent* in nominal value of a company's issued share capital or any class of it; or

(b) if the company does not have a share capital, not less than 5 *per cent* in number of the members of the company,

may, by notice in writing to the company during a financial year but not later than one month before the end of that year, require the company to obtain an audit of its accounts for that year.

(7) Where a notice is given under subsection (6), the company is not entitled to the exemption under subsection (1) in respect of the financial year to which the notice relates.

(8) In this section, “accounting transaction” means a transaction the record of which is in the books of account required to be kept under section 121.

**Private company exempt from audit requirements** [S 62/2014]

**133C.** (1) A company, being a private company, shall be exempt from audit requirements in respect of a financial year if —

(a) its revenue in that year does not exceed \$1,000,000;

(b) the beneficial interest in its shares is not held, directly or indirectly, by any corporation; and

(c) it consists of not more than twenty members.

(2) For a period which is an exempt private company's financial year but is less than 12 months, the amount of revenue under subsection (1) shall be proportionately adjusted.

(3) Section 133B(4), (6) and (7) apply, with the necessary modifications, to an exempt private company so exempt.

**Registrar may require company exempt from audit requirements to lodge audited accounts** [S 62/2014]

**133D.** Notwithstanding sections 133B and 133C, the Registrar may, if he is satisfied that there has been a breach of any provision of section 121 or 122 or that it is otherwise in the public interest to do so, by notice in writing to a company exempt under section 133B or 133C, require that company to lodge with him, within such time as may be specified in that notice —

(a) its accounts, duly audited by the auditor or auditors of the company or, where none has been appointed, an auditor or auditors to be appointed by the directors of the company for this purpose; and

(b) an auditor's report referred to in section 133 in relation to those accounts prepared by the auditor or auditors of the company.

## INSPECTION

### Investigation of affairs of company by inspectors

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

(a) in the case of a banking company having a share capital, on the application of members holding not less than one-third of the shares issued;

(b) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued;

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

(2) The application shall be supported by such evidence as the Court may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in, requiring the investigation, and the Court may, before appointing an inspector, require the applicants to give security to an amount not exceeding \$10,000 for payment of the costs of the inquiry.

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

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

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

(6) On the conclusion of the investigation, the inspectors shall report their opinion to the Court which shall direct that a copy of the report be forwarded to the registered office of the company. A further copy shall, at the request of the applicants for the investigation, be delivered to them. The report shall be written or printed, as the Court may direct.

### **Proceedings on report by inspectors**

**135.** (1) If from any report made under section 134 it appears to the Court that any person has been guilty of any offence in relation to the company for which he is criminally liable, the Court may direct that the matter shall be referred to the Public Prosecutor.

(2) If, where any matter is referred to the Public Prosecutor under this section, he considers that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company, past and present (other than the defendant in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.

For the purposes of this subsection, “agents” in relation to a company shall be deemed to include the bankers and solicitors of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

(3) The expenses of and incidental to an investigation under section 134 (in this subsection referred to as the expenses) shall be defrayed as follows —

(a) where as a result of the investigation a prosecution is instituted by the Public Prosecutor, the expenses shall be defrayed by the revenues of Brunei Darussalam;

(b) in any other case, the expenses shall be defrayed by the company unless the Court thinks proper to direct, as the Court is hereby authorised to do, that they shall either be paid by the applicants or in part by the company and in part by the applicants:

Provided that —

- (i) if the company fails to pay the whole or any part of the sum which it is liable to pay under this subsection, the applicants shall make good the deficiency up to the amount by which the security given by them under section 134 exceeds the amount, if any, which they have under this subsection been directed by the Court to pay; and
- (ii) any balance of the expenses not defrayed either by the company or the applicants shall be defrayed by the revenues of Brunei Darussalam.



**Definitions** [S 26/1998]

**135A.** For the purposes of sections 135A to 135N —

“body corporate” includes a company incorporated elsewhere than in Brunei Darussalam;

“company” includes any company liable to be wound up under this Act, any body corporate and any partnership or association wheresoever established.

**Appointment of inspectors** [S 26/1998]

**135B.** (1) The Minister of Finance may, if he considers it expedient in the public interest, appoint one or more inspectors to investigate the affairs of a company and to report on them in such manner as he may direct.

(2) Inspectors may be appointed under subsection (1) on terms that any report (or any part of it) they may make is not for publication.

**Inspectors’ powers during investigation** [S 26/1998]

**135C.** (1) If inspectors appointed under section 135B think it necessary for the purposes of their investigation to investigate also the affairs of another company or the Minister of Finance so directs, they have power to do so; and they shall report on the affairs of the other company so far as they think that the results of their investigation of its affairs are relevant to the investigation of the affairs of the company mentioned in section 135B.

(2) If inspectors appointed under section 135B think it necessary for the purposes of their investigation to investigate also the affairs of any other person who the inspectors consider has had dealings with any company mentioned in section 135B or 135C, or is or has been connected with any such company in such a manner as the inspectors consider warrants investigation, or if the Minister of Finance directs, they have power to do so; and they shall report on the affairs of that person so far as they think that the results of their investigation of his affairs are relevant to the investigation of the affairs of the company mentioned in section 135B or 135C.

**Production of documents and evidence to inspector** [S 26/1998]

**135D.** (1) Where inspectors are appointed under section 135B, it is the duty of each person mentioned in subsection (4) —

(a) to produce to the inspectors all documents of, or relating to, the company referred to in section 135B or 135C(1) or the person referred to in section 135C(2), which are in his possession, custody or power;

(b) to attend before the inspectors when required to do so;

(c) otherwise to give the inspectors all assistance in connection with the investigation which he is reasonably able to give.

(2) If the inspectors consider that any of the persons mentioned in subsection (4) is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may require him —

(a) to produce to them any documents in his custody or power relating to that matter;

(b) to attend before them; and

(c) otherwise to give them all assistance in connection with the investigation which he is reasonably able to give,

and it is the duty of that person to comply with the requirement.

(3) An inspector may, for the purposes of the investigation, examine any person on oath and may administer an oath accordingly.

(4) The persons referred to in subsections (1) and (2) are —

(a) any person who is or was a director, controller, manager, employee, agent, banker, auditor, legal adviser or shareholder of the company;

(b) any other person who the inspectors consider is or may be in possession of information relating to a matter which the inspectors believe to be relevant to the investigation.

(5) Any answer given by a person to a question put to him in exercise of powers conferred by this section may be used in evidence against him.

(6) In this section and section 135K, “documents” include —

(a) anything in which information of any description is recorded in any form, whether in a manner intelligible to the senses or capable of being made intelligible by the use of equipment;

(b) any database or electronic information,

and in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form.

**Obstruction of inspectors** [S 26/1998]

**135E.** If any person —

(a) fails to comply with his duty under section 135D(1)(a) or (c);

(b) refuses to comply with a requirement under section 135D(1)(b) or (2); or

(c) refuses to answer any question put to him by the inspectors for the purposes of the investigation,

the inspectors may certify that fact in writing to the Court, and the Court may thereupon inquire into the case, and may punish the offender in like manner as if he had been guilty of contempt of Court.

[S 118/2010]

**Report of inspectors** [S 26/1998]

**135F.** (1) The inspectors shall report to the Minister of Finance as the Minister of Finance may direct.

(2) Any such report shall be written or printed as the Minister of Finance may direct.

**Power to bring civil proceedings on behalf of company** [S 26/1998]

**135G.** (1) If from any report made or information obtained under section 135D, 135F or 149D, it appears to the Minister of Finance that any civil proceedings ought, in the public interest, to be brought by any company,

he may himself bring such proceedings in the name of and on behalf of the company.

(2) The Minister of Finance shall have the power to indemnify the company against any costs or expenses incurred by it in connection with the proceedings brought under this section.

**Expenses of investigating affairs of company** [S 26/1998]

**135H.** (1) The expenses of an investigation under any of the powers conferred by sections 135B to 135F shall be defrayed in the first instance by the Minister of Finance, but he may recover those expenses from the persons liable in accordance with this section. There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Minister of Finance may determine in respect of general staff costs and overheads.

(2) A person who is convicted on a prosecution instituted as a result of the investigation, or is ordered to pay the whole or any part of the costs of the proceedings brought under section 135G, may in the same proceedings, be ordered to pay those expenses to such extent as may be specified in the order.

(3) A company in whose name proceedings are brought under section 135G is liable in respect of any costs or expenses incurred in connection with those proceedings to the amount or value of any sums or property recovered by it as a result of those proceeding; any amount for which a company is liable under this subsection is a first charge on the sums or property recovered.

For the purposes of this section, any costs or expenses incurred by the Minister of Finance in or in connection with proceedings brought under section 135G are to be treated as expenses of the investigation giving rise to the proceedings.

**Power to investigate company ownership** [S 26/1998]

**135I.** Where the Minister of Finance appoints inspectors under section 135B, the inspectors may, if directed by the Minister of Finance, investigate and report on the membership of any company, and otherwise with respect to the company, for the purposes of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence its policy.

**Provisions applicable on investigation under section 135I** [S 26/1998]

**135J.** For the purposes of an investigation under section 135I, sections 135C to 135F apply with the necessary modifications of references to the affairs of the company or to those of any other company or person.

**Entry and search of premises** [S 26/1998]

**135K.** (1) The Court may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Minister of Finance or by a person appointed or authorised to exercise powers under sections 135B and 135C, that there are reasonable grounds for believing that there are, on any premises, documents whose production has been required and which have not been produced in compliance with that requirement.

(2) The Court may also issue a warrant under this section if satisfied on information on oath given by or on behalf of the Minister of Finance or by a person appointed or authorised to exercise powers under sections 135B and 135C that —

(a) there are reasonable grounds for believing that an offence has been committed and that there are, on any premises, documents relating to whether the offence has been committed;

(b) the Minister of Finance or the person so appointed or authorised, has power to require the production of the documents under section 135D; and

(c) there are reasonable grounds for believing that, if production was so required, the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed.

(3) A warrant under the section shall authorise a police officer —

(a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose;

(b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsections (1) and (2), or take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;

(c) to take copies of any such documents; and

(d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.

(4) If in the case where a warrant is issued under subsection (2), the Court is satisfied on information on oath that there are reasonable grounds for believing that there are also, on the premises, other documents relevant to the investigation, the warrant shall also authorise actions mentioned in subsection (3) to be taken in relation to such documents.

(5) Any person who intentionally obstructs the exercise of any rights conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (3)(d) is guilty of contempt of Court.

**Punishment for furnishing false information** [S 26/1998]

**135L.** A person who, in purported compliance with a requirement imposed under section 135D to provide an explanation or make a statement, provides or makes an explanation which he knows to be false in a material particular or recklessly provides or makes an explanation or statement which is also false, is guilty of contempt of Court.

**Disclosure of information by Minister of Finance** [S 26/1998]

**135M.** The Minister of Finance may, if he thinks fit, authorise or require an inspector appointed under section 135B to disclose any information to any person for such purpose as the Minister of Finance may direct.

**Reference to Public Prosecutor** [S 26/1998]

**135N.** (1) If, from any report made under section 135F, it appears to the inspectors that any person has been guilty of any offence in relation to the company for which he is criminally liable, the inspectors shall refer the matter to the Public Prosecutor.

(2) If, where any matter is referred to the Public Prosecutor under this section, he considers that the case is one in which a prosecution ought to be instituted and further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly.

**Power of company to appoint inspectors**

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

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

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

**Report of inspectors to be evidence**

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

**DIRECTORS AND MANAGERS****Number of directors**

**138.** (1) Every company registered after 1st January 1957, being the date of commencement of this Act, shall have at least two directors.

(2) One of the two directors or, where there are more than two directors, at least two of them shall be ordinarily resident in Brunei Darussalam.

*[S 118/2010]*

(2A) No person other than an individual who has attained the age of 18 years and who is otherwise of full legal capacity shall be a director of a company.

*[S 118/2010]*

(2B) A company shall comply with the requirements of subsection (2) within 6 months of 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010).

[S 118/2010]

(3) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

### **Restrictions on appointment or advertisement of director**

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

(a) signed and delivered to the Registrar for registration a consent in writing to act as such director; and

(b) either —

- (i) signed the memorandum for a number of shares not less than his qualification, if any;
- (ii) taken from the company and paid or agreed to pay for his qualification share, if any;
- (iii) signed and delivered to the Registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any; or
- (iv) made and delivered to the Registrar for registration a statutory declaration to the effect that a number of shares, not less than his qualification, if any, are registered in his name.

(2) Where a person has signed and delivered as aforesaid 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) On the application for registration of the memorandum and articles of a company, the applicant shall deliver to the Registrar a list of the persons who have consented to be directors of the company and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine of \$2,000.

(4) This section does not apply to —

(a) a company not having a share capital;

(b) a private company;

(c) a company which was a private company before becoming a public company; or

(d) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

### **Qualification of director or manager**

**140.** (1) Without prejudice to the restrictions imposed by section 139, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification and who is not already qualified, to obtain his qualification within 2 months after his appointment or such shorter time as may be fixed by the articles.

(2) For the purposes of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

(3) The office of director of a company shall be vacated if the director does not within 2 months from the date of his appointment or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of the said period or shorter time he ceases at any time to hold his qualification.

(4) A person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(5) If, after the expiration of the said period or shorter time, any unqualified person acts as a director of the company, he shall be liable to a fine of \$50 for every day between the expiration of the said period or shorter time or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

### **Provisions as to undischarged bankrupts acting as directors**

**141.** (1) If any person being an undischarged bankrupt act as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the Court by which he was adjudged bankrupt, he is guilty of an offence and liable on conviction to a fine of \$5,000 and imprisonment for one year:

Provided that a person shall not be guilty of an offence under this section by reason that he, being an undischarged bankrupt, has acted as director of, or taken part or been concerned in the management of, a company, if at the commencement of this Act he was acting as director of, or taking part or being concerned in the management of, that company and has continuously so acted, taken part or been concerned since that date and the bankruptcy was prior to that date.

(2) The leave of the Court for the purpose of this section shall not be given unless notice of intention to apply therefor has been served on the Official Receiver and it shall be the duty of the Official Receiver, if he is of opinion that it is contrary to the public interest that any such application should be granted, to attend on the hearing of and oppose the granting of the application.

(3) In this section —

“company” includes an unregistered company and a company incorporated outside Brunei Darussalam which has an established place of business within Brunei Darussalam;

“Official Receiver” means the Official Receiver in bankruptcy.

**Disqualification of unfit directors of insolvent companies** [S 118/2010]

**141A.** (1) The Court may —

(a) on the application of the Minister of Finance or the Official Receiver as provided for in subsection (9)(a); and

(b) on being satisfied as to the matters referred to in subsection (2),

make an order disqualifying a person specified in the order from being a director or in any way, whether directly or indirectly, being concerned in, or take part in, the management of a company during such period not exceeding 5 years after the date of the order as is specified in the order (referred to in this section as a disqualification order).

(2) The Court shall make a disqualification order under subsection (1) if it is satisfied that —

(a) the person against whom the order is sought has been given not less than 14 days' notice of the application; and

(b) (i) that person is or has been a director of a company which has at any time gone into liquidation (whether while he was a director or within 3 years of his ceasing to be a director) and was insolvent at that time; and

(ii) his conduct as director of that company either taken alone or taken together with his conduct as a director of any other company or companies makes him unfit to be a director of or in any way, whether directly or indirectly, be concerned in, or take part in, the management of a company.

(3) If in the case of a person who is or has been a director of a company which is —

(a) being wound up by the Court, it appears to the Official Receiver or to the liquidator (if he is not the Official Receiver); or

(b) being wound up otherwise than as mentioned in paragraph (a), it appears to the liquidator,

that the conditions mentioned in subsection (2)(b) are satisfied as respects that person, the Official Receiver or the liquidator, as the case may be, shall immediately report the matter to the Minister of Finance.

(4) The Minister of Finance may require the Official Receiver or the liquidator or the former liquidator of a company —

(a) to furnish him with such information with respect to any person's conduct as a director of the company; and

(b) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director,

as the Minister of Finance may reasonably require for the purpose of determining whether to exercise, or of exercising, any of his functions under this section; and if default is made in complying with that requirement, the Court may, on the application of the Minister of Finance, make an order requiring that person to make good the default within such time as is specified in the order.

(5) For the purposes of this section —

(a) a company has gone into liquidation —

(i) if it is wound up by the Court, on the date of the filing of the winding up application;

(ii) in any other case, on the date of the passing of the resolution for the voluntary winding up; and

(b) a company was insolvent at the time it has gone into liquidation if it was unable to pay its debts within the meaning of that expression in section 163,

and references in this section to a person's conduct as a director of any company or companies include, where any of those companies have become insolvent, references to that person's conduct in relation to any matter connected with or arising out of the insolvency of that company.

(6) In deciding whether a person's conduct as a director of any particular company or companies make him unfit to be concerned in, or take part in, the management of a company as is mentioned in subsection (2)(b),

the Court shall in relation to his conduct as a director of that company or, as the case may be, each of those companies have regard, generally to the matters referred to in paragraph (a), and, in particular, to the matters referred to in paragraph (b), notwithstanding that the director has not been convicted or may be criminally liable in respect of any of these matters —

- (a) (i) as to whether there has been any misfeasance or breach of any fiduciary or other duty by the director in relation to the company;
- (ii) as to whether there has been any misapplication or retention by the director of, or any conduct by the director giving rise to an obligation to account for, any money or other property of the company;
- (iii) as to the extent of the director's responsibility for any failure by the company to comply with sections 88, 89(1), 90(1), 95, 96, 98, 107, 121 and 122; and
- (b) (i) as to the extent of the director's responsibility for the causes of the company becoming insolvent;
- (ii) as to the extent of the director's responsibility for any failure by the company to supply any goods or services which have been paid for (in whole or in part);
- (iii) as to the extent of the director's responsibility for the company entering into any transaction liable to be set aside under section 167;
- (iv) as to whether the causes of the company becoming insolvent are attributable to its carrying on business in a particular industry where the risk of insolvency is generally recognised to be higher.

(7) The Minister of Finance may, by notification published in the *Gazette*, amend any of the matters referred to in subsection (6) and that notification may contain such transitional provisions as may appear to the Minister of Finance to be necessary or expedient.

(8) In this section, “company” includes a corporation and a company incorporated outside Brunei Darussalam but does not include a partnership or association to which Part VIII applies.

(9) (a) In the case of a person who is or has been a director of a company which has gone into liquidation and is being wound up by the Court, an application under this section shall be made by the Official Receiver, but in any other case an application shall be made by the Minister of Finance.

(b) On a hearing of an application under this section —

- (i) the Minister of Finance or the Official Receiver, as the case may be, shall appear and call the attention of the Court to any matter which appears to him to be relevant (and for this purpose the Minister of Finance may be represented) and may give evidence or call witnesses; and
- (ii) the person against whom an order is sought may appear and himself give evidence or call witnesses.

(10) This section does not apply unless the company mentioned in subsection (2)(b) has gone into insolvent liquidation on or after 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010) and the conduct to which the Court shall have regard shall not include conduct as a director of a company that has gone into liquidation before that date.

(11) A person who acts as Judicial Manager, Executive Manager, receiver or receiver manager shall not be liable to have a disqualification order made against him in respect of acts done in his capacity as Judicial Manager, Executive Manager, receiver or receiver manager, as the case may be.

(12) Any person who acts in contravention of a disqualification order made under this section is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(13) Nothing in this section shall prevent a person who is disqualified pursuant to an order made under subsection (1) from applying for leave of the Court to be concerned in or take part in the management of a company.

(14) On the hearing of an application made under subsection (13) or (15), the Minister of Finance or the Official Receiver shall appear (and for this purpose the Minister may be represented) and call attention of the Court to any matter which appears to him to be relevant to the application and may himself give evidence or call witnesses.

(15) Any right to apply for leave of the Court to be concerned or take part in the management of a company that was subsisting immediately before 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010) shall, after that date, be treated as subsisting by virtue of the corresponding provision made under this section.

**Disqualification of directors of companies wound up on grounds of national security or interest** [S 118/2010]

**141B.** (1) Subject to subsections (2) and (3), where a company is ordered to be wound up by the Court on the ground that it is being used for purposes against national security or interest, the Court may, on the application of the Minister of Finance, make an order (referred to in this section as a disqualification order) disqualifying any person who is a director of that company from being a director or in any way, directly or indirectly, being concerned in, or from taking part in, the management of any company or company incorporated outside Brunei Darussalam for a period of 3 years from the date of the making of the winding up order.

(2) The Court shall not make a disqualification order against any person under subsection (1) unless the Court is satisfied that the person against whom the order is sought has been given not less than 14 days' notice of the Minister of Finance's application for the order.

(3) The Court shall not make a disqualification order against any person under subsection (1) if such person proves to the satisfaction of the Court that —

(a) the company had been used for purposes against national security or interest without his consent or connivance; and

(b) he had exercised such diligence to prevent the company from being so used as he ought to have exercised having regard to the nature of his function in that capacity and to all the circumstances.

(4) Any person who acts in contravention of a disqualification order made under subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(5) In this section, “company incorporated outside Brunei Darussalam” means a company incorporated outside Brunei Darussalam to which Part IX applies.

**Disqualification to act as director on conviction of certain offences**  
*[S 118/2010]*

**141C.** (1) Where a person is convicted (whether in Brunei Darussalam or elsewhere) of any offence involving fraud or dishonesty punishable with imprisonment for 3 months or more, he shall be subject to the disqualifications provided in subsection (3).

(2) Where a person is convicted in Brunei Darussalam of —

(a) any offence in connection with the formation or management of a corporation; or

(b) any offence under section 259,

the Court may make a disqualification order in addition to any other sentence imposed.

(3) A person who is disqualified under subsection (1) or who has had a disqualification order made against him under subsection (2) shall not act as a director of a company or of a company incorporated outside Brunei Darussalam to which Part IX applies nor shall he take part, whether directly or indirectly, in the management of such a company or company incorporated outside Brunei Darussalam.

(4) (a) Where a disqualified person has not been sentenced to imprisonment, the disqualifications in subsection (3) shall take effect upon conviction and shall continue for a period of 5 years or for such shorter period as the Court may order under subsection (2).

(b) Where a disqualified person is sentenced to imprisonment, the disqualifications in subsection (3) shall take effect upon



conviction and shall continue for a period of 5 years after his release from prison.

(5) A person who acts in contravention of a disqualification under this section is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(6) An application for leave to act as a director of a company or of a company incorporated outside Brunei Darussalam to which Part IX applies or to take part, whether directly or indirectly, in the management of such a company or company incorporated outside Brunei Darussalam may be made by a person against whom a disqualification order has been made upon that person giving the Minister of Finance not less than 14 days' notice of his intention to apply for such leave.

(7) On the hearing of any application under this section, the Minister of Finance may be represented at the hearing and may oppose the granting of the application.

(8) The High Court may make a disqualification order under this section.

(9) Any right to apply for leave of the Court to be a director or promoter or to be concerned or take part in the management of a company that was subsisting immediately before 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010) shall on or after that date be treated as subsisting by virtue of the corresponding provision made under this section.

#### **Disqualification under S 117/2010** [S 118/2010]

**141D.** Any person who is subject to a disqualification or disqualification order under section 34, 35 or 36 of the Limited Liability Partnerships Order, 2010 shall not act as director of, or in any way, whether directly or indirectly, take part in or be concerned in the management of, a corporation during the period of the disqualification or disqualification order.

#### **Duty and liability of officers** [S 118/2010]

**141E.** (1) A director shall act honestly and use reasonable diligence in the discharge of the duties of his office.

(2) An officer or agent of a company shall not make improper use of any information acquired by virtue of his position as an officer or agent of the company to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the company.

(3) An officer or agent who commits a breach of any of the provisions of this section —

(a) is liable to the company for any profit made by him or for any damage suffered by the company as a result of the breach of any of those provisions; and

(b) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding one year.

(4) This section is in addition to and not in derogation of any other written law or rule of law relating to the duty or liability of directors or officers of a company.

(5) In this section —

“agent” includes a banker, solicitor or auditor of the company and any person who at any time has been a banker, solicitor or auditor of the company;

“officer” includes a person who at any time has been an officer of the company.

#### **Powers of directors** [S 118/2010]

**141F.** (1) The business of a company shall be managed by or under the direction of the directors.

(2) The directors may exercise all the powers of a company except any power that this Act or the memorandum and articles of the company require the company to exercise in general meeting.

#### **Use of information and advice** [S 118/2010]

**141G.** (1) Subject to subsection (2), a director of a company may, when exercising powers or performing duties as a director, rely on reports,

statements, financial data and other information prepared or supplied, and on professional or expert advice given by —

(a) an employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;

(b) a professional adviser or an expert in relation to matters which the director believes on reasonable grounds to be within such person's professional or expert competence; or

(c) any other director or any committee of directors upon which the director did not serve in relation to matters within that other director's or committee's designated authority.

(2) Subsection (1) applies to a director only if the director —

(a) acts in good faith;

(b) makes proper inquiry where the need for inquiry is indicated by the circumstances; and

(c) has no knowledge that such reliance is unwarranted.

### **Validity of acts of directors**

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

### **Register of directors**

**143.** (1) Every company shall keep at its registered office a register of its directors or managers containing with respect to each of them the following particulars —

(a) in the case of an individual, his present name and surname, any former name or surname, his usual residential address, his nationality and, if that nationality is not the nationality of origin, his nationality of origin and his business occupation, if any, or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and

[S 62/2014]

(b) in the case of a corporation, its corporate name and registered or principal office.

(2) The company shall send to the Registrar a return in such form as the Registrar may determine —

(a) forthwith from the date of appointment of the first directors of the company, the particulars specified in the register;

(b) one month from the date of any change among its directors or in any of the particular contained in the register, a notification of such change.

[S 62/2014]

(3) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than 2 hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of \$1 or such less sum as the company may prescribe, for each inspection.

(4) If any inspection required under this section is refused or if default is made in complying with subsection (1) or (2), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

(5) In the case of any such refusal, the Court may by order compel an immediate inspection of the register.

(6) For the purposes of this section, a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company.

### **Limited company may have directors with unlimited liability**

**144.** (1) In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.

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

(3) If any director, manager or proposer makes default in adding such a statement, or if any promoter, director, manager or secretary makes default in giving such a notice, he is guilty of an offence and liable on conviction to a fine of \$1,000, and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

### **Special resolution of limited company making liability of directors unlimited**

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

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

### **Register of directors' shareholdings [S 6/2015]**

**145A.** (1) A company shall keep a register showing with respect to each director of the company particulars of —

(a) shares in that company or in a related corporation, being shares of which the director is a registered holder or in which he has an interest and the nature and extent of that interest;

(b) debentures of or participatory interests made available by the company or a related corporation which are held by the director or in which he has an interest and the nature and extent of that interest;

(c) rights or options of the director, or of the director and another person, or other persons, in respect of the acquisition or disposal of shares in the company or a related corporation; and

(d) contracts to which the director is a party or under which he is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in the company or in a related corporation.

(2) A company need not show, in its register with respect to a director, particulars of shares in a related corporation that is a wholly-owned subsidiary of the company or of another corporation.

(3) A company that is a wholly-owned subsidiary of another company shall be deemed to have complied with this section in relation to a director who is a director of that other company if the particulars required by this section to be shown in the register of the first-mentioned company with respect to the director are shown in the register of the second-mentioned company.

(4) For the purposes of subsections (2) and (3), a company is a wholly-owned subsidiary of another company if none of the members of the first-mentioned company is a person other than —

(a) the second-mentioned company;

(b) a nominee of the second-mentioned company;

(c) a subsidiary of the second-mentioned company being a subsidiary none of the members of which is a person other than the second-mentioned company or a nominee of the second-mentioned company; or

(d) a nominee of such a subsidiary.

(5) A company shall, within 3 days after receiving notice from a director under section 147A(1)(a), enter in its register in relation to the director the particulars referred to in subsection (1) including the number and description of shares, debentures, participatory interests, rights, options and contracts to which the notice relates and in respect of shares, debentures, participatory interests, rights or options acquired or contracts entered into after he became a director —

(a) the price or other consideration for the transaction, if any, by reason of which an entry is required to be made under this section; and

(b) the date of —

- (i) the agreement for the transaction or, if it is later, the completion of the transaction; or
- (ii) where there was no transaction, the occurrence of the event by reason of which an entry is required to be made under this section.

(6) A company shall, within 3 days after receiving a notice from a director under section 147A(1)(b), enter in its register the particulars of the change referred to in the notice.

(7) A company is not, by reason of anything done under this section, to be taken for any purpose to have notice of or to be put upon inquiry as to the right of a person or in relation to a share in debenture of a participatory interest made available by the company.

(8) A company shall, subject to this section, keep its register at the registered office of the company and the register shall be open for inspection by a member of the company without charge and by any other person on payment for each inspection of a sum of \$3 or such lesser sum as the company requires.

(9) A person may request a company to furnish him with a copy of its register or any part thereof on payment in advance of a sum of \$1 or such lesser sum as the company requires for every page or part thereof required to be copied and the company shall send the copy to that person within 21 days or such longer period as the Registrar thinks fit after the day on which the request is received by the company.

(10) The Registrar may by notice in writing require a company to send to him within such time as may be specified in the notice a copy of its register or any part thereof.

(11) A company shall produce its register at the commencement of each annual general meeting of the company and keep it open and accessible during the meeting to all persons attending the meeting.

(12) It is a defence to a prosecution for failing to comply with subsection (1) or (5) in respect of particulars relating to a director if the defendant proves that the failure was due to the failure of the director to comply with section 147 with respect to those particulars.

(13) In this section —

(a) a reference to a participatory interest is a reference to a unit in a collective investment scheme referred to in Part IX of the Securities Markets Order, 2013 (S 59/2013); and

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

(14) For the purposes of this section —

(a) a director of a company shall be deemed to hold or have an interest or a right in or over any shares or debentures if a spouse of the director (not being a director thereof) holds or has an interest or a right in or over any shares or debentures or an infant son or infant daughter of that director (not being himself or herself a director) holds or has an interest in shares or debentures; and

(b) any contract, assignment or right of subscription exercised or made by, or grant made to, the wife or husband of a director of a company (not being herself or himself a director thereof) shall be deemed to have been entered into or exercised or made or, as the case may be, as having been made to the director; and so shall a contract, assignment or right of subscription entered into, exercised or made by, or grant made to, an infant son or infant daughter of a director of a company (not being himself or herself a director thereof).

(15) In subsection (14), “son” includes step-son and adopted son and “daughter” includes step-daughter and adopted daughter.

(16) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and



liable on conviction to a fine not exceeding \$15,000, imprisonment for a term not exceeding 3 years and, in the case of a continuing offence, to a further fine of \$1,000 for every day during which the offence continues after conviction.

**Statement as to remuneration of directors to be furnished to shareholders**

**146.** (1) Subject as hereinafter provided, the directors of a company shall, on a demand in that behalf made to them in writing by members of the company entitled to not less than one-fourth of the aggregate number of votes to which all the members of the company are together entitled, furnish to all the members of the company within a period of one month from the receipt of the demand a statement, certified as correct, or which such qualifications as may be necessary, by the auditors of the company, showing as respects each of the last 3 preceding years in respect of which the accounts of the company have been made up the aggregate amount received in that year by way of remuneration or other emoluments by persons being directors of the company, whether as such directors or otherwise in connection with the management of the affairs of the company, and there shall, in respect of any such director who is —

(a) a director of any other company which is, in relation to the first mentioned company, a subsidiary company; or

(b) by virtue of the nomination, whether direct or indirect, of the company, a director of any other company,

be included in that aggregate amount any remuneration or other emoluments received by him for his own use whether as a director of, or otherwise in connection with the management of the affairs of, that other company:

Provided that —

- (i) a demand for a statement under this section shall be of no effect if the company within one month after the date on which the demand is made resolve that the statement shall not be furnished; and
- (ii) it shall be sufficient to state the total aggregate of all sums paid to or other emoluments received by all the directors in each year without specifying the amount received by any individual.

(2) If any director fails to comply with the requirements of this section, he is guilty of an offence and liable on conviction to a fine of \$1,000.

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

### **Disclosure by directors of interest in contracts**

**147.** (1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company, to declare the nature of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract, the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or, if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested and, in a case where the director becomes interested in a contract after it is made, such declaration shall be made at the first meeting of the directors held after the director becomes so interested.

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

(4) Any director who fails to comply with the provisions of this section is guilty of an offence and liable on conviction to a fine of \$2,000.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

### **General duty to make disclosure** *[S 6/2015]*

**147A.** (1) A director of a company shall give notice in writing to the company —

(a) of such particulars relating to shares, debentures, participatory interests, rights, options and contracts as are necessary for the purposes of compliance with section 145A by the wholly-owned subsidiary company referred to in section 145A(3);

(b) of particulars of any change in respect of the particulars referred to in paragraph (a) of which notice has been given to the company including the consideration, if any, received as a result of the event giving rise to the change; and

(c) of such events and matters affecting or relating to himself as are necessary for the purposes of compliance by the company with section 143 that are applicable in relation to him.

(2) A notice under subsection (1) shall be given —

(a) in the case of a notice under subsection (1)(a), within 2 business days after —

- (i) the date on which the director became a director; or
- (ii) the date on which the director became a registered holder of or acquired an interest in the shares, debentures, participatory interests, rights, options or contracts,

whichever last occurs;

(b) in the case of a notice under subsection (1)(b), within 2 business days after the occurrence of the event giving rise to the change referred to in that paragraph; and

(c) in the case of a notice under subsection (1)(c), within 2 business days after the date on which the director became a director.

(3) A company shall, within 7 days after it receives a notice given under subsection (1), send a copy of the notice to each of the other directors of the company.

(4) It is a defence to a prosecution for failing to comply with subsection (1)(a) or (b) or with subsection (2) if the defendant proves that his

failure was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that —

(a) he was not so aware on the date of the information or summons; or

(b) he became so aware less than 7 days before the date of the summons.

(5) For the purposes of subsection (4), a person shall conclusively be presumed to have been aware at a particular time of a fact or occurrence —

(a) of which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware at that time; or

(b) of which an employee or agent of the person, being an employee or agent having duties or acting in relation to his master's or principal's interest or interests in a share in or a debenture of or participatory interest issued by the company concerned, was aware or would, if he had acted with reasonable diligence in the conduct of his master's or principal's affairs, have been aware at that time.

(6) In this section —

(a) a reference to a participatory interest is a reference to a unit in a collective investment scheme referred to in Part IX of the Securities Markets Order, 2013 (S 59/2013); and

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

(7) Any director who fails to comply with subsection (1) or (2) or any company that fails to comply with subsection (3) is guilty of an offence and liable on conviction to a fine not exceeding \$15,000, imprisonment for a term not exceeding 3 years and, in the case of a continuing offence, to a

further fine of \$1,000 for every day during which the offence continues after conviction.

**Provisions as to payments received by directors for loss of office or on retirement**

**148.** (1) It is hereby declared that it is not lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal approved by the company.

(2) Where a payment which is hereby declared to be illegal is made to a director of the company, the amount received shall be deemed to have been received by him in trust for the company.

(3) Where a payment is to be made as aforesaid to a director of a company in connection with the transfer to any persons, as a result of an offer made to the general body of shareholders, of all or any of the shares in the company, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(4) If any such director fails to take reasonable steps as aforesaid, or if any person who has been properly required by any such director to include such particulars in or send them with any such notice fails so to do, he is guilty of an offence and liable on conviction to a fine of \$1,000, and if the requirements of subsection (3) are not complied with in relation to any such payment as is mentioned in that subsection, any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made.

(5) If in connection with any such transfer, the price to be paid to a director of the company 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 of the money value of the consideration, as the case may be, shall, for the

purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(6) Nothing in this section shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are mentioned in this section or with respect to any other like payments made or to be made to the directors of a company.

### **Provisions as to assignment of office by directors**

**149.** If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment or office made in pursuance of that provision shall, notwithstanding anything to the contrary contained in that provision, be of no effect unless and until it is approved by a special resolution of the company.

### **Powers of Minister of Finance** [S 26/1998]

**149A.** The Minister of Finance may, if he considers it expedient in the public interest, remove, replace or appoint such directors or additional directors of any company in such numbers and on such terms as he considers expedient in the public interest.

### **Appointment of Executive Manager** [S 26/1998]

**149B.** (1) The Minister of Finance may, if he considers it expedient in the public interest, appoint any person to be the Executive Manager of any company.

(2) The Executive Manager shall be appointed for such initial period (not to exceed 6 months) as the Minister of Finance may specify on making such appointment.

(3) The Minister of Finance may extend the appointment of the Executive Manager for such period or periods as he thinks fit.

(4) The Minister of Finance may —

(a) at any time, remove the Executive Manager;

(b) at any time, appoint another person in addition to or in place of the existing Executive Manager;

(c) make such provision as he thinks fit for the remuneration and indemnification of the Executive Manager.

(5) If the appointment by the Minister of Finance has the effect that the office of Executive Manager is to be held by more than one person, the appointment shall declare whether any act required or authorised to be done by the Executive Manager is to be done by all or any one of the persons for the time being holding the office of Executive Manager.

**Effect of appointment of Executive Manager** [S 26/1998]

**149C.** (1) On the appointment of an Executive Manager —

(a) any petition for the winding up of the company or for the appointment of a Judicial Manager shall be dismissed; and

(b) any receiver or manager of all or any part of the property of the company shall vacate office upon being required to do so by the Executive Manager.

(2) During the period for which an Executive Manager is in office —

(a) no resolution may be passed or order made for the winding up of the company;

(b) no steps may be taken to enforce any security over the property of the company, or to repossess goods in the possession of the company under any hire purchase agreement, conditional sale agreement, chattel leasing agreement or retention of title agreement, except with the consent of the Executive Manager; and

(c) no other legal proceedings (including a petition for a judicial management order) and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the consent of the Executive Manager:

Provided that the Minister of Finance may at any time present a petition for a judicial management order under section 149J.

(3) During the period for which the Executive Manager is in office —

(a) the affairs, business and property of the company shall be managed by or under the control of the Executive Manager;

(b) the powers of the directors to manage the affairs, business and property of the company shall be suspended; and

(c) any power conferred upon the company or its directors, officers or shareholders, whether under this Act or by the memorandum and articles or otherwise, which could be exercised in such a way as to interfere with the exercise by the Executive Manager of his powers, is not exercisable except with the consent of the Executive Manager.

#### **Duties of Executive Manager** [S 26/1998]

**149D.** (1) The Executive Manager shall —

(a) take into his custody or under his control the property (wherever situate) to which the company is or appears to be entitled;

(b) investigate the affairs, business and property of the company;

(c) as soon as practicable, report to the Minister of Finance the results of his investigation in such manner as the Minister of Finance may direct;

(d) as soon as practicable, formulate and present to the Minister of Finance his proposals for the future conduct of the affairs, business and property of the company; and

(e) manage the affairs, business and property of the company.

(2) The proposals of the Executive Manager may include (without prejudice to the generality of the foregoing) proposals for —



(a) the removal of the Executive Manager and the return of the company to the control of the directors;

(b) the sanctioning under section 151 of a compromise or arrangement between the company and the persons mentioned in that section;

(c) the appointment of a Judicial Manager pursuant to section 149H or 149J;

(d) the winding up of the company.

**Powers of Executive Manager** [S 26/1998]

**149E.** (1) The Executive Manager has the power to do all things as may be necessary —

(a) for the management of the affairs, business and property of the company; and

(b) for the discharge of his duties as specified in section 149D.

(2) Without prejudice to the generality of subsection (1), the Executive Manager has —

(a) the powers specified in the Thirteenth Schedule; and

(b) the power to remove any director of the company and to appoint any person to be a director of the company.

(3) A person dealing with the Executive Manager in good faith and for value is not concerned to inquire whether the Executive Manager is acting within his powers.

(4) The Executive Manager has the power to dispose of any property of the company which is subject to a security, upon such terms (whether as to the disposition of the proceeds of such disposal or otherwise) as may be prescribed.

(5) In exercising his powers and discharging his duties, the Executive Manager —

(a) is deemed to act as the agent of the company;

(b) shall not be held to have adopted any contract (including any contract of employment) except where he states in writing his intention to do so; and

(c) shall not incur personal liability on any contract entered into by him or which he causes the company to enter into (except in so far as the contract otherwise provides).

(6) Any sums payable in respect of debts or liabilities of the company incurred while the Executive Manager was in office, under contracts entered into by him or which he causes the company to enter into, or contracts (including contracts of employment) adopted by him, shall be charged on and paid out of any property of the company which was in his custody or under his control at that time, in priority to all other liabilities of the company.

**Duty to co-operate with Executive Manager** [S 26/1998]

**149F.** (1) Where an Executive Manager is appointed, it is the duty of each of the persons mentioned in subsection (2) —

(a) to give to the Executive Manager such information concerning the company and its promotion, formation, business, dealings, affairs or property as the Executive Manager may require;

(b) to attend on the Executive Manager at such time and place as he may require;

(c) otherwise to give the Executive Manager all assistance in connection with the carrying out of his functions or the exercise of his powers which they are reasonably able to give.

(2) The persons referred to in subsection (1) are —

(a) any person who is or was a director, controller, manager, employee, agent, banker, auditor, legal adviser or shareholder of the company;

(b) any other person who the Executive Manager considers is or may be in possession of information which the Executive Manager believes to be relevant to the exercise of any of his powers.

**Investigative powers of Executive Manager** [S 26/1998]

**149G.** (1) The Executive Manager may require to appear before him any person who he thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company, or any other information which the Executive Manager believes to be relevant to the exercise of any of his powers.

(2) The Executive Manager may, for the purpose of carrying out his functions or the exercise of any of his powers, examine any person on oath and may administer an oath accordingly.

(3) The Executive Manager may require any person mentioned in section 149F(2) to produce any documents in his possession or under his control relating to the company or to any of the matters mentioned in section 149F(1)(a); and “documents” include —

(a) anything in which information of any description is recorded in any form, whether in a manner intelligible to the senses or capable of being made intelligible by the use of equipment;

(b) any database or electronic information,

and in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form.

(4) If any person —

(a) fails or refuses to comply with his duty under section 149F(1)(a) or (c);

(b) fails or refuses to comply with a requirement of the Executive Manager under section 149F(1)(b) or this section;

(c) refuses to answer any question put to him by the Executive Manager,

the Executive Manager may certify that fact in writing to the Court, and the Court may —

- (i) punish the offender in the like manner as if he had been guilty of contempt of Court; or
- (ii) cause a warrant to be issued to a police officer for the arrest of that person and for the seizure and delivery up to the Executive Manager of any documents (as defined in section 149G(3)) in that person's possession and authorise a person arrested under such a warrant to be kept in custody until he appears before the Executive Manager.

(5) A *lien* or other right to retain possession of any documents (as defined in section 149G(3)) of the company is unenforceable to the extent that its enforcement would deny possession of any documents to the Executive Manager.

**Power of Court to make judicial management order** [S 26/1998]

**149H.** (1) Subject to this section, if the Court —

(a) is satisfied that a company is or is likely to become unable to pay its debts as they fall due, or it is proved to the satisfaction of the Court that the value of the assets of the company is less than the amount of its liabilities, taking into account its contingent and prospective liabilities; and

(b) considers that the making of a judicial management order under this section would be likely to achieve one or more of the purposes mentioned in section 149I,

the Court may make a judicial management order in relation to the company.

(2) A judicial management order is an order directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed by a Judicial Manager appointed for the purpose by the Court.

(3) Any person who has acted as Executive Manager of the company in respect of which a judicial management order is sought may be appointed Judicial Manager of that company by the Court.

**Purposes of judicial management order** [S 26/1998]

**149I.** The purposes for whose achievement a judicial management order may be made on a petition presented under section 149K are —

(a) the survival of the company, and the whole or any part of its undertaking, as a going concern;

(b) the sanctioning under section 151 of a compromise or arrangement between the company and any such persons as are mentioned in that section;

(c) a more advantageous realisation of the company's assets than would be effected on a winding up,

and the order shall specify the purpose or purposes for which it is made.

**Power of Minister of Finance to present judicial management petition**  
[S 26/1998]

**149J.** (1) The Minister of Finance may, if he considers it expedient in the public interest, present a petition for a judicial management order in relation to any company.

(2) The Court may make a judicial management order on the petition of the Minister of Finance and appoint a Judicial Manager if the Court is satisfied that it is expedient in the public interest to do so, and the Court may, if it thinks fit, make a judicial management order forthwith or make such other order as it thinks fit.

(3) The purposes for which a judicial management order may be made on the petition of the Minister of Finance are —

(a) such purpose or purposes for the promotion of the public interest as the Minister of Finance may specify in his petition;

(b) all or any one or more of the purposes specified in section 149I,

and the order shall specify the purpose or purposes for which it is made.

**Application for judicial management order** [S 26/1998]

**149K.** (1) An application to the Court for a judicial management order pursuant to section 149H shall be by petition presented either by the company or the directors, or by a creditor or creditors (including any contingent or prospective creditor or creditors).

(2) Where a petition for a judicial management order is presented to the Court under this section —

(a) notice of the petition shall be given forthwith to the Minister of Finance;

(b) notice of the petition shall be given to such other persons as may be prescribed; and

(c) the petition shall not be withdrawn except with the leave of the Court.

(3) On hearing a petition presented under this section, the Court may (subject to the entitlement of the Minister of Finance to be heard) dismiss it, or adjourn the hearing conditionally or unconditionally, or make a judicial management order or such other order as it thinks fit.

**Effect of judicial management order** [S 26/1998]

**149L.** (1) On the making of a judicial management order —

(a) any petition for the winding up of the company shall be dismissed;

(b) any Executive Manager of the company shall vacate office; and

(c) the Court may make such provision as it thinks fit for the remuneration and indemnification of the Judicial Manager.

(2) During the period for which a Judicial Manager is in office —

(a) no resolution may be passed or order made for the winding up of the company;

(b) no steps may be taken to enforce any security over the property of the company, or to repossess goods in the possession of the company under any hire purchase agreement, conditional sale agreement, chattel leasing agreement or retention of title agreement, except with the consent of the Judicial Manager or leave of the Court; and

(c) no other legal proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied against the company or its property except with the consent of the Judicial Manager.

(3) During the period for which the Judicial Manager is in office —

(a) the affairs, business and property of the company shall be managed by the Judicial Manager;

(b) the powers of the directors to manage the affairs, business and property of the company shall be suspended; and

(c) any power conferred upon the company or its directors, officers or shareholders, whether under this Act or by the memorandum and articles or otherwise, which could be exercised in such a way as to interfere with the exercise by the Judicial Manager of his powers, is not exercisable except with the consent of the Judicial Manager.

#### **Powers of Judicial Manager** [S 26/1998]

**149M.** (1) The Judicial Manager has the power to do all things as may be necessary for —

(a) the management of the affairs, business and property of the company;

(b) the achievement of one or more of the purposes for which the judicial management order was made.

(2) Without prejudice to the generality of subsection (1), the Judicial Manager has —

(a) the powers specified in the Thirteenth Schedule;

(b) the power to remove any director of the company and appoint any person to be a director of the company.

(3) In exercising his powers and discharging his duties, the Judicial Manager —

(a) is deemed to act as the agent of the company;

(b) shall not be held to have adopted any contract (including any contract of employment) except where he states in writing his intention to do so;

(c) shall not incur personal liability on any contract entered into by him or which he causes the company to enter into (except insofar as the contract otherwise provides).

(4) Any sums payable in respect of debts or liabilities of the company incurred while the Judicial Manager was in office, under contracts entered into by him or which he causes the company to enter into, or contracts (including contracts of employment) adopted by him, shall be charged on and paid out of any property of the company which was in his custody or under his control at that time, in priority to all other liabilities of the company except those liabilities, if any, referred to in section 149E(6).

**Duty to co-operate with Judicial Manager** [S 26/1998]

**149N.** (1) Where a Judicial Manager is appointed, it is the duty of each of the persons mentioned in subsection (2) —

(a) to give to the Judicial Manager such information concerning the company or its promotion, formation, business, dealings, affairs or property as the Judicial Manager may require;

(b) to produce to the Judicial Manager any documents in his possession or under his control relating to the company or its promotion, formation, business, dealings, affairs or property; and “documents” include —

(i) anything in which information of any description is recorded in any form, whether in a manner intelligible



to the senses or capable of being made intelligible by the use of equipment;

(ii) any database or electronic information,

and in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form;

(c) to attend on the Judicial Manager at such time and place as he may require;

(d) otherwise to give the Judicial Manager all assistance in connection with the carrying out of his functions or the exercise of his powers which they are reasonably able to give.

(2) The persons referred to in subsection (1) are —

(a) any person who is or was a director, controller, manager, employee, agent, banker, auditor, legal adviser or shareholder of the company;

(b) any other person who the Judicial Manager considers is or may be in possession of information which the Judicial Manager believes to be relevant to the exercise of any of his powers.

**General powers** [S 26/1998]

**1490.** (1) The Judicial Manager may apply to the Court for directions in relation to any particular matter arising in connection with the carrying out of his functions.

(2) A person dealing with the Judicial Manager in good faith and for value is not concerned to enquire whether the Judicial Manager is acting within his powers.

(3) The Judicial Manager has the power to dispose of any property of the company which is subject to a security, upon such terms (whether as to the disposition of the proceeds of such disposal or otherwise) as may be prescribed.

**Duties of Judicial Manager** [S 26/1998]

**149P.** The Judicial Manager shall, on his appointment, take into his custody or under his control all the property (wherever situate) to which the company is or appears to be entitled and shall, subject to this Act, manage the affairs, business and property of the company.

**Discharges of variation of judicial management order** [S 26/1998]

**149Q.** (1) The Judicial Manager may at any time apply to the Court for the judicial management order to be discharged, or to be varied so as to specify an additional purpose.

(2) The Judicial Manager shall make an application under this section if it appears to him that the purpose or each of the purposes specified in the order either has been achieved or is incapable of achievement.

(3) On the hearing of an application under this section, the Court may by order discharge or vary the judicial management order and make such consequential provision as it thinks fit.

**Vacation of office** [S 26/1998]

**149R.** (1) The Judicial Manager of a company may at any time be removed from office by order of the Court and shall cease to hold office in such other circumstances as may be prescribed.

(2) The Judicial Manager shall vacate office if the judicial management order is discharged.

**Release of Judicial Manager** [S 26/1998]

**149S.** (1) A person who has ceased to be the Judicial Manager of a company has his release in such circumstances as may be prescribed.

(2) Where a person has his release under this section, he is discharged from all liability both in respect of his acts or omissions in the judicial management and otherwise in relation to his conduct as Judicial Manager.

**Statement of affairs to be submitted to Judicial Manager** [S 26/1998]

**149T.** (1) Where a judicial management order has been made, the Judicial Manager shall forthwith require some or all of the persons

mentioned in subsection (2) to make out and submit to him within such time as he may require a statement in such form as he may require as to the affairs of the company.

(2) The persons referred to in subsection (1) are —

(a) any person who is or was a director, controller, manager, employee, agent, banker, auditor, legal adviser or shareholder of the company;

(b) any other person who the Judicial Manager considers is or may be in possession of information which the Judicial Manager believes to be relevant to the exercise of any of his powers.

**Consequences of failure to comply** [S 26/1998]

**149U.** (1) If any person fails or refuses to comply with his duty under section 149N or a requirement of the Judicial Manager under section 149T, the Judicial Manager may certify that fact in writing to the Court, and the Court may —

(a) punish the offender in the like manner as if he had been guilty of contempt of Court; or

(b) cause a warrant to be issued to a police officer for the arrest of that person and for the seizure and delivery up to the Judicial Manager of any document (as defined in section 149G(3)) in that person's possession and authorise a person arrested under such a warrant to be kept in custody until he appears before the Judicial Manager.

(2) A *lien* or other right to retain possession of any documents (as defined in section 149G(3)) of the company is unenforceable to the extent that its enforcement would deny possession of any documents to the Judicial Manager.

AVOIDANCE OF PROVISIONS IN ARTICLES OR CONTRACTS  
RELIEVING OFFICERS FROM LIABILITY**Provisions as to liability of officers and auditors**

**150.** Subject as hereinafter provided, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company, or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void:

Provided that —

(a) in relation to any such provision which is in force at the date of the commencement of this Act, this section shall have effect only on the expiration of a period of 6 months from that date;

(b) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and

(c) notwithstanding anything in this section, a company may, in pursuance of any such provision, indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 321 in which relief is granted to him by the Court.

## ARRANGEMENTS AND RECONSTRUCTIONS

**Power to compromise with creditors and members**

**151.** (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a

meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) shall have no effect until an office copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with subsection (3), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of \$15 for each copy in respect of which default is made.

(5) In this section —

“arrangement” includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods;

“company” means any company liable to be wound up under this Act.

### **Provisions for facilitating reconstruction and amalgamation of companies**

**152.** (1) Where an application is made to the Court under section 151 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of

any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as the transferor company) is to be transferred to another company (in this section referred to as the transferee company), the Court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters —

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(d) the dissolution, without winding up, of any transferor company;

(e) the provision to be made for any persons, who within such time and in such manner as the Court may direct, dissent from the compromise or arrangement;

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy thereof to be

delivered to the Registrar for registration within 7 days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

(4) In this section —

“liabilities” includes duties;

“property” includes property, rights and powers of every description.

(5) Notwithstanding the provisions of section 151(5), “company” in this section does not include any company other than a company within the meaning of this Act.

### **Power to acquire shares of shareholders dissenting from scheme or contract approved by majority**

**153.** (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as the transferor company) to another company, whether a company within the meaning of this Act or not (in this section referred to as the transferee company) has, within 4 months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares affected, the transferee company may, at any time within 2 months after the expiration of that 4 months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the Court thinks fit to order otherwise, be titled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company.

(2) Where a notice has been given by the transferee company under this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by

the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon, register the transferee company as the holder of those shares.

(3) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(4) In this section, “dissenting shareholder” includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

## PART V

### WINDING UP

#### (i) PRELIMINARY

#### MODES OF WINDING UP

#### **Modes of winding up**

**154.** (1) The winding up of a company may be either —

- (a) by the Court;
- (b) voluntary; or
- (c) subject to the supervision of the Court.

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



## CONTRIBUTORIES

**Liability as contributories of present and past members**

**155.** (1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of subsection (2) and the following qualifications —

(a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;

(b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(c) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contribution required to be made by them in pursuance of this Act;

(d) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;

(e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of subsection (3), be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted or whereby the funds of the company are alone made liable in respect of the policy or contract;

(g) a sum due to any member of a company in his character of a member by way of dividends, profits or otherwise shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account, for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a limited company, any director or manager, whether past or present, whose liability is, under the provisions of this Act, unlimited shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company:

Provided that —

(a) a past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;

(b) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;

(c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.

(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount under taken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

### **Definition of contributory**

**156.** “Contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final

determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

### **Nature of liability of contributory**

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

### **Contributories in case of death of member**

**158.** (1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives (and his heirs or other inheritors in countries where property does not pass to personal representatives) shall be liable in due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

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

### **Default by personal representatives**

**159.** If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment there out of the money due.

### **Contributories in case of bankruptcy of member**

**160.** If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories —

(a) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt or otherwise to allow to be paid out of his assets in due course of law any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

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

## (ii) WINDING UP BY COURT

## JURISDICTION

**Jurisdiction to wind up companies registered in Brunei Darussalam**

**161.** The Court shall have jurisdiction to wind up any company registered in Brunei Darussalam.

## CASES IN WHICH COMPANY MAY BE WOUND UP BY COURT

**Circumstances in which company may be wound up by Court**

**162.** A company may be wound up by the Court if —

(a) the company has by special resolution resolved that the company be wound up by the Court;

(b) default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;

(c) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;

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

(e) the company is unable to pay its debts; or

(f) the Court is of opinion that it is just and equitable that the company should be wound up.

**Definition of inability to pay debts**

**163.** A company shall be deemed to be unable to pay its debts —

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding \$10,000 then due, has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay

the sum so due, and the company has for 3 weeks there after neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;

[S 69/2001]

(b) if execution or other process issued on a judgment, decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

## PETITION FOR WINDING UP AND EFFECTS THEREOF

### Provisions as to applications for winding up

**164.** (1) An application to the Court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately:

Provided that —

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

- (i) either the number of members is reduced, in the case of a private company, below two or, in the case of any other company, below seven; or
- (ii) the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him and registered in his name for at least 6 months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder;

(b) a winding up petition shall not, if the ground of the petition is default in delivering the statutory report to the Registrar or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of 14 days after the last day on which the meeting ought to have been held; and

(c) the Court shall not give a hearing to a winding up petition presented by contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the Court.

(2) Where a company is being wound up voluntarily or subject to supervision, a winding up petition may be presented by the Official Receiver attached to the Court as well as by any other person authorised in that behalf under the other provisions of this section, but the Court shall not make a winding up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(3) Where under the provisions of this Part any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the 6 months mentioned in proviso (a)(ii) to subsection (1) been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

(4) A winding up petition may be presented by the Minister of Finance in a case falling within section 164A.

[S 26/1998]

**Power of Minister of Finance to present winding up petition** [S 26/1998]

**164A.** (1) If, in the case of a company liable to be wound up under this Act, it appears to the Minister of Finance from —

(a) any report made by inspectors or Executive Managers under section 135F or 149D(1)(c);

(b) any information or documents obtained by inspectors appointed under section 135B; or

(c) any other information howsoever obtained which comes to his attention,

that it is expedient in the public interest that the company should be wound up, he may present a petition for it to be wound up if the Court thinks it just and equitable for it to be so.

(2) This section does not apply if the company is already being wound up by the Court.

### **Powers of Court on hearing petition**

**165.** (1) On hearing a winding up petition, the Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order or any other order that it thinks fit, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground of default in delivering the statutory report to the Registrar or in holding the statutory meeting, the Court may —

(a) instead of making a winding up order, direct that the statutory report shall be delivered or that a meeting shall be held; and

(b) order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

### **Power to stay or restrain proceedings against company**

**166.** At any time after the presentation of a winding up petition and before a winding up order has been made, the company or any creditor or contributory, may —

(a) where any action or proceedings against the company is pending in any Court, apply to the Court in which the action or proceeding is pending for a stay of proceedings therein; and

(b) where any other action or proceedings is pending against the company, apply to the Court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding,

and the Court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

### **Avoidance of dispositions of property etc. after commencement of winding up**

**167.** In a winding up by the Court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up shall, unless the Court otherwise orders, be void.

### **Avoidance to attachments etc.**

**168.** Where any company is being wound up by the Court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

## COMMENCEMENT OF WINDING UP

### **Commencement of winding up by Court**

**169.** (1) Where before the presentation of a petition for the winding up of a company by the Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

## CONSEQUENCES OF WINDING UP ORDER

### **Copy of order to be forwarded to Registrar**

**170.** On the making of a winding up order, a copy of the order must forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute thereof in his books relating to the company.



**Actions stayed on winding up order**

171. When a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose.

**Effect of winding up order**

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

**OFFICIAL RECEIVER IN WINDING UP****Official Receiver in bankruptcy to be Official Receiver for winding up purposes**

173. For the purposes of this Act, so far as it relates to the winding up of companies by the Court, “Official Receiver” means the Official Receiver in bankruptcy.

**Appointment of Official Receiver by Court in certain case**

174. If in the case of the winding up of any company by the Court, it appears to the Court desirable with a view to securing the more convenient and economical conduct of the winding up, that some officer, other than the Official Receiver in bankruptcy, should be the Official Receiver for the purposes of that winding up, the Court may appoint that other officer to act as Official Receiver in that winding up, and the person so appointed shall be deemed to be the Official Receiver in that winding up for all the purposes of this Act.

**Statement of company’s affairs to be submitted to Official Receiver**

175. (1) Where the Court has made a winding up order or appointed a provisional liquidator, there shall, unless the Court thinks fit to order otherwise and so orders, be made out and submitted to the Official Receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit and showing the particulars of its assets, debts, and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and

such further or other information as may be prescribed or as the Official Receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary or other chief officer of the company, or by such of the persons hereinafter in this subsection mentioned as the Official Receiver, subject to the direction of the Court, may require to submit and verify the statement —

(a) persons who are or have been directors or officers of the company;

(b) persons who have taken part in the formation of the company at any time within one year before the relevant date;

(c) persons who are in the employment of the company, or have been in the employment of the company within that year, and are in the opinion of the Official Receiver capable of giving the information required;

(d) persons who are or have been within that year officers of or in the employment of a company, which is, or within that year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within 28 days from the relevant date, or within such extended time as the Official Receiver or the Court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the Official Receiver or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Official Receiver may consider reasonable, subject to an appeal to the Court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he is guilty of an offence and liable on conviction to a fine of \$50 for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court and shall, on the application of the liquidator or of the Official Receiver, be punishable accordingly.

(8) In this section, “relevant date” means, in a case where a provisional liquidator is appointed, the date of his appointment and, in a case where no such appointment is made, the date of the winding up order.

### **Report by Official Receiver**

**176.** (1) In a case where a winding up order is made, the Official Receiver shall, as soon as practicable after receipt of the statement to be submitted under section 175 or, in a case where the Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court —

(a) as to the amount of capital issued, subscribed and paid-up, and the estimated amount of assets and liabilities;

(b) if the company has failed, as to the causes of the failure; and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company, or the conduct of the business thereof.

(2) The Official Receiver may also, if he thinks fit, make a further report or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court.

(3) If the Official Receiver states in any such further report that in his opinion a fraud has been committed as aforesaid, the Court shall have the further powers provided in sections 207 and 208.

## LIQUIDATORS

### **Power of Court to appoint liquidators**

**177.** For the purposes of conducting the proceedings in winding up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a liquidator or liquidators.

### **Appointment and powers of liquidator**

**178.** (1) Subject to the provisions of this section, the Court may appoint a liquidator provisionally at any time after the presentation of a winding up petition.

(2) The appointment of a provisional liquidator may be made at any time before the making of a winding up order, and either the Official Receiver or any other fit person may be appointed.

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

### **Appointment, style etc. of liquidators**

**179.** The following provisions with respect to liquidators shall have effect on a winding up order being made —

(a) the Official Receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;

(b) 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 make any appointment and order required to give effect to any such determination and, if there is a difference

between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the Court shall decide the difference and make such order thereon as the Court may think fit;

(d) in any case where a liquidator is not appointed by the Court, the Official Receiver shall be the liquidator of the company;

(e) the Official Receiver shall by virtue of his office be the liquidator during any vacancy;

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

#### **Appointment of liquidator by Minister of Finance** [S 23/1999]

**179A.** (1) When a winding up order has been made, the Official Receiver may, at any time when he is the provisional liquidator of the company, apply to the Minister of Finance for the appointment of a person as liquidator in his place.

(2) Section 181 (save for subsection (4) thereof) shall apply to a liquidator appointed by the Minister of Finance under subsection (1) as if he had been appointed by the Court. If any such appointment by the Minister of Finance has the effect that the office of liquidator is to be held by more than one person, the appointment shall declare whether any act authorised or required to be done by the liquidator is to be done by all or any one of the persons appointed.

(3) Where a liquidator has been appointed by the Minister of Finance under subsection (1), he shall —

(a) give notice of his appointment to creditors and advertise his appointment once in the *Gazette*; and

(b) summon separate meetings of creditors and contributories for the purpose of determining whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the

committee if appointed. Section 191(2) shall apply following such determination.

(4) Where a liquidator has been appointed by the Minister of Finance under subsection (1), section 179(b), (c) and (d) do not apply.

### **Provisions where person other than Official Receiver is appointed liquidator**

**180.** Where in the winding up of a company by the Court a person other than the Official Receiver is appointed liquidator, that person —

(a) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in the prescribed manner to the satisfaction of the Official Receiver;

(b) shall give the Official Receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

### **General provisions as to liquidators**

**181.** (1) A liquidator appointed by the Court may resign or, on cause shown, be removed by the Court.

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

(3) A vacancy in the office of a liquidator appointed by the Court shall be filled by the Court.

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

(5) Subject to the provisions of section 263, the acts of liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

**Custody of company's property**

**182.** Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be, shall take into his custody or under his control, all the property and things in action to which the company is or appears to be entitled.

**Vesting of property of company in liquidator**

**183.** Where a company is being wound up by the Court, the Court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the Court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

**Powers of liquidator**

**184.** (1) The liquidator in a winding up by the Court shall have power with the sanction either of the Court or of the committee of inspection —

(a) to bring or defend any action or other legal proceedings in the name and on behalf of the company;

(b) to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof;

(c) to appoint a solicitor to assist him in the performance of his duties;

(d) to pay any classes of creditors in full;

(e) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;

(f) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

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

(a) to sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;

(b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;

(c) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent and rateably with the other separate creditors;

(d) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

(e) to raise on the security of the assets of the company any money requisite;

(f) to take out in his official name letters of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due from a



contributory or his estate which cannot be conveniently done in the name of the company and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;

(g) to appoint an agent to do any business which the liquidator is unable to do himself;

(h) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the Court of the powers conferred by this section shall be subject to the control of the Court and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any, of those powers.

### **Exercise and control of liquidator's powers**

**185.** (1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.

(3) The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the Court and the Court may confirm, reverse or modify the act or decision complained of and make such order in the premises as it thinks just.

### **Books to be kept by liquidator**

**186.** Every liquidator of a company which is being wound up by the Court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

### **Payments of liquidator into bank or Treasury**

**187.** (1) Every liquidator other than the Official Receiver of a company which is being wound up by the Court shall, in such manner and at such times as the Official Receiver directs, pay the money received by him to the Companies Liquidation Account at the bank where such account is kept and the Permanent Secretary shall furnish him with a certificate of receipt of the money so paid, and when the Official Receiver is the liquidator of such company he shall pay all monies received by him in such capacity into the Companies Liquidation Account:

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

(2) If any such liquidator at any time retains for more than 10 days a sum exceeding \$500 or such other amount as the Court in any particular case may authorise him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of 20 *per cent per annum*, and shall be liable to disallowance of all or such part of his remuneration as the Court may think just and to be removed from his office by the Court, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the Court shall not pay any sums received by him as liquidator into his private banking account.

#### **Audit of liquidator's accounts**

**188.** (1) Every liquidator (other than the Official Receiver) of a company which is being wound up by the Court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Official Receiver an account of his receipts and payments as liquidator, and where the Official Receiver is liquidator he shall cause such account to be prepared.

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

(3) The Official Receiver shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the Official Receiver with such vouchers and information as the Official Receiver may require, and the Official Receiver may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Official Receiver and the other copy shall be delivered to the Court for filing, and each copy shall be open to the inspection of any creditor or of any person interested.

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

#### **Control of Official Receiver over liquidators**

**189.** (1) The Official Receiver shall take cognisance of the conduct of liquidators of companies which are being wound up by the Court and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules or otherwise with respect to the performance of his duties, or if any complaint is made to the Official Receiver by any creditor or contributory in regard thereto, the Official Receiver shall inquire into the matter and take such action thereon as he may think expedient.

(2) The Official Receiver may at any time require any liquidator of a company which is being wound up by the Court to answer any inquiry in relation to any winding up in which he is engaged and may, if he thinks fit, apply to the Court to examine him or any other person on oath concerning the winding up.

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

### **Release of liquidators**

**190.** (1) When the liquidator of a company which is being wound up by the Court has realised all the property of the company or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories, or has resigned, or has been removed from his office, the Court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Court, shall take into consideration the report and any objection which may be urged by any creditor or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly.

(2) Where the release of a liquidator is withheld, the Court may, on the application of any creditor or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

## COMMITTEES OF INSPECTION

**Meetings of creditors and contributories to determine whether committee of inspection shall be appointed**

**191.** (1) When a winding up order has been made by the Court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the Court for appointing a liquidator in place of the Official Receiver, to determine further whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2) The Court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid the Court shall decide the difference and make such order thereon as the Court may think fit.

**Constitution and proceedings of committee of inspection**

**192.** (1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the Court.

(2) The committee shall meet at such times as they from time to time appoint and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting but shall not act unless a majority of the committee are present.

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

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together

with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors if he represents creditors, or of contributories if he represents contributories, of which 7 days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

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

### **Powers of Court where no committee of inspection**

**193.** Where in the case of a winding up there is no committee of inspection, the Court 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.

## GENERAL POWERS OF COURT IN CASE OF WINDING UP BY COURT

### **Power to stay winding up**

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

(2) On any application under this section, the Court may, before making an order, require the Official Receiver to furnish to the Court a report with respect to any facts or matters which are in his opinion relevant to the application.

**Settlement of list of contributories and application of assets**

**195.** (1) As soon as may be after making a winding up order, the Court shall settle a list of contributories with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities:

Provided that, where it appears to the Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

**Delivery of property of liquidator**

**196.** The Court may, at any time after making a winding up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the Court directs, to the liquidator any money, property or books and papers in his hands to which the company is *prima facie* entitled.

**Payment of debts due by contributory to company and extent to which set-off allowed**

**197.** (1) The Court may, at any time after making a winding up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The Court in making such an order may —

(a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and

(b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

### **Power of Court to make calls**

**198.** (1) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses, of winding up, and for the adjustment of the rights of the contributories among themselves and make an order for payment of any calls so made.

(2) In making a call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

### **Payment into bank of moneys due to company**

**199.** (1) The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into such bank as the Court may direct to the account of the liquidator instead of to the liquidator, and any such order may enforced in the same manner as if it had directed payment to the liquidator.

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

### **Order on contributory conclusive evidence**

**200.** (1) An order made by the Court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.



(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

### **Appointment of special manager**

**201.** (1) Where in proceedings the Official Receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court, and the Court may on such application, appoint a special manager of such estate or business to act during such time as the Court may direct with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the Court.

(2) The special manager shall give such security and account in such manner as the Court may direct.

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

### **Power to exclude creditors not proving in time**

**202.** The Court may fix a time or times within which creditors are to prove their debt or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

### **Adjustment of rights of contributories**

**203.** The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

### **Inspection of books by creditors and contributories**

**204.** The Court may, at any time after making a winding up order, make such order for inspection of the books and papers of the company by creditors and contributories as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

### **Power to order costs of winding up to be paid out of assets**

**205.** The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs,

charges and expenses incurred in the winding up in such order of priority as the Court thinks just.

**Power to summon persons suspected of having property of company**

**206.** (1) The Court may, at any time after the appointment of a provisional liquidator or the making of a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

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

(3) The Court may require him to produce any books and papers in his custody or power relating to the company but, where he claims any *lien* on books or papers produced by him, the production shall be without prejudice to that *lien*, and the Court shall have jurisdiction in the winding up to determine all questions relating to that *lien*.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.

**Power to order public examination of promoters, directors etc.**

**207.** (1) Where an order has been made for winding up a company by the Court and the Official Receiver has made a further report under this Act stating that, in his opinion, a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the Court may, after consideration of the report, direct that that person, director or officer shall attend before the Court on a day appointed by the Court for that purpose and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.

(2) The Official Receiver shall take part in the examination and for that purpose may, if specially authorised by the Court in that behalf, employ an advocate.

(3) The liquidator, where the Official Receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by an advocate.

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

(5) The person examined shall be examined on oath and shall answer all such questions as the Court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination be furnished with a copy of the Official Receiver's report, and may at his own cost employ an advocate, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that, if any such person applies to the Court to be exculpated from any charges made or suggested against him, it shall be the duty of the Official Receiver to appear on the hearing of the application and call the attention of the Court to any matters which appear to the Official Receiver to be relevant, and if the Court, after hearing any evidence given or witnesses called by the Official Receiver, grants the application, the Court may allow the applicant such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against him and shall be open to the inspection of any creditor or contributory at all reasonable times.

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

### **Power to restrain fraudulent persons from managing companies**

**208.** (1) Where an order has been made for winding up a company by the Court and the Official Receiver has made a further report in accordance with this Act stating that, in his opinion, a fraud has been committed by a person in the promotion or formation of the company, or by any director or

other officer of the company in relation to the company since its formation, the Court may, on the application of the Official Receiver, order that that person, director or officer shall not, without the leave of the Court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding 5 years, from the date of the report as may be specified in the order.

(2) The Official Receiver shall, where he intends to make an application under subsection (1), give not less than 10 days' notice of his intention to the person charged with the fraud, and on the hearing of the application that person may appear and himself give evidence or call witnesses.

(3) It shall be the duty of the Official Receiver to appear on the hearing of an application by him for an order under this section and on an application for leave under this section and to call the attention of the Court to any matters which appear to him to be relevant, and on any such application the Official Receiver may himself give evidence or call witnesses.

(4) If any person acts in contravention of an order made under this section, he is, in respect of each offence, guilty of an offence and liable on conviction to a fine of \$5,000 and imprisonment for 2 years.

(5) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.

### **Power to arrest absconding contributory**

**209.** The Court, at any time either before or after making a winding up order, on proof of probable cause for believing that a contributory is about to quit Brunei Darussalam, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and moveable personal property to be seized, and him and them to be safely kept until such time as the Court may order.

**Powers of Court cumulative**

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

**Delegation to liquidator of certain powers of Court**

**211.** Provision may be made by general rules for enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Act in respect of the following matters —

(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;

(c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;

(d) the making the calls;

(e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court:

Provided that the liquidator shall not, without the special leave of the Court, rectify the register of members and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

**Dissolution of company**

**212.** (1) When the affairs of a company have been completely wound up, the Court shall make an order that the company be dissolved from the date of the order and the company shall be dissolved accordingly.

(2) The order shall within 14 days from the date thereof be reported by the liquidator to the Registrar of Companies who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section, he is guilty of an offence and liable on conviction to a fine of \$25 for every day during which he is in default.

### (iii) VOLUNTARY WINDING UP

#### RESOLUTIONS FOR, AND COMMENCEMENT OF, VOLUNTARY WINDING UP

#### **Circumstances in which company may be wound up voluntarily**

**213.** A company may be wound up voluntarily —

(a) when the period, if any, for the direction of the company by the articles expires or the event, if any, occurs on the occurrence of which the articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

(b) if the company resolves by special resolution that the company be wound up voluntarily;

(c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business and that it is advisable to wind up.

#### **Notice of resolution to wind up voluntarily**

**214.** (1) When a company has passed a resolution for voluntary winding up, it shall, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in the *Gazette*.

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

**Commencement of voluntary winding up**

**215.** A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

## CONSEQUENCES OF VOLUNTARY WINDING UP

**Effect of voluntary winding up on business and status of company**

**216.** In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

**Avoidance of transfers etc. after commencement of voluntary winding up**

**217.** Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

## DECLARATION OF SOLVENCY

**Statutory declaration of solvency in case of proposal to wind up voluntarily**

**218.** (1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having done so, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding one year, from the commencement of the winding up.

(2) A declaration made as aforesaid shall have no effect for the purpose of this Act unless it is delivered to the Registrar for registration before the date mentioned in subsection (1).

(3) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as a members' voluntary winding up, and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as a creditors' voluntary winding up.

#### PROVISIONS APPLICABLE TO MEMBERS' VOLUNTARY WINDING UP

##### **Provisions applicable to members' winding up**

**219.** The provisions contained in sections 220, 221, 222, 223 and 224 apply in relation to a members' voluntary winding up.

##### **Power of company to appoint and fix remuneration of liquidators**

**220.** (1) The company in general meetings shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator sanctions the continuance thereof.

##### **Power to fill vacancy in office of liquidators**

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

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.



**Power of liquidator to accept shares etc. as consideration for sale of property of company**

**222.** (1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section referred to as the transferee company), the liquidator of the first mentioned company (in this section referred to as the transferor company) may —

(a) with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transferor sale, shares, policies or other like interests in the transferee company, for distribution among the members of the transferor company; or

(b) enter into any other arrangement whereby the members of the transferor company may, *in lieu* of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any members of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the company within 7 days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(4) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators but, if an order is made within a year for winding up the company by or subject to the supervision of

the Court, the special resolution shall not be valid unless sanctioned by the Court.

(6) For the purposes of an arbitration under this section, the provisions of the Companies Clauses Consolidation Act 1845 with respect to the settlement of disputes by arbitration shall be incorporated with this Act, and in the construction of those provisions —

(a) the company shall mean the transferor company;

(b) this Act shall be deemed to be the special Act; and

(c) any appointment by such incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator or, if there is more than one liquidator then of any two or more of the liquidators, and all powers given by such Act to the Board of Trade shall be exercised by His Majesty the Sultan and Yang Di-Pertuan\*.

### **Duty of liquidator to call general meeting at end of each year**

**223.** (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he is guilty of an offence and liable on conviction to a fine of \$500.

### **Final meeting and dissolution**

**224.** (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account and giving any explanation thereof.

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\* Transferred to the Minister of Law\*\* with effect from 31st December 1988 — [S 31/1988]

\*\*Transferred further to the Registrar of Companies with effect from 16th September 1998 — [S 32/1998]

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

(3) Within 3 weeks after the meeting, the liquidator shall send to the Registrar a copy of the account and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection, the liquidator is guilty of an offence and liable on conviction to a fine of \$25 for every day during which the default continues:

Provided that, if a *quorum* is not present at the meeting, the liquidator shall, *in lieu* of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no *quorum* was present there at, and upon, such a return being made the provisions of the subsection as to the making of the return shall be deemed to have been complied with.

(4) The Registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them and on the expiration of 3 months from the registration of the return, the company shall be deemed to be dissolved:

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within 7 days after the making of the order, to deliver to the Registrar an office copy of the order for registration and if that person fails to do so, he is guilty of an offence and liable on conviction to a fine of \$25 for every day during which the default continues.

#### PROVISIONS APPLICABLE TO CREDITORS' VOLUNTARY WINDING UP

##### **Provisions applicable to creditors' winding up**

**225.** The provisions contained in sections 226, 227, 228, 229, 230, 231, 232 and 233 apply in relation to a creditors' voluntary winding up.

**Meeting of creditors**

**226.** (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of such meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the *Gazette* and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall —

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claim to be laid before the meeting of creditors to be held as aforesaid; and

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made —

(a) by the company in complying with subsections (1) and (2);

(b) by the directors of the company in complying with subsection (3);

(c) by any director of the company in complying with subsection (4),

the company, directors or director, as the case may be, is guilty of an offence and liable on conviction to a fine of \$1,000 and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

### **Appointment of liquidator**

**227.** The creditors and the company at their respective meetings mentioned in section 226 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator:

Provided that in the case of different persons being nominated any director, member or creditor of the company may, within 7 days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

### **Appointment of committee of inspection**

**228.** (1) The creditors at the meeting to be held in pursuance of section 226 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this provision the Court may, if it thinks fit, appoint other

persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to general rules, the provisions of section 192 (except subsection (1)) apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the Court.

### **Fixing of liquidators' remuneration and cesser of directors' powers**

**229.** (1) The committee of inspection or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors sanction the continuance thereof.

### **Power to fill vacancy in office of liquidator**

**230.** If a vacancy occurs by death, resignation or otherwise in the office of a liquidator, other than a liquidator appointed by or by the direction of the Court, the creditors may fill the vacancy.

### **Application of section 222 to creditors' voluntary winding up**

**231.** The provisions of section 222 apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under that section shall not be exercised except with the sanction either of the Court or of the committee of inspection.

### **Duty of liquidator to call meetings of company and of creditors at end of each year**

**232.** (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he is liable to a fine of \$500.

**Final meeting and dissolution**

**233.** (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement in the *Gazette* specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within 3 weeks after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings of their dates, and if the copy is not sent or the return is not made in accordance with this subsection, the liquidator is guilty of an offence and liable on conviction to a fine of \$50 for every day during which the default continues:

Provided that, if a *quorum* is not present at either such meeting, the liquidator shall *in lieu* of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no *quorum* was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of the meeting, be deemed to have been complied with.

(4) The Registrar on receiving the account and in respect of each such meeting either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of 3 months from the registration thereof the company shall be deemed to be dissolved:

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within 7 days after the making of the order, to deliver to the Registrar an office copy of the orders for registration

and if that person fails to do so, he is guilty of an offence and liable on conviction to a fine of \$25 for every day during which the default continues.

#### PROVISIONS APPLICABLE TO EVERY VOLUNTARY WINDING UP

##### **Provisions applicable to every voluntary winding up**

**234.** The provisions contained in sections 235, 236, 237, 238, 239, 240, 241 and 242 apply to every voluntary winding up whether a members' or a creditors' winding up.

##### **Distribution of property of company**

**235.** Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

##### **Powers and duties of liquidator in voluntary winding up**

**236.** (1) The liquidator may —

(a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company and, in the case of a creditors' voluntary winding up, with the sanction of either the Court or the committee of inspection, exercise any of the powers given by section 184(1)(d), (e) and (f) to a liquidator in a winding up by the Court;

(b) without sanction, exercise any of the other powers by this Act given to the liquidator in a winding up by the Court;

(c) exercise the power of the Court under the Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;

(d) exercise the power of the Court of making calls;



(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment or, in default of such determination, by any number not less than two.

### **Court may appoint and remove liquidator in voluntary winding up**

**237.** (1) If from any cause whatever there is no liquidator acting, the Court may appoint a liquidator.

(2) The Court may, on cause shown, remove a liquidator and appoint another liquidator.

### **Notice by liquidator of his appointment**

**238.** (1) The liquidator shall, within 5 weeks after his appointment, deliver to the Registrar for registration a notice of his appointment in the form prescribed.

(2) If the liquidator fails to comply with the requirements of this section, he is guilty of an offence and liable on conviction to a fine of \$25 for every day during which the default continues.

### **Arrangement, when binding on creditors**

**239.** (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within 3 weeks from the completion of the arrangement, appeal to the Court against it and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

**Power to apply to Court to have questions determined or powers exercised**

**240.** (1) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up of a company or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

**Costs of voluntary winding up**

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

**Saving for rights of creditors and contributories**

**242.** The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court but in the case of an application by a contributory, the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

**(iv) WINDING UP SUBJECT TO SUPERVISION OF COURT****Power to order winding up subject to supervision**

**243.** When a company has passed a resolution for voluntary winding up, the Court may make an order that the voluntary winding up shall continue but subject to such supervision of the Court and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions, as the Court thinks just.

**Effect of petition for winding up subject to supervision**

**244.** A petition for the continuance of voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over actions, be deemed to be a petition for winding up by the Court.

**Application of sections 168 and 169 to winding up subject to supervision**

**245.** A winding up subject to the supervision of the Court shall, for the purposes of sections 168 and 169, be deemed to be a winding up by the Court.

**Power of Court to appoint or remove liquidators**

**246.** (1) Where an order is made for winding up subject to supervision, the Court may by that or any subsequent order appoint an additional liquidator.

(2) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.

(3) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal or by death or resignation.

**Effect of supervision order**

**247.** (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court in the same manner as if the company were being wound up altogether voluntarily:

Provided that the powers specified in sections 184(1)(d), (e) and (f), shall not be exercised by the liquidator except with the sanction of the Court or, in a case where before the order the winding up was a creditors' voluntary winding up, with the sanction of either the Court or the committee of inspection.

(2) A winding up subject to the supervision of the Court is not a winding up by the Court for the purpose of the provisions of this Act which are set out in the Seventh Schedule but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes be deemed to be an order for winding up by the Court:

Provided that where the order for winding up subject to supervision was made in relation to a creditors' voluntary winding up in which a committee of inspection had been appointed, the order shall be deemed to be an order for winding up by the Court for the purpose of section 192 (except subsection (1) thereof), except in so far as the operation of that section is excluded in a voluntary winding up by general rules.

(v) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

PROOF AND RANKING OF CLAIMS

**Debts of all descriptions to be proved**

**248.** In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

**Application of bankruptcy rules in winding up of insolvent companies**

**249.** In the winding up of an insolvent company registered in Brunei Darussalam the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy in Brunei Darussalam with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claim against the company as they respectively are entitled to by virtue of this section.

**Preferential payments**

**250.** (1) In a winding up, there shall be paid in priority to all other debts —

(a) the following rates and taxes —

- (i) all rates due to any Municipal Board constituted under the Municipal Boards Act (Chapter 57);
  - (ii) income tax and other tax assessed on the company up to the 31st of December next before that date and not exceeding in the whole one year's assessment;
- (b) all wages, or salary of any clerk, servant, labourer or workman not exceeding \$1,000 for each whether payable for time or piece work or whether or not payable wholly or in part by way of commission in respect of services rendered to the company during the period of 5 months next before the relevant date or the date of the termination of his service if the latter occurs within 12 months of and precedes the relevant date:

Provided that, without prejudice to the conditions and restrictions imposed upon contracts and agreements to labour by the Employment Order, 2009 (S 37/2009), where any clerk, servant, labourer or workman has entered into a contract for the payment of his wages or any part thereof in a lump sum at the end of the year of hiring, the priority under this section shall extend to the whole of such sum, or a part thereof as the Court may decide to be due under the contract, proportionate to the time of service up to the relevant date;

(c) the deposit liabilities as defined in section 2 of the Banking Order, 2006 (S 45/2006);

[S 45/2006]

(d) the deposit liabilities as defined in section 2(1) of the Islamic Banking Order, 2008 (S 96/2008).

[S 96/2008]

(2) Where any payment on account of wages or salary has been made to any clerk, servant, workman or labourer in the employment of a company out of money advanced by some person for that purpose, that person shall in a winding up have a right of priority in respect of the money so advanced and paid-up to the amount by which the sum in respect of which that clerk, servant, workman or labourer would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(3) The debts referred to in subsection (1) shall —

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) in the case of a company registered in Brunei Darussalam, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under floating charge created by the company and be paid accordingly out of any property comprised in or subject to that charge.

(4) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(5) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within 3 months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(6) In this section, “the relevant date” means —

(a) in the case of a company order to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order;

(b) in any other case, the date of the commencement of the winding up.

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EFFECT OF WINDING UP ON ANTECEDENT AND  
OTHER TRANSACTIONS

**Fraudulent preference**

**251.** (1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors and be invalid accordingly.

(2) For the purposes of this section, the commencement of the winding up shall be deemed to correspond with the presentation of the bankruptcy petition in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

**Effect of floating charge**

**252.** Where a company is being wound up, a floating charge on the undertaking or property of the company created within 6 months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of *5 per cent per annum*.

**Disclaimer of onerous property in case of company wound up**

**253.** (1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, or shares or stock in companies of unprofitable contracts, or of any other property that is unsaleable or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has 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 and subject to the provisions of this section, by writing signed by him, at any time within one year after the commencement of the

winding up or such extended period as may be allowed by the Court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within one year after he has become aware thereof or such extended period as may be allowed by the Court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, 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, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period 28 days after the receipt of the application or such further period as may be allowed by the Court, given notice to the applicant that he intends to apply to the Court for leave to disclaim, and in the case of a contract, if the liquidator, after such an application as aforesaid, does not within such period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The Court may, on the application of any person who is as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not



discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit make an order for the vesting of the property in or the delivery of the property —

(a) to any persons entitled thereto;

(b) to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid; or

(c) to a trustee for him,

and on such terms as the Court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee by demise, including a charge by way of legal mortgage, except upon the terms of making that person —

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property and if there is no person claiming under the company who is willing to accept an order upon such terms, the Court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(7) 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.

**Restriction of rights of creditor as to execution or attachment in case of company being wound up**

**254.** (1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up:

Provided that —

(a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had the notice shall for the purposes of the foregoing provision be substituted for the date of the commencement of the winding up; and

(b) a person who purchases in good faith under a sale by the bailiff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator.

(2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land, shall be deemed to be completed by registration of the prohibitory order in the Land Office, and in the case of an equitable, interest, by the appointment of a receiver.

(3) In this section —

“bailiff” includes any officer charged with the execution of a writ or other process;

“goods” includes all chattels personal.

**Duties of bailiff as to goods taken in execution**

**255.** (1) Where any goods of a company are taken in execution and before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that a provisional liquidator, has been appointed or that a winding up order has been made or that a resolution for voluntary winding up has been passed, the bailiff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof for the purpose of satisfying that charge.

(2) Where under an execution in respect of a judgment, for a sum exceeding \$200 the goods of a company are sold or money is paid in order to avoid sale, the bailiff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for 14 days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the bailiff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) In this section —

“bailiff” includes any officer charged with the execution of a writ or other process;

“goods” includes all chattels personal.

**OFFENCES ANTECEDENT TO OR IN COURSE OF WINDING UP****Offences by officers of companies in liquidation**

**256.** (1) If any person being a past or present director, manager or other officer of a company which at the time of the commission of the alleged offence is being wound up, whether, by or under the supervision of the Court or voluntarily, or is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up —

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;

(b) does not deliver up to the liquidator or as he directs, all such part of the real and personal property of the company as is in his custody or under his control and which he is required by law to deliver up;

(c) does not deliver up to the liquidator or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;

(d) within one year next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of \$100 or upwards, or conceals any debt due to or from the company;

(e) within one year next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of \$50 or upwards;

(f) makes any material omission in any statement relating to the affairs of the company;

(g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof;

(h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company;

(i) within one year next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company;

(j) within one year next before the commencement of the winding up or at any time thereafter, makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;

(k) within one year next before the commencement of the winding up or at any time thereafter, fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;

(l) after the commencement of the winding up or at any meeting of the creditors of the company, within one year next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses;

(m) has within one year next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for;

(n) within one year next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit for or on behalf of the company, any property which the company does not subsequently pay for;

(o) within one year next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of the business of the company; or

(p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

he is guilty of an offence and liable on conviction to, in the case of offences mentioned respectively in paragraphs (m), (n) and (o), imprisonment for 5 years, and in any other case, imprisonment for 2 years:

Provided that it shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (n) and (o), if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to a misdemeanour under subsection (1)(o), any person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid is guilty of an offence and liable on conviction to imprisonment for 5 years.

(3) For the purposes of subsection (1)(o), a person who has sent out of Brunei Darussalam or purports to have sent out of Brunei Darussalam any property which has been obtained by or on behalf of the company on credit and not paid for, shall be deemed, unless he proves the contrary, to have disposed of such otherwise than in the ordinary way of the business of the company, if the person to whom such property was or is purported to have been sent cannot be found or does not pay for the same within a reasonable time after being required to do so by the liquidator of the company.

(4) For the purposes of this section, “director” shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

### **Penalty for falsification of books**

**257.** If any director, manager or other officer, or contributory of any company being wound up destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he is guilty of an offence and liable on conviction to imprisonment for 2 years.

### **Frauds by officers of companies which have gone into liquidation**

**258.** If any person being at the time of the commission of the alleged offence a director, manager or other officer of the company which is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up —

(a) has by false pretences 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 caused to be made any gift or transfer of or charge on or has caused or connived at the levying of any execution against, the property of the company; or

(c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within 2 months before, the date of any unsatisfied judgment or order for payment of money obtained against the company,

he is guilty of an offence and liable on conviction to imprisonment for 2 years.

### **Liability where proper accounts not kept**

**259.** (1) If, where a company is wound up, it is shown that proper books of account were not kept by the company throughout the period of 2 years immediately preceding the commencement of the winding up, every director, manager or other officer of the company who was knowingly a party to or connived at the default of the company, unless he shows that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable, is guilty of an offence and liable on conviction to imprisonment for one year.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary, to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings 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.

**Responsibility of directors for fraudulent trading**

**260.** (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court, on the application of the Official Receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper to do so, declare that any of the directors, whether past or present, of the company who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court may direct.

(2) Where the Court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such director under the declaration a charge on —

(a) any debt or obligation due from the company to him; or

(b) any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in —

(i) him;

(ii) any company or person on his behalf; or

(iii) any person claiming as assignee from or through the director, company or person,

and may make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

For the purposes of this subsection, “assignee” includes any person to whom or in whose favour, by the directions of the director, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any, of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1), every director of the



company who was knowingly a party to the carrying on of the business in manner aforesaid is guilty of an offence and liable on conviction to imprisonment for one year.

(4) The Court may, in the case of any person in respect of whom a declaration has been made under subsection (1) or who has been convicted of an offence under subsection (3), order that that person shall not, without the leave of the Court, be a director of, or in any way, whether directly or indirectly, be concerned in or take part in the management of, a company for such period, not exceeding 5 years, from the date of the declaration or of the conviction, as the case may be, as may be specified in the order, and if any person acts in contravention of an order made under this subsection, he is guilty of an offence and liable on conviction to a fine of \$5,000 and imprisonment for 2 years.

In this subsection, “the Court in relation to making of an order” means the Court by which the declaration was made or the Court before which the person was convicted, as the case may be, and in relation to the granting of leave means any Court having jurisdiction to wind up the company.

(5) For the purposes of this section, “director” shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

(6) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration under subsection (1) is made in the case of a winding up the declaration shall be deemed to be a final judgment for the purpose of any written law relating to bankruptcy.

(7) It shall be the duty of the Official Receiver or of the liquidator to appear on the hearing of an application for leave under subsection (4), and on the hearing of an application under that subsection or under subsection (1) the Official Receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.

### **Power of Court to assess damages against delinquent directors etc.**

**261.** (1) If, in the course of winding up a company, it appears that any person who has taken part in the formation or promotion of the company, or

any past or present director, manager, liquidator or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the Official Receiver, liquidator or any creditor or contributory —

(a) examine into the conduct of the promoter, director, manager, liquidator or officer; and

(b) compel him to —

(i) repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just; or

(ii) contribute such sum to the assets of the company by way of compensation in respect of the misapplication, misfeasance or breach of trust as the Court thinks just.

(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) Where, in the case of a winding up, an order for payment of money is made under this section the order shall be deemed to be a final judgment within the meaning of section 3(1)(g) of the Bankruptcy Act (Chapter 67).

### **Prosecution of delinquent officers and members of company**

**262.** (1) If it appears to the Court in the course of a winding up by, or subject to the supervision of, the Court, that any past or present director, manager or other officer, or any member, of the company has been guilty of an offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the Public Prosecutor.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter, to the Public Prosecutor, and shall furnish to him such information

and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question as he may require.

(3) Where any report is made under subsection (2) to the Public Prosecutor, he may, if he thinks fit, refer the matter to the Official Receiver for further inquiry, and he shall thereupon investigate the matter and may, if he thinks it expedient, apply to the Court for an order conferring on him or any person designated by him for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court.

(4) If on any report to the Public Prosecutor under subsection (2) it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly; and thereupon subject to the previous sanction of the Court, the liquidator may himself take proceedings against the offender.

(5) If it appears to the Court in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty, as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Public Prosecutor under subsection (2), the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2).

(6) If, where any matter is reported or referred to the Public Prosecutor under this section, he considers that the case is one in which a prosecution ought to be instituted and further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this subsection, “agent”, in relation to a company, shall be deemed to include any banker or advocate of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(7) If any person fails or neglects to give assistance in manner required by subsection (6), the Court may, on the application of the Public Prosecutor, direct that person to comply with the requirements of that subsection and where any such application is made with respect to a liquidator the Court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him to do so, direct that the costs of the application shall be borne by the liquidator personally.

(8) The Court may direct that the whole or part of any costs and expenses properly incurred by the liquidator in proceedings duly brought by him under this section shall be defrayed as expenses incurred by the liquidator under this Act in relation to the winding up of companies. Subject to any direction under this subsection and to any mortgages or charges on the assets of the company and any debts to which priority is given by section 250, all such costs and expenses as aforesaid shall be payable out of those assets in priority to all other liabilities payable thereout.

#### SUPPLEMENTARY PROVISIONS AS TO WINDING UP

##### **Disqualification for appointment as liquidator**

**263.** (1) A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the Court or in a voluntary winding up, and any appointment made in contravention of this provision shall be void.

(2) Nothing in this section shall disqualify a body corporate from acting as liquidator of a company if acting under an appointment made before 1st January 1957, being the date of commencement of this Act, but subject as aforesaid any body corporate which acts as liquidator of a company is guilty of an offence and liable on conviction to a fine of \$1,000.

##### **Enforcement of duty of liquidator to make returns etc.**

**264.** (1) If any liquidator, who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the Court may, on an application made to the Court by any contributory or creditor of the company or by the Registrar, make an order

directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any written law imposing penalties on a liquidator in respect of any such default as aforesaid.

### **Notification that company is in liquidation**

**265.** (1) Where a company is being wound up, whether by or under the supervision of the Court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company, and every liquidator of the company and every receiver or manager, who knowingly and wilfully authorises or permits the default is guilty of an offence and liable on conviction to a fine of \$1,000.

### **Exemption of certain documents from stamp duty on winding up of companies**

**266.** In the case of a winding up by the Court of a company registered in Brunei Darussalam, or of a creditors' voluntary winding up of such a company —

(a) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other incumbrance on, or any estate, right or interest, in, any real or personal property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and

(b) every power of attorney, proxy paper, writ, order, certificate, affidavit bond or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceedings under any such winding up,

shall be exempt from duties chargeable under the Stamp Act (Chapter 34).

In this section, “assurance” includes deed, conveyance, assignment and surrender.

### **Books of company to be evidence**

**267.** Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

### **Disposal of books and papers of company**

**268.** (1) Where a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed as follows —

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

(b) in the case of a members’ voluntary winding up, in such way as the company by extraordinary resolution directs, and in the case of a creditors’ voluntary winding up, in such way as the committee of inspection or, if there is no such committee as the creditors of the company, may direct.

(2) After 5 years from the dissolution of the company no responsibility shall rest on the company, the liquidators or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) Provision may be made by general rules for enabling the Official Receiver to prevent, for such period (not exceeding 5 years from the dissolution of the company) as he thinks proper, the destruction of the books and papers of the company which has been wound up, and for enabling any creditor or contributory of the company to make representations to him, and to appeal to the Court from any direction which may be given by him in the matter.

(4) If any person acts in contravention of any general rules made for the purposes of this section or of any direction of the Official Receiver thereunder, he is guilty of an offence and liable on conviction to a fine of \$1,000.

### **Information as to pending liquidations**

**269.** (1) If where a company is being wound up, the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement and to receive a copy thereof or extract therefrom.

(3) If a liquidator fails to comply with this section, he is liable to a fine of \$25 for each day during which the default continues, and any person untruthfully stating himself as aforesaid to be a creditor or contributory shall be guilty of a contempt of Court and shall, on the application of the liquidator or of the Official Receiver, be punishable accordingly.

### **Unclaimed assets to be paid to companies liquidation account**

**270.** (1) If, where a company is being wound up it appears either from any statement sent to the Registrar under section 269 or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for 6 months after the date of their receipt, the liquidator shall forthwith pay the said money to the companies liquidation account, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(2) For the purpose of ascertaining and getting in any money payable into the bank in pursuance of this section, the liquidator may be called upon by the Court to account for any unclaimed or undistributed assets of the company and any failure to comply with the requisitions of the Court in this behalf may be dealt with as a contempt of Court.

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

(4) Any person dissatisfied with the decision of the Official Receiver in respect of a claim made in pursuance of this section may appeal to the Court.

### **Resolutions passed at adjourned meetings of creditors and contributories**

**271.** Where after 1st January 1957, being the date of commencement of this Act, a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date.

## SUPPLEMENTARY POWERS OF COURT

### **Meetings to ascertain wishes of creditors to contributories**

**272.** (1) The Court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company as proved to it by any sufficient evidence and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

### **Judicial notice of signature of officers**

**273.** In all proceedings under this Part, all Courts, judges, and persons judicially acting, and all officers, judicial or ministerial, of any Court, or employed in enforcing the process of any Court, shall take judicial notice of



the signature of any officer of the Supreme Court, and also of the official seal or stamp of the several offices of the Supreme Court, appended to or impressed on any document made, issued or signed under the provisions of this Part, or any official copy thereof.

### **Affidavits etc. in Brunei Darussalam and Commonwealth**

**274.** (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in Brunei Darussalam, or elsewhere within the Commonwealth, before any Court, judge or person lawfully authorised to take and receive affidavits or before any of Brunei Darussalam consuls or vice-consuls in any place outside Brunei Darussalam.

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

## PROVISIONS AS TO DISSOLUTION

### **Power of Court to declare dissolution of company void**

**275.** (1) Where a company has been dissolved, the Court may at any time within 2 years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within 7 days after the making of the order or such further time as the Court may allow, to deliver to the Registrar for registration an office copy of the order and if that person fails to do so, he is guilty of an offence and liable on conviction to a fine of \$25 for every day during which the default continues.

### **Registrar may strike defunct company off register**

**276.** (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the

company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within 14 days after the expiration of the month, send to the company by post a registered letter referring to the first letter and stating that no answer thereto has been received and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after sending the second letter receive an answer, he may publish in the *Gazette* and send to the company by post a notice, that at the expiration 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.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up and the returns required to be made by the liquidator have not been made for a period of 6 consecutive months, the Registrar shall publish in the *Gazette* and send to the company or the liquidator, if any, a like notice as is provided in subsection (3).

(5) Where the Registrar is of the opinion that the registered office of a company or the name and address of a liquidator or subscriber to the memorandum of association of a company cannot be ascertained, or the Registrar is of the opinion that a letter or notice to be sent under subsection (1), (2), (3) or (4) is unlikely to be received by the person to whom it would be directed, it shall be sufficient compliance with the provisions of those subsections if the Registrar shall publish in the *Gazette* a notice stating that at the expiration of 3 months from the date of the publication of such 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.

(6) At the expiration of the time specified in any notice referred to in subsection (3), (4) or (5) the Registrar may, unless cause to the contrary is previously shown, strike its name off the register, and shall publish notice

thereof in the *Gazette* and on the publication in the *Gazette* of this notice the company shall be dissolved:

Provided that —

(a) the liability, if any, of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and

(b) nothing in this subsection shall affect the power of the Court to wind up a company the name of which has been struck off the register.

(7) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court on an application made by the company or member or creditor before the expiration of 20 years from the publication in the *Gazette* of the notice aforesaid may, if satisfied that the company was at the time of the striking off carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being delivered to the Registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(8) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office or, if no office has been registered, to the care of some director or officer of the company or, if there is no director or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

### **Property of dissolved company to be *bona vacantia***

277. Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall, subject and without prejudice

to any order which may at any time be made by the Court under sections 275 and 276, be deemed to be *bona vacantia* and shall accordingly belong to the Government of Brunei Darussalam, and subject to any necessary modification shall vest and may be dealt with in the same manner as other *bona vacantia* accruing to the Crown of England.

## CENTRAL ACCOUNTS

### **Companies liquidation account**

**278.** (1) An account, to be called the companies liquidation account, shall be kept by the Official Receiver at such bank as His Majesty the Sultan and Yang Di-Pertuan\* may direct, and all moneys received by the Official Receiver in respect of proceedings under this Act in connection with the winding up of companies, shall be paid to that account.

(2) All payments out of money standing to the credit of the Official Receiver in the companies liquidation account shall be made in the prescribed manner.

### **Investment of surplus funds on general account**

**279.** (1) Whenever the cash balance standing to the credit of the companies liquidation account is in excess of the amount which in the opinion of the Official Receiver is required for the time being to answer demands in respect of companies' estates, he shall notify the excess to the Permanent Secretary and shall pay over the whole or any part of that excess, as the Permanent Secretary may require, to the Permanent Secretary, to such account as the Permanent Secretary may direct, and the Permanent Secretary may invest the sums paid over, or any part thereof, in Government securities, to be placed to the credit of such account.

(2) When any part of the money so invested is, in the opinion of the Official Receiver, required to answer any demands in respect of companies' estates, he shall notify to the Permanent Secretary the amount so required, and the Permanent Secretary shall thereupon repay to the Official Receiver such sum as may be required to the credit of the companies liquidation account, and for that purpose may direct the sale of such part of such securities as may be necessary.

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\* Transferred to the Minister of Law\*\* with effect from 31st December 1988 — [S 31/1988]

\*\*Transferred further to the Registrar of Companies with effect from 16th September 1998 — [S 32/1998]

(3) The income on investments under this section, any profits realised on the sale of such investments and any bank interest received shall be paid into the companies liquidation account, and the Official Receiver shall on or before the 31st day of December in each year transfer to the general revenue the accumulated balance of such income, profits and bank interest, after deducting therefrom any losses on the realisation of such investments.

### **Separate accounts of particular estates**

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

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

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

## **RULES AND FEES**

### **General rules and fees**

**281.** (1) The Chief Justice may, with the concurrence of His Majesty the Sultan and Yang Di-Pertuan make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies, and also rules for the purposes of this Act generally, including rules as to costs.

(2) His Majesty the Sultan and Yang Di-Pertuan in Council\* may make rules to provide for —

(a) the manner in which applications by persons desirous of being placed upon the authorised list of auditors shall be made;

(b) the examination of such applications and if thought fit of applicants by an Advisory Board;

(c) the establishment of an Advisory Board to advise His Majesty the Sultan and Yang Di-Pertuan in Council\*\*\* in relation to such applications and also as to whether the name of any person on the authorised list should be removed therefrom;

(d) anything which may require to be prescribed; and

(e) carrying this Act into effect.

(3) All rules made under this section shall be judicially noticed and shall have effect as if enacted by this Act.

(4) There shall be paid in respect of proceedings under this Act, where no fee is otherwise fixed, such fees as the Chief Justice may, with the sanction of His Majesty the Sultan and Yang Di-Pertuan direct, and he may direct by whom and in what manner the same are to be collected and accounted for.

## PART VI

### RECEIVERS AND MANAGERS

#### **Disqualification for appointment as receiver**

**282.** (1) A body corporate shall not be qualified for appointment as receiver of the property of a company.

(2) Any body corporate which acts as receiver as aforesaid shall be liable to a fine of \$1,000.

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\* Transferred to the Minister of Law\*\* with the approval of His Majesty the Sultan and Yang Di-Pertuan with effect from 31st December 1988 — [S 31/1988]

\*\* Transferred further to the Registrar of Companies with effect from 16th September 1998 — [S 32/1998]

\*\*\*Transferred to the Minister of Finance with effect from 31st December 1988 — [S 31/1988]

**Power to appoint Official Receiver as receiver for debenture holders or creditors**

**283.** Where an application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the Court, the Official Receiver may be so appointed.

**Notification that receiver or manager appointed**

**284.** (1) 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 that a receiver or manager has been appointed.

(2) If default is made in complying with requirements of this section, the company and every director, manager, secretary or other officer of the company, and every liquidator of the company, and every receiver or manager who knowingly and wilfully authorises or permits the default, is guilty of an offence and liable on conviction to a fine of \$500.

**Power of Court to fix remuneration on application of liquidator**

**285.** The Court may, on an application made to the Court by the liquidator or a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company, and may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend any order, so made.

**Delivery to Registrar of accounts of receivers and managers.**

**286.** (1) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall —

(a) within one month or such longer period as the Registrar may allow, after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months; and

(b) within one month after he ceases to act as receiver or manager,

deliver to the Registrar for registration —

- (i) an abstract in the prescribed form showing his receipts and his payments —
  - (A) during that period of 6 months; or
  - (B) where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing; and
- (ii) the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.

(2) Any receiver or manager who makes default in complying with the provisions of this section is guilty of an offence and liable on conviction to a fine of \$50 for every day during which the default continues.

#### **Enforcement of duty of receiver to make returns etc.**

**287.** (1) If —

(a) any receiver of the property of a company, who has made default in filing, delivering or making any return, account or other document or in giving any notice, which a receiver is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so; or

(b) any receiver or manager of the property of a company who has been appointed under the powers contained in any instrument has, after being required at any time by the liquidator of the company to do so, failed to render proper accounts of his receipts and payments and to pay over to the liquidator the amount properly payable to him,

the Court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as may be specified in the order.

(2) In the case of any such default as is mentioned in subsection (1)(a), an application for the purposes of this section may be



made by any member or creditor of the company or by the Registrar and the order may provide that all costs of and incidental to the application shall be borne by the receiver, and in the case of any such default as is mentioned in subsection (1)(b), the application shall be made by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of such default as is mentioned in subsection (1)(a).

## PART VII

### GENERAL PROVISIONS AS TO REGISTRATION

#### **Appointment of Registrar of Companies etc.** [S 118/2010]

**288.** His Majesty the Sultan and Yang Di-Pertuan shall appoint fit and proper persons to be the Registrar of Companies, Deputy Registrars and Assistant Registrars of Companies under and for the purposes of this Act.

#### **Fees.** [S 118/2010]

**289.** (1) There shall be paid to the Registrar —

(a) the fees specified in the Eight Schedule;

(b) such other fees as may be prescribed.

(2) The Registrar may add, vary or amend the fees specified in the Eight Schedule or prescribed under this Act.

(3) All fees paid to the Registrar shall be paid into the Treasury.

#### **Inspection, production and evidence of documents kept by Registrar**

**290.** (1) Any person may inspect the documents kept by the Registrar on payment of such fees as may be appointed by the Minister\*, and person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar, on payment for the certificate, certified copy or extract, of such fees as the Minister\* may appoint.

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\* Transferred further to the Registrar of Companies with effect from 16th September 1998 — [S 32/1998]

(2) No process for compelling the production of any document kept by the Registrar shall issue from any Court except with the leave of that Court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the Court.

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

### **Enforcement of duty of company to make returns to Registrar**

**291.** (1) If a company, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the Registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within 14 days after the service of a notice on the company requiring it to do so, the Court may, on an application made to the Court by any member or creditor of the company or by the Registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

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

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

## PART VIII

### WINDING UP OF UNREGISTERED COMPANIES

#### **Meaning of unregistered company**

**292.** For the purposes of this Part, “unregistered company” shall include any partnership, any association and any company except —

(a) a company registered under this Act; or

(b) a partnership, association or company which consists of less than eight members and is not a foreign partnership, association or company.

### **Winding up of unregistered companies**

**293.** (1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions —

(a) no unregistered company shall be wound up under this Act voluntarily or subject to supervision;

(b) the circumstances in which an unregistered company may be wound up are as follows —

- (i) the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
- (ii) the company is unable to pay its debts;
- (iii) the Court is of opinion that it is just and equitable that the company should be wound up;

(c) an unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts if —

- (i) a creditor by assignment or otherwise, to whom the company is indebted in a sum exceeding \$500 then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for 3 weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;

- (ii) any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within 10 days after service of the notice paid, secured, or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same;
- (iii) execution or other process issued on a judgment, decree or order obtained in any Court in favour of a creditor, against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;
- (iv) it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

(2) Where a company incorporated outside Brunei Darussalam which has been carrying on business in Brunei Darussalam ceases to carry on business in Brunei Darussalam, it may be wound up as an unregistered company under this Part notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

### **Contributories in winding up of unregistered company**

**294.** (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of —

- (a) any debt or liability of the company;

(b) any sum for the adjustment of the rights of the members themselves; or

(c) the costs and expenses of winding up the company,

and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of such liability as aforesaid.

(2) In the event of the death, bankruptcy or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.

### **Power of Court to stay or restrain proceeding**

**295.** The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

### **Actions stayed on winding up order**

**296.** Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

### **Provisions of Part VIII cumulative**

**297.** The provisions of this Part with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Act contained with respect to winding up companies by the Court, and the Court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act:

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

## PART IX

COMPANIES INCORPORATED OUTSIDE  
BRUNEI DARUSSALAM CARRYING ON BUSINESS  
WITHIN BRUNEI DARUSSALAM**Companies to which Part IX applies**

**298.** This Part applies to all companies incorporated outside Brunei Darussalam which, after 1st January 1957, being the date of commencement of this Act, establish a place of business in Brunei Darussalam, and to all companies incorporated outside Brunei Darussalam which have, before the commencement of this Act, established a place of business in Brunei Darussalam and continue to have an established place of business within Brunei Darussalam at the commencement of this Act.

**Documents to be delivered to Registrar by companies carrying on business in Brunei Darussalam** [S 118/2010]

**299.** (1) Every company incorporated outside Brunei Darussalam shall, before it establishes a place of business or commences to carry on business in Brunei Darussalam, lodge with the Registrar for registration —

(a) a certified copy of the certificate of its incorporation or registration in its place of incorporation or origin or a document of similar effect;

(b) a certified copy of its charter, statute or memorandum and articles or other instrument constituting or defining its constitution;

(c) a list of its directors containing similar particulars with respect to its directors as are by this Act required to be contained in the register of the directors, managers and secretaries of a company incorporated under this Act;

(d) where the list includes directors resident in Brunei Darussalam who are members of the local board of directors, a memorandum duly executed by or on behalf of the company incorporated outside Brunei Darussalam stating the powers of the local directors;

(e) a memorandum of appointment or power of attorney under the seal of the company incorporated outside Brunei Darussalam or executed on its behalf in such manner as to be binding on the company and, in either case, verified in the prescribed manner, stating the names and addresses of two or more individuals resident in Brunei Darussalam authorised to accept on its behalf service of process and any notices required to be served on the company; and

(f) notice of the situation of its registered office in Brunei Darussalam and, unless the office is open and accessible to the public during ordinary business hours on each business day, the days and hours during which it is open and accessible to the public,

and on payment of the appropriate fees and subject to this Act the Registrar shall register the company by registration of the documents.

(2) Where a memorandum of appointment or power of attorney lodged with the Registrar in pursuance of subsection (1)(e) is executed by a person on behalf of the company, a copy of the deed or document by which that person is authorised to execute the memorandum of appointment or power of attorney, verified by statutory declaration in the prescribed manner, shall be lodged with the Registrar and the copy shall for all purposes be regarded as an original.

(3) Subsection (1) applies to a company registered outside Brunei Darussalam which was not registered but which, immediately before 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010), had a place of business or was carrying on business in Brunei Darussalam and, on that date, had a place of business or was carrying on business in Brunei Darussalam, as if it established that place of business or commenced to carry on that business on that date.

### **Power of companies incorporated outside Brunei Darussalam to hold immovable property**

**300.** A company incorporated outside Brunei Darussalam which shall have filed with the Registrar the documents specified in section 299, shall have the same power to acquire hold and dispose of immovable property in Brunei Darussalam as if it were a company incorporated under this Act.

**Power to refuse registration of company incorporated outside Brunei Darussalam in certain circumstances** [S 118/2010]

**300A.** Notwithstanding anything in this Act or any other written law, the Registrar shall refuse to register a company under this Part if he is satisfied that the company incorporated outside Brunei Darussalam is being used or is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Brunei Darussalam or is acting or likely to act against the national security or interest.

**Returns to be delivered to Registrar where documents etc. altered** [S 118/2010]

**301.** (1) If in the case of any company to which this Part applies any alteration is made in —

(a) the charter, statutes or memorandum and articles of the company or any such instrument as aforesaid;

(b) the directors of the company or the particulars contained in the list of the directors;

(c) the names or addresses of the persons authorised to accept service on behalf of the company;

(d) the situation or address or designation of situation or address of the registered office of the company incorporated outside Brunei Darussalam or the days or hours during which it is open and accessible to the public;

(e) the address of the registered office of the company incorporated outside Brunei Darussalam in its place of incorporation or origin;

(f) the name of the company incorporated outside Brunei Darussalam; or

(g) the powers of any directors resident in Brunei Darussalam who are members of the local board of directors of the company incorporated outside Brunei Darussalam,

the company incorporated outside Brunei Darussalam shall, within one month or within such further period as the Registrar in special circumstances



allow after the change or alteration, lodge with the Registrar particulars of the change or alteration and such documents as are required.

### **Balance sheet of company carrying on business in Brunei Darussalam**

**302.** (1) Every company to which this Part applies shall in every calendar year make out a balance sheet in such form, and containing such particulars and including such documents, as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting, and deliver a copy of that balance sheet to the Registrar for registration.

(2) If any such balance sheet is not written in the English language, there shall be annexed to it a certified translation thereof.

(3) Subject to this section, a company incorporated outside Brunei Darussalam shall, within 2 months of its annual general meeting, lodge with the Registrar, a copy of its balance sheet made up to the end of its last 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, together with a statutory declaration in the prescribed form verifying that the copies are true copies of the documents so required.

*[S 118/2010]*

(4) The Registrar may, if he is of the opinion that the balance sheet and other documents referred to in subsection (3) do not sufficiently disclose the company's financial position, 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 the Registrar by notice in writing to the company requires but this subsection does not authorise the Registrar to require a balance sheet to contain any particulars or the company to annex, attach or to send any documents that would not be required to be furnished if the company were a public company incorporated under this Act.

*[S 118/2010]*

(5) The company shall comply with the requirements set out in the notice.

*[S 118/2010]*

(6) Where a company to which this Part applies, 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 to 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 incorporated under this Act.

[S 118/2010]

(7) In addition to the balance sheet and other documents required to be lodged with the Registrar by subsections (3) to (6), a company incorporated outside Brunei Darussalam shall lodge with the Registrar with such balance sheet and other documents a duly audited statement showing its assets used in and liabilities arising out of its operations in Brunei Darussalam as at the date to which its balance sheet was made up and a duly audited profit and loss account which, in so far as is practicable, complies with the requirements of the accounting standards which gives a true and fair view of the profit or loss arising out of the company's operation in Brunei Darussalam for the last preceding financial year of the company:

Provided that —

(a) the company shall be entitled to make such apportionments of expenses incurred in connection with operations or administration affecting both Brunei Darussalam 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 operation in Brunei Darussalam; and

(b) the Registrar may waive compliance with this subsection in relation to any company incorporated outside Brunei Darussalam if he is satisfied that —

- (i) it is impractical to comply with this subsection having regard to the nature of the company's operations in Brunei Darussalam;
- (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 company related to the company.

[S 118/2010]

(8) A statement and profit and loss account shall be deemed to have been duly audited for the purposes of subsection (7) if it is accompanied by a report by an authorised auditor appointed to provide auditing services in respect of the company's operations in Brunei Darussalam.

[S 118/2010]

(9) Without prejudice to the powers of the Registrar under paragraph (b) of the proviso to subsection (7), a company incorporated outside Brunei Darussalam may apply to the Registrar in writing for an order relieving the company incorporated outside Brunei Darussalam from any requirement of this section relating to the form and content of accounts or reports and the Registrar may make such an order either unconditionally or on condition that the company incorporated outside Brunei Darussalam complies with such other requirements relating to the form and content of the accounts or reports as the Registrar thinks fit to impose.

[S 118/2010]

(10) The Registrar shall not make an order under subsection (9) unless he is of the opinion that compliance with the requirements of this section would render the accounts or reports misleading or inappropriate to the circumstances of the company incorporated outside Brunei Darussalam or would impose unreasonable burdens on the company incorporated outside Brunei Darussalam.

[S 118/2010]

(11) The Registrar may make an order under subsection (9) which may be limited to a specific period and may from time to time revoke or suspend the operation of any such order.

[S 118/2010]

(12) In this section, "authorised auditor" means a person authorised to perform the duties required by this Act to be performed by an auditor.

[S 118/2010]

**Obligation to state name of company, whether limited and country where incorporated**

**303.** Every company to which this Part applies shall —

(a) in every prospectus inviting subscriptions for its shares or debentures in Brunei Darussalam state the country in which the company is incorporated;

(b) conspicuously exhibit on every place where it carries on business in Brunei Darussalam the name of the company and the country in which the company is incorporated;

(c) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices, advertisements, and other official publications of the company; and

(d) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every such prospectus as aforesaid and in all bill-heads, letter paper, notices, advertisements and other official publications of the company in Brunei Darussalam and to be affixed on every place where it carries on its business.

**Service on company to which Part IX applies**

**304.** Any process or notice required to be served on a company to which this Part applies shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar under this Part and left at or sent by post to the address which has been so delivered:

Provided that —

(a) where any such company makes default in delivering to the Registrar the name and address of a person resident in Brunei Darussalam who is authorised to accept on behalf of the company service of process or notices; or

(b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served,

a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Brunei Darussalam.

**Cesser of business in Brunei Darussalam** [S 118/2010]

**304A.** (1) If a Part IX company ceases to have a place of business or to carry on business in Brunei Darussalam, it shall, within 7 days after so ceasing, lodge with the Registrar notice of that fact, and as from the day on which the notice is so lodged its obligation to lodge any document (not being a document that ought to have been lodged before that day) with the Registrar shall cease, and the Registrar shall upon the expiration of 12 months after the lodging of such notice remove the name of that company incorporated outside Brunei Darussalam from the register.

(2) If a company incorporated outside Brunei Darussalam goes into liquidation or is dissolved in its place of incorporation or origin —

(a) each person who immediately prior to the commencement of the liquidation proceedings was an agent shall, within one month after the commencement of the liquidation or the dissolution or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice of that fact and, when a liquidator is appointed, notice of such appointment; and

(b) the liquidator shall, until a liquidator for Brunei Darussalam is duly appointed by the Court, have the powers and functions of a liquidator for Brunei Darussalam.

(3) A liquidator of a company incorporated outside Brunei Darussalam appointed for Brunei Darussalam by the Court or a person exercising the powers and functions of such a liquidator —

(a) shall, before any distribution of the company incorporated outside Brunei Darussalam's assets is made, by advertisement in a newspaper circulating generally in each country where the company incorporated outside Brunei Darussalam had been carrying on business prior to the liquidation if no liquidator has been appointed for that place, invite all creditors to make their claims against the company incorporated outside Brunei Darussalam within a reasonable time prior to the distribution;

(b) subject to subsection (7), shall not, without obtaining an order of the Court, pay out any creditor to the exclusion of any other creditor of the company incorporated outside Brunei Darussalam; and

(c) shall, unless otherwise ordered by the Court, only recover and realise the assets of the company incorporated outside Brunei Darussalam in Brunei Darussalam and shall, subject to paragraph (b) and subsection (7), pay the net amount so recovered and realised to the liquidator of that company incorporated outside Brunei Darussalam for the place where it was formed or incorporated after paying any debts and satisfying any liabilities incurred in Brunei Darussalam by the company incorporated outside Brunei Darussalam.

(4) Where a company incorporated outside Brunei Darussalam has been wound up so far as its assets in Brunei Darussalam 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 in pursuance of subsection (3).

(5) On receipt of a notice from an agent that the company has been dissolved, the Registrar shall remove the name of the company from the register.

(6) Where the Registrar has reasonable cause to believe that a company incorporated outside Brunei Darussalam has ceased to carry on business or to have a place of business in Brunei Darussalam, the provisions of this Act relating to the striking off the register of the names of defunct companies shall with such adaptations as are necessary extend and apply accordingly.

(7) Section 250 applies to a company incorporated outside Brunei Darussalam wound up or dissolved pursuant to this section as if for references to a company there were substituted references to a company incorporated outside Brunei Darussalam.

(8) Where the Registrar is satisfied that a company incorporated outside Brunei Darussalam is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Brunei Darussalam or against the national security or interest, he shall strike the name of the company incorporated outside Brunei Darussalam off the

register and it shall thereupon cease to be registered as a company incorporated outside Brunei Darussalam under this Part.

(9) Any person aggrieved by the decision of the Registrar under subsection (8), may, within 30 days of the date of the decision, appeal to the Minister of Finance whose decision shall be final.

**Restriction on use of certain names** [S 118/2010]

**304B.** (1) No company incorporated outside Brunei Darussalam shall be registered by a name that, in the opinion of the Registrar, is undesirable, or is a name, or a name of a kind, that the Minister of Finance has directed the Registrar not to accept for registration.

(2) Any change in the name of a company incorporated outside Brunei Darussalam shall not be registered if in the opinion of the Registrar the new name of the company is undesirable notwithstanding that particulars of the change have been lodged in accordance with section 301.

(3) No company incorporated outside Brunei Darussalam to which this Part applies shall use in Brunei Darussalam any name other than that under which it is registered under this Part.

(4) If default is made in complying with subsection (3), the company incorporated outside Brunei Darussalam, every officer of the company who is in default and every agent of the company who knowingly and wilfully authorises or permits the default is guilty of an offence and liable on conviction to a fine not exceeding \$2,000 and a default fine.

**Office where documents to be filed**

**305.** (1) Any document, which any company to which this Part applies is required to deliver to the Registrar shall be delivered to the Registrar at the registration office.

(2) If any company to which this Part applies ceases to have a place of business in Brunei Darussalam, it shall forthwith give notice of the fact to the Registrar and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease.

**Penalties**

**306.** If any company to which this Part applies fails to comply with any of the foregoing provisions of this Part, the company and every officer or agent of the company is guilty of an offence and liable on conviction to a fine of \$1,000 or, in the case of a continuing offence, \$25 for every day during which the default continues.

**Interpretation of Part IX**

**307.** For the purposes of this Part —

“certified” means certified in the prescribed manner to be a true copy or a correct translation;

“director”, in relation to a company, includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

“place of business” includes a share transfer or share registration office;

“prospectus” has the same meaning as when used in relation to a company incorporated under this Act.

## PART X

RESTRICTIONS ON SALE OF SHARES AND  
OFFERS OF SHARES FOR SALE**Provisions with respect to prospectuses of foreign companies inviting subscriptions for shares or offering shares for sale**

**308.** (1) It shall not be lawful for any person to —

(a) issue, circulate or distribute in Brunei Darussalam any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Brunei Darussalam, whether the company has or has not established, or when formed will or will not establish, a place of business in Brunei Darussalam, unless —



- (i) before the issue, circulation or distribution of the prospectus in Brunei Darussalam a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the Registrar;
- (ii) the prospectus states on the face of it that the copy has been so delivered;
- (iii) the prospectus is dated;
- (iv) the prospectus otherwise complies with this Part; or

(b) issue to any person in Brunei Darussalam a form of application for shares in or debentures of such a company or intended company as aforesaid, unless the form is issued with a prospectus which complies with this Part:

Provided that this provision does not apply if it is shown that the form of application was issued in connection with an invitation made in good faith to a person to enter into an underwriting agreement with respect to the shares or debentures.

(2) This section does not apply to the issue to existing members of debenture holders of a company of a prospectus or form of application relating to share in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(3) Where any document by which any shares in or debentures of a company incorporated outside Brunei Darussalam are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 41 to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company.

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Section 40 shall extend to every prospectus to which this section applies.

(6) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the issue of a form of application for shares or debentures, in contravention of the provisions of this section is guilty of an offence and liable on conviction to a fine of \$5,000 and imprisonment for 2 years.

(7) In this section and section 309, “prospectus”, “shares” and “debentures” have the same meanings as when used in relation to a company incorporated under this Act.

### **Requirements as to prospectus**

**309.** (1) In order to comply with this Part, a prospectus in addition to complying with the provisions of section 308(1)(a)(ii) and (iii) shall —

(a) contain particulars with respect to the following matters —

- (i) the objects of the company;
- (ii) the instrument constituting or defining the constitution of the company;
- (iii) the enactments or provisions having the force of an enactment, by or under which the incorporation of the company was effected;
- (iv) an address in Brunei Darussalam where such instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected;
- (v) the date on which and the country in which the company was incorporated;
- (vi) whether the company has established a place of business in Brunei Darussalam, and, if so, the address of its principal office in Brunei Darussalam:

Provided that the provisions of sub-paragraphs (i), (ii), (iii) and (iv) do not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business.

(b) subject to the provisions of this section, state the matters specified in Part I of the Third Schedule (other than those specified in paragraph 1 of that Part I) and set out the reports specified in Part II of that Schedule subject always to the provisions contained in Part III of that Schedule:

Provided that —

(a) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed;

(b) in paragraph 3 of Part I of the Third Schedule, a reference to the constitution of the company shall be substituted for the reference to the articles; and

(c) paragraph 1 of Part III of the Third Schedule shall have effect as if the reference to the memorandum were omitted therefrom.

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

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

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

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

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

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 15 of Part I of the Third Schedule, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

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

### **Restriction on offering of shares for subscription or sale**

**310.** (1) It shall not be lawful for any person to go from house to house offering shares for subscription or purchase to the public or any member of the public.

In this subsection, “house” shall not include an office used for business purposes.

(2) Subject as hereinafter provided in this subsection, it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase, unless the offer is accompanied by a statement in writing (which must be signed by the person making the offer and dated) containing such particulars as are required by this section to be included therein and otherwise complying with the requirements of this section, or, in the case of shares in a company incorporated outside Brunei Darussalam, either by such a statement as aforesaid, or by such a prospectus as complies with this Part:

Provided that the provisions of this subsection shall not apply —

(a) where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by, any recognised stock exchange in Brunei Darussalam 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; or

(c) where the offer was made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares.

(3) The written statement aforesaid shall not contain any matter other than the particulars required by this section to be included therein and shall not be in characters less large or less legible than any characters used in the offer or in any document sent therewith.

(4) The statement shall contain particulars with respect to the following matters —

(a) whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in Brunei Darussalam where that principal can be served with process;

(b) the date on which and the country in which the company was incorporated and the address of its registered or principal office in Brunei Darussalam;

(c) the authorised share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of shareholders in respect of capital, dividends and voting;

(d) the dividends, if any, paid by the company on each class of shares during each of the 3 financial years immediately preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;

(e) the total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon;

(f) the names and addresses of the directors of the company;

(g) whether or not the shares offered are fully paid-up, and, if not, to what extent they are paid-up;

(h) whether or not the shares are quoted on, or permission to deal therein has been granted by, any recognised stock exchange in Brunei Darussalam or elsewhere, and, if so, which, and, if not, a statement that they are not so quoted or that no such permission has been granted;

(i) where the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in Brunei Darussalam where that document or a copy thereof can be inspected.

In this subsection, “company” means the company by which the shares to which the statement relates were or are to be issued.

(5) If any person acts, incites, or causes or procures any person to act, in contravention of this section, he is guilty of an offence and liable on conviction to a fine of \$2,000 and imprisonment for 6 months, and in the case of a second or subsequent offence a fine of \$5,000 and imprisonment for one year.

(6) Where a person convicted of an offence against this section is a company (whether a company within the meaning of this Act or not) every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(7) In this section, unless the context otherwise requires —

“shares” means the shares of a company, whether a company within the meaning of this Act or not, and includes debentures and units; and

“unit” means any right or interest (by whatever name called) in a share,

and for the purposes of this section a person shall not in relation to a company be regarded as not being a member of the public by reason only

that he is a holder of shares in the company or a purchaser of goods from the company.

(8) (a) Where any person is convicted of having made an offer in contravention of the provisions of this section, the Court before which he is convicted may order that any contract made as a result of the offer shall be void, and, where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares.

(b) Where the Court makes an order under this subsection (whether with or without consequential directions) an appeal against the order and the consequential directions, if any, shall lie to the Court of Appeal.

## PART XI

### PROHIBITION OF PARTNERSHIPS WITH MORE THAN TWENTY MEMBERS

#### **Prohibition of partnerships with more than twenty members**

**311.** No company, association, or partnership consisting of more than twenty 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.

#### ENFORCEMENT

[S 6/2015]

#### **Court may compel compliance** [S 6/2015]

**311A.** (1) If any person in contravention of this Act, refuses or fails to permit the inspection of any register, minute book or document, or to supply a copy of any register, minute book or document, the Court may by order compel an immediate inspection of the register, minute book or document, or order the copy to be supplied.

(2) If any officer or former officer of a company has failed or omitted to do any matter or thing which under this Act he is or was required or directed to do, the Court on the application of the Registrar or any member

of the company, the Official Receiver or liquidator may, by order, require that officer or former officer to do such act, matter or thing immediately or within such time as is allowed by the order, and for the purpose of complying with any such order a former officer shall be deemed to have the same status, powers and duties as he had at the time the act, matter or thing should have been done.

### MISCELLANEOUS OFFENCES

#### **Penalty for false statement**

**312.** If any person in any return, report, certificate, balance sheet or other document, required by or for the purposes of any of the provisions of this Act specified in the Ninth Schedule, wilfully makes a statement false in any material particular, knowing it to be false, he is guilty of an offence and liable on conviction to a fine and imprisonment for 2 years.

#### **Penalty for improper use of word “*Berhad*”** [S 118/2010]

**313.** Any person who uses any name or title, or trades or carries on business under any name or title, of which “Limited”, “Berhad”, or any abbreviation, imitation or translation of any of those words is the last word, or in any way holds out that the business is registered or incorporated that person is, unless at that time that business was duly incorporated, under this Act or registered under the Limited Liability Partnerships Order, 2010 (S 117/2010) or the Business Names Act (Chapter 92), is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

### GENERAL PROVISIONS AS TO OFFENCES

#### **Provision with respect to default fines and meaning of “officer in default”**

**314.** (1) Where by any section of this Act it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every such officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine of such amount as is specified in the said section or, if the amount of the fine is not so specified, to a fine of \$100.

[S 118/2010]



(2) For the purposes of any section in this Act which provides that an officer of a company who is in default shall be liable to a fine or penalty, “officer who is in default” means any director, manager, secretary or other officer of the company, who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the section.

### **Applications of fines**

**315.** The Court or Magistrate imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Act shall, notwithstanding anything in any other Act, be paid into the Treasury.

### **Penalty for failure to pay fine**

**316.** (1) If any company fails to pay the whole or any part of any fine or penalty imposed by a Court or Magistrate under this Act within one month of the day on which the said fine or penalty was imposed, the Registrar shall publish in the *Gazette* and send to the company by post a notice that at the expiration of 2 months from the date of such notice the name of the company mentioned therein will, unless the said fine or penalty be sooner paid, be struck off the register and the company will be dissolved.

(2) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the *Gazette*, and on such publication the company shall be dissolved:

Provided that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved.

(3) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court on the application of the company or member or creditor may, if satisfied that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the

same position as nearly as may be as if the name of the company had not been struck off.

(4) A letter or notice under this section may be addressed to the company at its registered office or, if no office has been registered, to the care of some director or officer of the company or, if there is no director or officer of the company whose name and address are known to the Registrar of Companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum:

Provided that nothing in this section shall affect any other legal method of enforcing fines or penalties imposed by a magistrate.

### **Saving as to private prosecutors**

**317.** Nothing in this Act relating to the institution of criminal proceedings by the Public Prosecutor shall be taken to preclude any person from instituting or carrying on any such proceedings.

### **Saving for privileged communications**

**318.** Where proceedings are instituted under this Act against any person by the Public Prosecutor, nothing in this Act shall be taken to require any person who has acted as advocate for the defendant to disclose any privileged communication made to him in that capacity.

### **Service of documents on company**

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

### **Electronic filing** *[S 118/2010]*

**319A.** (1) The Registrar may require any document to be lodged under the Act to be filed electronically with the Registrar using the service provided by the Registry of Companies whereby the document under this Act may be filed with or submitted to the Registrar electronically.

(2) When any document is required to be filed with or submitted to the Registrar electronically by any person using the service referred to in subsection (1), the Registrar may allow the document to be filed or submitted by a prescribed person on behalf of the first-mentioned person, subject to such conditions as may be imposed from time to time by the Registrar on the prescribed person.

(3) When the Registry of Companies provides a service whereby documents required under this Act may be filed electronically with the Registrar, the Registrar and his officers shall not be liable for any loss and damage suffered by any person by reason of any error or omission of whatsoever nature or however caused appearing in any document obtained by any person under the services, if the error or omission —

(a) is made in good faith and in the ordinary course of the discharge of the duties of the Registrar or any such officers; or

(b) has occurred or arose as a result of any defect or breakdown of the service or in any of the equipment used for the service.

(4) A copy of or an extract from any document electronically filed with or submitted to the Registrar using the service referred to in subsection (1) which is supplied or issued by the Registrar and certified under his hand and seal to be a true copy of or extract from such document shall, in any proceedings, be admissible in evidence as of equal validity with the original document.

(5) Any information supplied by the Registrar that is certified by the Registrar under his hand and seal to be a true extract from any document filed or lodged with or submitted to the Registrar using the service referred to in subsection (1) shall, in any proceedings, be admissible.

### **Costs in actions by certain limited companies**

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

**Power of Court to grant relief in certain cases**

**321.** (1) If in any proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies, it appears to the Court hearing the case that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a Court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where any case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

(4) The persons to whom this section applies are the following —

- (a) directors of a company;
- (b) managers of a company;
- (c) officers of a company;
- (d) persons employed by a company as auditors, whether they are or are not officers of the company.

**Power to enforce orders**

**322.** Orders made by the Court under this Act may be enforced and shall be subject to appeal in the same manner as orders made in a civil proceeding pending therein.

**GENERAL PROVISIONS AS TO ALTERATION OF  
TABLES, FORMS AND FEES ETC.****Power to alter tables and forms**

**323.** (1) His Majesty the Sultan and Yang Di-Pertuan in Council\* may by order specified in the *Gazette* alter Table A, the form in the Sixth Schedule and the table of fees in the Eighth Schedule, and may alter or add to Tables B, C, D and E in the First Schedule, and the forms in the Fifth Schedule.

(2) Any such order, when altered, shall be published in the *Gazette*, and thenceforth shall have the same force as if the alteration or addition authorised thereby had been included in one of the Schedules, but no alteration made in Table A shall affect any company registered before the alteration, or repeal, as respects that company, of any portion of that table.

**Rules and fees**

**324.** The fees specified in the Tenth Schedule and the rules specified in the Eleventh and Twelfth Schedules shall remain in force until amended by any subsidiary legislation made under this Act.

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\* Transferred to the Minister of Law\*\* with the approval of His Majesty the Sultan and Yang Di-Pertuan with effect from 31st December 1988 — [S 31/1988]

\*\*Transferred further to the Registrar of Companies with effect from 16th September 1998 — [S 32/1998]

**FIRST SCHEDULE**

## TABLE A

(sections 11, 114, 307 and 323)

REGULATIONS FOR MANAGEMENT OF COMPANY  
LIMITED BY SHARES

## PRELIMINARY

## 1. In these Regulations —

“Act” means the Companies Act.

When any provision of the Act is referred to, the reference is to that provision as modified by any statute for the time being in force.

Unless the context otherwise requires, expressions defined in the Act or any statutory modification thereof in force at the date at which these Regulations become binding on the company, shall have the meaning so defined.

## SHARES

2. Subject to the provisions, if any, in that behalf of the memorandum of association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine, and any preference share may, with the sanction of a special resolution, be issued on the terms that it is, or at the option of the company is liable, to be redeemed.

3. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these Regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary *quorum* shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

## FIRST SCHEDULE

## TABLE A — (continued)

4. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the seal of the company specifying the share or shares held by him and the amount paid-up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

5. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding \$50, and on such terms, if any, as to evidence and indemnity, as the directors think fit.

6. No part of the funds of the company shall directly or indirectly be employed in the purchase of, or in loans upon the security of, the company's shares, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 48(1).

*LIEN*

7. The company shall have a *lien* on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a *lien* on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's *lien*, if any, on a share extend to all dividends payable thereon.

8. The company may sell, in such manner as the directors think fit, any shares on which the company has a *lien*, but no sale shall be made unless some sum in respect of which the *lien* exists is presently payable, nor until the expiration of 14 days after a notice in writing, stating and demanding, payment of such part of the amount in respect of which the *lien* exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

9. For giving effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

## FIRST SCHEDULE

## TABLE A — (continued)

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

## CALLS ON SHARES

11. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least 14 days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

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

13. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of \$5 *per cent per annum* from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

14. The provisions of these Regulations as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

15. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

16. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, 6 *per cent*) as may be agreed upon between the member paying the sum in advance and the directors.



## FIRST SCHEDULE

## TABLE A — (continued)

## TRANSFER AND TRANSMISSION OF SHARES

17. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

18. Shares shall be transferred in the following form, or in any usual or common form which the directors shall approve —

*I, A, B., of* *, in consideration of the*  
*sum of \$* *paid to me by C.D.*  
*of* *(hereinafter called the said transferee) do*  
*hereby transfer to the said transferee the share [or shares]*  
*numbered* *in the undertaking called the*  
*Company, Berhad, to hold unto the said*  
*transferee, subject to the several conditions on which I hold the same: and*  
*I, the said transferee, do hereby agree to take the said share [or shares]*  
*subject to the conditions aforesaid. As witness our hands the*  
*day of* .  
*Witness to the signatures of, & c.*

19. The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a *lien*. The directors may also suspend the registration of transfers during the 14 days immediately preceding the ordinary general meeting in each year. The directors may decline to reorganise any instrument of transfer unless —

(a) a fee not exceeding \$1 is paid to the company in respect thereof; and

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register a transfer of any shares, they shall within 2 months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

## FIRST SCHEDULE

TABLE A — *(continued)*

20. The legal personal representatives of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

21. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

22. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

## FORFEITURE OF SHARES

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

24. The notice shall name a further day (not earlier than the expiration of 14 days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

25. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time there after, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

## FIRST SCHEDULE

TABLE A — *(continued)*

26. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

27. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

28. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

29. The provisions of these Regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

## CONVERSION OF SHARES INTO STOCK

30. The company may by ordinary resolution convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination.

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

## FIRST SCHEDULE

## TABLE A — (continued)

32. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

33. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words “share” and “shareholder” therein shall include “stock” and “stockholder”.

## ALTERATION OF CAPITAL

34. The company may by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

35. Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

36. The new shares shall be subject to the same provisions with reference to the payment of calls, in *lien*, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.

37. The company may by ordinary resolution —

(a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

## FIRST SCHEDULE

## TABLE A — (continued)

(b) sub-divide its existing shares, of any of them, into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of section 53(1)(d);

(c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

38. The company may by special resolution reduce its share capital and any capital redemption reserve fund in any manner and with, and subject to, any incident authorised, and consent required, by law.

## GENERAL MEETINGS

39. A general meeting shall be held once in every calendar year at such time (not being more than 15 months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

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

41. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default may be convened by such requisitionists, as provided by section 113. If at any time there are not within Brunei Darussalam sufficient directors capable of acting to form a *quorum*, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

## FIRST SCHEDULE

## TABLE A — (continued)

## NOTICE OF GENERAL MEETINGS

42. Subject to the provisions of section 116(2) relating to special resolutions, 7 days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but, with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

43. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

## PROCEEDINGS AT GENERAL MEETINGS

44. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officer in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

45. No business shall be transacted at any general meeting unless a *quorum* of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a *quorum*.

46. If within half an hour from the time appointed for the meeting a *quorum* is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and, if at the adjourned meeting a *quorum* is not present within half an hour from the time appointed for the meeting, the members present shall be a *quorum*.

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

48. If there is no such chairman, or if at any meeting he is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose someone of their number to be chairman.

## FIRST SCHEDULE

## TABLE A — (continued)

49. The chairman may, with the consent of any meeting at which a *quorum* is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 10 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

50. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members present in person or by proxy entitled to vote or by one member or two members so present and entitled, if that member or those two members together hold not less than 15 *per cent* of the paid-up capital of the company, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number of proportion of the votes recorded in favour of, or against, that resolution.

51. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the results of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

52. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

53. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

## VOTES OF MEMBERS

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

55. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

## FIRST SCHEDULE

## TABLE A — (continued)

56. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, *curator bonis*, or other person in the nature of a committee *curator bonis* appointed by that Court, and any such committee, *curator bonis*, or other person may, on a poll, vote by proxy.

57. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

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

59. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

60. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company 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, and in default the instrument of proxy shall not be treated as valid.

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

<p>“I, of of the hereby appoint</p>	<p><i>Company, Berhad,</i> <i>, being a member</i> <i>Company, Berhad,</i> <i>, of</i> <i>as my proxy, to vote for me and on my</i> <i>behalf at the [ordinary or extraordinary, as the case may be] general</i> <i>meeting of the company to be held on the</i> <i>day of</i> <i>and at any adjournment thereof.”</i></p>
<p>Signed this</p>	<p>day of</p>

62. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.



## FIRST SCHEDULE

TABLE A — *(continued)*

## CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

63. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

## DIRECTORS

64. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

65. The remuneration of the directors shall be determined by the company in general meeting.

66. The qualification of a director shall be the holding of at least one share in the company.

## POWERS AND DUTIES OF DIRECTORS

67. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company, as are not, by the Act, or by these Articles, required to be exercised by the company in general meeting, subjects, nevertheless, to any regulation of these Articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

68. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the

## FIRST SCHEDULE

## TABLE A — (continued)

rotation of retirement of directors; but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that this tenure of the office of managing director or manager be determined.

69. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

70. The directors shall cause minutes to be made in books provided for the purposes of —

- (a) all appointments of offices made by the directors;
- (b) the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) all resolution and proceedings at all meetings of the company; and the directors, and committees of directors,

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

## SEAL

71. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

## DISQUALIFICATION OF DIRECTORS

72. The office of director shall be vacated if the director —

- (a) ceases to be a director by virtue of section 140;

## FIRST SCHEDULE

## TABLE A — (continued)

(b) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager;

(c) becomes bankrupt;

(d) becomes prohibited from being a director by reason of any order made under section 208 or 260;

(e) is found lunatic or becomes of unsound mind;

(f) resigns his office by notice in writing to the company; or

(g) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company:

## ROTATION OF DIRECTORS

Provided, however, that a director shall not vacate his office by reason of his being a member of any corporation which has entered into contracts with or done any work for the company if he shall have declared the nature of his interest in manner required by section 147, but the director shall not vote in respect of any such contract or work or any matter arising thereout, and if he does so vote his vote shall not be counted.

73. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

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

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

76. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

## FIRST SCHEDULE

## TABLE A — (continued)

77. The company may in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

78. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

79. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

80. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

## PROCEEDINGS OF DIRECTORS

81. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

82. The *quorum* necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall when the number of directors exceeds three be three, and when the number of directors does not exceed three, be two.

83. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary *quorum* of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

## FIRST SCHEDULE

## TABLE A — (continued)

84. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

85. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

86. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

87. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

88. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

## DIVIDENDS AND RESERVE

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

90. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

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

## FIRST SCHEDULE

TABLE A — *(continued)*

92. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid-up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

93. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

94. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

95. Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto or in the case of joint holders to any one of such joint holders at his registered address or to such person and such address as the member or person entitled or such joint holders, as the case may be, may direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent or to the order of such other person as the member or person entitled or such joint holders, as the case may be, may direct.

96. No dividend shall bear interest against the company.

97. The directors shall cause proper books of account to be kept with respect to —

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

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

(c) the assets and liabilities of the company.

98. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

## FIRST SCHEDULE

## TABLE A — (continued)

99. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

100. The directors shall from time to time in accordance with section 122, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets and reports as are referred to in that section.

101. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditors' report shall not less than 7 days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

## AUDIT

102. Auditors shall be appointed and their duties regulated in accordance with sections 131, 132 and 133.

## NOTICES

103. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within Brunei Darussalam) to the address, if any, within Brunei Darussalam supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

104. If a member has no registered address within Brunei Darussalam and has not supplied to the company an address within Brunei Darussalam for the giving of notices to him, a notice addressed to him and advertised in the *Gazette*, shall be deemed to be duly given to him at noon on the day on which the advertisement appears.

## FIRST SCHEDULE

TABLE A — *(continued)*

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

106. A notice may be given by the company of the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within Brunei Darussalam supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

107. Notice of every general meeting shall be given in some manner hereinbefore authorised to —

(a) every member except those members who (having no registered address within Brunei Darussalam) have not supplied to the company an address within Brunei Darussalam for the giving of notices to them; and

(b) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting.

No other persons shall be entitled to receive notices of general meetings.



## FIRST SCHEDULE — (continued)

## TABLE B

(sections 14 and 323)

FORM OF MEMORANDUM OF ASSOCIATION OF  
COMPANY LIMITED BY SHARES

1st. The name of the company is “*Syarikat Pelayaran Timor, Berhad*”.

2nd. The registered office of the company will be situate in “*Bandar Seri Begawan*”.

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

4th. The liability of the members is limited.

5th. The share capital of the company is \$200,000 divided into 1,000 shares of \$200 each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

	<i>Names, Addresses and Descriptions of Subscribers</i>	<i>Number of shares taken by each Subscriber</i>
“1.	Ahmad bin Bakar ..... merchant	200
2.	Mohammad bin Daud ..... merchant	25
3.	Ali bin Yassin ..... merchant	30
4.	Wong Ah Bee ..... merchant	40
5.	Bakar bin Ali ..... merchant	15
6.	Daud bin Ahmad ..... merchant	5
7.	Yassin bin Mohammad ..... merchant	10
	Total shares taken	325”

FIRST SCHEDULE

TABLE B — *(continued)*

Dated the                                    day of                                    20                                    ”

Witness to the above signatures,

.....  
*A.B. No. 13 Jalan Sultan,  
Bandar Seri Begawan*

## FIRST SCHEDULE — (continued)

## TABLE C

(sections 14 and 323)

FORM OF MEMORANDUM AND ARTICLES OF ASSOCIATION OF  
COMPANY LIMITED BY GUARANTEE AND  
NOT HAVING SHARE CAPITAL

## MEMORANDUM OF ASSOCIATION

- 1st. The name of the company is “*The Brunei School Association Berhad*”.
- 2nd. The registered office of the company will be situate in “*Bandar Seri Begawan*”.
- 3rd. The objects for which the company is established are the carrying on a school for boys in Brunei Darussalam and the doing all such other things as are incidental or conducive to the attainment of the above object.
- 4th. The liability of the members is limited.
- 5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and 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 \$100.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

*Names, Addresses and Descriptions of Subscribers*

- |     |                           |              |
|-----|---------------------------|--------------|
| “1. | Ahmad bin Bakar .....     | schoolmaster |
| 2.  | Mohammad bin Daud .....   | schoolmaster |
| 3.  | Ali bin Yassin .....      | schoolmaster |
| 4.  | Wong Ah Bee .....         | schoolmaster |
| 5.  | Bakar bin Ali .....       | schoolmaster |
| 6.  | Daud bin Ahmad .....      | schoolmaster |
| 7.  | Yassin bin Mohammad ..... | schoolmaster |



## FIRST SCHEDULE

## TABLE C — (continued)

5. A general meeting shall be held once in every calendar year at such time (not being more than 15 months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

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

7. The directors may, whenever they think fit, convene an extraordinary general meeting and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 113. If at any time there are not within Brunei Darussalam sufficient directors capable of acting to form a *quorum*, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

## NOTICE OF GENERAL MEETINGS

8. Subject to the provisions of section 116(2) relating to special resolutions, 7 days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but, with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

9. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

10. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

## FIRST SCHEDULE

## TABLE C — (continued)

## PROCEEDINGS AT GENERAL MEETINGS

11. No business shall be transacted at any general meeting unless a *quorum* of members is presented at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a *quorum*.

12. If within half an hour from the time appointed for the meeting a *quorum* is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a *quorum* is not present within half an hour from the time appointed for the meeting the members present shall be a *quorum*.

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

14. If there is no such chairman, or if at any meeting he is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

15. The chairman may, with the consent of any meeting at which a *quorum* is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 10 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

16. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least two members present in person or by proxy entitled to vote and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

17. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

## FIRST SCHEDULE

## TABLE C — (continued)

18. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting, at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

19. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

## VOTES OF MEMBERS

20. Every member shall have one vote.

21. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, *curator bonis*, or other person in the nature of a committee or *curator bonis* appointed by that Court, and any such committee, *curator bonis*, or other person may, on a poll, vote by proxy.

22. No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid.

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

24. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the seal or under the hand of an officer or attorney so authorised. A proxy need not be a member of the company.

25. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

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

## FIRST SCHEDULE

TABLE C — (continued)

*Company, Berhad,*

“I,  
of  
being a member of the  
Berhad, hereby appoint  
*Company,*  
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  
any adjournment thereof.” *and at*

Signed this                      day of

27. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

## CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

28. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

## DIRECTORS

29. The number of directors and the names of the first directors shall be determined in writing by a majority of the subscribers to the memorandum.

30. The remuneration of the directors shall be determined by the company in general meeting.



## FIRST SCHEDULE

TABLE C — *(continued)*

## POWERS AND DUTIES OF DIRECTORS

31. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the Act, or by these Articles required to be exercised by the company in general meeting, subject nevertheless to any regulation of these Articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

32. The directors shall cause minutes to be made in books provided for the purpose of —

(a) all appointments of officers made by the directors;

(b) the names of the directors present at each meeting of the directors and any committee of the directors;

(c) all resolutions and proceedings at all meetings of the company, and the directors, and committees of directors,

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

## THE SEAL

33. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

## DISQUALIFICATIONS OF DIRECTORS

34. The office of director shall be vacated if the director —

## FIRST SCHEDULE

TABLE C — *(continued)*

- (a) without the consent of the company in general meeting holds any other office or profit under the company;
- (b) becomes bankrupt;
- (c) becomes prohibited from being a director by reason of any order made under section 208 or 260;
- (d) is found lunatic or becomes of unsound mind;
- (e) resigns his office by notice in writing to the company; or
- (f) is directly or indirectly interested in any contract with the company and fails to declare the nature of his interest in manner required by section 147.

A director shall not vote in respect of any contract in which he is interested or any matter arising thereout, and if he does so vote his vote shall not be counted.

## ROTATION OF DIRECTORS

35. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

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

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

38. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

## FIRST SCHEDULE

## TABLE C — (continued)

39. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

40. Any casual vacancy occurring in the board of directors may be filled up by the directors but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

41. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

42. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

## PROCEEDINGS OF DIRECTORS

43. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

44. The *quorum* necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceeds three, be three and shall, when the number of directors does not exceed three, be two.

45. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary *quorum* of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

## FIRST SCHEDULE

TABLE C — *(continued)*

46. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

47. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

48. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

49. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality for votes the chairman shall have a second or casting vote.

50. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

## ACCOUNTS

51. The directors shall cause proper books of account to be kept with respect to —

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

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

(c) the assets and liabilities of the company.

52. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

## FIRST SCHEDULE

## TABLE C — (continued)

53. The directors shall determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

54. The directors shall, in accordance with section 122, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets and reports as are referred to in that section.

55. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditors' report shall not less than 7 days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

## AUDIT

56. Auditors shall be appointed and their duties regulated in accordance with sections 131, 132 and 133.

## NOTICES

57. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within Brunei Darussalam) to the address, if any, within Brunei Darussalam supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected at the expiration of 24 hours after the letter containing the same was posted.

58. If a member has no registered address within Brunei Darussalam and has not supplied to the company an address within Brunei Darussalam for the giving of notices to him, a notice addressed to him and advertised in the *Gazette*, shall be deemed to be duly given to him on the day on which the advertisement appears.



FIRST SCHEDULE — *(continued)*

## TABLE D

(sections 14 and 323)

MEMORANDUM OF ARTICLES OF ASSOCIATION OF  
COMPANY LIMITED BY GUARANTEE AND HAVING SHARE CAPITAL

## MEMORANDUM OF ASSOCIATION

- 1st. The name of the company is “*Syarikat Hotel Moden, Berhad*”.
- 2nd. The registered office of the company will be situate in “*Bandar Seri Begawan*”.
- 3rd. The objects for which the company is established are “*the facilitating of travel in Brunei Darussalam by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object*”.
- 4th. The liability of the members is limited.
- 5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding \$200.
- 6th. The share capital of the company shall consist of \$500,000, divided into 5,000 shares of \$100 each.

## FIRST SCHEDULE

TABLE D — *(continued)*

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

<i>Names, Addresses and Descriptions of Subscribers</i>	<i>Number of shares taken by each Subscriber</i>
“1. Ahmad bin Bakar ..... merchant	200
2. Mohammad bin Daud ..... merchant	25
3. Ali bin Yassin ..... merchant	30
4. Wong Ah Bee ..... merchant	40
5. Bakar bin Ali ..... merchant	15
6. Daud bin Ahmad ..... merchant	5
7. Yassin bin Mohammad ..... merchant	10
Total shares taken	325”

Dated the                      day of                      20                      ”

Witness to the above signatures,

.....  
*A.B. No. 13 Jalan Sultan,  
Bandar Seri Begawan*





## FIRST SCHEDULE — (continued)

## TABLE E

(sections 14 and 323)

MEMORANDUM OF ARTICLES OF ASSOCIATION OF  
UNLIMITED COMPANY HAVING SHARE CAPITAL

## MEMORANDUM OF ASSOCIATION

1st. The name of the company is “*The Patent Stereotype Company*”.

2nd. The registered office of the company will be situate in “*Bandar Seri Begawan*”.

3rd. The objects for which the company is established are “*the working of a patent method of founding and casting stereotype plates of which method Mohammad bin Daud of Bandar Seri Begawan, is the sole patentee, and the doing of all such things as are incidental or conducive to the attainment of the above object*”.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names..

<i>Names, Addresses and Descriptions of Subscribers</i>	<i>Number of shares taken by each Subscriber</i>
“1. Ahmad bin Bakar ..... merchant	3
2. Mohammad bin Daud ..... merchant	2
3. Ali bin Yassin ..... merchant	1
4. Wong Ah Bee ..... merchant	2
5. Bakar bin Ali ..... merchant	2
6. Daud bin Ahmad ..... merchant	1
7. Yassin bin Mohammad ..... merchant	1
Total shares taken	12”





## SECOND SCHEDULE

(section 30)

FORM OF STATEMENT *IN LIEU* OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY PRIVATE COMPANY ON BECOMING PUBLIC COMPANY

## COMPANIES ACT, CHAPTER 39

Statement *in lieu* of Prospectus delivered for registration by  
(*Insert the name of the company*)

Pursuant to section 30 of the Companies Act. Delivered for registration by

The nominal share capital of the company.	\$	
Divided into .....	Shares of \$	each
	Shares of \$	each
	Shares of \$	each
	Shares of \$	each
Amount (if any) of above capital which consists of redeemable preference shares.		
The date on or before which these shares are, or are liable, to be redeemed.		
Names, descriptions and addresses of directors or proposed directors.		
Amount of shares issued .....	Shares	
Amount of commissions paid in connection therewith.		
Amount of discount, if any, allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement.		
Unless more than one year has elapsed since the date on which the company was entitled to commence business —		
Amount of preliminary expenses .....	\$	
Amount of paid to any promoter .....	Name of promoter	
	Amount \$	
Consideration for the payment .....	Consideration —	

## SECOND SCHEDULE — (continued)

If the share capital of the company is divided into different classes of shares the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

Number and amount of shares and debentures issued with the 2 years preceding the date of this statement as fully or partly paid-up otherwise than for cash or agreed to be so issued at the date of this statement.

Consideration for the issue of those shares or debentures.

Names and addresses of Vendors of Property (1) purchased or acquired by the company within the 2 years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the company.

Amount (in cash, shares or debentures) paid or payable to each separate vendor.

Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill.

Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of business or entered into more than 2 years before the delivery of this statement).

Time and place at which the contracts or copies thereof may be inspected.

Names and addresses of the auditors of the company.

1.                    shares of  
\$                    fully paid

2. shares upon  
which \$  
per share credited  
as paid

3.                    debenture  
\$

4. Consideration —

Total purchase price

\$

Cash                    \$

Shares                    \$

Debenture                    \$

Goodwill                    \$

## SECOND SCHEDULE — (continued)

Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the company within the 2 years preceding the date of this statement or proposed to be purchased or acquired by the company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered or to be rendered to the company by him or by the firm.

Rates of the dividends (if any) paid by the company in respect of each class of shares in the company in each of the 3 financial years immediately preceding the date of this statement or since the incorporation of the company whichever period is the shorter.

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

If any of the unissued shares or debentures are to be applied in the purchase of any business the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the 3 financial years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than 3 years and the accounts of which have only been made up in respect of 2 years or one year the above requirement shall have effect as if references to 2 years or one year, as the case may be, were substituted for references to 3 years, and in any such case the statement shall say how long the business to be acquired has been carried on.

SECOND SCHEDULE — *(continued)*

(Signatures of the person above named as directors  
or proposed directors or of their agents authorised  
in writing).

\_\_\_\_\_

Date

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

---

Note:— In this Form, the expression “vendor” includes a vendor as defined in Part III of the Fourth Schedule to this Act, and the expression “financial year” has the meaning assigned to it in that Part of the said Schedule.



**THIRD SCHEDULE**

(sections 38 and 309)

## PART I

## MATTERS REQUIRED TO BE STATED IN PROSPECTUS

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

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

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

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

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

(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 each of the following matters —

- (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 moneys borrowed by the company in respect of any of the foregoing matters;
- (iv) working capital; and

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

THIRD SCHEDULE — *(continued)*

6. The amount payable on application and allotment on each share, and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the 2 preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

7. The number and amount of shares and debentures which within the 2 preceding years have been issued, or agreed to be issued, as fully or partly paid-up otherwise than in cash, and in the latter case the extent to which they are so paid-up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

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

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

10. The amount, if any, paid within the 2 preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission.

11. The amount or estimated amount of preliminary expenses.

12. The amount paid within the 2 preceding years or intended to be paid to any promoter, and the consideration for any such payment.

13. The dates of and parties to every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than 2 years before the date of issue of the prospectus, and a reasonable time and place at which any such material contract or a copy thereof may be inspected.

14. The names and addresses of the auditors, if any, of the company.

## THIRD SCHEDULE — (continued)

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

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

17. In the case of a company which has been carrying on business, or of a business which has been carried on for less than 3 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 IN PROSPECTUS

1. A report by the auditors of the company with respect to the profits of the company in respect of each of the 3 financial years immediately preceding the issue of the prospectus, and with respect to the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the said 3 years, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years, and, if no accounts have been made up in respect of any part of the period of 3 years ending on a date 3 months before the issue of the prospectus, containing a statement of that fact.

2. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants who shall be named in the prospectus upon the profits of the business in respect of each of the 3 financial years immediately preceding the issue of the prospectus.

THIRD SCHEDULE — *(continued)*

## PART III

## PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE

1. The provisions of this Schedule with respect to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of the preliminary expenses, shall not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business.

2. 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;

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

3. Where any property to be acquired by the company is to be taken on lease, this 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.

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

5. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than 3 years, the accounts of the company or business have only been made up in respect of 2 years or one year, Part II of this Schedule shall have effect as if references to 2 years or one year, as the case may be, were substituted for references to 3 years.

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

**FOURTH SCHEDULE**

(section 43)

FORM OF STATEMENT *IN LIEU* OF PROSPECTUS TO BE  
 DELIVERED TO REGISTRAR BY PRIVATE COMPANY WHICH DOES  
 NOT ISSUE PROSPECTUS OR WHICH DOES NOT GO TO  
 ALLOTMENT ON PROSPECTUS ISSUED

COMPANIES ACT, CHAPTER 39

Statement *in lieu* of Prospectus delivered for registration by  
 (Insert the name of company)

Pursuant to section 43 of the Companies Act. Delivered for registration

Delivered for registration by	
The nominal share capital of the company.	\$
Divided into .....	Shares of \$ each
	Shares of \$ each
	Shares of \$ each
Amount (if any) of above capital which consists of redeemable preference shares.	Shares of \$ each
The date on or before which these shares are, or are liable, to be redeemed.	
Names, descriptions and addresses of directors or proposed directors.	
If the share capital of the company is divided into different classes of shares, the right voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid-up otherwise than in cash.	1. shares of \$ fully paid
The consideration for the intended issue of those shares and debentures.	2. shares upon which \$ per share credited as paid
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company.	3. debenture \$
Amount (in cash, shares or debentures) payable to each separate vendor.	4. Consideration —

FOURTH SCHEDULE — (continued)

<p>Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.</p>	<p>Total purchase price \$ Cash \$ Shares \$ Debentures \$  Goodwill \$</p>
<p>Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or</p>	<p>Amount paid Amount payable</p>
<p>Rate of the commission .....</p>	<p>Rate per cent</p>
<p>The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.</p>	
<p>Estimated amount of preliminary expenses.</p>	<p>\$</p>
<p>Amount paid or intended to be paid to any promoter.</p>	<p>Name of promoter Amount \$</p>
<p>Consideration for the payment.</p>	<p>Consideration —</p>
<p>Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of business intended to be carried on by the Company or entered into more than 2 years before the delivery of this statement).</p>	
<p>Time and place at which the contracts or copies thereof may be inspected.</p>	
<p>Names and addresses of the auditors of the company (if any).</p>	
<p>Full particulars of the nature and extent of the interest of every director in any promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm, with a statement of all sums</p>	

## FOURTH SCHEDULE — (continued)

paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the 3 financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than 3 years and the accounts of which have only been made up in respect of 2 years or one year the above requirement shall have effect as if references to 2 years or one year, as the case may be, were substituted for references to 3 years, and in any such case the statement shall say how long the business to be acquired has been carried on.

(Signatures of the persons above named as directors or proposed directors, or of their agents authorised in writing).

Date

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NOTE: — In this Schedule, the expression “vendor” includes a vendor as defined in Part III of the Third Schedule to this Act and the expression “financial year” has the meaning assigned to it in that Part of the said Schedule.

## FIFTH SCHEDULE

(sections 107 and 323)

FORM OF ANNUAL RETURN OF COMPANY  
HAVING SHARE CAPITAL

Annual Return of the Company, (including foreign  
companies) made up to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (being the date of  
the first or only ordinary general meeting in \_\_\_\_\_, 20\_\_\_\_).

The address of the registered office of the company is as follows —

*Summary of share capital and shares*

Nominal Share Capital \$ divided into*	}	\$	shares of each
		\$	shares of each
Total number of shares taken up* to the _____ day of _____, 20____ being the date of the return (which number must agree with the total shown in the list as held by existing members).			
Number of shares issued subject to payment wholly in cash.			
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) 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		\$	
§There has been called up on each of shares		\$	
§There has been called up on each of shares		\$	

\*Where there are shares of different kinds or amounts (e.g. Preference and Ordinary of \$100 and \$10) state the number and nominal values separately.

†If the shares are of different kinds, state them separately.

§Where various amounts have been called, or there are shares of different kinds, state them separately.



## FIFTH SCHEDULE — (continued)

†† Total amount of calls received, including payments on application and allotment	\$
Total amount (if any) agreed to be considered as paid on shares which has been issued as fully paid-up otherwise than in cash.	\$
Total amount (if any) agreed to be considered as paid on shares which has been issued as partly paid-up to the extent of            per shares otherwise than in cash.	\$
Total amount of calls unpaid .....	\$
Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures or allowed by way of discount in respect of any debentures since the date of the last Return.	\$
Total number of shares forfeited.	\$
Total amount paid (if any) on shares forfeited.	\$
Total amount of shares for which share warrants to holder, if outstanding.	\$
Total amount of share warrants to bearer issued and surrendered respectively since the date of the last Return.	Issued \$ Surrendered \$
Remaining number of shares comprised in each share warrant to holder.	
Total amount of the indebtedness of the company in respect of all mortgages and charges of the kind which are required to be registered with the Registrar of Companies under the Companies Act, Chapter 39.	\$

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†† Include what has been received on forfeited as well as on existing shares.

## FIFTH SCHEDULE — (continued)

## COPY OF LAST AUDITED BALANCE SHEET OF COMPANY

*Note*— Except where the Company is a “Private Company” within the meaning of section 29 of the Companies Act, this Return must include a written copy, certified by a Director or by the Manager or Secretary of the company to be a true copy, of the last balance sheet which have been audited by the company’s auditors (including every document required by law to be annexed thereto) together with a copy of the report of the auditors thereon (certified as aforesaid), and if any such balance sheet is in a foreign language there must also be annexed to it a translation thereof in such language as may be prescribed by the Registrar certified in the prescribed manner to be a correct translation. If the said last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets there must be made such additions to and corrections in the said copy as would have been required to be made in the said balance sheet in order to make it comply with the said requirements, and the fact that the said copy has been so amended must be stated thereon.

## PRIVATE COMPANY

## Certificates to be given by private company

A. “I certify that the Company has not since the date of the <sup>1</sup>last Annual Return issued any invitation to the public to subscribe for any shares or debentures of the Company”.

(Signature)

(State whether Director or Secretary)

B. Should the number of members of the company exceed 50 the following certificate is also required —

“I certify that the excess of members of the Company above fifty consists wholly of persons who are in the employment of the Company and/or of persons who, having been formerly in the employment of the Company were while in such employment, and have continued after the determination of such employment to be, members of the Company”.

(Signature)

(State whether Director or Secretary)

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<sup>1</sup>In the case of the first Annual Return, strike out the words “last Annual Return” and substitute therefor the words “Incorporation of the Company”.

## FIFTH SCHEDULE — (continued)

The Return must be signed at the end by a Director or by the Manager or Secretary of the company.

Delivered for filing by

Particulars of the \*Directors of the Company, Berhad, at the date of the Annual Return.

†The present name or names	Any former name or names	Nationality	Nationality of origin (if other than the present nationality)	Usual residential address	‡Other business occupation if any. If none state so

\* “Director” includes any person who occupies the position of a Director by whatever name called and any person in accordance with whose directions or instructions the Directors of a company are accustomed to act.

† In the case of a corporation, its corporate name and registered or principal office should be shown.

‡ In the case of an individual who has no business occupation but holds any other directorship or directorships particulars of that directorship or of some one of those directorships must be entered.

FIFTH SCHEDULE — (continued)

List of persons holding shares in the \_\_\_\_\_ Company, Berhad, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and of persons who have held shares therein at any time since the date of the last Return, or (in the case of the first Return) of the incorporation of the company, showing their names and address, and an account of the shares so held.

*N.B.* — If the names in this list are not arranged in alphabetical order, an index sufficient to enable the name of any person in the list to be readily found must be annexed to this list.

		Name, Addresses, and Occupations			Account of Shares					
Folio in Register Ledger, containing particulars		Name	Address	Occupation	*Number of Shares held by existing Members at date of Return	‡Particulars of Shares Transferred since the date of the last Return, or (in the case of the first Return) of the incorporation of the Company, by person who are still Members		‡Particulars of Shares Transferred since the date of the last Return, or (in the case of the first Return) of the incorporation of the Company, by persons who have ceased to be Members		Remarks
						Number†	Date of Registration of Transfer	Number†	Date of Registration of Transfer	

(Signature)  
(State whether Director or Manager or Secretary)

- \* The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.
- † When the shares are of different classes these columns may be subdivided so that the number of each class held, or transferred, may be shown separately. Where any shares have been converted into stock the amount of stock held by each member must be shown.
- ‡ The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor, and not opposite that of the transferee, but the name of transferee may be inserted in “Remarks” column immediately opposite the particulars of each transfer.

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## SIXTH SCHEDULE

(section 130)

FORM OF STATEMENT TO BE PUBLISHED BY INSURANCE COMPANIES  
AND DEPOSIT, PROVIDENT OR BENEFIT SOCIETIES

\*The share capital of the company is \_\_\_\_\_, divided into  
shares of \_\_\_\_\_ each.

The number of shares issued is \_\_\_\_\_.

Calls to the amount of \$ \_\_\_\_\_ per share have been made, under which the sum of  
\$ \_\_\_\_\_ has been received.

The liabilities of the company on the first day of January (*or* July) were —

Debts owing to sundry persons by the company.

On judgment, \$

On speciality, \$

On notes or bills, \$

On simple contracts, \$

On estimated liabilities, \$

The assets of the company on that day were —

Government securities [*stating them*]

Bills of exchange and promissory notes, \$

Cash at the bankers, \$

Other securities, \$

---

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

**SEVENTH SCHEDULE**

(section 247)

**PROVISIONS WHICH DO NOT APPLY IN CASE OF WINDING UP  
SUBJECT TO SUPERVISION OF COURT**

	Section
Statement of companies affairs to be submitted to Official Receiver	175
Report of Official Receiver	176
Power of Court to appoint liquidator	177
Appointment and powers of provisional liquidator	178
Appointment, style &c. of liquidators in winding up	179
Provisions where person other than Official Receiver is appointed liquidator	180
General provisions as to liquidators	181 except ss (5)
Exercise and control of liquidators' powers	185
Books to be kept by liquidator	186
Payments of liquidator into bank or Treasury	187
Audit of liquidator's account	188
Control of Official Receiver over liquidator	189
Release of liquidators	190
Meeting of creditors and contributories to determine whether committee of inspection shall be appointed	191
Constitution and proceedings of committee of inspection	192
Powers of the Court where no committee of inspection	193
Appointment of special manager	201
Power to order public examination of promoters, directors &c	207
Power to restrain fraudulent persons from managing companies	208
Delegation to liquidator of certain power of Court	211
Power to appoint Official Receiver as receiver for debenture holders or creditors.	283

## EIGHTH SCHEDULE

(sections 83(1), 83(3), 87(1), 175(6), 269(2) and 281(4))

## TABLE OF FEES TO BE PAID TO REGISTRAR

	\$	¢
By company having share capital		
1. For incorporation of a company .....	300.00	
2. For increase of share capital of a company whose nominal share capital exceeds \$25,000 with the following additional fees regulated according to the amount of nominal share capital —		
For every \$5,000 of nominal share capital, or part of \$5,000, after the first \$25,000 up to \$500,000 .....	20.00	
For every \$5,000 of nominal share capital or part of \$5,000 after the first \$500,000 up to \$1,000,000 .....	10.00	
For every \$15,000 of nominal share capital or part of \$15,000 after the first \$1,000,000 up to \$50,000,000	5.00	
For every \$20,000 of nominal share capital or part of \$20,000 after the first \$50,000,000 .....	3.00	
3. On lodging notice of increase of share capital — an amount equal to the difference (if any) between the amount which would have been payable under the Act on first registration by reference to its capital as increased and the amount would have been payable under the Act by reference to its capital immediately before the increase:		

Provided that no company shall be liable to pay in respect of nominal share capital on registration or thereafter any greater amount of fees than \$35,000 taking into account in the case of fees payable on an increase of share capital after registration the fees paid on registration.

## EIGHTH SCHEDULE — (continued)

	\$	¢
By company not having share capital		
4. For registration of a company whose number of members as stated in the articles of association does not exceed twenty	150.00	
5. For registration of a company whose number of members as stated in the articles of association exceeds twenty but does not exceed one hundred the additional fee of \$150 (with an additional \$5 for every fifty members or less than fifty members after the first one hundred) but no company shall be liable to pay on the whole a greater fee than \$600 in respect of its number of members taking into account the fee paid on the first registration of the company.		
6. For registration of a company in which the number of members is stated in the articles of association to be unlimited .....	600.00	
Other fees		
7. For every application for consent of His Majesty the Sultan and Yang Di-Pertuan to use of a name by a company .....	25.00	
8. For every command of His Majesty the Sultan and Yang Di-Pertuan granting consent to use of a name by a company .....	50.00	
9. For every approval of His Majesty the Sultan and Yang Di-Pertuan to the change of the name of a company (otherwise than a change of name with the Registrar's consent pursuant to the provisions of section 22(2)) .....	50.00	
10. For perusing memorandum or articles of a company in connection with an application for a licence under section 21 .....	100.00	
11. For every licence of His Majesty the Sultan and Yang Di-Pertuan to dispense with the word "Berhad" in the name of a company .....	100.00	



## EIGHTH SCHEDULE — (continued)

	\$	¢
12. For an approval of High Court to alter the memorandum or articles of a company .....	100.00	
13. On the late lodging of any document under this Act after the period prescribed by law, in addition to any other fee .....	100.00	
The Registrar, if satisfied that just cause existed for the late lodgment may waive in whole or in part the additional fee.		
14. For the registration of a foreign company —		
(a) subject to paragraph (b), one-half of the appropriate fee prescribed in respect of a company registered or incorporated under Part I of the Act; and		
(b) where a fee prescribed in paragraph (a) is not applicable .....	600.00	
15. On lodging by a foreign company of notice of increase in share capital or in the case of a foreign company not having a share capital on the lodging of notice of increase in number of members beyond its registered number — one-half of the prescribed fee payable on the increase in share capital or on the increase in the number of members of a company incorporated or registered under Part I of the Act.		
16. For registering particulars of each series of debenture where more than issue in the series .....	10.00	
17. On an application for the reservation of a name .....	15.00	
18. For granting extension of time for the reservation of a name for a further period after the first reservation .....	5.00	
19. For search as to availability of any name proposed to be adopted by a company, for every name search .....	5.00	
20. On lodging articles of association of a foreign company .....	10.00	
21. On lodging a company of any special resolution altering the memorandum or articles of association of a company .....	10.00	

## EIGHTH SCHEDULE — (continued)

	\$	¢
22. On lodging any prospectus or document required under section 308 .....	25.00	
23. For registering any charge created by a company .....	25.00	
24. For registering the appointment of a receiver or manager of the property of a company under section 87 .....	25.00	
25. For registering particulars of a series of debentures created by a company .....	25.00	
26. For the entry in the register of charge of any memorandum of satisfaction .....	10.00	
27. For each inspection of the register of charge .....	5.00	
28. On lodging any application .....	5.00	
29. For every certificate issued by the Registrar under the Act or any other written law .....	25.00	
30. For supplying a photographic or microprint copy of, or extract from, any document	\$2.00	for each page or part thereof
31. For supplying and certifying a photographic or microprint copy of, or extract from, any document	\$4.00	for each page or part thereof
32. For each search for and inspection of a document filed by or in relation to company .....	5.00	
33. For any information concerning a company supplied by the Registrar in reply to a written application .....	10.00	
34. For every approval of an authorised auditor granted by His Majesty in Council .....	100.00	
35. For every appointment of a company liquidator by the High Court .....	100.00	
36. On lodging any annual return of a company .....	20.00	

## EIGHTH SCHEDULE — (continued)

	\$	¢
37. On lodging registering depositing or filling any other document with or by the Registrar under any Act (where the fee is not specified in any relevant written law .....	10.00	
Fees payable with respect to companies formed or incorporated outside Brunei Darussalam shall where appropriate be calculated after the conversion of the share capital to Brunei Darussalam currency.		
38. For registering any document required to be filed in complying with the provisions of Part VII .....	10.00	

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## NINTH SCHEDULE

(section 312)

## PROVISIONS REFERRED TO IN SECTION 312

	Section
Provisions relating to —	
Conclusiveness of certificate of incorporation	18
Registrar may accept statutory declarations as sufficient evidence of compliance with registration requirements	19
Specific requirements as to particulars in prospectus	38
Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar	43
Return as to allotments	45
Registration of charges created by company registered in Brunei Darussalam	80
Duty of company to register charges created by company	81(1)
Duty of company to register charges existing on property acquired	82
Application of Part III to companies incorporated outside Brunei Darussalam	91
Restrictions on commencement of business	94
The particulars as to directors and indebtedness of the company	107(3)(n)
Statutory meeting and statutory report	112
Auditor's report and right to information and explanations	133(1)(2)
Restrictions on appointment or advertisement of director	139
Notice by liquidator of his appointment	238
Delivery to Registrar of accounts of receivers and managers	286
Documents &c. to be delivered to Registrar by companies carrying on business in Brunei Darussalam	299
Return to be delivered to Registrar where documents &c. altered	301
Balance sheet of company carrying on business in Brunei Darussalam	302
Obligation to state name of company &c	303

## TENTH SCHEDULE

(section 324)

## WINDING UP OF COMPANIES

## SCALE OF FEES

## TABLE A

	\$	¢
1. Every petition .....	50.00	
2. Every bond with sureties .....	10.00	
3. Every subpoena or summons .....	2.00	
4. On issuing an office copy of a judgment or order made in Court (except an order upon a petition for winding up, an order adjourning a public examination, and an order appointing a shorthand writer)		
(a) if made in Court .....	25.00	
(b) if not made in Court .....	15.00	
5. Every order adjourning a public examination .....	5.00	
6. Every order appointing a shorthand writer .....	5.00	
7. Every affidavit filed other than proof of debt .....	10.00	
8. For taking an affidavit or an affirmation <i>in lieu</i> of an affidavit, or declaration, except for proof of debts, for each person making the same .....	10.00	
And in addition thereto for each exhibit referred to therein and required to be marked .....	5.00	
9. On every proof of debt above \$10 (other than proof for workmen's wages) .....	5.00	
10. Every other office copy, for each page on part thereof .....	2.00	
11. On every application to the Court to approve a reconstruction or other scheme by which the affairs of the company are to be wound up otherwise than by the realisation and distribution of assets .....	100.00	

## TENTH SCHEDULE — (continued)

	\$	¢
12. On every order of the Court approving such reconstruction or scheme, a fee according to the following scale on the estimated value of the Company's property transferred or otherwise disposed of, viz —		
(i) On the first \$500,000 or fraction thereof .....	$\frac{1}{2}$	<i>per cent</i>
(ii) On the next \$500,000 or fraction thereof .....	$\frac{1}{4}$	<i>per cent</i>
(iii) Above \$1,000,000 or fraction thereof .....	$\frac{1}{8}$	<i>per cent</i>
13. For taxation of costs —		
the same fees as those directed to be paid and collected by the order for the time being in force as to fees in the original jurisdiction of the High Court.		

## TABLE B

	\$	¢
1. Every inspection of any document lodged with the Official Receiver .....	5.00	
2. Every copy of or extract from such document, for each page or part thereof .....	2.00	
3. Every application by a committee of inspection to the Official Receiver for a special bank account .....	20.00	
4. Every order of the Official Receiver for a special bank account .....	20.00	
5. Every application under section 241 to the Official Receiver for payment of money out of the Companies Liquidation Account; and every application for the re-issue of a lapsed cheque or money order in respect of moneys standing to the credit of the Companies Liquidation Account —		
Where the amount applied for does not exceed \$10 .....	50	
Where the amount applied for exceeds \$10 .....	1.00	
Where the amount applied for exceeds \$100 .....	5.00	

## TENTH SCHEDULE — (continued)

TABLE C

- I. On the audit of the Official Receiver's or liquidator's accounts a fee according to the following scale on the amount brought to credit, including the produce of calls on contributories, but after deducting (1) money received and spent in carrying on the business of the company and (2) amounts paid by the Official Receiver or liquidator to secured creditors (other than debenture holders) —

On the first \$100,000 or fraction thereof .....	1 per cent
On the next \$900,000 or fraction thereof .....	$\frac{1}{2}$ per cent
On the next \$4,000,000 or fraction thereof .....	$\frac{1}{4}$ per cent
On the next \$5,000,000 or fraction thereof .....	$\frac{1}{8}$ per cent
Above \$10,000,000 .....	$\frac{1}{16}$ per cent

- II. Where the Official Receiver acts as provisional liquidator only —

(a) Where no winding up order is made upon the petition or where a winding up order is rescinded or all further proceedings are stayed in prior to the summoning of the statutory meetings of creditors and contributories.

Such amount as the Court may consider reasonable to be paid by the petitioner or by the company as the Court may direct in respect of the services of the Official Receiver as provisional liquidator.

(b) Where a winding up order is made but the Official Receiver is not continued as liquidator after the statutory meeting of creditors and contributories.

(1) In respect of every 10 members, creditors and debtors and every fraction of 10 up to 1,000 .....	\$ 5.00
For every 10 or fraction of 10 above 1,000 .....	\$ 2.50

Provided that where the net assets of the company including uncalled capital are estimated in the statement of affairs not to exceed \$5,000, three-fifths of the above fee only shall be charged.

(This fee to include cost of official stationery, printing, books, forms and postage.)

## TENTH SCHEDULE

TABLE C — (continued)

(2) On the value of the company's property as estimated in the statement of affairs after deducting (in cases where a person other than the Official Receiver has, prior to the making of a winding up order, been appointed receiver for debenture holders) the amount due to debenture holders —

On the first \$100,000 or fraction thereof .....	1 per cent
On the next \$200,000 or fraction thereof .....	½ per cent
On the next \$700,000 or fraction thereof .....	¼ per cent
Above \$1,000,000 .....	⅛ per cent

III. Where the Official Receiver acts as liquidator of the company (including his services as provisional liquidator) —

(1) In respect of every 10 members, creditors and debtors and every fraction of 10 .....

	\$10.00
--	---------

Provided that where net assets of the company, including uncalled capital, do not exceed \$5,000, three-fifths of the above fee only shall be charged.

(This fee is to include cost of official stationery, printing, books, forms and postage.)

(2) Upon the total assets, including, produce of calls on contributories, realised or brought to credit by the Official Receiver, after deducting sums on which fees are chargeable under No. IV of this Table and not being moneys received and spent in carrying on the business of the company —

On the first \$10,000 or fraction thereof .....	5 per cent
On the next \$15,000 or fraction thereof .....	4 per cent
On the next \$25,000 or fraction thereof .....	3 per cent
On the next \$50,000 or fraction thereof .....	2 per cent
On the next \$900,000 or fraction thereof .....	1 per cent
Above \$1,000,000 .....	½ per cent

(3) On the amount distributed in dividend or paid to contributories, preferential creditors and debenture holder by the Official Receiver, half the above percentages.



## TENTH SCHEDULE

TABLE C — *(continued)*

- IV. Where the Official Receiver collects, calls or realises property for debenture holders or other secured creditors —  
The same fees as under No. III (2) and (3) of this Table, to be paid out of the proceeds of such calls or property.
- V. Where the Official Receiver performs any special duties not provided for in the foregoing tables —  
Such amount as the Court, on the application of the Official Receiver, may consider reasonable.
- VI. Travelling, keeping possession, law costs, and other reasonable expenses of the Official Receiver —  
The amount disbursed.
- VII. On every payment under section 241 of money out of the Companies Liquidation Account 10 cents on each \$10 or fraction of \$10 to be charged as follows —  
Where the money consists of unclaimed dividend, on each dividend paid out.  
Where the money consists of undistributed funds or balances, on the amount paid out.

**ELEVENTH SCHEDULE**

COMPANIES (FORMS) RULES

ARRANGEMENT OF RULES

Rule

1. Citation
2. Interpretation
3. Forms
4. Certified copy of Charter etc. under section 299
5. Time for delivering particulars of alterations under section 301
6. Verified or certified copy of charge under sections 80 and 82
7. Translations
8. Provision for particular cases

SCHEDULE — FORMS

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**ELEVENTH SCHEDULE**

(section 324)

**COMPANIES (FORMS) RULES****Citation**

1. These Rules may be cited as the Companies (Forms) Rules.

**Interpretation**

2. In these Rules —

“Act” means the Companies Act.

**Forms**

3. The forms contained in the Schedule, with such variations and additions as the circumstances of the particular case may require, shall be used for the purposes of the Act and the particulars contained therein are hereby prescribed as the particulars required under the Act.

**Certified copy of Charter etc. under section 299**

4. (1) A certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company required to be delivered to the Registrar under section 299 in the case of a company incorporated outside Brunei Darussalam in any part of the Commonwealth or in any place where Her Britannic Majesty has jurisdiction, unless incorporated under the laws of a foreign country shall be deemed to be certified as a true copy if in such part of the Commonwealth or place it is —

(a) duly certified as a true copy by an official of the Government to whose custody the original is committed;

(b) duly certified as a true copy by a notary public in such part of the Commonwealth or place; or

(d) duly certified as a true copy on oath by some officer of the company before a Brunei Darussalam Consul or some person having authority to administer an oath as provided by section 3 of the Commissioners for Oaths Act 1889 of the United Kingdom.

ELEVENTH SCHEDULE — *(continued)*

(2) A certified copy of the charter, statutes, or memorandum and articles of the company or other instrument constituting or defining the constitution of the company required to be delivered to the Registrar under section 299 in the case of a company incorporated outside Brunei Darussalam under the laws of a foreign country shall be deemed to be certified as a true copy if in such foreign country it is —

(a) duly certified as a true copy by an official of the Government to whose custody the original is committed, the signature or seal of such official being authenticated by a Brunei Darussalam Consul;

(b) duly certified as a true copy by a notary of such foreign country, the certificate of the notary being authenticated by a Brunei Darussalam Consul; or

(c) duly certified as a true copy on oath by some officer of the company before a Brunei Darussalam Consul.

**Time for delivering particulars of alterations under section 301**

5. The time within which a return containing the particulars of alterations is to be delivered to the Registrar under section 301 shall be 21 days after the date of making of such alterations or 21 days after the date on which notice thereof could in due course of post and if despatched with due diligence have been received in Bandar Seri Begawan.

**Verified or certified copy of charge under sections 80 and 82**

6. A copy of the instrument by which a charge is created or evidenced to be delivered to the Registrar under the provisions of sections 80(3) and 82(1) shall be verified or certified to be a true copy under the seal of the company, or under the hand of some person interested therein otherwise than on behalf of the company.

**Translations**

7. A translation of a charter, statutes of memorandum and articles of association or other instrument constituting or defining the constitution of a company or any account or document required to be delivered to the Registrar of Companies under the Act shall be certified by the person making such translation to be a correct translation and shall be deemed to be certified in the prescribed manner if the person making such translation be certified by the appropriate person hereunder mentioned to be believed by him to be competent to translate it into the English language —

(a) if the translation be made in a foreign country —

a Brunei Darussalam Consul;

ELEVENTH SCHEDULE — *(continued)*

(b) if the translation be made outside Brunei Darussalam or in any part of the Commonwealth or in any place where Her Britannic Majesty had jurisdiction —

any person having authority to administer an oath as provided by section 3 of the Commissioner for Oaths Act 1889 of the United Kingdom;

(c) if the translation be made in Northern Ireland —

(i) a notary public in Northern Ireland; or

(ii) a solicitor of the Supreme Court of Judicature of Northern Ireland;

(d) if the translation be made in Scotland —

(i) a notary public in Scotland; or

(ii) an enrolled Law Agent;

(e) if the translation be made in England —

(i) a notary public in England; or

(ii) a solicitor of the Supreme Court of Judicature in England; and

(f) if the translation be made in Brunei Darussalam —

(i) a Magistrate; or

(ii) a Commissioner of Oaths of Brunei Darussalam.

**Provision for particular cases**

**8.** The Registrar may in any particular case, if he thinks fit to do so and upon such conditions as he thinks fit, permit certified copies of translations to be delivered to him though not certified in accordance with the above requirements.

*List of forms in the Schedule*

FORM NUMBER	RELEVANT SECTION	NATURE OF FORM
I	45(2)	Particulars of a contract relating to shares.
I(F)	80 & 91	Particulars of a mortgage or charge on property in Brunei Darussalam created on or after 1st January 1957, by a company incorporated outside Brunei Darussalam.
II	46(1)(c)(ii) & (d)	Statement of the amount or rate <i>per cent</i> of the commission payable in respect of shares and of the number of shares which persons have agreed for a commission to subscribe absolutely.
II(F)	82 & 91	Particulars of a mortgage or charge subject to which property in Brunei Darussalam has been acquired on or after the 1st January 1957, by a company incorporated outside Brunei Darussalam.
III	55	Notice of increase in nominal capital.
III(F)	301	Return of alteration in the charter, statutes, memorandum or articles of association or other instrument constituting or defining the constitution of a company incorporated outside Brunei Darussalam.
IV	80	Particulars of a mortgage or charge created by a company registered in Brunei Darussalam.
IV(F)	301	Return of alteration in the list of particulars of directors of a company incorporated outside Brunei Darussalam.
V	82	Particulars of a mortgage or charge subject to which property has been acquired on or after 1st January 1957, by a company registered in Brunei Darussalam.
V(F)	301	Return of alteration in the names or addresses of persons resident in Brunei Darussalam authorised to accept service on behalf of a company incorporated outside Brunei Darussalam.

*List of forms in the Schedule — (continued)*

FORM NUMBER	RELEVANT SECTION	NATURE OF FORM
VI	83(1)	Register of mortgages and charges, and of memoranda of satisfaction.
VII	83(4)	Chronological index of charges entered in the Register.
VIII	94(1)(c)	Declaration that the conditions of section 94(1)(a) and (b) have been complied with.
IX	94(2)(c)	Declaration that the provisions of section 94(2)(b) have been complied with.
X	143	Particulars of directors or managers and of any changes therein.
XI	153(1)	Notice to dissenting shareholders.
XII	286	Receiver or manager's abstract of receipts and payments.

**SCHEDULE**

(rule 3)

**FORMS**

FORM I

Fee \$10.00

COMPANIES ACT, CHAPTER 39

*Particulars of a contract relating to shares*

PURSUANT TO SECTION 45(2)

NOTE — The particulars must be stamped with the same stamp duty as would have been payable if the contract had been reduced to writing

Presented by .....

Particulars of contract relating to share allotted as fully or partly paid-up otherwise than in cash by .....

..... Berhad.

<p>(1) The number of shares allotted as fully or partly paid-up otherwise than in cash .....</p> <p>(2) The nominal amount of each such share .....</p> <p>(3) The amount to be considered as paid-up on each such share otherwise than in cash .....</p> <p>(4) If the consideration for the allotment of such shares in services, or any consideration other than that mentioned below in part 5, state the nature of such consideration, and the number of shares so allotted .....</p> <p>(5) If the allotment is made in satisfaction or part satisfaction of the purchase price or property, give a brief description of such property, and full particulars of the manner in which the purchase price is to be satisfied .....</p>	<p>\$</p> <p>\$</p> <p>(1) Brief description of property.</p> <p>(2) Purchase price. \$</p> <p>(a) Total amount of consideration \$ as paid on ..... shares allotted otherwise than in cash.</p>
---	--





SCHEDULE

FORM I — (continued)

(Signature) .....

(State whether Director or Manager or Secretary) .....

Dated the ..... day of ....., 20 .....

---

(a) Where such properties are sold subject to mortgage, the gross value should be shown.

(b) No plant and machinery which was not in an actual state of severance on the date of the sale-should be included under this head.

SCHEDULE — (continued)

FORM I(F)

Fee \$25.00

COMPANIES ACT, CHAPTER 39

*Particulars of a mortgage or charge on property in Brunei Darussalam created on or after the 1st January 1957, by a company incorporated outside Brunei Darussalam*

PURSUANT TO SECTIONS 80 AND 91

Presented by .....

Particulars of a mortgage or charge created by .....  
 .....  
 a company incorporated in (a) ..... and which  
 has established a place of business in Brunei Darussalam at .....

Date and description of the instrument creating or evidencing the mortgage or charge (b)	Amount secured by mortgage or charge	Short particulars of the property mortgaged or charged	Names, addresses and descriptions of the mortgagees or persons entitled to the charge	Amount or rate <i>per cent</i> of the commission, allowance or discount (if any) paid or made either directly or indirectly by the Company to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of the debentures included in this return (c)

Signature of the persons authorised under section 299(c) of the Companies Act, or of some other person in Brunei Darussalam duly authorised by the Company. ] .....

Dated the ..... day of ..... 20 .....

- (a) Country of origin.
- (b) A description of the instrument, e.g. “trust deed”, “mortgage”, “debenture” etc. as the case may be, should be given.
- (c) The rate of interest payable under the terms of the debentures should not be entered.

SCHEDULE — (continued)

FORM II

Fee \$10.00

COMPANIES ACT, CHAPTER 39

Statement of the amount or rate per cent of the commission payable in respect of shares and of the number of shares which persons have agreed for a commission to subscribe absolutely

PURSUANT TO SECTION 46(1)(c)(ii) AND (d)

Presented by .....

Name of company ..... Berhad

Article of association authorising commission .....

..... No. ....

Particulars of amount payable as commission for subscribing, or agreeing to subscribe, or for procuring or agreeing to procure, subscriptions for any shares in the company; or ..... } \$ .....

Rate of such commission ..... Rate per cent .....

Date or circular or notice (if any), not being a prospectus, inviting subscriptions for the shares and disclosing the amount or rate of the commission ..... } Date .....

Number of shares which persons have agreed for a commission to subscribe absolutely ..... No. ....

(Signature of all directors or of their agents authorised in writing) ..... } .....

Dated this ..... day of ....., 20 .....

SCHEDULE — (continued)

FORM II(F)

Fee \$25.00

COMPANIES ACT, CHAPTER 39

*Particulars of a mortgage or charge subject to which property in Brunei Darussalam has been acquired on or after the 1st January 1957, by a company incorporated outside Brunei Darussalam*

PURSUANT TO SECTIONS 82 AND 91

Presented by .....

Particulars of a mortgage or charge subject to which property in Brunei Darussalam has been acquired by .....

a company incorporated in (a) ..... and which has established a place of business in Brunei Darussalam at .....

1	2	3	4	5
Date and description of the instrument creating or evidencing the mortgage or charge (b)	Date of the acquisition of the property	Amount secured by the mortgage or charge	Short particulars of the property mortgaged or charged	Names, addresses and descriptions of the mortgagees or persons entitled to the charge

SCHEDULE

FORM II(F) — (continued)

Signature of the persons authorised  
 under section 299(c) of the  
 Companies Act, or of some other  
 person in Brunei Darussalam duly  
 authorised by the Company

} .....  
 } .....  
 } .....

Dated the ..... day of ....., 20 .....

(a) Country of origin.

(b) A description of the instrument, e.g. “trust deed”, “mortgage”, “debenture”, etc., as the case may be, should be given.

A copy of the instrument certified as prescribed in paragraph 5 of these Rules, must be delivered with these particulars.

SCHEDULE — (continued)

FORM III

Fee \$10.00

COMPANIES ACT, CHAPTER 39

Notice of increase in nominal capital

PURSUANT TO SECTION 55

Presented by .....

.....

To the REGISTRAR OF COMPANIES

.....

..... Company .....

hereby gives you notice pursuant to section 55 of the Companies Act, that by (a) ..... resolution of the Company dated ..... day of ....., 20 ....., the nominal capital of the Company has been increased by the addition thereto of the sum of \$ ..... beyond the registered capital of \$ .....

The additional capital is divided as follows —

Number of shares	Class of share	Nominal amount of each share

The conditions (e.g. voting rights, dividends, etc.) subject to which the new shares have been or are to be issued are as follows —

(If any of the new shares are preference shares state whether they are redeemable or not).

Signature .....

(State whether Director or Manager or Secretary) .....

Dated the ..... day of ....., 20 .....

(a) “ordinary”, “extraordinary” or “special”.

SCHEDULE — (continued)

FORM III(F)

Fee \$10.00

COMPANIES ACT, CHAPTER 39

*Return of alteration in the charter, statutes, memorandum or articles of association or other instrument constituting or defining the constitution of a company incorporated outside Brunei Darussalam*

PURSUANT TO SECTION 301

Presented by .....

Return of alteration in the (a) ..... constituting  
or defining the constitution of .....  
.....  
a company incorporated in (b) .....  
and which has established a place of business in Brunei Darussalam at .....

(c) Certified copy of alteration or certified copy of new deed, if one has been executed, and certified translation of alteration or deed must accompany this return and be shortly referred to here.

Signature of the persons authorised under section 299(c) of the Companies Act, or of some other person in Brunei Darussalam duly authorised by the Company. } .....

Dated the ..... day of ....., 20 .....

- (a) "charter", "statutes", "memorandum or articles of association" or other instrument, as the case may be.
- (b) Country of origin.
- (c) The copy and translation (if any) must be certified in the manner prescribed in paragraphs 3 and 6 of these Rules.



SCHEDULE — (continued)

FORM IV

Fee \$25.00

COMPANIES ACT, CHAPTER 39

*Particulars of a mortgage or charge created by a company registered in Brunei Darussalam*

PURSUANT TO SECTION 80

Presented by .....

.....

Particulars of a mortgage or charge created by .....

.....

..... Berhad.

1 Date and description of the instrument creating or evidencing the mortgage or charge (a)	2 Amount secured by the mortgage or charge	3 Short particulars of the property mortgaged or charged	4 Names, addresses and descriptions of the mortgagees or persons entitled to the charge	5 Amount or rate <i>per cent</i> of the commission, allowance or discount (if any) paid or made either directly or indirectly by the company to the person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of the debentures included in this return (b)

(Signature) .....

(Designation of position in relation to the company)

Dated the ..... day of ....., 20 .....

(a) A description of the instrument, e.g. “trust deed”, “mortgage”, “debenture”, etc., as the case may be, should be given.

(b) The rate of interest payable under the terms of the debentures should not be entered.

SCHEDULE — (continued)

FORM IV(F)

Fee \$10.00

COMPANIES ACT, CHAPTER 39

*Return of alteration in the list or particulars of directors of the company incorporated outside Brunei Darussalam*

PURSUANT TO SECTION 309

Presented by .....

.....

Return of alteration in the list or particulars of directors (a) .....  
 ..... of .....  
 a company incorporated in (b) ..... and which has  
 established a place of business in Brunei Darussalam at .....

The present name or names (c)	Any former name or names	Nationality	Nationality of origin (if other than the present nationality)	Usual residential address	Other business occupation or directorships if any if none, state so (d)	Remarks as to the alteration (e)

Signature of the persons authorised under section 299(c) of the Companies Act, or of some other person in Brunei Darussalam duly authorised by the Company. }  
 .....  
 .....  
 .....

Dated the ..... day of ....., 20 .....

(a) “director” includes any person who occupies the position of a director by whatever name called, and any person in accordance with whose directions or instructions the directors of a company are accustomed to act.

(b) Country of origin.

(c) In the case of a corporation its corporate name and registered or principal office should be shown.

(d) In the case of an individual who has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships must be entered.

(e) A complete list of the directors or managers shown as existing in the last return should always be given. A note of the changes since the last list was filed should be made in this column, e.g. by placing against a new director’s name the words “in place of ” and by writing against any former director’s name the words “dead”, “resigned” or, as the case may be.

SCHEDULE — (continued)

FORM V

Fee \$25.00

COMPANIES ACT, CHAPTER 39

*Particulars of a mortgage or charge subject to which property has been acquired on or after 1st January 1957, by a Company registered in Brunei Darussalam*

PURSUANT TO SECTION 82

Presented by .....

.....

Particulars of a mortgage or charge subject to which property has been acquired on or after 1st January, 1957, by.....

..... Berhad.

1 Date and description of the instrument creating or evidencing the mortgage or charge (a)	2 Date of the acquisition of the property	3 Amount owing on security of mortgage or charge	4 Short particulars of the property mortgaged or charged	5 Names, addresses and descriptions of the mortgagees or persons entitled to the charge

(Signature) .....

(Designation of position in relation to the company) .....

Dated the ..... day of ....., 20 .....

(a) A description of the instrument, e.g. "trust deed", "mortgage", "debenture" etc. as the case may be, should be given.

A copy of the instrument, certified as prescribed in paragraph 5 of these Rules, must be delivered with these particulars.

SCHEDULE — (continued)

FORM V(F)

Fee \$25.00

COMPANIES ACT, CHAPTER 39

*Return of alteration in the list or particulars of directors of the company incorporated outside of Brunei Darussalam*

PURSUANT TO SECTION 301

Presented by .....

.....

Return of alteration in the names or address of the persons resident in Brunei Darussalam authorised to accept on behalf of the company service of process and process and any notices required to be served on .....

.....

a company incorporated in (a) .....

and which has established a place of business in Brunei Darussalam at .....

.....

The following are the particulars of such alteration(s).

**(State full name and address of any newly appointed authorised person)**

.....

.....

.....

.....

Signature of the persons authorised under section 299(c) of the Companies Act, or of some other person in Brunei Darussalam duly authorised by the company. } .....

Dated the ..... day of ....., 20 .....

(a) Country of origin.

SCHEDULE — (continued)

FORM VI

(section 83(1))

Register of Mortgages and Charges and of Memoranda of Satisfaction of .....  
 ..... Berhad.

1	2	3	3A	4	5	6	7					12	13	14			
							Particulars relating to the issues of debentures of the series								Memoranda of Satisfaction ..... Amount	Amount of rate <i>per cent</i> of the commission, allowance, or discount	REMARKS Name and date appointment of receiver or manager and date of his ceasing to act
							Date and amount of each issue of the series		8	9	10						
Date	Amount	Dates of the resolutions authorising the issue of the series	Date of the covering deed	General description of the property charged	Names of the trustees for the debenture holders												

SCHEDULE — (continued)

FORM VII

Chronological index of charges entered in the Register  
(section 83(4))

Date of registration	Serial No. of charge in this index	Folio in register	Name of company	Amount of mortgage or charge	Date of trust deed	Debentures		By whom registered	Remarks
						First issue	Further issue		

SCHEDULE — (continued)

FORM VIII

Fee \$10.00

COMPANIES ACT, CHAPTER 39

*Declaration that the conditions of section 94(1)(a) and (b) of the Companies Act, have been complied with*

PURSUANT TO SECTION 94(1)(c)

To be used by a company which issued a prospectus on or with reference to its formation.

Presented by .....

I .....  
of .....  
being (a) .....  
of .....  
..... Berhad,

do solemnly and sincerely declare —

That the amount of the share capital of the company offered to the public for subscription is \$ .....

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 5 Part I of the Third Schedule to the Companies Act, is \$ .....

That shares held subject to the payment of the whole amount thereof in cash have been allotted to the amount of \$ .....

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.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act.

SCHEDULE

FORM VIII — (continued)

Declared at ..... }  
..... }  
the ..... day of ..... }  
....., 20 ..... }  
before me }  
A Magistrate (b)

---

(a) "The secretary" or "a director".

(b) or the Chief Registrar or a Deputy Registrar of the Supreme Court.



SCHEDULE — (continued)

FORM IX

Fee \$10.00

COMPANIES ACT, CHAPTER 39

Declaration that the provisions of section 94(2)(b), of the Companies Act, have been complied with

PURSUANT TO SECTION 94(2)(c)

To be used by a company which has delivered to the Registrar of Companies a statement *in lieu* of prospectus.

Presented by .....

I .....  
of .....  
being (a) .....  
of ..... Berhad,  
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.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act.

Declared at .....  
.....  
the ..... day of .....  
....., 20 .....  
before me  
A Magistrate (b)

(a) "The secretary" or "a director".  
(b) or the Chief Registrar or a Deputy Registrar of the Supreme Court.

SCHEDULE — (continued)

FORM X

Fee \$10.00

COMPANIES ACT, CHAPTER 39

*Particulars of directors or managers and of any changes therein*

PURSUANT TO SECTION 143

Presented by .....

.....

Particulars of the directors or managers (a) of .....

.....

..... company, ..... and of any changes therein.

The present name or names and identification number [S 62/ 2014] (b)	Any former name or names	Nationality	Nationality of origin (if other than the present nationality)	Usual residential address	Other business occupation or directorships if any. If none, state so (c)	Changes (d)

(Signature) .....

(State whether director or manager or secretary) .....

Dated the ..... day of ....., 20.....

SCHEDULE — *(continued)*

(a) “director” includes any person who occupies the position of a director by whatever name called, and any person in accordance with whose directions or instruction the directors of a company are accustomed to act.

(b) In the case of a corporation in corporate name and registered or principal office should be shown. In the case of foreign directors, the Brunei National Registration number and passport number should be entered after the name of each director.

*[S 62/2014]*

(c) In the case of an individual who has no business occupation but holds any other directorship or directorships, particulars of the directorship or of some one of those directorships must be entered.

(d) A complete list of the directors or managers shown as existing in the last particulars should always be given. A note of the changes since the last list was filed should be made in this column, e.g., by placing against a new director’s name the words “in place of ” and by writing against any former director’s name the words “dead”, “resigned” or, as the case may be.

SCHEDULE — (continued)

FORM XI

COMPANIES ACT, CHAPTER 39

Notice to dissenting shareholders

PURSUANT TO SECTION 153(1)

re (a) ..... Berhad.

Notice by (b) ..... Berhad.

To (c) .....

Whereas on the ..... day of ....., 20 ..... (b) ..... made an offer to all the holders of (d) ..... shares in (a) ..... (state shortly the nature of the offer) ..... and whereas up to the ..... day of ....., 20 ....., being a date within 4 months of the date of the making thereof such offer was approved by the holders of not less the nine-tenths in value of the (d) ..... shares in the said company.

Now therefore the said (b) ..... in pursuance of the provisions of section 153 of the Companies Act, hereby gives you notice that the said (b) ..... desires to acquire the (d) ..... shares in the said (a) ..... held by you.

And further take notice that unless upon an application made to the Court by you the said (c) ..... on or before the ..... day of ....., 20 ..... being one month from the date of this notice, the Court thinks fit to order otherwise, the said (b) ..... will be entitled and bound to acquire the (d) .....

## SCHEDULE

FORM XI — *(continued)*

shares held by you in the said (a) .....  
 on the terms of the above-mentioned offer approved by the approving (d) .....  
 ..... shareholders in the said company.

(Signature) .....

for (b) .....

(State whether Director or Manager or Secretary) .....

Dated the ..... day of ....., 20 .....

---

(a) Name of transferor company.

(b) Name of transferee company.

(c) Name and address of dissenting shareholder.

(d) If the offer is limited to a certain class or classes of shareholders insert particulars of the shares.

SCHEDULE — (continued)

FORM XII

Fee \$10.00

COMPANIES ACT, CHAPTER 39

*Receiver or manager's abstract of receipts and payments*

PURSUANT TO SECTION 286

Name of company .....

Name and address of receiver or manager .....

Date and description of security containing the powers under which receiver or manager is appointed ..... [ .....

Period covered by the abstract ..... [ From .....  
To .....

Presented by .....  
.....

ABSTRACT

RECEIPTS	PAYMENT
<i>Brought forward</i> ..... \$	<i>Brought forward</i> ..... \$
	(The receipts and payments must severally be added up at the foot of each sheet and the totals carried forward from one abstracts to another without any intermediate balance so that the gross totals shall represent the total amounts received and paid by the receiver or manager since the date of appointment).
<i>Carried forward</i> ..... \$	<i>Carried forward</i> ..... \$

(Signature) .....

Dated the ..... day of ....., 20 .....

## TWELFTH SCHEDULE

## COMPANIES (WINDING UP) RULES

## ARRANGEMENT OF RULES

## PRELIMINARY

## Rule

1. Citation and application
2. Interpretation of terms
3. Use of forms in Appendix

## COURT AND CHAMBERS

4. Office of Registrar in Court
5. Matters in Court to be heard in Court and chambers
6. Applications in chambers
7. Motions and summonses
8. Times for holding Court

## PROCEEDINGS

9. Title of proceedings
10. Written or printed proceedings
11. Process to be sealed
12. Issue of summonses
13. Orders
14. File of proceedings in office of Registrar
15. Office copies
16. Inspection of file

- 17. Use of file by Official Receiver
- 18. Defacement of stamps

SERVICE AND EXECUTION OF PROCESS  
AND ENFORCEMENT OF ORDERS

- 19. Duties of bailiff
- 20. Service
- 21. Enforcement of orders

PETITION

- 22. Form of petition
- 23. Presentation of petition
- 24. Advertisement of petition
- 25. Service of petition
- 26. Verification of petition
- 27. Copy of petition to be furnished to creditor or contributory

PROVISIONAL LIQUIDATOR

- 28. Appointment of provisional liquidator

HEARING OF PETITIONS AND ORDERS MADE THEREON

- 29. Attendance before hearing to show compliance with Rules
- 30. Notice by persons who intend to appear
- 31. List of names and addresses of persons who appear on petition
- 32. Affidavits in opposition and reply
- 33. Substitution of creditor or contributory for withdrawing petitioner



## ORDER TO WIND UP COMPANY

34. Notice that winding up order has been pronounced to be given to Official Receiver
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## TWELFTH SCHEDULE

(section 324)

## COMPANIES (WINDING UP) RULES

**Citation and application**

1. (1) These Rules may be cited as the Companies (Winding Up) Rules.

(2) Subject to the limitation hereinafter mentioned, these Rules shall apply to the proceedings in every winding up of a company under the Act. Rules which from their nature and subject matter are, or which by the head lines above the group in which they are contained or by their terms are made applicable only to the proceedings in a winding up by the Court, or only to such proceedings in a creditors voluntary winding up shall not apply to the proceedings in a voluntary winding up, or as the case may be, in a members' voluntary winding up whether any such voluntary winding up is or is not being continued under the supervision of the Court.

**Interpretation**

2. In these Rules —

“Act” means the Companies Act;

“bailiff” means the bailiff of the Court and includes an assistant bailiff;

“company” means a company which is being wound up, or against which proceedings to have it wound up have been commenced;

“Court” means the Supreme Court for Brunei Darussalam and includes any Judge thereof;

“creditor” includes a corporation, and a firm of creditors in partnership;

“form” means a form in the Appendix to these Rules;

“gazetted” means published in the *Gazette*;

“liquidator” includes an Official Receiver when acting as liquidator;

“Official Receiver” includes any officer appointed by the Minister to discharge the duties of Official Receiver under the Act and includes a Deputy Official Receiver so appointed;

“proceedings” means the proceedings in the winding up of a company under the Act;

“Registrar” means the Chief Registrar of the Court and includes a deputy registrar;



TWELFTH SCHEDULE — *(continued)*

“Rules” means these Rules, and includes the prescribed forms;

“sealed” means sealed with the seal of the Court;

“taxing officer” means the officer of the Court whose duty it is to tax costs in the proceedings of the Court under its ordinary jurisdiction.

**Use of forms in Appendix**

3. The forms in the Appendix, where applicable, and where they are not applicable forms of the like character, with such variations as circumstances may require, shall be used. Where such forms are applicable, any costs occasioned by the use of any other or more prolix forms shall be borne by or disallowed to the party using the same, unless the Court shall otherwise direct.

## COURTS AND CHAMBERS

**Office of Registrar in Court**

4. (1) All proceedings in the winding up of companies in the Court shall be attached to the Registrar, who shall, together with the necessary clerks and officers, and subject to the Act and Rules, under the general or special directions of a Judge.

(2) In every cause or matter within the jurisdiction of a Judge, whether by virtue of the Act or otherwise, the Registrar shall, in addition to his powers and duties under the Rules, have all the powers and duties of a Master, Registrar or Taxing Master.

**Matters in Court to be heard in Court and chambers**

5. (1) The following matters and applications in the Court shall be heard before a Judge in open Court —

(a) petitions;

(b) appeals to the Court from the Official Receiver when acting as Official Receiver and not as liquidator;

(c) applications under section 275;

(d) applications by the Official Receiver or liquidator under section 269(3), or an appeal thereunder;

(e) applications for the committal of any person to prison for contempt;

TWELFTH SCHEDULE — *(continued)*

- (f) public examinations;
- (g) applications under section 262(1);
- (h) applications to rectify the Registrar; and
- (i) such matters and applications as a Judge may by any general or special orders direct to be heard before him in open Court.

(2) Examinations of persons summoned before the Court under section 206 shall be held in Court or in chambers as the Court shall direct.

(3) Every other matter or application in the Court under the Act to which the Rules apply may be heard and determined in chambers.

**Applications in chambers**

6. Subject to the provisions of the Act and Rules —

(a) the Registrar may, under the general or special directions of a Judge, hear and determine any application or matter which under the Act and Rules may be heard and determined in chambers;

(b) any matter or application before the Registrar may at any time be adjourned by him to be heard before a Judge; and

(c) any matter or application may, if a Judge thinks fit, be adjourned from chambers to Court, or from Court to chambers.

**Motions and summonses**

7. (1) Every application in Court other than a petition, shall be made by motion, notice of which shall be served on every person against whom an order is sought, not less than 2 clear days before the day named in the notice for hearing the motion.

(2) Every application in chambers shall be made by summons, which, unless otherwise ordered, shall be served on every person against whom an order is sought, and shall require the person or persons to whom the summons is addressed to attend at the time and place named in the summons.

(3) Every application by the liquidator to the Court for directions in relation to any particular matter arising under the winding up shall be made in chambers.

TWELFTH SCHEDULE — *(continued)*

## PROCEEDINGS

**Times for holding Court**

8. Subject to the provisions of the Act, the times of the sitting of the Court in matters of the winding up of companies shall be those which are appointed for the transaction of the general business of the Court, unless a Judge shall otherwise order.

**Title of proceedings**

9. (1) Every proceeding in a winding up matter shall be dated, and shall, with any necessary additions, be instituted as follows —

IN THE SUPREME COURT OF BRUNEI DARUSSALAM

COMPANIES (WINDING UP) RULES. No. OF 20

In the matter of the Companies Act, Chapter 39.

and in the matter of the company to which it relates. Numbers and dates may be denoted by figures.

(2) The first proceeding in every winding up matter shall have a distinctive numbers assigned to it in the office of the Registrar, and all proceedings in any matter subsequent to the first proceeding shall bear the same number as the first proceeding.

**Written or printed proceedings**

10. All proceedings shall be written or printed, or partly written or partly printed, on paper of the size of 13 inches in length and 8 inches in breadth, or thereabouts, and must have a stitching margin; but no objection shall be allowed to any proof or affidavit on account only of its being written or printed on paper of other size.

**Process to be sealed**

11. All orders, summonses, petitions, warrants, process of any kind (including notices when issued by the Court) and office copies in any winding up matter shall be sealed.

**Issue of summonses**

12. Every summons in a winding up matter in the Court shall be prepared by the applicant or his solicitor, and issued from the office of the Registrar. A summons, when sealed, shall be deemed to be issued.

TWELFTH SCHEDULE — *(continued)***Orders**

13. Every order, whether made in Court or in chambers, in the winding up of a company shall be drawn up by the applicant or his solicitor and signed by the Registrar, unless in any proceeding, or classes of proceedings, the Judge or Registrar who makes the order shall direct that no order need be drawn up. Where a direction is given that no order need be drawn up, the note or memorandum of the order, signed or initialled by the Judge or the Registrar making the order, shall be sufficient evidence of the order having been made.

**File of proceedings in office of Registrar**

14. All petitions, affidavits, summonses, orders, proofs, notices, depositions, bills of costs and other proceedings in the Court in a winding up matter shall be kept and remain of record in the office of the Registrar and, subject to the directions of the Court, shall be placed in one continuous file.

**Office copies**

15. All office copies of petitions, affidavits, depositions, papers and writings, or any parts thereof, required by the Official Receiver or any liquidator, contributory, creditor, officer of a company, or other person entitled thereto, shall be provided by the Registrar, and shall, except as to figures, be fairly written out at length, and be sealed and delivered out without any unnecessary delay, and in the order in which they shall have been spoken.

**Inspection of file**

16. Every person who has been a director or officer of a company which is being wound up, shall be entitled, free of charge, and every contributory and every creditor whose claim or proof has been admitted shall be entitled on payment of a fee of \$1 for each inspection per day, at all reasonable times, to inspect the file of proceedings and to take copies or extracts from any documents therein, or to be furnished with such copies or extracts upon payment of \$2 per page or part thereof.

**Use of file by Official Receiver**

17. Where, in the exercise of his functions under the Act or Rules, the Official Receiver requires to inspect or use the file of proceedings, the Registrar shall (unless the file is at the time required for use in Court or by him) on request, transmit the file of proceedings to the Official Receiver, and the Registrar may, in his discretion, permit the Official Receiver to retain in his custody for such time as the Registrar may think fit any file or files of proceedings.

TWELFTH SCHEDULE — *(continued)***Defacement of stamps**

18. Every officer of the Court who shall receive any document to which an adhesive stamp shall be affixed, shall immediately upon receipt of the document deface the stamp thereon and no such document shall be filed or delivered until the stamp thereon shall have been so defaced.

SERVICE AND EXECUTION OF PROCEEDS AND  
ENFORCEMENT OF ORDERS**Duties of bailiff**

19. (1) It shall be the duty of the bailiff to serve such orders, summonses, petitions and notices as the Court may require him to serve; to execute warrants and other process; to attend any sittings of the Court if so required by the Court (but not sittings in chambers); and to do and perform all such things as may be required of him by the Court.

(2) Nothing in this rule shall require any order, summons, petition, or notice to be served by a bailiff or officer of the Court which is not specially required by the Act or Rules to be so served, unless the Court in any particular proceeding by order specially so directs.

**Service**

20. (1) All notices, summonses, and other documents other than those of which personal service is required, may be sent by prepaid post letter to the last known address of the person to be served therewith; and the notice, summons or document shall be considered as served at the time that the same ought to be delivered in the due course of post by the post office, and notwithstanding the same may be returned by the post office.

(2) No service shall be deemed invalid by person that the name, or any of the names other than the surname of the person to be served, has been omitted from the document containing the person's name, provided that the Court is satisfied that in other respects the service of the document has been sufficient.

**Enforcement of orders**

21. Every order of the Court made in the exercise of the powers conferred by the Act and Rules, may be enforced by the Court as if it was a judgment or order of the Court made in the exercise of its ordinary jurisdiction.

## TWELFTH SCHEDULE — (continued)

## PETITION

**Form of petition**

22. Every petition for the winding up of a company by the Court, or subject to the supervision of the Court, shall be in Forms 2 and 3.

**Presentation of petition**

23. A petition shall be presented at the office of the Registrar, who shall appoint the time and place at which the petition is to be heard. Notice of the time and place appointed for hearing the petition shall be written on the petition and sealed copies thereof, and the Registrar may at any time before the petition has been advertised, alter the time appointed, and fix another time.

**Advertisement of petition**

24. Every petition shall be advertised 7 clear days or such longer time as the Court may direct before the hearing, as follows —

(a) in the case of a company whose registered office or if there shall be no such office, then whose principal or last known principal place of business is or was situate within Brunei Darussalam once in the *Gazette*, and once at least in such newspaper or newspapers as the Court directs;

(b) in the case of any other company, once in the *Gazette*, and twice at least in a local newspaper or the principal or last known principal place of business, as the case may be, of such company is or was situate, or in such other newspaper as shall be directed by the Court; and

(c) the advertisement shall state the day on which the petition was presented, and the name and address of the petitioner and of his solicitor, and shall contain a note at the foot thereof, stating that any person who intends to appear on the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner, or to his solicitor within the time and in the manner prescribed by rule 30, and an advertisement of a petition for the winding up of a company by the Court which does not contain such a note shall be deemed irregular.

And if the petitioner or his solicitor does not, within the time hereby prescribed or within such extended time as the Registrar may allow, duly advertise the petition in the manner prescribed by this rule, the appointment of the time and place at which the petition is to be heard shall be cancelled by the Registrar and the petition shall be removed from the file unless a Judge or the Registrar shall otherwise direct.

## TWELFTH SCHEDULE — (continued)

**Service of petition**

25. Every petition shall, unless presented by the company, be served upon the company at the registered office, if any, of the company, and if there is no registered office, then at the principal or last known principal place of business of the company, if any such can be found, by leaving a copy with any member, officer or servant of the company there, or in case no such member, officer or servant can be found there, then by leaving a copy at such registered office or principal place of business, or by serving it on such member, officer or servant of the company as the Court may direct; and where the company is being wound up voluntarily, the petition shall also be served upon the liquidator (if any) appointed for the purpose of winding up the affairs of the company.

**Verification of petition**

26. Every petition of the winding up of a company by the Court, or subject to the supervision of the Court, shall be verified by an affidavit referring thereto. Such affidavit shall be made by the petitioner, or by one of the petitioner, if more than one, or, in case the petition is presented by a corporation, by some director, secretary or other principal officer thereof, and shall be sworn after and filed within 4 days after the petition is presented, and such affidavit shall be sufficient *prima facie* evidence of the statements in the petition.

**Copy of petition to be furnished to creditor or contributory**

27. Every creditor or contributory or of the company shall be entitled to be furnished immediately by the petitioner or his solicitor with a copy of the petition, upon payment of \$2 per page or part thereof.

## PROVISIONAL LIQUIDATOR

**Appointment of provisional liquidator**

28. (1) After the presentation of a petition, upon the application of a creditor, or of a contributory, or of the company, and upon proof by affidavit of sufficient grounds for the appointment of a provisional liquidator, the Court, if it thinks fit, and upon such terms as in the opinion of the Court shall be just and necessary, may make the appointment.

(2) The order appointing the provisional liquidator shall bear the number of the petition, and shall state the nature and a short description of the property of which the provisional liquidator is ordered to take possession, and the duties to be performed by the provisional liquidator.

TWELFTH SCHEDULE — *(continued)*

(3) Subject to any order of the Court, if no order for the winding up of the company is made upon the petition, or if an order for the winding up of the company on the petition is rescinded, or if all proceedings on the petition are stayed, or if an order is made containing the voluntary winding up of the company subject to the supervision of the Court, the provisional liquidator shall be entitled to be paid, out of the property of the company, all the costs, charges and expenses properly incurred by him as provisional liquidator, including such sum as is or would be payable under the scale of fees in force for the time being where the Official Receiver is appointed provisional liquidator, and may retain out of such property the amounts of such costs, charges, expenses and fees.

(4) Where any person other than the Official Receiver has been appointed provisional liquidator and the Official Receiver has taken any steps for the purpose of obtaining a statement of affairs or has performed any other duty prescribed by these Rules, the provisional liquidator shall pay the Official Receiver such sum, if any, as the Court directs.

## HEARING OF PETITIONS AND ORDERS MADE THEREON

**Attendance before hearing to show compliance with Rules**

**29.** After a petition has been presented, the petitioner or his solicitor shall, on a day to be appointed by the Registrar, attend before the Registrar and satisfy him that the petition has been duly advertised, that the prescribed affidavit verifying the statements therein and the affidavit of service (if any) have been duly filed, and that the provisions of the rules as to petitions for winding up companies have been duly complied with by the petitioner. No order for the winding up of a company shall be made on the petition of any petitioner who has not, prior to the hearing of the petition, attended before the Registrar at the time appointed, and satisfied him in manner required by this rule.

**Notice by persons who intend to appear**

**30.** Every person who intends to appear on the hearing of a petition shall serve on, or send by post to, the petitioner or his solicitor, at the address stated in the advertisement of the petition, notice of his intention. The notice shall contain the address of such person, and shall be signed by him or his solicitor, and shall be served, or if sent by post shall be posted in such time as in ordinary course of post to reach the address not later than 6 o'clock in the afternoon of the day previous to the day appointed for the hearing of the petition, or if such day be a Monday, not later than one o'clock in the afternoon of the Saturday previous to such day. The notice shall be in Form 10 with such variations as circumstances may require. A person who has failed to comply with this rule shall not, without the special leave of the Court, be allowed to appear on the hearing of the petition.



## TWELFTH SCHEDULE — (continued)

**List of names and addresses of persons who appear on petition**

31. The petitioner or his solicitor, shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition, and of their respective solicitors, which shall be in Form 11. On the day appointed for hearing the petition, a fair copy of the list (or if no notice of intention to appear has been given, a statement in writing to that effect) shall be handed by the petitioner, or his solicitor, to the Court prior to the hearing of the petition.

**Affidavits in opposition and reply**

32. (1) Affidavits in opposition to a petition that a company may be wound up by or subject to the supervision of the Court shall be filed within 7 days, or such longer time as the Court may direct, of the date on which the affidavit verifying the petition is filed and notice of the filing of every affidavit in opposition to such a petition shall be given to the petitioner or his solicitor on the day on which the affidavit is filed.

(2) An affidavit in reply to an affidavit filed in opposition to a petition shall be filed within 3 days of the date on which notice of such affidavit is received by the petitioner or his solicitor.

**Substitution of creditor or contributory for withdrawing petitioner**

33. When a petitioner is not entitled to present a petition or whether so entitled or not, where he —

(a) fails to advertise his petition within the time by these Rules prescribed or such extended time as the Registrar may allow;

(b) consents to withdraw his petition, or to allow it to be dismissed, or the hearing adjourned, or fails to appear in support of his petition when it is called on in Court on the day originally fixed for the hearing thereof, or on any day to which the hearing has been adjourned; or

(c) if appearing, does not apply for an order in the terms of the prayer of his petition,

the Court may, upon such terms as it may think just, substitute as petitioner any creditor or contributory who in the opinion of the Court would have a right to present a petition, and who is desirous of prosecuting the petition. An order to substitute a petitioner may, where a petitioner fails to advertise his petition within the time prescribed by these Rules or consents to withdraw his petition, be made in chambers at any time.

TWELFTH SCHEDULE — *(continued)*

## ORDER TO WIND UP COMPANY

**Notice that winding up order has been pronounced to be given to Official Receiver**

**34.** When an order for the winding up of a company, or for the appointment of a provisional liquidator prior to the making of an order for the winding up of the company, has been pronounced in Court, the Registrar shall, on the same day, send to the Official Receiver a notice informing him that the order has been pronounced.

The notice may be in Forms 12 and 13 respectively, with such variations as circumstances may require.

**Drawing up and contents of winding up order**

**35.** (1) It shall be the duty of the petitioner, or his solicitor, and of all other persons who have appeared on the hearing of the petition, at latest on the day following the day on which an order for the winding up of a company is pronounced in Court, to leave with the Registrar a draft of the order and all other documents required for the purpose of enabling the Registrar to complete the order forthwith. It shall not be necessary for the Registrar to make an appointment to settle the order unless in any particular case the special circumstances make an appointment necessary.

(2) An order to wind up a company or for the appointment of a provisional liquidator shall contain at the foot thereof a notice stating that it will be the duty of the person who is at the time secretary or chief officer of the company, and of such of the persons who are liable to make out or concur in making out of the company's statement of affairs as the Official Receiver may require, to attend on the Official Receiver at such time and place as he may appoint and to give him all information he may require.

**Transmission and advertisement of winding up order**

**36.** (1) When an order that a company be wound up, or for the appointment of a provisional liquidator has been made —

(a) three copies of the order sealed with the seal of the Court shall forthwith be sent by the Registrar to the Official Receiver;

(b) the Official Receiver shall cause a sealed copy of the order to be served upon the company by prepaid letter addressed to it at the registered office of the company (if any), or if there is no registered office at its principal or last known principal place of business, or upon such other person or persons, and in such other manner as the Court may direct, and if the order is that the company be wound up by the Court, shall forward to the Registrar of Companies the copy of

the order which by section 170 is directed to be so forwarded by the company, or otherwise as may be prescribed;

TWELFTH SCHEDULE — *(continued)*

(c) the Official Receiver shall forthwith cause notice of the order to be gazetted; and

(d) the Official Receiver shall forthwith send notice of the order to such local paper as the Court may direct, or, in default of such direction, as he may select.

(2) An order for the winding up of a company, subject to the supervision of the Court, shall before the expiration of 12 days from the date thereof be advertised by the petitioner, once in the *Gazette*, and shall be served on such persons (if any) and in such manner as the Court shall direct.

SPECIAL MANAGER

**Appointment of special manager**

37. An application by the Official Receiver for the appointment of a special manager shall be supported by a report of the Official Receiver, which shall be placed on the file of proceedings. No affidavit by the Official Receiver in support of the application shall be required.

**Accounting by special manager**

38. Every special manager shall account to the Official Receiver, and the special manager's accounts shall be verified by affidavit, and, when approved by the Official Receiver, the totals of the receipts and payments shall be added by the Official Receiver to his accounts.

STATEMENT OF AFFAIRS

**Preparation of statement of affairs**

39. (1) Every person who under section 175 has been required by the Official Receiver to submit and verify a statement as to the affairs of a company, shall be furnished by the Official Receiver with forms and instructions for the preparation of the statement. The statement shall be made out in duplicate, one copy of which shall be verified by affidavit. The Official Receiver shall cause to be filed with the Registrar the verified statement of affairs.

TWELFTH SCHEDULE — *(continued)*

(2) The Official Receiver may from time to time hold personal interviews with every such person for the purpose of investigating the company's affairs, and it shall be the duty of every such person to attend on the Official Receiver at such time and place as the Official Receiver may appoint and give the Official Receiver all information that he may require.

**Extension of time for submitting statement of affairs**

40. When any person requires any extension of time for submitting the statement of affairs, he shall apply to the Official Receiver, who may, if he thinks fit, give a written certificate extending the time, which certificate shall be filed with the proceedings in the winding up and shall render an application to the Court unnecessary.

**Information subsequent to statement of affairs**

41. After the statement of affairs of a company has been submitted to the Official Receiver, it shall be the duty of each person who has made or concurred in making it, if and when required, to attend on the Official Receiver and answer all such questions as may be put to him, and give all such further information as may be required of him by the Official Receiver in relation to the statement of affairs.

**Default.**

42. Any default in complying with the requirements of section 175 may be reported by the Official Receiver to the Court.

**Expenses of statement of affairs**

43. A person who is required to make or concur in making any statement of affairs of a company shall, before incurring any costs or expenses in and about the preparation and making of the statement, apply to the Official Receiver for his sanction, and submit a statement of the estimated costs and expenses which it is intended to incur; and, except by order of the Court, no person shall be allowed, out of the assets of the company, any costs or expenses which have not, before being incurred, been sanctioned by the Official Receiver.

**Dispensing with statement of affairs**

44. (1) Any application to dispense with the requirements of section 175 shall be supported by a report of the Official Receiver showing the special circumstances which in his opinion render such a course desirable.

TWELFTH SCHEDULE — *(continued)*

(2) When the Court has made an order dispensing with the requirements of section 175, it may give such consequential directions as it may see fit and in particular it may give directions as to the sending of any notices which are by these Rules required to be sent to any person mentioned in the statement of affairs.

## APPOINTMENT OF LIQUIDATOR IN WINDING UP BY COURT

**Appointment of liquidator of report of meetings of creditors and contributories**

45. (1) As soon as possible after the first meetings of creditors and contributories have been held, the Official Receiver, or the chairman of the meeting, as the case may be, shall report the result of each meeting to the Court.

(2) Upon the result of the meetings of creditors and contributories being reported to the Court, the Court may, if the meeting of creditors and the meeting of contributories have each passed the same resolutions, or if the resolutions passed at the two meetings are identical in effect, upon the application of the Official Receiver, forthwith make the appointments necessary for giving effect to such resolutions. In any other case the Court shall, on the application of the Official Receiver, fix a time and place for considering the resolutions and determinations (if any) of the meetings, deciding differences (if any), and making such order as shall be necessary.

(3) When a time and place have been fixed for the consideration of the resolutions and determinations of the meetings, such time and place shall be advertised by the Official Receiver in such manner as the Court shall direct, but so that the first or only advertisement shall be published not less than 7 days before the time so fixed.

(4) Upon the consideration of the resolutions and determinations of the meetings, the Court shall hear the Official Receiver and any creditor or contributory.

(5) If a liquidator is appointed, a copy of the order appointing him shall be transmitted by him to the Official Receiver and the Official Receiver shall, as soon as the liquidator has given security, cause notice of the appointment to be gazetted. The expense of gazetting the notice of the appointment shall be paid by the liquidator, but may be charged by him on the assets of the company.

(6) Every appointment of a liquidator or committee of inspection shall be advertised by the liquidator in such manner as the Court directs immediately after the appointment has been made and the liquidator has given the required security.

TWELFTH SCHEDULE — *(continued)*

(7) If a liquidator in a winding up by the Court shall die, or resign, or be removed, another liquidator may be appointed in his place in the same manner as in the case of a first appointment, and the Official Receiver shall, on the request of not less than one-tenth in value of the creditors or contributories, summon meetings for the purpose of determining whether or not the vacancy shall be filled; but none of the provisions of this rule shall apply where the liquidator is released under section 190 in which case the Official Receiver shall remain liquidator.

## NOTICE OF APPOINTMENT OF LIQUIDATOR

**Notice of appointment of liquidator**

**46.** The notice of the appointment of a liquidator required by section 238 shall be in Form 28.

SECURITY BY LIQUIDATOR OR SPECIAL MANAGER IN  
WINDING UP BY COURT**Security to satisfaction of Official Receiver**

**47.** In the case of a special manager or a liquidator other than the Official Receiver, the following provisions as to security shall have effect —

(a) the security shall be given to such officers or persons, and in such manner, as the Official Receiver may direct;

(b) it shall not be necessary that security shall be given in each separate winding up; but security may be given either specially in a particular winding up, or generally, to be available for any winding up in which the person giving security may be appointed, either as liquidator or special manager;

(c) the Official Receiver shall fix the amount and nature of such security, and may, as he thinks fit, either increase or diminish the amount of special or general security which any person has given;

(d) the certificate of the Official Receiver that a liquidator or special manager has given security to his satisfaction shall be filed with the Registrar; and

TWELFTH SCHEDULE — *(continued)*

(e) the cost of furnishing the required security by a liquidator or special manager, including any premiums which he may pay to a guarantee society, shall be borne by him personally, and shall not be charged against the assets of the company as an expense incurred in the winding up.

**Failure to give or keep up security**

48. (1) If a liquidator or special manager fails to give the required security within the time stated for that purpose in the order appointing him, or any extension thereof, the Official Receiver shall report such failure to the Court, who may thereupon rescind the order appointing the liquidator or special manager.

(2) If a liquidator or special manager fails to keep up his security, the Official Receiver shall report such failure to the Court, who may thereupon remove the liquidator or special manager, and make such order as to costs as the Court shall think fit.

(3) Where an order is made under this rule rescinding an order for the appointment of or removing a liquidator, the Court may direct that another liquidator is to be appointed and thereupon the same meetings shall be summoned and the same proceedings may be taken as in the case of a first appointment of a liquidator.

## PUBLIC EXAMINATION

**Report of Official Receiver to be filed**

49. A report made by the Official Receiver pursuant to section 176(2) shall state, in a narrative form, the facts and matters which the Official Receiver desires to bring to the notice of the Court, and his opinion as required by that section.

**Appointment of time for consideration of report**

50. The Official Receiver may apply to the Court to fix a day for the consideration of the report, and on such application the Court shall appoint a day on which the report shall be considered.

**Consideration of report**

51. The consideration of the report shall be before a Judge personally in chambers, and the Official Receiver shall personally, or by counsel or solicitor, attend the consideration of the report, and give the Court any further information or explanation with reference to the matter stated in the report which the Court may require.

TWELFTH SCHEDULE — *(continued)***Order for public examination**

52. An order under section 207 directing any person or persons to attend for public examination shall be in Form 29.

**Application for day for holding examination**

53. Upon an order directing a person to attend for public examination being made, the Official Receiver shall apply for the appointment of a day on which the public examination is to be held.

**Appointment of time and place for public examination**

54. A day and place shall be appointed for holding the public examination, and notice of the day and place so appointed shall be given by the Official Receiver to the person who is to be examined by sending such notice in a registered letter addressed to his usual or last known address.

**Notice of public examination to creditors and contributories**

55. (1) The Official Receiver shall give notice of the time and place appointed for holding a public examination to the creditors and contributories by advertisement in such newspapers as the Court may direct, or in default of any such direction as the Official Receiver thinks fit, and shall also cause notice of the appointment to be gazetted.

(2) Where an adjournment of the public examination has been directed, notice of the adjournment shall not, unless otherwise directed by the Court, be advertised.

**Default in attending and warrant of arrest**

56. If any person who has been directed by the Court to attend for public examination fails to attend at the time and place appointed for holding or proceeding with the same, and no good cause is shown by him for such failure, or if before the day appointed for the examination the Official Receiver satisfies the Court that such person has absconded, or that there is reason for believing that he is about to abscond with the view of avoiding examination, it shall be lawful for the Court, upon its being proved to the satisfaction of the Court that notice of the order and of the time and place appointed for attendance at the public examination was duly served, without any further notice, to issue a warrant for the arrest of the person required to attend, or to make such other order as the Court shall think just.



TWELFTH SCHEDULE — *(continued)***Notes of examination to be filed**

57. The notes of every public examination shall, after being signed as required by section 207(7), be filed with the Registrar.

PROCEEDINGS BY OR AGAINST DIRECTORS, PROMOTERS  
AND OFFICERS**Application by or against delinquent directors, officers and promoters**

58. (1) An application under any of the following provisions —

- (a) section 261;
- (b) section 260(1), (2) or (4);
- (c) section 208;
- (d) section 302(2),

shall be made by a summons returnable in the first instance in chambers, in which summons shall be stated the nature of the declaration or order for which application is made, and the grounds of the application, and which summons, unless otherwise ordered by the Court, shall be served in accordance with the provisions of orders 9, 10 and 11 of the Rules of the Supreme Court (R 1 of Chapter 5) on every person against whom an order is sought, not less than 8 days before the day named in the summons for hearing the application. Where the application is made by the Official Receiver or liquidator, he may make a report to the Court stating any facts and information on which he proceeds which are verified by affidavit, or derived from sworn evidence in the proceedings. Where the application is made by any other person, it shall be supported by affidavit to be filed by him.

A copy of every report and affidavit intended to be used in support of the summons shall be served on every person against whom an order is sought not less than 4 days before the hearing of the summons.

(2) On the return of the summons, the Court may give such directions as it shall think fit as to the taking of evidence wholly or in part by affidavit or orally, and the cross-examination either before a Judge on the hearing in Court or in chambers of any deponents to affidavits in support of or in opposition to the application and as to any report it may require the Official Receiver or liquidator to make and generally as to the procedure on the summons and for the hearing thereof.

TWELFTH SCHEDULE — *(continued)***Use of depositions taken at public examinations**

**59.** Where in the course of the proceedings in a winding up by the Court, an order has been made for the public examination of persons named in the order pursuant to section 207, then in any proceedings subsequently instituted under any of the provisions of the Act mentioned in rule 58(1), the verified notes of the examination of each person who was examined under the order shall, subject as hereinafter mentioned, and to any order or directions of the Court as to the manner and extent in and to which the notes shall be used, and subject to all just exceptions to the admissibility in evidence against any particular person or persons of any of the statements contained in the notes of the examinations, be admissible in evidence against any of the persons against whom the application is made, who, under section 207 and the order for the public examination, was or had the opportunity of being present at and taking part in the examination:

Provided that before any such notes of a public examination shall be used on any such application, the person intending to use the same shall, not less than 15 days before the day appointed for hearing the application, give notice of such intention to each person against whom it is intended to use such notes, or any of them, specifying the notes or parts of the notes which it is intended to read against him, and furnish him with copies of such notes, or parts of notes (except notes of the person's own depositions), and provided also that every person against whom the application is made shall be at liberty to cross-examine or re-examine (as the case may be) any person the notes of whose examination are read, in all respects as if such person had made an affidavit on the application.

## WITNESSES AND DEPOSITIONS

**Shorthand notes**

**60.** (1) If the Court or the officer of the Court before whom any examination under the Act and Rules is directed to be held shall in any case, and at any stage of the proceedings, be of opinion that it would be desirable that a person (other than the person before whom an examination is taken) should be appointed to take down the evidence of any person examined in shorthand or otherwise, it shall be competent for the Court or officer to make such appointment, and every person so appointed, if not in the service of the Government, shall be paid a sum not exceeding \$75 a day, and also a sum not exceeding \$2 per part thereof for any transcript of the evidence that may be required and such sums shall be paid by the party at whose instance the appointment was made, or out of the assets of the company, as may be directed by the Court.

TWELFTH SCHEDULE — *(continued)*

(2) The shorthand writer (if any) attached to the Official Receiver's office shall be deemed to be duly appointed under this rule, and it shall not be necessary to make any application to make such appointment, and a general declaration by such shorthand writer adapted from Form 33 shall be deemed to apply to all cases in which notes are taken by him as aforesaid, but this rule shall not be construed as precluding the appointment of any other person.

(3) A transcript of any such notes, purporting to be such transcript, and purporting to be signed by a shorthand writer duly appointed under this rule or by the shorthand writer attached to the Official Receiver's office, shall until the contrary is proved be sufficient evidence that the questions and answers set forth therein were so put and answered respectively.

**Committal of contumacious witness**

**61.** (1) If a person examined before a Registrar or other officer of the Court who has no power to commit for contempt of Court, refuses to answer to the satisfaction of the Registrar or officer any question which he may allow to be put, the Registrar or officer shall report such refusal to a Judge, and upon report being made, the person in default shall be in the same position, and be dealt with in the same manner as if he had made default in answering before the Judge.

(2) The report shall be in writing, but without affidavit and shall set forth the question put, and the answer (if any) given by the person examined.

(3) The Registrar or other officer shall, before the conclusion of the examination at which the default in answering is made, name the time when and the place where the default will be reported to a Judge, and upon receiving the report a Judge may take such action thereon as he shall think fit. If a Judge is sitting at the time when the default in answering is made, such default may be reported immediately.

**Depositions at private examinations**

**62.** (1) The Official Receiver may attend in person, or by an Assistant Official Receiver, or by counsel or by solicitors employed for the purpose, any examination of a witness under section 206 on whosoever application the same has been ordered, and may take notes of the examination for his own use, and put such question to the persons examined as the Court may allow.

## TWELFTH SCHEDULE — (continued)

(2) The notes of the depositions of a person examined under section 206 or under any order of the Court before the Court, or before any officer of the Court, or person appointed to take such an examination (other than the notes of the depositions of a person examined at a public examination under section 207) shall not be filed, or be open to the inspection of any creditor, contributory, or other person, except the Official Receiver or liquidator, or any provisional liquidator other than the Official Receiver, while he is acting as provisional liquidator, unless and until the Court shall so direct, and the Court may give such general or special directions as it shall think expedient as to the custody and inspection of such notes and the furnishing of copies of or extracts therefrom.

## DISCLAIMER

**Disclaimer**

**63.** (1) Any application for leave to disclaim any part of the property of a company pursuant to section 53(1) shall be by *ex parte* summons. Such summons shall be supported by an affidavit showing who are the parties interested and what their interests are. On the hearing of the summons, the Court shall give such directions as it sees fit and in particular directions as to the notices to be given to the parties interested or any of them and the Court may adjourn the application to enable any such party to attend.

(2) Where a liquidator disclaims a leasehold interest, he shall forthwith file the disclaimer at the office of the Registrar and, when the property is situate in Brunei Darussalam, register a notice thereof in the Land Office. The disclaimer shall contain particulars of the interest disclaimed and a statement of the persons to whom notice of the disclaimer has been given. Until the disclaimer is filed by the liquidator and, when the property is situate in Brunei Darussalam, a notice thereof is registered in the Land Office the disclaimer shall be inoperative. A disclaimer shall be in Form 39 and a notice of disclaimer in Form 40.

(3) Where any person claims to be interested in any part of the property of a company which the liquidator wishes to disclaim, he shall at the request of the liquidator furnish a statement of the interest so claimed by him.

## VESTING OF DISCLAIMED PROPERTY

**Vesting of disclaimed property**

**64.** (1) Any application under section 53(6) for an order for the vesting of any disclaimed property in or the delivery of any such property to any persons shall be supported by the affidavit filed on the application for leave to disclaim such property.

TWELFTH SCHEDULE — *(continued)*

(2) Where such an application relates to disclaimed property of a leasehold nature and it appears that there is any mortgage by assignment or demise or under-lessee of such property, the Court may direct that notice shall be given to such mortgagee or under-lessee that, if he does not elect to accept and apply for such a vesting order as aforesaid upon the terms required by the sub-rule (1) and imposed by the Court within a time to be fixed by the Court and stated in the notice, he will be excluded from all interest in and security upon the property and the Court may adjourn the application for such notice to be given and for such mortgagee or under-lessee to be added as a party to and served with the application and, if he sees fit, to make such election and application as is mentioned in the notice. If at the expiration of the time so fixed by the Court such mortgagee or under-lessee fails to make such election and application, the Court may make an order vesting the property in the applicant and excluding such mortgagee or under-lessee from all interest in or security upon the property.

ARRANGEMENTS WITH CREDITORS AND  
CONTRIBUTORIES IN WINDING UP BY COURT**Report by Official Receiver on arrangements and compromises**

**65.** In a winding up by the Court, if application is made to the Court to sanction any compromises or arrangement, the Court may, before giving its sanction thereto, hear a report by the Official Receiver as to the terms of the scheme, and as to the conduct of the directors and other officers of the company, and as to any other matters which, in the opinion of the Official Receiver, ought to be brought to the attention of the Court. The report shall not be placed upon the file, unless and until the Court shall direct to be filed.

COLLECTION AND DISTRIBUTION OF ASSETS IN  
WINDING UP BY COURT**Collection and distribution of company's assets by liquidator**

**66.** (1) The duties imposed on the Court by section 195(1), in a winding up by the Court with regard to the collection of the assets of the company and the application of the assets in discharge of the company's liabilities, shall be discharged by the liquidator as an officer of the Court subject to the control of the Court.

(2) For the purposes of the discharge by the liquidator of the duties imposed by section 195(1) and by sub-rule (1), the liquidator in a winding up by the Court shall for the purpose of acquiring or retaining possession of the property of the company, be in the same position as if he were a receiver of the property appointed by the Court, and the Court may, on his application, enforce such acquisition or retention accordingly.

## TWELFTH SCHEDULE — (continued)

**Power of liquidator to require delivery of property**

67. The powers conferred on the Court by section 196 shall be exercised by the liquidator. Any contributory for the time being on the list of contributories, trustee, receiver, banker or agent or officer of a company which is being wound up under order of the Court shall, on notice from the liquidator and within such time as he shall by notice in writing require, pay, deliver, convey, surrender or transfer to or into the hands of the liquidator any sum of money or balance, books, papers, estate or effects which happen to be in his hands for the time being and to which the company is *prima facie* entitled.

## LIST OF CONTRIBUTORIES IN WINDING UP BY COURT

**Liquidator to settle list of contributories**

68. Unless the Court shall dispense with the settlement of a list of contributories, the liquidator shall with all convenient speed after his appointment settle a list of contributories of the company, and shall appoint a time and place for that purpose. The list of contributories shall contain a statement of the address of, and the number of shares or extent of interest to be attributed to each contributory and the amount called up and the amount paid-up in respect of such shares or interest, and shall distinguish the several classes of contributories. As regards representative contributories, the liquidator shall, so far as practicable, observe the requirements of section 195(2).

**Appointment of time and place for settlement of list**

69. The liquidator shall give notice in writing of the time and place appointed for the settlement of the list of contributories to every person whom he proposes to include in the list, and shall state in the notice to each person in what character and for what number of shares or interest he proposes to include such person in the list, and what amount has been called up and what amount paid-up in respect of such shares or interest.

**Settlement of list of contributories**

70. On the day appointed for settlement of the list of contributories, the liquidator shall hear any person who objects to being settled as a contributory, and after such hearing shall finally settle the list, which when so settled shall be the list of contributories of the company.

## TWELFTH SCHEDULE — (continued)

**Notice to contributories**

71. The liquidator shall forthwith give notice to every person whom he has finally placed on the list of contributories stating in what character and for what number of shares or interest he has been placed on the list and what amount has been called up and what amount paid-up in respect of such shares or interest, and in the notice he shall inform such person that any application for the removal of his name from the list, or for a variation of the list, must be made to the Court by summons within 21 days from the date of the service on the contributory or alleged contributory of notice of the fact that his name is settled on the list of contributories.

**Application to Court to vary list**

72. (1) Subject to the power of the Court to extend the time or to allow an application to be made notwithstanding the expiration of the time limited for that purpose, no application to the Court by any person who objects to the list of contributories as finally settled by the liquidator shall be entertained after the expiration of 21 days from the date of the service on such person of notice of the settlement of the list.

(2) The Official Receiver shall not in any case be personally liable to pay any costs of or in relation to an application to set aside or vary his act or decision settling the name of a person on the list of contributories of a company.

**Variation of or addition to list of contributories**

73. The liquidator may vary or add to the list of contributories, but any such variation or addition shall be made in the same manner in all respects as the settlement of the original list.

## CALLS

**Calls by liquidator**

74. The powers and duties of the Court in relation to making calls upon contributories conferred by section 199 shall and may be exercised, in a winding up by the Court, by the liquidator as an officer of the Court subject to the proviso to section 11 and to the following regulations —

(a) where the liquidator desires to make any call on the contributories, or any of them, for any purpose authorised by the Act, if there is a committee of inspection he may summon a meeting of such committee for the purpose of obtaining their sanction to the intended call;

TWELFTH SCHEDULE — *(continued)*

(b) the notice of the meeting shall be sent to each member of the committee of inspection in sufficient time to reach him not less than 7 days before the day appointed for holding the meeting, or such longer time as the Court may appoint, and shall contain a statement of the proposed amount of the call, and the purpose for which it is intended. Notice of the intended call and the intended meeting of the committee of inspection shall also be advertised once at least in a Brunei Darussalam newspaper. The advertisement shall state the time and place of the intended meeting of the committee of inspection, and that each contributory may either attend the meeting and be heard, or make any communication in writing to the liquidator or members of the committee of inspection to be laid before the meeting, in reference to the intended call;

(c) at the meeting of the committee of inspection any statements or representations made either to the meeting personally or addressed in writing to the liquidator or members of the committee by any contributory shall be considered before the intended call is sanctioned;

(d) the sanction of the committee shall be given by resolution, which shall be passed by a majority of the members present; and

(e) where there is no committee of inspection, the liquidator shall not make a call without obtaining the leave of the Court.

**Application to Court for leave to make call**

75. In a winding up by the Court, an application to the Court for leave to make any call on the contributories of a company, or any of them, for any purpose authorised by the Act, shall be made by summons stating the proposed amount of such call, which summons shall be served 4 clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call or such longer time as the Court may appoint; or if the Court so directs, notice of such intended call may be given by advertisement, without a separate notice to each contributory.

**Document making the call**

76. When the liquidator is authorised by resolution or order to make a call on the contributories he shall file with the Registrar a document in Form 58 making the call.



TWELFTH SCHEDULE — *(continued)***Service of notice of call**

77. When a call has been made by the liquidator in a winding up by the Court, a copy of the resolution of the committee of inspection or order of the Court (if any), as the case may be, shall forthwith after the call has been made, be served upon each of the contributories included in such call, together with a notice from the liquidator specifying the amount or balance due from such contributory in respect of such call, but such resolution or order need not be advertised unless for any special reason the Court so directs.

**Enforcement of call**

78. The payment of the amount due from each contributory on a call may be enforced by order of the Court, to be made in chambers on summons by the liquidator.

## PROOFS

**Proof of debt**

79. In a winding up by the Court, every creditor shall prove his debt, unless a Judge in any particular winding up shall give directions that any creditors or class of creditors shall be admitted without proof.

**Mode of proof**

80. A debt may be proved in any winding up by delivering or sending through the post an affidavit verifying the debt. In a winding up by the Court, the affidavit shall be so sent to the Official Receiver or, if a liquidator has been appointed, to the liquidator; and in any other winding up, the affidavit may be so sent to the liquidator.

**Verification of proof**

81. An affidavit proving a debt may be made by the creditor himself or by some person authorised by or on behalf of the creditor. If made by a person so authorised, it shall state his authority and means of knowledge.

**Contents of proof**

82. An affidavit proving a debt shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the debt can be substantiated. The Official Receiver or liquidator to whom the proof is sent may at any time call for the production of the vouchers.

## TWELFTH SCHEDULE — (continued)

**Statement of security**

**83.** An affidavit proving a debt shall state whether the creditor is or is not a secured creditor.

**Proof before whom sworn**

**84.** An affidavit proving a debt may in a winding up by the Court be sworn before the Official Receiver, or an Assistant Official Receiver or a Deputy Official Receiver, or before any commissioner of oaths.

**Costs of proof**

**85.** A creditor shall bear the cost of proving his debt unless the Court otherwise orders.

**Discount**

**86.** A creditor proving his debt shall deduct therefrom —

(a) all trade discounts; and

(b) any discount, which he may have agreed to allow for payment in cash, in excess of 5 *per cent* on the net amount of his claim.

**Periodical payments**

**87.** When any rent or other payment falls due at stated periods, and the order or resolution to wind up is made at any time other than one of those periods, the persons entitled to the rent or payment may prove for a proportionate part thereof up to the date of the winding up order or resolution as if the rent or payment grew due from day to day:

Provided that where the liquidator remains in occupation of premises demised to a company which is being wound up, nothing therein contained shall prejudice or affect the right of the landlord of such premises to claim payment by the company, or the liquidator, of rent during the period of the company's or the liquidator's occupation.

## TWELFTH SCHEDULE — (continued)

**Interest**

**88.** On any debtor sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the commencement of the winding up, the creditor may prove for interest at a rate not exceeding 6 *per cent per annum* to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of the demand until the time of payment.

**Proof for debt payable at future time**

**89.** A creditor may prove for a debt not payable at the date of the winding up order or resolution, as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of 6 *per cent per annum* computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

**Workmen's wages**

**90.** In any case in which it appears that there are numerous claims for wages by workmen and others employed by the company, it shall be sufficient if one proof for all such claims is made either by a foreman or by some other person on behalf of all such creditors. Such proof shall have annexed thereto as forming part thereof, a schedule setting forth the names of the workmen and others, and the amounts severally due to them. Any proof made in compliance with this rule shall have the same effect as if separate proofs had been made by each of the said workmen and others.

**Production of bills of exchange and promissory notes**

**91.** Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the company is liable, such bill of exchange, note, instrument, or security must, subject to any special order of the Court made to the contrary, be produced to the Official Receiver, chairman of a meeting or liquidator, as the case may be, and be marked by him before the proof can be admitted either for voting or for any purpose.

**Transmission of proofs to liquidator**

**92.** Where a liquidator is appointed in a winding up by the Court, all proofs of debts that have been received by the Official Receiver shall be handed over to the liquidator, but the Official Receiver shall first make a list of such proofs, and take a receipt thereon from the liquidator for such proofs.

TWELFTH SCHEDULE — *(continued)*ADMISSION AND REJECTION OF PROOFS AND  
PREFERENTIAL CLAIMS, AND APPEAL TO COURT**Notice to creditors to prove**

**93.** (1) Subject to the provisions of the Act, and unless otherwise ordered by the Court, the liquidator in any winding up may fix a certain day, which shall be not less than 14 days from the date of the notice, on or before which the creditors of the company are to prove their debts or claims, and to establish any title they may have to priority under section 250 or to be excluded from the benefit of any distribution made before such debts are proved or, as the case may be, from objecting to such distribution, and the liquidator shall give notice in writing of the day so fixed by advertisement in such newspaper as he shall consider convenient, and in a winding up by the Court to every person mentioned in the statement of affairs as a creditor, and who has not proved his debt, and to every person mentioned in the statement of affairs as a preferential creditor whose claim to be a preferential creditor has not been established and is not admitted, and in any other winding up to the last known address or place of abode of each person who, to the knowledge of the liquidator, claims to be a creditor or preferential creditor of the company and whose claim has not been admitted.

(2) All the rules hereinafter set out as to admission and rejection of proofs shall apply with the necessary variation to any such claim to priority as aforesaid.

**Examination of proof**

**94.** The liquidator shall examine every proof of debt lodged with him, and the rounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.

**Appeal by creditor**

**95.** If a creditor or contributory is dissatisfied with the decision of the liquidator in respect of a proof, the Court may, on the application of the creditor or contributory, reverse or vary the decision; but, subject to the power of the Court to extend the time, no application to reverse or vary the decision of the liquidator in a winding up by the Court rejecting a proof sent to him by a creditor, or person claiming to be a creditor, shall be entertained, unless notice of the application is given before the expiration of 21 days from the date of the service of the notice of rejection.

TWELFTH SCHEDULE — *(continued)***Expunging at instance of liquidator**

96. If the liquidator thinks that a proof has been improperly admitted, the Court may, on the application of the liquidator, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

**Expunging at instance of creditor**

97. The Court may also expunge or reduce a proof upon the application of a creditor or contributory if the liquidator declines to interfere in the matter.

**Oaths**

98. For the purposes of any of his duties in relation to proofs, the liquidator, in a winding up by the Court, may administer oaths and take affidavits.

**Official Receiver's powers**

99. In a winding up by the Court, the Official Receiver, before the appointment of a liquidator, shall have all the powers of a liquidator with respect to the examination, admission and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the same appeal.

**Filing proofs by Official Receiver**

100. In a winding up by the Court, the Official Receiver, where no other liquidator is appointed, shall, before payment of a dividend, file all proofs tendered in the winding up, with a list thereof, distinguishing in such list the proofs which were wholly or partly admitted, and the proofs which were wholly or partly rejected.

**Proofs to be filed**

101. Every liquidator in a winding up by the Court other than the Official Receiver shall on the first day of every month, forward to the Registrar for filing a certified list of all proofs, if any, received by him during the month next preceding, distinguishing in such lists the proofs admitted, those rejected and such as stand over for further consideration; and, in the case of proofs admitted or rejected, he shall cause the proofs to be filed with the Registrar.

**Procedure where creditor appeals**

102. The liquidator in a winding up by the Court, including the Official Receiver when he is liquidator, shall, within 3 days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof with the Registrar, with a memorandum thereon of his disallowance thereof.

TWELFTH SCHEDULE — *(continued)***Time for dealing with proofs by Official Receiver**

**103.** Subject to the power of the Court to extend the time in a winding up by the Court, the Official Receiver as liquidator, not later than 14 days from the latest date specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, shall in writing either admit or reject wholly, or in part, every proof lodged with him, or require further evidence in support of it.

**Time for dealing with proofs by liquidator**

**104.** Subject to the power of the Court to extend the time, the liquidator in a winding up by the Court, other than the Official Receiver, within 28 days after receiving a proof, which has not previously been dealt with, shall in writing either admit or reject it wholly or in part, or require further evidence in support of it:

Provided that where the liquidator has given notice of his intention to declare a dividend, he shall within 14 days after the date mentioned in the notice as the latest date up to which proofs must be lodged, examine, and in writing admit or reject, or require further evidence in support of, every proof which has not been already dealt with, and shall give notice of his decision, rejecting a proof wholly or in part, to the creditors affected thereby. Where a creditor's proof has been admitted, the notice of dividend shall be a sufficient notification of the admission.

**Cost of appeals from decisions as to proofs**

**105.** The Official Receiver shall in no case be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.

**GENERAL MEETINGS OF CREDITORS AND  
CONTRIBUTORIES IN RELATION TO WINDING UP BY COURT****First meetings of creditors and contributories**

**106.** Unless the Court otherwise directs, the meetings of creditors and contributories under section 179 (hereinafter referred to as the first meetings of creditors and contributories) shall be held within one month, or if a special manager has been appointed, then within 6 weeks after the date of the winding up order. The dates of such meetings shall be fixed and they shall be summoned by the Official Receiver.

## TWELFTH SCHEDULE — (continued)

**Notice of first meetings**

**107.** The Official Receiver shall forthwith give notice of the dates fixed by him for the first meetings of creditors and contributories by advertisement in the *Gazette*.

**Summoning of first meetings**

**108.** The first meetings of creditors and contributories shall be summoned as hereinafter provided.

**Form of notices of first meetings**

**109.** The notices of first meetings of creditors and contributories may be in Forms 18 and 19, and the notices to creditors shall state a time within which the creditors must lodge their proofs in order to entitle them to vote at the first meeting.

**Notice of first meetings to officers of company**

**110.** The Official Receiver shall also give to each of the directors and other officers of the company who in his opinion ought to attend the first meetings of creditors and contributories 7 days notice of the time and place appointed for each meeting. The notice may either be delivered personally or sent by prepared post letter, as may be convenient. It shall be the duty of every director or officer who receives notice of such meeting to attend, if so required by the Official Receiver, and if any such director or officer fails to attend, the Official Receiver shall report the failure to the Court.

**Summary of statement of affairs**

**111.** (1) The Official Receiver shall also, as soon as practicable, send to each creditor mentioned in the company's statement of affairs, and to each person appearing from the company's books or otherwise to be a contributory of the company, a summary of the company's statement of affairs, including the causes of its failure, and any observations thereon which the Official Receiver may think fit to make. The proceedings at a meeting shall not be invalidated by reason of any summary or notice required by these Rules not having been sent or received before the meeting.

(2) Where prior to the winding up order the company has commenced to be wound up voluntarily, the Official Receiver may, if in his absolute discretion he sees fit to do so, send to the persons mentioned in sub-rule (1) or any of them an account of such voluntary winding up showing how such winding up has been conducted and how the property of the company has been disposed of and any observations which the Official Receiver may think fit to make on such account or on the voluntary winding up.

## TWELFTH SCHEDULE — (continued)

GENERAL MEETINGS OF CREDITORS AND CONTRIBUTORIES  
IN RELATION TO WINDING UP BY COURT AND OF CREDITORS  
IN RELATION TO CREDITORS VOLUNTARY WINDING UP**Liquidator's meeting of creditors and contributories**

**112.** (1) In addition to the first meetings of creditors and contributories and in addition also to meetings of creditors and contributories directed to be held by the Court under section 272 (hereinafter referred to as Court meetings of creditors and contributories), the liquidator in any winding up by the Court may himself subject to the provisions of the Act and the control of the Court summon, hold and conduct meetings of the creditors or contributories (hereinafter referred to as liquidator's meetings of creditors and contributories) for the purpose of ascertaining their wishes in all matters relating to the winding up.

(2) In any creditors voluntary winding up, the liquidator may himself summon, hold and conduct meetings of creditors for the purpose of ascertaining their wishes in all matters relating to the winding up (such meetings and all meetings of creditors which a liquidator or a company is by the Act required to convene in or immediately before such a voluntary winding up and all meetings convened by a creditor in a voluntary winding up under these Rules are hereinafter called voluntary liquidation meetings).

**Application of rules as to meetings**

**113.** Except where and so far as the nature of the subject matter or the context may otherwise require, the rules as to meetings hereinafter set out shall apply to first meetings, Court meetings, liquidator's meetings of creditors and contributories, and voluntary liquidation meetings, but so nevertheless that the rules shall take effect as to first meetings subject and without prejudice to any express provisions of the Act, and as to Court meetings subject and without prejudice to any express directions of the Court.

**Summoning of meetings**

**114.** (1) The Official Receiver or liquidator shall summon all meetings of creditors and contributories by giving not less than 7 days notice of the time and place thereof in the *Gazette* and in one or more local papers; and shall not less than 7 days before the day appointed for the meeting, send by post to every person appearing by the company's books to be a creditor of the company, notice of the meeting of creditors, and to every person appearing by the company's books or otherwise to be a contributory of the company, notice of the meeting of contributories.



TWELFTH SCHEDULE — *(continued)*

(2) The notice to each creditor shall be sent to the address given in his proof, or if he has not proved to the address given in the statement of affairs of the company, if any, or to such other address as may be known to the person summoning the meeting. The notice to each contributory shall be sent to the address mentioned in the company's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

(3) In the case of meetings under section 230, the continuing liquidator or if there is no continuing liquidator, any creditor, may summon the meeting.

(4) This rule does not apply to meetings under section 226 or 233.

**Proof of notice**

**115.** A certificate by the Official Receiver or other officer of the Court, or by the clerk of any such person, or an affidavit by the liquidator, or creditor, or his solicitor, or the clerk of either of such persons, or as the case may be, by some officer of the company or its solicitor or the clerk of such company or solicitor, that the notice of any meeting has been duly posted, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

**Place of meetings**

**116.** Every meeting shall be held at such place as is in the opinion of the person convening the same most convenient for the majority of the creditors or contributories, or both. Different times or places or both may if thought expedient be named for the meetings of creditors and for the meetings of contributories.

**Costs of calling meeting**

**117.** The costs of summoning a meeting of creditors or contributories at the instance of any person other than the Official Receiver or liquidator shall be paid by the person at whose instance it is summoned who shall before the meeting is summoned deposit with the Official Receiver or liquidator (as the case may be) such sum as may be required by the Official Receiver or liquidator as security for the payment of such costs. The costs of summoning such meeting of creditors or contributories, including all disbursements for printing, stationery, postage and the hire of room, shall be calculated at the following rate for each creditor or contributory to whom notice is required to be sent, namely, \$1 per creditor or contributory for the first twenty creditors or contributories, and 50 cents per creditor or contributory for the next thirty creditors or contributories, and 25 cents per creditor or contributory for any number of creditors or contributories after the first fifty.

TWELFTH SCHEDULE — *(continued)*

The costs shall be repaid out of the assets of the company if the Court shall by order, or if the creditors or contributories (as the case may be) shall by resolution, so direct. This rule does not apply to meetings under sections 226 and 230.

**Chairman of meeting**

**118.** Where a meeting is summoned by the Official Receiver or the liquidator, he or someone nominated by him shall be chairman of the meeting. At every other meeting of creditors or contributories, the chairman shall be such person as the meeting by resolution shall appoint. This rule does not apply to meetings under section 226.

**Ordinary resolution of creditors and contributories**

**119.** At a meeting of creditors, a resolution shall be deemed to be passed when a majority in number and value of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution, and at a meeting of the contributories, a resolution shall be deemed to be passed when a majority in number and value of the contributories present personally or by proxy, and voting on the resolution, have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the regulations of the company.

**Copy of resolution to be filed**

**120.** The Official Receiver or, as the case may be, the liquidator shall file with the Registrar a copy certified by him of every resolution of a meeting of creditors or contributories in a winding up by the Court.

**Non-reception of notice by creditor**

**121.** Where a meeting of creditors or contributories is summoned by notice, the proceedings and resolutions at the meeting shall, unless the Court otherwise orders, be valid notwithstanding that some creditors or contributories may not have received the notice sent to them.

**Adjournment**

**122.** The chairman may with the consent of the meeting adjourn it from time to time and from place to place, but the adjourned meeting shall be held at the same place as the original place of meeting unless in the resolution for adjournment another place is specified or unless the Court otherwise orders.

## TWELFTH SCHEDULE — (continued)

**Quorum**

**123.** (1) A meeting may not act for any purpose except the election of a chairman, the proving of debts and the adjournment of the meeting unless there are present or represented thereat at least three creditors entitled to vote or three contributories or all the creditors entitled to vote or all the contributories, if the number of the creditors entitled to vote or the contributories, as the case may be, shall not exceed three.

(2) If within half an hour from the time appointed for the meeting a *quorum* of creditors or contributories is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day as the chairman may appoint not being less than 7 or more than 21 days, from the day from which the meeting was adjourned.

**Creditors entitled to vote**

**124.** In the case of a first meeting of creditors or of an adjournment thereof, a person shall not be entitled to vote as a creditor unless he has duly lodged with the Official Receiver not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting a proof of the debt which he claims to be due to him from the company. In the case of a Court meeting or liquidator's meeting of creditors a person shall not be entitled to vote as a creditor unless he has lodged with the Official Receiver or liquidator a proof of the debt which he claims to be due to him from the company and such proof has been admitted wholly or in part before the date on which the meeting is held:

Provided that this rule and rules 125, 126, 127 and 128 shall not apply to a Court meeting of creditors held prior to the first meeting of creditors. This rule shall not apply to any creditors or class of creditors who by virtue of any direction given under these Rules are not required to prove their debts or to any voluntary liquidation meeting.

**Cases in which creditors may not vote**

**125.** A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained, nor shall a creditor vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a Receiving Order in bankruptcy has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

## TWELFTH SCHEDULE — (continued)

**Votes of secured creditors**

**126.** For the purposes of voting, a secured creditor shall, unless he surrenders his security, state in his proof or in a voluntary liquidation in such a statement as is hereinafter mentioned the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

**Creditor required to give up security**

**127.** The Official Receiver or liquidator may, within 28 days after a proof or in a voluntary liquidation, a statement estimating the value of a security as aforesaid has been used in voting at a meeting require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated with an addition thereto of 20 *per cent*:

Provided that where a creditor has valued his security, he may at any time before being required to give it up, correct the valuation by a new proof and deduct the new value from his debt, but in that case the addition of 20 *per cent* shall not be made if the security is required to be given up.

**Admission and rejection of proofs for purpose of voting**

**128.** The chairman shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether a proof should be admitted or rejected, he shall mark it as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

**Statement of security**

**129.** For the purpose of voting at any voluntary liquidation meetings a secured creditor shall unless he surrenders his security lodge with the liquidator or where there is no liquidator at the registered office of the company before the meeting a statement giving the particulars of his security, the date when it was given and the value at which he assesses it.

**Minutes of meeting**

**130.** (1) The chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose or in the file of proceedings and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

TWELFTH SCHEDULE — *(continued)*

(2) A list of creditors and contributories present at every meeting shall be made and kept as in Form 22.

PROXIES IN RELATION TO WINDING UP BY COURT,  
AND TO MEETINGS OF CREDITORS IN CREDITORS  
VOLUNTARY WINDING UP**Proxies**

**131.** A creditor or a contributory may vote either in person or by proxy. Where a person is authorised in manner provided by section 115 to represent a corporation at any meeting of creditors or contributories, such person shall produce to the Official Receiver or liquidator or other chairman of the meeting a copy of the resolution so authorising him. Such copy must either be under the seal of the corporation or must be certified to be a true copy by the secretary or a director of the corporation. The succeeding rules as to proxies shall not (unless otherwise directed by the Court) apply to a Court meeting of creditors or contributories prior to the first meeting.

**Form of proxies**

**132.** Every instrument of proxy shall be in accordance with the form in the Appendix and every written part thereof shall be in the handwriting of the person giving the proxy or of any manager or clerk or other person in his regular employment or of the solicitor employed by him in connection with the matter or of a commissioner to administer oaths in the Supreme Court.

**Forms of proxy to be sent with notices.**

**133.** General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the Official Receiver or liquidator or any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

**General proxies**

**134.** A creditor or a contributory may give a general proxy to any person.

**Special proxies**

**135.** A creditor or a contributory may give a special proxy to any person to vote at any specified meeting or adjournment thereof —

(a) for or against the appointment or continuance in office of any specified person as liquidator or member of the committee of inspection; and

## TWELFTH SCHEDULE — (continued)

(b) on all questions relating to any matter other than those above referred to and arising at the meeting or an adjournment thereof.

**Solicitation by liquidator to obtain proxies**

**136.** Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a liquidator in obtaining proxies or in procuring his appointment as liquidator except by the direction of a meeting of creditors or contributories, the Court may, if it thinks fit, order that no remuneration be allowed to the person by whom or on whose behalf the solicitation was exercised, notwithstanding any resolution of the committee of inspection or of the creditors or contributories to the contrary.

**Proxies to Official Receiver or liquidator**

**137.** A creditor or a contributory in a winding up by the Court may appoint the Official Receiver or liquidator, and in a voluntary winding up, the liquidator or if there is no liquidator, the chairman of a meeting to act as his general or special proxy.

**Holder of proxy not to vote on matter in which he is financially interested**

**138.** No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the assets of the company otherwise than as creditor rateably with the other creditors of the company:

Provided that where any person holds special proxies to vote for an application to the Court in favour of the appointment of himself as liquidator, he may use the proxies and vote accordingly.

**Lodgment of proxies**

**139.** (1) A proxy intended to be used at the first meeting of creditors or contributories, or an adjournment thereof, shall be lodged with the Official Receiver not later than the time mentioned for that purpose in the notice convening the meeting or the adjourned meeting, which time shall not be earlier than 12 o'clock at noon of the day but one before, nor later than 12 o'clock at noon of the day before the day appointed for such meeting, unless the Court otherwise directs.

(2) In every other case, a proxy shall be lodged with the Official Receiver or liquidator in a winding up by the Court, with the company at its registered office for a meeting under section 226 and with the liquidator, or if there is no liquidator, with the person named in the notice convening the meeting to receive the same in a voluntary winding up, not later than 4 o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

TWELFTH SCHEDULE — *(continued)*

- (3) No person shall be appointed a general or special proxy who is a minor.

**Use of proxies by deputy**

**140.** Where an Official Receiver who holds any proxies cannot attend the meeting for which they are given, he may, in writing, depute some person under his official control to use the proxies on his behalf, and in such manner as he may direct.

**Filling in where creditor blind or incapable**

**141.** The proxy of a creditor blind or incapable of writing may be accepted, if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence:

Provided that all insertions in the proxy are in the handwriting of the witness and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request of the creditor and in his presence before he attached his signature or mark.

## DIVIDENDS IN WINDING UP BY COURT

**Dividends to creditors**

**142.** (1) Not more than 2 months before declaring a dividend, the liquidator in a winding up by the Court shall give notice of his intention to do so to the Official Receiver in order that the same may be gazetted, and at the same time to such of the creditors mentioned in the statement of affairs as have not proved their debts. Such notice shall specify the latest date up to which proofs must be lodged, which shall not be less than 14 days from the date of such notice.

(2) Where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date up to which proofs may be lodged, appeals against the decision of the liquidator rejecting a proof, notice of appeal shall, subject to the power of the Court to extend the time in special cases, be given within 7 days from the date of the notice of the decision against which the appeal is made, and the liquidator may in such case make provision for the dividend upon such proof, and the probable costs of such appeal in the event of the proof being admitted. Where no notice of appeal has been given within the time specified in this rule, the liquidator shall exclude all proofs which have been rejected from participation in the dividend.

(3) Immediately after the expiration of the time fixed by this rule for appealing against the decision of the liquidator, he shall proceed to declare a dividend, and shall give notice to the Official Receiver (in order that the same may be gazetted), and shall also send a notice of dividend to each creditor whose proof has been admitted.

TWELFTH SCHEDULE — *(continued)*

(4) If it becomes necessary, in the opinion of the liquidator and the committee of inspection to postpone the declaration of the dividend beyond the limit of 2 months, the liquidator shall give a fresh notice of his intention to declare a dividend to the Official Receiver in order that the same may be gazetted; but it shall not be necessary for the liquidator to give a fresh notice to such of the creditors mentioned in the statement of affairs as have not proved their debts. In all other respects, the same procedure shall follow the fresh notice as would have followed the original notice.

(5) Upon the declaration of a dividend, the liquidator shall forthwith transmit to the Official Receiver a list of the proofs filed with the Registrar under rule 101, which list shall be in Form 68 or 69, as the case may be, and the liquidator shall, if so required by the Official Receiver, transmit to him, office copies of all lists of proofs filed by him up to the date of the declaration of the dividend.

(6) Dividends may, at the request and risk of the person to whom they are payable, be transmitted to him by post.

(7) If a person to whom dividends are payable desires that they shall be paid to some other person, he may lodge with the liquidator a document in Form 72 which shall be a sufficient authority for payment of the dividend to the person therein named.

(8) The Official Receiver, when he is liquidator, shall cause to be gazetted notice of his intention to declare a dividend and notice of his declaration thereof, and shall also at the same time give to creditors notice of such intention or of such declaration in like manner as notice thereof is required to be given by a liquidator other than the Official Receiver.

**Return of capital to contributories**

**143.** Every order by which the liquidator in a winding up by the Court is authorised to make a return to contributories of the company shall, unless the Court shall otherwise direct, contain or have appended thereto a schedule or list (which the liquidator shall prepare) setting out in a tabular form the full names and addresses of the persons to whom the return is to be paid, and the amount of money payable to each person, and particulars of the transfers of shares (if any) which have been made or the variations in the list of contributories which have arisen since the date of the settlement of the list of contributories and such other information as may be requisite to enable the return to be made. The schedule or list shall be in Form 74, and the liquidator shall send a notice of return to each contributory.



## TWELFTH SCHEDULE — (continued)

## ATTENDANCE AND APPEARANCE OF PARTIES

**Attendance at proceedings**

**144.** (1) Every person for the time being on the list of contributories of the company, and every person whose proof has been admitted shall be at liberty, at his own expense, to attend proceedings, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of:

Provided that if the Court shall be of opinion that the attendance of any such person upon any proceedings has occasioned any additional costs which ought not to be borne by the funds of the company, it may direct such costs, or a gross sum *in lieu* thereof, to be paid by such person; and such person shall not be entitled to attend any further proceedings until he has paid the same.

(2) The Court may appoint any one or more of the creditors or contributories to represent before the Court, at the expense of the company, all or any class of the creditors or contributories, upon any question or in relation to any proceedings before the Court, and may remove the person so appointed. Such person or persons may appoint a solicitor to represent them.

(3) No creditor or contributor shall be entitled to attend any proceedings in chambers unless and until he has entered in a book, to be kept by the Registrar for that purpose, his name and address, and the name and address of his solicitor (if any) and upon any change of his address or of his solicitor, his new address, and the name and address of his new solicitor.

**Attendance of liquidator's solicitor**

**145.** Where the liquidator's solicitor attends on any proceedings in Court or chambers, the liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the Court directs him to attend.

## LIQUIDATOR AND COMMITTEE OF INSPECTION

**Remuneration of liquidator**

**146.** (1) The remuneration of a liquidator, unless the Court shall otherwise order, shall be in the nature of a commission or percentage of which one part shall be payable on the amount realised, after deducting the sums (if any) paid to secured creditors (other than debenture holders) out of the proceeds of their securities, and the other part on the amount distributed in dividend.

TWELFTH SCHEDULE — *(continued)*

(2) The remuneration of the liquidator shall, unless the Court shall otherwise order, be fixed by the scale of fees and percentages for the time being payable on realisations and distributions by the Official Receiver as liquidator.

(3) This rule does only apply to a liquidator appointed in a winding up by the Court.

**Limit of remuneration**

**147.** Except as provided by the Act or Rules, a liquidator shall not under any circumstances whatever, make any arrangement for, or accept from any solicitor, auctioneer, or any other person connected with the company of which he is liquidator, or who is employed in or in connection with the winding up of the company, and gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration to which under the Act and Rules he is entitled as liquidator, nor shall he make any arrangement for giving up, or give up any part of such remuneration to any such solicitor, auctioneer, or other person.

**Dealings with assets**

**148.** Neither the liquidator nor any member of the committee of inspection of a company shall, while acting as liquidator or member of such committee, except by leave of the Court, either directly or indirectly, by himself or any employer, partner, clerk, agent, or servant, become purchaser of any part of the company's assets. Any such purchase made contrary to the provisions of this rule may be set aside by the Court on the application of the Official Receiver in a winding up by the Court or of any creditor or contributory in any winding up and the Court may make such order as to costs as the Court shall think fit.

**Restriction on purchase of goods by liquidator**

**149.** Where the liquidator carries on the business of the company, he shall not, without the express sanction of the Court, purchase goods for the carrying on of such business from any person whose connection with the liquidator is of such a nature as would result in the liquidator obtaining any portion of the profit (if any) arising out of the transaction.

## TWELFTH SCHEDULE — (continued)

**Committee of inspection not to make profit**

**150.** No member of a committee of inspection shall, except under and with the sanction of the Court, directly or indirectly, by himself or any employer, partner, clerk, agent or servant, be entitled to derive any profit from any transaction arising out of the winding up, or to receive out of the assets any payment for services rendered by him in connection with the administration of the assets, or for any goods supplied by him to the liquidator for or on account of the company. In a winding up by the Court, if it appears to the Official Receiver, or in a voluntary winding up, if it appears to the committee of inspection or to any meeting of creditors or contributories, that any profit or payment has been made contrary to the provisions of this rule, they may disallow such payment or recover such profit, as the case may be, on the audit of the liquidator's accounts, or otherwise.

**Costs of obtaining sanction of Court**

**151.** In any case in which the sanction of the Court is obtained under rules 149 and 150, the cost of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained, and shall not be payable out of the company's assets.

**Sanction of payments to committee**

**152.** Where the sanction of the Court to a payment to a member of a committee of inspection for services rendered by him in connection with the administration of the company's assets is obtained, the order of the Court, shall specify the nature of the services, and such sanction shall only be given where the service performed is of a special nature. Except by the express sanction of the Court no remuneration shall, under any circumstances, be paid to a member of a committee for services rendered by him in the discharge of the duties attaching to his office as a member of such committee.

**Discharge of costs before assets handed to liquidator**

**153.** (1) Where a liquidator is appointed by the Court, and has notified his appointment to the Registrar of Companies, and given security to the satisfaction of the Official Receiver, the Official Receiver shall forthwith put the liquidator into possession of all property of the company of which the Official Receiver may have custody:

Provided that such liquidator shall have, before the assets are handed over to him by the Official Receiver, discharged any balance due to the Official Receiver on account of fees, costs and charges properly incurred by him, and on account of any advances properly made by him in respect of the company, together with interest on such advances at the rate of *6 per cent per annum*; and the liquidator shall pay all fees, costs, and charges of the Official Receiver which may not have been discharged by the liquidator before being put into possession of the property of the company, and whether incurred before or after he has been put into such possession.

## TWELFTH SCHEDULE — (continued)

(2) The Official Receiver shall be deemed to have a *lien* upon the company's assets until such balance shall have been paid and the other liabilities shall have been discharged.

(3) It shall be the duty of the Official Receiver, if so requested by the liquidator, to communicate to the liquidator all such information respecting the estate and affairs of the company as may be necessary or conducive to the due discharge of the duties of the liquidator.

(4) This rule and rule 154 apply only in a winding up by the Court.

**Resignation of liquidator**

**154.** A liquidator who desires to resign his office shall summon separate meetings of the creditors and contributories of the company to decide whether or not the resignation shall be accepted. If the creditors and contributories by ordinary resolutions both agree to accept the resignation of the liquidator, he shall file with the Registrar a memorandum of his resignation, and shall send notice thereof to the Official Receiver, and the resignation shall thereupon take effect. In any other case, the liquidator shall report to the Court the result of the meetings and shall send a report to the Official Receiver and thereupon the Court may, upon the application of the liquidator or the Official Receiver, determine whether or not the resignation of the liquidator shall be accepted, and may give such directions and make such orders as in the opinion of the Court shall be necessary.

**Office of liquidator vacated by his insolvency**

**155.** If a Receiving Order in bankruptcy is made against the liquidator, he shall thereby vacate his office, and for the purposes of the application of the Act and Rules, shall be deemed to have been removed.

## PAYMENTS INTO AND OUT OF BANK

**Payments out of bank**

**156.** All payments out of the companies liquidation account shall be made in such manner as the Permanent Secretary may direct.

TWELFTH SCHEDULE — *(continued)***Special bank account**

157. (1) Where the liquidator in a winding up by the Court is authorised to have a special bank account, he shall forthwith pay all moneys received by him into that account to the credit of the liquidator of the company. All payments out shall be made by cheque payable to order, and every cheque shall have marked or written on the face of it the name of the company, and shall be signed by the liquidator, and shall be countersigned by at least one member of the committee of inspection, and by such other person, if any, as the committee of inspection may appoint.

(2) Where application is made to the Official Receiver to authorise the liquidator in a winding up by the Court to make his payments into and out of a special bank account, the Official Receiver may grant such authorisation for such time and on such terms as he may think fit, and may at any time order the account to be closed if he is of opinion that the account is no longer required for the purposes mentioned in the application.

## BOOKS

**Record of proceedings**

158. In a winding up by the Court, the Official Receiver, until a liquidator is appointed by the Court, and thereafter the liquidator, shall keep a record in which he shall record all minutes, all proceedings had and resolutions passed at any meeting of creditors or contributories, or of the committee of inspection, and all such matters as may be necessary to give a correct view of his administration of the company's affairs, but he shall not be bound to insert in the record any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors or contributories), nor need he exhibit such document to any person other than a member of the committee of inspection, or the Official Receiver.

**Cash Book**

159. (1) In a winding up by the Court, the Official Receiver, until a liquidator is appointed by the Court, and thereafter the liquidator, shall keep a book to be called the "Cash Book" (which shall be in such form as the Official Receiver may direct) in which he shall (subject to the provisions of the rules as to trading accounts) enter from day to day the receipts and payments made by him.

(2) In a winding up by the Court, a liquidator other than the Official Receiver, shall submit the record and Cash Book, together with any other requisite books and vouchers, to the committee of inspection (if any) when required, and not less than once every 3 months.

TWELFTH SCHEDULE — *(continued)*

(3) In a creditors voluntary winding up, the liquidator shall keep such books as the committee of inspection, or if there is no such committee, as the creditors, direct and all books kept by the liquidator shall be submitted to the committee of inspection, or if there is no such committee, to the creditors, with any other books, documents, papers, and accounts in his possession relating to his office as liquidator or to the company as and when the committee of inspection, or if there is no such committee, the creditors direct.

## INVESTMENT OF FUNDS

**Investment of assets in securities and realisation of securities**

**160.** (1) Where in a winding up by the Court or in a creditors voluntary winding up, the committee of inspection are of opinion that any part of the cash balance standing to the credit of the account of the company should be invested, they shall sign a certificate and request, and the liquidator shall transmit such certificate and request to the Official Receiver.

(2) Where the committee of inspection in any such winding up are of opinion that it is advisable to sell any of the securities in which the moneys of the company's assets are invested, they shall sign a certificate and request to that effect, and the liquidator shall transmit such certificate and request to the Official Receiver.

(3) Where there is no committee of inspection in any such winding up as is mentioned in sub-rules (1) and (2) and in every members voluntary winding up, whether subject to the supervision of the Court or not, if a case has in the opinion of the liquidator arisen under section 280 for an investment of funds of the company or a sale of securities in which the company's funds have been invested, the liquidator shall sign and transmit to the Official Receiver a certificate of the facts on which his opinion is founded, and a request to the Official Receiver to make the investment or sale mentioned in the certificate, and the Official Receiver may thereupon, if he thinks fit, invest or sell the whole or any part of the funds or securities, as provided in section 280, and the certificate and request shall be a sufficient authority to the Official Receiver for the investment or sale.

## ACCOUNTS AND AUDIT IN WINDING UP BY COURT

**Audit of Cash Book**

**161.** The committee of inspection shall, not less than once every 3 months, audit the liquidator's Cash Book and certify therein under their hands the day on which the book was audited.

**Official Receiver's audit of liquidator's accounts**

**162.** (1) The liquidator shall, at the expiration of 6 months from the date of the winding up order, and at the expiration of every succeeding 6 months thereafter until his release, transmit to the Official Receiver a copy of the Cash Book for such period in duplicate, together with the necessary vouchers and copies of the certificates of audit by the committee of inspection. He shall also forward with the first accounts, a summary of the company's statement of affairs, showing thereon in red ink the amounts realised, and explaining the cause of the non-realisation of such assets as may be unrealised. The liquidator shall also at the end of every 6 months forward to the Official Receiver, with his accounts, a report upon the position of the liquidation of the company in such form as the Official Receiver may direct.

(2) When the assets of the company have been fully realised and distributed, the liquidator shall forthwith send in his accounts to the Official Receiver, although the 6 months may not have expired.

(3) The accounts sent in by the liquidator shall be verified by him by affidavit.

**Liquidator carrying on business**

**163.** (1) Where the liquidator carries on the business of the company, he shall keep a distinct account of the trading, and shall incorporate in the Cash Book the total weekly amounts of the receipts and payments on such trading account.

(2) The trading account shall from time to time, and not less than once in every month, be verified by affidavit, and the liquidator shall thereupon submit such account to the committee of inspection (if any) or such member thereof as may be appointed by the committee for that purpose, who shall examine and certify the same.

**Copy of accounts to be filed**

**164.** When the liquidator's account has been audited, the Official Receiver shall certify the fact upon the account, and thereupon the duplicate copy, bearing a like certificate, shall be filed with the Registrar.

TWELFTH SCHEDULE — *(continued)***Summary of accounts**

**165.** (1) The liquidator shall transmit to the Official Receiver with his accounts a summary of such accounts in such form as the Official Receiver may direct, and, on the approval of such summary by the Official Receiver, shall forthwith obtain, prepare and transmit to the Official Receiver so many printed copies thereof, duly stamped for transmission by post, and addressed to the creditors and contributories, as may be required for transmitting such summary to such creditor and contributory.

(2) The cost of printing and posting such copies shall be a charge upon the assets of the company.

**Affidavit of no receipts**

**166.** Where a liquidator has not since the date of his appointment or since the last audit of his accounts, as the case may be, received or paid any sum of money on account of the assets of the company, he shall, at the time when he is required to transmit his accounts to the Official Receiver, forward to the Official Receiver an affidavit of no receipts or payments.

**Proceedings on resignation &c. of liquidator and disposal of books**

**167.** (1) Upon a liquidator resigning, or being released or removed from his office, he shall deliver over to the Official Receiver, or as the case may be, to the new liquidator, all books kept by him, and all other books, documents, papers and accounts in his possession relating to the office of liquidator. The release of a liquidator shall not take effect unless and until he has delivered over to the Official Receiver or, as the case may be, to the new liquidator, all the books, papers, documents and accounts which he is by this rule required to deliver on his release.

(2) The Court may, at any time during the progress of the liquidation, on the application of the liquidator or the Official Receiver, direct that such of the books, papers, and documents of the company or of the liquidator as are no longer required for the purpose of the liquidation, may be sold, destroyed, or otherwise disposed of.

**Expenses of sales**

**168.** Where property forming part of a company's assets is sold by the liquidator through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent, and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent, on the production of the necessary certificate of the taxing officer. Every liquidator by whom such auctioneer or agent is employed, shall, unless the Court otherwise orders, be accountable for the proceeds of every such sale.



## TWELFTH SCHEDULE — (continued)

## TAXATION OF COSTS

**Taxation of costs payable by or to Official Receiver or liquidator or by company**

**169.** Every solicitor, manager, accountant, auctioneer, broker, or other person employed by an Official Receiver or liquidator in a winding up by the Court shall, on request by the Official Receiver or liquidator (to be made a sufficient time before the declaration of a dividend), deliver his bill of costs or charges to the Official Receiver or liquidator for the purpose of taxation; and if he fails to do so within the time stated in the request, or such extended time as the Court may allow, the liquidator shall declare and distribute to the dividend without regard to such person's claim, and subject to any order of the Court the claim shall be forfeited. The request by the Official Receiver or liquidator shall be in Form 90.

**Notice of appointment**

**170.** Where a bill of costs or charges in any winding up has been lodged with the taxing officer, he shall give notice of an appointment to tax the same, in a winding up by the Court to the Official Receiver, and in every winding up to the liquidator, and to the person to or by whom the bill or charges is or are to be paid (as the case may be).

**Lodgment of bill**

**171.** The bill or charges, if incurred in a winding up by the Court prior to the appointment of a liquidator, shall be lodged with the Official Receiver, and if incurred after the appointment of a liquidator, shall be lodged with the liquidator. The Official Receiver or the liquidator, as the case may be, shall lodge the bill or charges with the taxing officer.

**Copy of bill to be furnished**

**172.** Every person whose bill or charges in a winding up by the Court is or are to be taxed shall, on application either of the Official Receiver or the liquidator, furnish a copy of his bill or charges so to be taxed, on payment at the rate of 35 cents per folio, which payment shall be charged on the assets of the company. The Official Receiver shall call the attention of the liquidator to any items which, in his opinion ought to be disallowed or reduced, and may attend or be represented on the taxation.

**Application for costs**

**173.** Where any party to, or person affected by, any proceedings desires to make an application for an order that he be allowed his costs, or any part of them, incident to such proceedings, and such application is not made at the time of the proceedings —

TWELFTH SCHEDULE — *(continued)*

(a) such party or person shall serve notice of his intended application on the Official Receiver or on the liquidator, as the case may be;

(b) the Official Receiver or liquidator may appear on such application and object thereto; and

(c) no costs of or incident to such application shall be allowed to the applicant, unless the Court is satisfied that the application could not have been made at the time of the proceedings.

**Certificate of taxation**

**174.** Upon the taxation of any bill of costs, charges or expenses being completed, the taxing officer shall issue to the person presenting such bill for taxation his allowance or certificate of taxation. The bill of costs, charges and expenses, together with the allowance or certificate, shall be filed with the Registrar.

**Certificate of employment**

**175.** Where the bill or charges of any solicitor, manager, accountant, auctioneer, broker, or other person employed by an Official Receiver or liquidator, is or are payable out of the assets of the company, a certificate in writing, signed by the Official Receiver or liquidator, as the case may be, shall on the taxation be produced to the taxing officer setting forth whether any, and if so what, special terms of remuneration have been agreed to, and in the case of the bill of costs of a solicitor, a copy of the resolution or other authority sanctioning the employment of a solicitor to assist the liquidator in the performance of his duties, and the instructions given to such solicitor by the liquidator.

**Costs and taxation**

**176.** All costs properly incurred in a winding up by the Court shall be allowed and shall be taxed by the Registrar.

**Review of taxation and appeals thereon**

**177.** The procedure and practice of the Supreme Court shall be observed in all reviews of taxation.

## TWELFTH SCHEDULE — (continued)

## COSTS AND EXPENSES PAYABLE OUT OF ASSETS OF COMPANY

**Liquidator's charges**

**178.** (1) Where a liquidator or special manager in a winding up by the Court receives remuneration for his services as such, no payment shall be allowed on his accounts in respect of the performance by any other person of the ordinary duties which are required by the Act or Rules to be performed by himself.

(2) Where a liquidator is a solicitor, he may contract that the remuneration for his services as liquidator shall include all professional services.

**Costs payable out of assets**

**179.** (1) The assets of a company in a winding up by the Court, remaining after payment of the fees and expenses properly incurred in preserving, realising or getting in the assets, including where the company has previously commenced to be wound up voluntarily such remuneration, costs and expenses as the Court may allow to a liquidator appointed in such voluntary winding up shall, subject to any order of the Court, be liable to the following payments, which shall be made in the following order of priority, namely —

*First.* — The taxed costs of the petitions, including the taxed costs of any person appearing on the petition whose costs are allowed by the Court.

*Next.* — The remuneration of the special manager (if any).

*Next.* — The costs and expenses of any person who makes or concurs in making, the company's statement of affairs.

*Next.* — The taxed charges of any shorthand writer appointed to take an examination: Provided that where the shorthand writer is appointed at the instance of the Official Receiver the cost of the shorthand notes shall be deemed to be an expense incurred by the Official Receiver in getting in and realising the assets of the company.

*Next.* — The necessary disbursements of any liquidator appointed in the winding up by the Court, other than expenses properly incurred in preserving, realising or getting in the assets heretofore provided for.

*Next.* — The costs of any person properly employed by any such liquidator.

*Next.* — The remuneration of any such liquidator.

*Next.* — The actual out-of-pocket expenses necessarily incurred by the committee of inspection, subject to the approval of the Official Receiver.

TWELFTH SCHEDULE — *(continued)*

(2) No payments in respect of bills or charges of solicitors, managers, accountants, auctioneers, brokers, or other persons, other than payments for costs and expenses incurred and sanctioned under rule 43, and payments of bills which have been taxed and allowed under orders made for the taxation thereof, shall be allowed out of the assets of the company without proof that the same have been considered and allowed by the Registrar. The taxing officer shall satisfy himself before passing such bills or charges that the employment of the solicitor or other person in respect of the matters mentioned in the bills or charges has been duly sanctioned:

Provided that the Official Receiver when acting as liquidator may without taxation pay and allow the costs and charges of any person other than a solicitor employed by him where such costs and charges are within the scale usually allowed by the Court and do not exceed the sum of \$100.

(3) Nothing contained in this rule shall apply to or affect costs which, in the course of legal proceedings by or against a company which is being wound up by the Court, are ordered by the Court in which such proceedings are pending, or a Judge thereof to be paid by the company or the liquidator, or the rights of the person to whom such costs are payable.

## STATEMENTS BY LIQUIDATOR TO REGISTRAR OF COMPANIES

**Conclusion of winding up**

**180.** The winding up of a company shall, for the purposes of section 269, be deemed to be concluded —

(a) in the case of a company wound up by order of the Court, at the date on which the order dissolving the company has been reported by the liquidator to the Registrar of Companies or at the date of the order of the Court releasing the liquidator pursuant to section 190;

(b) in the case of a company wound up voluntarily, or under the supervision of the Court, at the date of the dissolution of the company, unless at such date any funds or assets of the company remain unclaimed or undistributed in the hands or under the control of the liquidator, or any person who has acted as liquidator, in which case the winding up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into the companies liquidation account.

## TWELFTH SCHEDULE — (continued)

**Times of sending liquidator's statements, and regulations applicable thereto**

**181.** In a voluntary winding up or a winding up under the supervision of the Court, the statements with respect to the proceedings in and position of a liquidation of a company, the winding up of which is not concluded within a year after its commencement, shall be sent to the Registrar of Companies twice in every year as follows —

(a) the first statement commencing at the date when a liquidator was first appointed and brought down to the end of 12 months from the commencement of the winding up, shall be sent within 30 days from the expiration of such 12 months, or within such extended period as the Court may sanction, and the subsequent statements shall be sent at intervals of half a year, each statement being brought down to the end of the half-year for which it is sent. In cases in which the assets of the company have been fully realised and distributed before the expiration of a half-yearly interval a final statement shall be sent forthwith;

(b) subject to the next succeeding rule, Form 92, and where applicable Forms 94, 95 and 96, shall be used, and the directions specified in the form shall (unless the Court otherwise directs) be observed in reference to every statement;

(c) every statement shall be sent in duplicate, and shall be verified by an affidavit in Form 93.

**Affidavit of no receipts or payments**

**182.** Where in a voluntary winding up or a winding up under the supervision of the Court, a liquidator has not during any period for which a statement has to be sent received or paid any money on account of the company, he shall at the period when he is required to transmit his statement, send to the Registrar of Companies the prescribed statement in Form 92, in duplicate, containing the particulars therein required with respect to the proceedings in and position of the liquidation, and with such statement shall also send an affidavit of no receipts or payments in Form 93.

TWELFTH SCHEDULE — *(continued)*UNCLAIMED FUNDS AND UNDISTRIBUTED ASSETS IN  
HANDS OF LIQUIDATOR**Payment of undistributed and unclaimed money into companies liquidation account**

**183.** (1) All money in the hands or under the control of a liquidator of a company representing unclaimed dividends, which for 6 months from the date when the dividend became payable have remained in the hands or under the control of the liquidator, shall forthwith, on the expiration of the 6 months, be paid into the companies liquidation account.

(2) In a voluntary winding up or a winding up under the supervision of the Court, all other money in the hands or under the control of a liquidator of a company, representing unclaimed or undistributed assets, which under section 270(1), the liquidator is to pay into the companies liquidation account, shall be ascertained as on the date to which the statement of receipts and payments sent in to the Registrar of Companies is brought down, and the amount to be paid to the companies liquidation account shall be the minimum balance of such money which the liquidator has had in his hands or under his control during the 6 months immediately preceding the date to which the statement is brought down, less such part (if any) thereof as the Official Receiver may authorise him to retain for the immediate purposes of the liquidation. Such amount shall be paid into the companies liquidation account within 14 days from the date to which the statement of account is brought down.

(3) Notwithstanding anything in this rule, any moneys representing unclaimed or undistributed assets or dividends in the hands of the liquidator at the date of the dissolution of the company shall forthwith be paid by him into the companies liquidation account.

(4) A liquidator whose duty it is to pay into the companies liquidation account money representing unclaimed or undistributed assets of the company shall pay in the same through the Official Receiver and shall be entitled to a certificate of receipt for the money so paid in Form 105.

TWELFTH SCHEDULE — *(continued)*

(5) In a voluntary winding up or a winding up under the supervision of the Court, money invested or deposited at interest by a liquidator shall be deemed to be money under his control, and when such money forms part of the minimum balance payable into the companies liquidation account pursuant to sub-rule (2), the liquidator shall realise the investment or withdraw the deposit, and shall pay the proceeds into the companies liquidation account, provided that where the money is invested in Government securities, or such securities as the Court may direct, such securities, may, with the permission of the Court, be transferred to the control of the Official Receiver instead of being forthwith realised and the proceeds thereof paid into the companies liquidation account. In the latter case, if and when the money represented by the securities is required wholly or in part for the purposes of the liquidation, the Official Receiver may realise the securities wholly or in part and pay the proceeds of realisation into the companies liquidation account and deal with the same in the same way as other monies paid into the account may be dealt with.

**Liquidator to furnish information to Official Receiver**

**184.** In a voluntary winding up or in a winding up under the supervision of the Court, every person who has acted as liquidator of any company, whether the liquidation has been concluded or not, shall furnish to the Official Receiver particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the company and such other particulars as the Official Receiver may require for the purpose of ascertaining or getting in any money payable into the companies liquidation account at the bank. The Official Receiver may require such particulars to be verified by affidavit.

**Official Receiver may call for verified accounts**

**185.** (1) In a voluntary winding up or in a winding up under the supervision of the Court, the Official Receiver may at any time order any such person to submit an account verified by affidavit of the sums received and paid by him as liquidator of the company and may direct and enforce an audit of the account.

(2) For the purposes of section 270 and the Rules, the Court shall have and, at the instance of the Official Receiver, may exercise all the powers conferred by the Bankruptcy Act (Chapter 67) with respect to the discovery and realisation of the property of a debtor, and the provisions of that Act with respect thereto shall, with any necessary modification, apply to proceedings under section 270.

**Application to Court for enforcing account and getting in money**

**186.** An application by the Official Receiver for the purpose of ascertaining and getting in money payable into the bank pursuant to section 270 shall be made by motion.

## TWELFTH SCHEDULE — (continued)

**Application for payment out by person entitled**

**187.** An application by a person claiming to be entitled to any money paid into the bank in pursuance of section 270 shall be made in such form and manner as the Official Receiver may direct, and shall, unless the Official Receiver otherwise directs, be accompanied by the certificate of the liquidator that the person claiming is entitled and such further evidence as the Official Receiver may direct.

**Application by liquidator for payment out**

**188.** A liquidator who requires to make payments out of money paid into the bank in pursuance of section 270 either by way of distribution or in respect of the cost and expenses of the proceedings, shall apply in such form and manner as the Official Receiver may direct, and the Official Receiver may thereupon either make an order for payment to the liquidator of the sum required by him for the purposes aforesaid, or may direct cheques to be issued to the liquidator or transmission to the persons to whom the payments are to be made.

## RELEASE OF LIQUIDATOR IN WINDING UP BY COURT

**Proceedings for release of liquidator**

**189.** (1) A liquidator in a winding up by the Court before making application to the Court for his release, shall give notice of his intention so to do to all the creditors who have proved their debts and to all the contributories, and shall send with the notice a summary of all receipts and payments in the winding up.

(2) When the Court has granted to a liquidator his release, a notice of the order granting the release shall be gazetted. The liquidator shall provide their requisite payment for the *Gazette*, which he may charge against the company's assets.

**Disposal of books and papers**

**190.** (1) The Court may order that the books and papers of a company which has been wound up shall not be destroyed for such period (not exceeding 5 years from the dissolution of the company) as the Court thinks proper.

(2) Any creditor or contributory may make representations to the Court with regard to the destruction of such books and papers.

(3) A resolution for the destruction of the books and papers of such a company within the period of 5 years or any shorter period fixed by an order of the Court in force at the date of such resolution shall not take effect until the expiration of such period of 5 years or of such shorter period unless the Court shall otherwise direct.



## TWELFTH SCHEDULE — (continued)

(4) At least one week's notice shall be given to the Official Receiver of any application to the Court for an order for destruction of the books and papers of a company before the expiration of such period of 5 years or shorter period.

## OFFICIAL RECEIVERS

**Appointment**

**191.** (1) Judicial notice shall be taken of the appointment of the Official Receiver appointed by His Majesty the Sultan and Yang Di-Pertuan.

(2) When His Majesty the Sultan and Yang Di-Pertuan appoints any officer to act as deputy for or in the place of an Official Receiver notice thereof shall be given in the *Gazette*.

(3) Any person so appointed shall, during his tenure of office, have all the status, rights, and powers, and be subject to all the liabilities of an Official Receiver.

**Removal**

**192.** Where an Official Receiver is removed from his office by His Majesty the Sultan and Yang Di-Pertuan, notice of the order removing him shall be published in the *Gazette*.

**Personal performance of duties**

**193.** The Court may, by general or special directions determine what acts or duties of the Official Receiver in relation to the winding up of companies are to be performed by him in person, and in what cases he may discharge his functions through the agency of his clerks or other persons in his regular employ, or under his official control.

**Assistant Official Receivers**

**194.** An Assistant Official Receiver appointed by His Majesty the Sultan and Yang Di-Pertuan shall be an officer of the Court, as fully as the Official Receiver to whom he is assistant, and, subject to the directions of the Court, he may represent the Official Receiver in all proceedings in Court, or in any administrative or other matter. Judicial notice shall be taken of the appointment of an Assistant Official Receiver and he may be removed in the same manner as is provided in the case of an Official Receiver.

TWELFTH SCHEDULE — *(continued)***Powers of certain officers and Official Receivers' clerks in certain cases to act for Official Receivers**

**195.** In the absence of the Official Receiver, any officer duly authorised for the purpose by His Majesty the Sultan and Yang Di-Pertuan and any clerk of the Official Receiver duly authorised by him in writing, may by leave of the Court act on behalf of the Official Receiver, and take part for him in any public or other examination and in any unopposed application to the Court.

**Duties where no assets**

**196.** Where a company against which a winding up order has been made has no available assets, the Official Receiver shall not be required to incur any expense in relation to the winding up without the express directions of the Court.

**Accounting by Official Receiver**

**197.** (1) Where a liquidator is appointed by the Court in a winding up by the Court, the Official Receiver shall account to the liquidator.

(2) If the liquidator is dissatisfied with the account or any part thereof, he may report the matter to the Court, which shall take such action (if any) thereon as it may deem expedient.

(3) The provisions of these Rules as to liquidators and their accounts shall not apply to the Official Receiver when he is liquidator, but he shall account in such manner as the Court may direct.

**Official Receiver to act as committee of inspection where no committee of inspection appointed**

**198.** Where there is no committee of inspection in a winding up by the Court, any functions of the committee of inspection which devolve on the Court may, subject to the directions of the Court, be exercised by the Official Receiver.

**Appeals from Official Receiver**

**199.** An appeal to the Court from an act or decision of the Official Receiver acting otherwise than as liquidator of a company, shall be brought within 21 days from the time when the decision or act appealed against is done, pronounced, or made.

## TWELFTH SCHEDULE — (continued)

## BOOKS TO BE KEPT AND RETURNS MADE BY OFFICERS OF COURT

**Applications under sections 189 and 262(3)**

**200.** (1) An application by the Official Receiver to the Court to examine on oath the liquidator or any other person pursuant to section 189 or to confer on the Official Receiver or on any person designated by him for the purpose with respect to the company concerned the powers of investigating the affairs of the company, mentioned in section 262(3) shall be made *ex parte*, and shall be supported by a report to the Court filed with the Registrar, stating the circumstances in which the application is made.

(2) The report shall be signed by the Official Receiver and shall for the purposes of such application be *prima facie* evidence of the statement therein contained.

**Books to be kept by officers of Court**

**201.** (1) The Registrar of the Court shall keep books according to the forms in the Appendix, and the particulars given under the different heads in such books shall be entered forthwith after each proceeding has been concluded.

(2) The books shall at all times be open to inspection by the Official Receiver, and the officers of the Court whose duty it is to keep the books prescribed by these Rules shall furnish the Official Receiver with such information and returns as the Official Receiver may require.

## GAZETTING IN WINDING UP BY COURT

**Gazetting notices**

**202.** (1) All notices subsequent to the making by the Court of a winding up order in pursuance of the Act or Rules requiring publication in the *Gazette* shall be gazetted by the Official Receiver.

(2) Where any winding up order is amended, and also in any case in which any matter which has been gazetted has been amended or altered, or in which a matter has been wrongly or inaccurately gazetted, the Official Receiver shall re-gazette such order or matter with the necessary amendments and alterations in the prescribed form, at the expense of the company's assets, or otherwise as the Court may direct.

TWELFTH SCHEDULE — *(continued)***Filing memorandum of *Gazette* notices**

**203.** (1) Whenever the *Gazette* contains any advertisement relating to any winding up proceedings, the Official Receiver or liquidator, as the case may be, shall file with the proceedings a memorandum referring to and giving the date of the advertisement.

(2) In the case of an advertisement in a local paper, the Official Receiver or liquidator, as the case may be, shall keep a copy thereof and a memorandum referring to and giving the date of the advertisement shall be placed on the file.

(3) For this purpose, one copy of each local paper in which any advertisement relating to any winding up proceeding in the Court is inserted, shall be left with the Official Receiver or liquidator, as the case may be, by the person who inserts the advertisement.

(4) A memorandum under this rule shall be, until the contrary is proved, be evidence that the advertisement to which it refers was duly inserted in the issue of the *Gazette* or newspaper mentioned in it.

## ARRESTS AND COMMITMENTS

**To whom warrants may be addressed**

**204.** A warrant of arrest, or any other warrant issued under the provisions of the Act and Rules, may be addressed to such bailiff or officer of the Court or police officers as the Court may in each case direct.

**Prison to which person arrested on warrant is to be taken**

**205.** Where the Court issues a warrant for the arrest of a person under any of the provisions of the Act or Rules, he shall be committed, unless the Court shall otherwise order, to the prison used by the Court in cases of commitment made in the exercise by the Court of its ordinary jurisdiction.

## TWELFTH SCHEDULE — (continued)

**Prison to which person arrested is to be conveyed, and production and custody of persons arrested**

**206.** Where a person is arrested under a warrant of commitment issued under any of the provisions of the Act and Rules, other than sections 206 and 209, and rule 56, he shall be forthwith conveyed in custody of the bailiff or officer apprehending him to the prison used by the Court in cases of commitment made in the exercise by the Court of its ordinary jurisdiction and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged by the order of the Court or otherwise by law. Where a person is arrested under a warrant, issued under section 206 or 209, or under rule 56, he shall be forthwith conveyed in custody of the bailiff or officer apprehending him to such prison as aforesaid; and the Director of Prisons shall produce such person before the Court as it may direct, and shall safely keep him until such time as the Court shall otherwise order, or such person shall be otherwise discharged by law.

[GN 68/1985]

## MISCELLANEOUS MATTERS

**Disposal of monies received after execution**

**207.** (1) Where any money is seized or received by the bailiff in part satisfaction of an execution against the goods of a company, the same shall be paid into Court to the credit of a ledger account in the name of the bailiff with a sub-title in the matter of the action and if, before the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that a provisional liquidator has been appointed or that a winding up order has been made or that a resolution for voluntary winding up has been passed, the bailiff shall forthwith inform the Registrar of the service of such notice and the Registrar shall, on being so required, deliver any money so seized or received in part satisfaction of the execution to the liquidator after deducting therefrom the costs of the execution.

(2) Where under an execution in respect of a judgment for a sum exceeding \$200 the goods of a company are sold or money is paid in order to avoid a sale, the proceeds of sale or money paid in order to avoid a sale shall be paid into Court to the credit of a ledger account in the name of the bailiff with a sub-title in the matter of the action and shall be retained for 14 days from the date of such sale or payment in order to avoid sale, and if within such 14 days notice is served on the bailiff of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company, the bailiff shall forthwith notify the Registrar of the service of such notice and if an order is made or a resolution is passed, as the case may be, for the winding up of the company, the Registrar shall deduct the costs of the execution and shall pay the balance to the liquidator.

TWELFTH SCHEDULE — *(continued)*

(3) Payment by the bailiff in to Court in pursuance of this rule shall be a good discharge to him as against the liquidator.

**Enlargement or abridgement of time**

**208.** The Court may, in any case in which it shall see fit, extend or abridge the time appointed by the Rules or fixed by any order of the Court for doing any act or taking any proceeding.

**Formal defect not to invalidate proceedings**

**209.** (1) No proceedings under the Act or Rules shall be invalidated by any formal defect or by any irregularity, unless the Court is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the Court.

(2) No defect or irregularity in the appointment or election of an Official Receiver, liquidator or member of a committee of inspection shall vitiate any act done by him in good faith.

**Application of existing procedure**

**210.** In all proceedings in or before the Court, or any Registrar or officer thereof, or over which the Court has jurisdiction under the Act and Rules, where no other provision is made by the Act or Rules, the practice, procedure and regulations shall, unless the Court otherwise in any special case directs, be in accordance with the rules and practice of the Court.

## APPENDIX

## FORMS

## FORM 1

(rule 7)

## SUMMONS (GENERAL)

*(Title)*

Let *(a)* attend at on the day of 20 ,  
 at o'clock in the noon on the hearing of an application of *(b)*  
 for an order that *(c)*

Dated the day of 20 .

This summons was taken out by of Solicitors  
 for

To

*NOTE* — If you do not attend, either in person or by your solicitor, at the time and place above mentioned, such order will be made, and proceedings taken as the Judge (or Registrar) may think just and expedient.

- (a) Name of respondent.*
- (b) Name and description of applicant.*
- (c) State object of application.*

## FORM 2

(rule 22)

## PETITION

*(Title)*

To the Supreme Court of Brunei Darussalam

The humble petition of (a) showeth as follows —

1. The Company Berhad (hereinafter called the company), was in the month of , incorporated under the Companies Act.
2. The registered office of the company is at (b) .
3. The nominal capital of the company is \$ , divided into shares of \$ each. The amount of the capital paid-up or credited as paid-up is \$ .
4. The objects for which the company was established are as follows —

To

and other objects set forth in the memorandum of association thereof.

*[Here set out in paragraphs the facts on which the petitioner relies, and conclude as follows] —*

Your petitioner therefore humbly prays as follows —

- (1) That the Company Berhad may be wound up by the Court under the provisions of the Companies Act.
- (c) (That the voluntary winding up of the Company Berhad may be continued but subject to the supervision of the Court).
- (2) Or that such other order may be made in the premises as shall be just.

---

*NOTE — (d) It is intended to serve this petition on*

- (a) *Insert full name, title, etc. of petitioner.*
- (b) *State the full address of the registered office so as sufficiently to show where it is situate.*
- (c) *Add words in brackets if supervision order is asked for.*
- (d) *This note will be unnecessary if the company is petitioner.*



## FORM 3

(rule 22)

## PETITION BY UNPAID CREDITOR ON SIMPLE CONTRACT

*(Title)*

Paragraphs 1, 2, 3, and 4 as in Form 2.

5. The company is indebted to your petitioner in the sum of \$        for (a)        .

6. Your petitioner has made application to the company for payment of his debt, but the company has failed and neglected to pay the same or any part thereof.

7. The company is [insolvent and] unable to pay its debts.

8. In the circumstances it is just and equitable that the company should be wound up.

Your petitioner, therefore, etc. [as in Form 2].

*(a) State consideration for the debt, with particulars so as to establish that the debt claimed is due.*

## FORM 4

(rule 24)

## ADVERTISEMENT OF PETITION

*(Title)*

Notice is hereby given that a petition for the winding up of the above named company by (a) the Supreme Court of Brunei Darussalam was, on the day of 20 , presented to the said Court by the said company [or, as the case may be]. And that said petition is directed to be heard before the Court at .m. on the day of 20 ; and any creditor or contributory of the said company desirous to support or oppose the making of an order on the said petition may appear at the time of hearing by himself or his counsel for that purpose; and a copy of the petition will be furnished to any creditor or contributory of the said company requiring the same by the undersigned on payment of the regulated charge for the same.

Signed (b) [Name]

[Address]

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*NOTE* — Any person who intends to appear on the hearing of the said petition must serve on or send by post to the above named, notice in writing of his intention so to do. The notice must state the name and address of the person, or, if a firm, the name and address of the firm, and must be signed by the person or firm, or his or their solicitor (if any), and must be served, or if posted, must be sent by post in sufficient time to reach the above named not later than 6 o'clock in the afternoon of the of 20 .

- (a) *If the winding up is to be subject to supervision, insert instead of “by” the words “subject to the supervision of”.*
- (b) *To be signed by the solicitor to the petitioner or by the petitioner if he has no solicitor.*

## FORM 5

(rule 25)

AFFIDAVIT OF SERVICE OF PETITION ON MEMBERS, OFFICERS OR  
SERVANTS, & c.*(Title)*

In the matter of a petition dated

I, \_\_\_\_\_, of \_\_\_\_\_, make oath and say —

1. *[In the case of service of petition on a company by leaving it with a member, officer or servant at the registered office, or if no registered office at the principal or last known principal place of business of the company.]*

That I did on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, serve the above named company with the above mentioned petition by delivering to and leaving with [name and description] a member (or officer) (or servant) of the company a copy of the above mentioned petition, duly sealed with the seal of the Court, at [office or place of business as aforesaid], before the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon.

2. *[In the case of no member, officer, or servant of the company being found at the registered office or place of business.]*

That I did on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, having failed to find any member, officer, or servant of the above named company at [here state registered office or place of business], leave there a copy of the above mentioned petition, duly sealed with the seal of the Court, before the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon [add with whom such sealed copy was left, or where, e.g. affixed to door of offices, or placed in letter box, or otherwise].

3. *[In the case of directions by the Court as to the member, or members, officer, or servant of the company to be served].*

That I did on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, serve [name or names and description] with a copy of the above mentioned petition, duly sealed with the seal of the Court, by delivering the same personally to the said, at [place] before the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon.

4. The said petition is now produced and shown to me, marked “A”.

Sworn at, & c.

## FORM 6

(rule 25)

## AFFIDAVIT OF SERVICE OF PETITION ON LIQUIDATOR

*(Title)*

In the matter of a petition, dated \_\_\_\_\_, for winding up the above company [by] or [under the supervision of] the Court [as the case may be].

I, \_\_\_\_\_, of \_\_\_\_\_, make oath and say —

That I did, on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, serve [name and description] the liquidator of the above named company, with a copy of the above mentioned petition, duly sealed with the seal of the Court, by delivering the same personally to the said \_\_\_\_\_, at [place], before the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon.

The said petition is now produced and shown to me, marked “A”.

Sworn at, &c.

## FORM 7

(rule 26)

## AFFIDAVIT VERIFYING PETITION

*(Title)*

I, *A.B.*, of & c., make oath and say, that such of the statements in the petition is now produced and shown to me, and marked with the letter “A”, as relate to (a) my own acts and deeds are true, and such of the said statements as relate to the acts and deeds of any other person or persons I believe to be true.

Sworn, &c.

(a) *If the petition is by a firm, insert “the acts and deeds of my said firm”.*

## FORM 8

(rule 26)

## AFFIDAVIT VERIFYING PETITION OF LIMITED COMPANY

*(Title)*

I, *A.B.*, of, &c., make oath and say as follows —

1. I am (a director) (the secretary) of \_\_\_\_\_ Company Berhad, the petitioner in the above matter, and am duly authorised by the said petitioner to make this affidavit on its behalf.

2. That such of the statements in the petition now produced and shown to me marked with the letter “A”, as relate to the acts and deeds of the said petitioner or to my own acts and deeds, are true, and such of the statements in the said petition as relate to the acts and deeds of any other corporation, person or persons I believe to be true.

Sworn, &c.

## FORM 9

(rule 28)

## ORDER APPOINTING PROVISIONAL LIQUIDATOR AFTER PRESENTATION OF PETITION, AND BEFORE ORDER TO WIND UP

the        day of                20

*(Title)*

Upon the application, &c., and upon reading, &c., the Court do hereby appoint the Official Receiver (or as may be) to be provisional liquidator of the above named company. And the Court do hereby limit and restrict the powers of the said provisional liquidator to the following acts, that is to say [*describe the acts which the provisional liquidator is to be authorised to do and the property of which he is to take possession*].

*NOTE* — It will be the duty of the person who is at the time secretary of chief officer of the company and of such of the persons who are liable to make out or concur in making out the company’s statement of affairs as the Official Receiver may require, to attend on the Official Receiver at such time and place as he may appoint and to give him all information he may require.

FORM 10

(rule 30)

NOTICE OF INTENTION TO APPEAR ON PETITION

*(Title)*

Take notice that *A.B.*, of (a) a creditor for \$ of (or contributory holding (b) shares in) the above company intends to appear on the hearing of the petition advertised to be heard on the day of , 20 , and to support (or oppose) such petition.

(Signed) (c)

[Address]

(a) State full name, or if a firm, the name of the firm and address.

(b) State numbers and class of shares held.

(c) To be signed by the person or his solicitor or agent.

FORM 11

(rule 31)

LIST OF PARTIES ATTENDING HEARING OF PETITION

*(Title)*

The following are the names of those who have given notice of their intention to attend the hearing of the petition herein, on the day of 20 .

Name	Address	Name and address of solicitor of party who has given notice	Creditors Amount of debt	Contributories. Number of shares	Opposing	Supporting

## FORM 12

(rule 34)

## NOTIFICATION TO OFFICIAL RECEIVER OF WINDING UP ORDER

*(Title)*

To the Official Receiver

*(Address)*

Order pronounced this day by \_\_\_\_\_ [*or, as the case may be*] for winding up the under mentioned company under the Companies Act.

Name of company	Registered office of company	Petitioner's solicitor	Date of presentation of petition

## FORM 13

(rule 34)

NOTIFICATION TO OFFICIAL RECEIVER OF ORDER PRONOUNCED  
FOR APPOINTMENT OF LIQUIDATOR  
PRIOR TO WINDING UP ORDER BEING MADE

*(Title)*

To the Official Receiver

*(Address)*

Order pronounced this day by \_\_\_\_\_ [*or, as the case may be*] for the appointment of the Official Receiver (or, as the case may be, the name, address and description of the person appointed) as provisional liquidator prior to any winding up order being made.

Name of company	Registered office of company	Petitioner's solicitor	Date of presentation of petition

FORM 14

(rule 35)

## ORDER FOR WINDING UP BY COURT

day of \_\_\_\_\_, 20

*(Title)*

Upon the petition of the above named company (or *A.B.*, of & c., a creditor (or contributory of the above named company, on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, preferred unto the Court and upon hearing for the petitioner, and \_\_\_\_\_ for \_\_\_\_\_ and upon reading the said petition, an affidavit of (the said petitioner), failed, etc. verifying the said petition, an affidavit of L.M., filed the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, the *Gazette* of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, the newspaper of the \_\_\_\_\_ day of \_\_\_\_\_ (enter any other papers), each containing an advertisement of the said petition (enter any other evidence), this Court do order that the said \_\_\_\_\_ company be wound up by this Court under the provisions of the Companies Act, and that the Official Receiver, or as the case may be, be constituted provisional liquidator of the affairs of the company.

And it is ordered that the costs of \_\_\_\_\_ of the said petition be taxed and paid out of the assets of the said company.

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*NOTE* — It will be the duty of the secretary or chief officer of the company and of such of the persons who are liable to make out or concur in making out the company's statement of affairs, as the Official Receiver may require, to attend on the Official Receiver at such time and place as he may appoint and to give him all information he may require.



FORM 15

(rule 36(2))

## ORDER FOR WINDING UP SUBJECT TO SUPERVISION

day of , 20

*(Title)*

Upon the petition, & c., this Court do order that the voluntary winding up of the said Company Berhad, be continued, but subject to the supervision of this Court; and any of the proceedings under the said voluntary winding up may be adopted as the Court shall think fit; and it is ordered that the liquidator appointed in the voluntary winding up of the said company, or other the liquidator for the time being, do on the day of next, and thenceforth every 3 months file with the Registrar a report in writing as to the position of, and the progress made with, the winding up of the said company, and with the realisation of the assets thereof, and as to any other matters connected with the winding up as the Court may from time to time direct. And it is ordered that no bills of costs, charges or expenses, or special remuneration of any solicitor employed by the liquidator of the said company, or any remuneration, charges or expenses of such liquidator, or of any manager, accountant, auctioneer, broker, or other person, be paid out of the assets of the said company, unless such costs, charges, expenses, or remuneration, shall have been taxed or allowed by the Registrar. And it is ordered that all such costs, charges, expenses and remuneration, be taxed and ascertained accordingly. And it is ordered that the costs of the petitioner and of [*here insert any directions as to allowance of costs of petitioner and of persons appearing*]. And the creditors, contributories, and liquidator of the said company, and all other persons interested, are to be at liberty to apply generally as there may be occasion.

FORM 16

(rule 36(1))

## NOTICE OF ORDER TO WIND UP (FOR NEWSPAPER)

## COMPANIES ACT, CHAPTER 39

In the matter of \_\_\_\_\_, Berhad.

winding up order made, 20\_\_\_\_\_

Date and place of first meetings —

Creditors \_\_\_\_\_, 20\_\_\_\_\_, at

Contributories \_\_\_\_\_, 20\_\_\_\_\_, at

Official Receiver and

Provisional Liquidator

FORM 17

(rule 38)

## AFFIDAVIT BY SPECIAL MANAGER VERIFYING ACCOUNT

*(Title)*

I, \_\_\_\_\_ of \_\_\_\_\_ make oath and say as follows —

1. The account hereunto annexed, marked with the letter “A”, produced and shown to me at the time of swearing this my affidavit, and purporting to be my account as special manager of the estate or business of the above named company, contains a true account of all and every sums and sum of money received by me or by any other person or persons by my order or to my knowledge or belief for my use on account or in respect of the said estate or business.

2. The several sums of money mentioned in the said account hereby verified to have been paid or allowed have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every item and particulars therein contained, according to the best of my knowledge and belief.

Sworn, &amp;c.

FORM 18

(rule 109)

## NOTICE TO CREDITORS OF FIRST MEETING

*(Title)*

(Under the order for winding up the above named company, dated the      day of      , 20      .)

Notice is hereby given that the first meeting of creditors in the above matter will be held at      on the      day      20      , at      o'clock in the      noon.

To entitle you to vote thereat your proof must be lodged with me not later than o'clock on the      day of      20      .

Forms of proof and of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged with me not later than      o'clock on the      day of      20      .

*Official Receiver**Address*

(The statement of the company's affairs *(a)*)

*(a) Here insert "has not been lodged" or "has been lodged, and summary is enclosed".*

*Note*

*At the first meetings of the creditors and contributories they may amongst other things —*

*1. By resolution determine whether or not an application is to be made to the Court to appoint a liquidator in place of the Official Receiver.*

*2. By resolution determine whether or not an application shall be made to the Court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed.*

*NOTE — If a liquidator is not appointed by the Court the Official Receiver will be the liquidator.*

FORM 19

(rule 109)

## NOTICE TO CONTRIBUTORIES OF FIRST MEETING

*(Title)*

Notice is hereby given that the first meeting of the contributories in the above matter will be held at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon.

Forms of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged with me not later than \_\_\_\_\_ o'clock on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

*Official Receiver*

*Address*

(The company's statement of affairs *(a)*)

*(a) Here insert "has not been lodged" or "has been lodged, and summary is enclosed".*

*Note*

*At the first meetings of creditors and contributories they may amongst other things —*

*1. By resolution determine whether or not an application shall be made to the Court to appoint a liquidator in place of the Official Receiver.*

*2. By resolution determine whether or not an application shall be made to the Court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed.*

*NOTE — If a liquidator is not appointed by the Court the Official Receiver will be the liquidator.*

FORM 20

(rule 110)

NOTICE TO DIRECTORS AND OFFICERS OF COMPANY TO ATTEND FIRST  
MEETING OF CREDITORS OR CONTRIBUTORIES*(Title)*

Take notice that the first meeting of creditors [*or* contributories] will be held on the     day of     , 20     , at     o'clock at (*a*)     and that you are required to attend thereat, and give such information as the meeting may require.

Dated this     day of     , 20     .

To (*b*)

*Official Receiver*

---

*NOTE* — The failure of any director or officer to attend will be reported by the Official Receiver to the Court.

*(a) Here insert place where meeting will be held.*

*(b) Insert name of person required to attend.*

FORM 21

(rule 123(2))

## MEMORANDUM OF PROCEEDINGS AT ADJOURNED FIRST MEETING

(No *quorum*)*(Title)*

Before            at            on the       day of            , 20    , at       o'clock.

Memorandum. — The adjourned meeting of *(a)*            in the above matter was held at the time and place above mentioned; but it appearing that there was not a *quorum* of *(a)*            qualified to vote present or represented, no resolution was passed, and the meeting was not further adjourned.

*Chairman*

*(a) Insert "creditors" or "contributories", as the case may be.*

## FORM 22

(rule 130)

## LIST OF CREDITORS (a) PRESENT TO BE USED AT EVERY MEETING

*(Title)*

Meeting held at                    this            day of                    , 20

Number	Names of creditors (a) present or represented	Amount of proof (b)	
		\$	¢
1			
2			
3			
4			
5			
6			
7			
7	Total number of creditors (a) present or represented		

*(a) "Or contributories".**(b) In case of contributories insert "number of shares" and "number of votes according to the regulations of the company".*

FORM 23

(rule 39)

STATEMENT OF AFFAIRS

(Title)

STATEMENT OF AFFAIRS on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, the date of the winding up order (or such other date as the Official Receiver has for special reasons directed).

I. — As regards Creditors

Gross liabilities		Liabilities	Expected to rank	Assets		Estimated to produce	
\$.	¢			\$	¢	\$	¢
		Debts and liabilities, viz —			(a) Property as per list "H", viz —		
		(a) ..... Unsecured creditors as per List "A" (state number).			(a) Cash at bankers .....		
			\$	¢	(b) Cash in hand .....		
		(b) ..... creditors fully secured (not including debenture, holders), as per List "B"			(c) Stock in trade .....		
		Estimated value of securities .....			(Estimated cost, \$ .....)		
					(d) Machinery .....		
		Estimated surplus \$			(e) Trade fixture, fittings, utensils & c. ....		
		Carried to List "C" .....			(f) Investments in shares & c .....		
					(g) Loans on mortgage.		
		Balance to contra (d) ..... \$			(h) Other property, viz —		
		(c) ..... creditors partly secured, as per List "C" .....			(b) Book debts (debtors), as per List "I", viz —		
		Less estimated value of securities .....			Good .....		
		Estimated to rank for dividend .....	\$	¢	Doubtful .....	\$	¢
		(d) Liabilities on bills discounted other than the company's own acceptances for value, as per List "D".....			Bad .....		
		Of which it is expected will rank for dividend .....			Estimated to produce .....	\$	¢
					(c) Bills of exchange, or other similar securities on hand, as per List "J" .....		
					Estimated to produce .....		
					(d) Surplus from securities in the hands of creditors fully secured (per contra)		
					(b) .....	\$	¢



I. — As regards creditors — (continued)

<p>(e) Other liabilities as per List "E" ..... Of which it is expected will rank for dividend .....</p>										<p>(e) Unpaid calls (debtors), as per List "K" ..... Estimated to produce .....</p> <p>Estimated total assets ..... Deduct preferential creditors as per contra (f) .....</p> <p>Estimated amount available to meet claims of debenture holders ..... Deduct loans on debenture bonds secured on the assets of the company as per contra (g) .....</p>
<p>(f) ..... preferential creditor for rates, taxes, wages &amp; c. as per List "F" deducted contra ..... \$</p>										
<p>(g) Loan on debenture bonds, as per List "G" deducted contra (holders) ..... \$</p>										

The nominal amount of unpaid capital liable to be called up is \$ \_\_\_\_\_ which is [available to meet above deficiency] or [charged to debenture holders], or as the case may be.

<p>Estimated surplus (if any) after meeting liabilities of company, subject to cost of liquidation ...</p>	\$									<p>Estimated amount available to meet unsecured creditors, subject to cost of liquidation .....</p> <p>Estimated deficiency of assets to meet liabilities of the company, subject to cost of liquidation .....</p>
	\$									\$

II. — As regards contributories

(a) Where capital is issued as partly paid-up the form should be altered accordingly.

(b) Add particulars of any other capital.

<p>Capital issued and allotted, viz — Founder' Shares of \$ _____ per share, ( _____ Shareholders.) (a) Issued as fully paid. Amount called up at \$ _____ per share, as per List "L" .....</p> <p>Ordinary Shares of \$ _____ per share ( _____ Shareholders.) (a) Issued as fully paid. Amount called up at \$ _____ as per List "M" .....</p> <p>Preference Shares of \$ _____ per share ( _____ Shareholders.) (a) Issued as fully paid. Amount called up at \$ _____ per share, as per List</p>										<p>Estimated surplus as above (if any) subject to cost of liquidation .....</p>

II. — *As regards contributories — (continued)*

(b) Amount, if any, paid in advance of call.	\$						
Less unpaid calls estimated to be irrecoverable .....	\$						
Add deficiency to meet liabilities as above .....	\$						
					Total deficiency as explained in Statement "O" .....	\$	

I, \_\_\_\_\_ of \_\_\_\_\_ make oath and say that the foregoing statement and the several list hereunto annexed marked \_\_\_\_\_ are, to the best of my knowledge and belief, a full, true, and complete statement of the affairs of the above named company, on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, the date of the winding up order (a).

Sworn at \_\_\_\_\_ this day of \_\_\_\_\_ 20\_\_\_\_  
 in Brunei Darussalam  
 Before me.

*Magistrate*  
 Signature

*NOTE — The Magistrate is particularly requested, before swearing the affidavit, to ascertain that the full name, address, and description of the deponent are stated, and to initial all crossings-out or other alterations on the printed form. A deficiency in the affidavit in any of the above respects will entail its refusal by the Court, and will necessitate its being re-sworn.*

(a) Where the Official Receiver has directed any date other than the date of the winding up order substitute such other date.

LIST "A"

UNSECURED CREDITORS

The names to be arranged in alphabetical order and numbered consecutively, creditors for \$100 and upwards being placed first.

LIST "A" — (continued)

NOTES. — 1. When there is a contra account against the creditor, less than the amount of his claim against the company, the amount of the creditor's claim and the amount of the contra account should be shown in the third column, and the balance only be inserted under the heading "Amount of Debt", thus —

\$    ¢

Total amount of claim .....

Less: Contra account .....

No such set-off should be included in List "I".

2. The particulars of any bills of exchange and promissory notes held by creditor should be inserted immediately below the name and address of such creditor.

3. The names of any creditors who are also contributories, or alleged to be contributories, of the company must be shown separately, and described as such at the end of the List.

No.	Name	Address and occupation	Amount debt		Date when contracted		Consideration
					Month	Year	

Signature

Dated

20

## LIST "B"

## CREDITORS FULLY SECURED (NOT INCLUDING DEBENTURE HOLDERS)

No.	Name of creditor	Address and occupation	Amount of debt		Date when contracted		Consideration	Particulars of securities	Date when given	Estimated value of security		Estimated surplus from security	
					Month	Year				\$	¢	\$	¢
			\$	¢						\$	¢	\$	¢

Signature

Dated

20

## LIST "C"

## CREDITORS PARTLY SECURED

(State whether also contributories of the company)

No.	Name of creditor	Address and occupation	Amount of debt		Date when contracted		Consideration	Particulars of securities	Month and year when given	Estimated value of security		Balance of debt unsecured	
					Month	Year				\$	¢	\$	¢
			\$	¢						\$	¢	\$	¢

Signature

Dated

20

## LIST "D"

LIABILITIES OF COMPANY ON BILLS DISCOUNTED OTHER THAN  
THEIR OWN ACCEPTANCES FOR VALUE

No.	Acceptor's name address and occupation	Whether liable as drawer or indorser	Date when due	Amount		Holder's name, address and occupation (if known)	Amount expected to rank for dividend	
				\$	¢		\$	¢

Signature

Dated

20

## LIST "E" — OTHER LIABILITIES

FULL PARTICULARS OF ALL LIABILITIES NOT OTHERWISE  
TO BE GIVEN HERE

No.	Name of creditor or claimant	Amount and occupation	Amount of liability or claim		Date when liability incurred		Nature of liability	Consideration	Amount expected to rank against assets for dividend	
			\$	¢	Month	Year			\$	¢

Signature

Dated

20

LIST "F"

PREFERENTIAL CREDITORS FOR RATES, TAXES, SALARIES AND WAGES

No.	Name of creditor	Address and occupation	Nature of claim	Period during which claim accrued due	Date when due	Amount of claim		Amount payable in full		Difference ranking for dividend	
						\$	¢	\$	¢	\$	¢

Signature

Dated

20

LIST "G"

LIST OF DEBENTURE HOLDERS

The names to be arranged in alphabetical order and numbered consecutively.

*Separate Lists* must be furnished of holders of each issue of debentures, should more than one issue have been made.

No	Name of holder	Address	Amount		Description of assets over which security extends
			\$	¢	

Signature

Dated

20

LIST "H"

PROPERTY

Full particulars of every description of property not included in any other lists are to be set forth in this list.

Full statement and nature of property	Estimated cost		Estimated producer	
	\$	¢	\$	¢
(a) Cash at Bankers .....				
(b) Cash in hand .....				
(c) Stock in trade, at .....				
(d) Machinery, at .....				
(e) Trade fixtures, fittings, office furniture, utensils &c. ....				
(f) Investments in stocks or shares, &c. ....				
(g) Loans for which mortgage or other security held .....				[state particulars]
(h) Other property, viz —				

Signature

Dated

20

LIST "I"

DEBTS DUE TO THE COMPANY

The names to be arranged in alphabetical order, and numbered consecutively.

NOTE — If any debtor to the company is also a creditor, but for a less amount than his indebtedness, the gross amount due to the company and the amount of the contra account should be shown on the 3rd column, and the balance only be inserted under the heading "Amount of Debt", thus —

	\$	¢
Due to company .....		
Less: Contra account .....		

LIST "I" — (continued)

No such claim should be included in sheet "A".

No.	Name	Residence and occupation	Amount of debt						Folio of ledger or other book where particulars to be found	When contracted		Estimated to produce		Particulars of any securities held for debt
			Good		Doubtful		Bad			Month	Year			
			\$	¢	\$	¢	\$	¢			\$	¢		

Signature

Dated

20

LIST "J"

BILLS OF EXCHANGE, PROMISSORY NOTES ETC. ON HAND  
AVAILABLE AS ASSETS

No.	Name of acceptor of bill or note	Address, etc.	Amount of bill or note		Date when due	Estimated to produce		Particulars of any property held as security for payment of bill or note
			\$	¢		\$	¢	
			\$	¢		\$	¢	

Signature

Dated

20



## LIST "K"

## UNPAID CALLS

Consecutive No.	No. in share register	Name of shareholder	Address and occupation	No. of shares held	Amount of call per share unpaid		Total amount due		Estimated to realise	
					\$	¢.	\$	¢	\$	¢

Signature

Dated

20

## LIST "L"

## LIST OF FOUNDERS' SHARES

Consecutive No.	Register No.	Name of shareholder	Address	Nominal amount of share	No. of shares held	Amount per share called up		Total amount called up	
						\$	¢	\$	¢

Signature

Dated

20

## LIST "M"

## LIST OF ORDINARY' SHARES

Consecutive No.	Register No.	Name of shareholder	Address	Nominal amount of share	No. of shares held	Amount per share called up		Total amount called up	
						\$	¢	\$	¢

Signature

Dated

20

## LIST "N"

## LIST OF PREFERENCE SHARES

Consecutive No.	Register No.	Name of shareholder	Address	Nominal amount of share	No. of shares held	Amount per share called up		Total amount called up	
						\$	¢	\$	¢

Signature

Dated

20

LIST "O" (1)

Deficiency Account

(1) DEFICIENCY ACCOUNT WHERE WINDING UP ORDER MADE WITHIN 3 YEARS OF FORMATION OF COMPANY

	\$	¢		\$	¢
I. Gross profit (if any) arising from carrying on business from date of formation of company to date of winding up order (as per Trading Account annexed) .....			I. Expenditure in carrying on business from date of formation of company to date of winding up orders, viz —		
II. Receipts, if any, during same period from under mentioned sources —					
Interest on loans .....					
Interest on deposits Transfers fees .....					
Amount paid on shares issued and subsequently forfeited (as per list annexed) .....					
III. Other receipts, if any, during same period not included under any of the above headings, viz. ....			II. General Expenditure —		
IV. Deficiency as per statement of affairs (Part II) .....			Salaries .....	\$	¢
			Wages not charged in Trading Account .....	\$	¢
			Rent .....		
			Law costs .....		
			Commission .....		
			Interest on Loans .....		
			Interest on Debentures		
			Miscellaneous Expenditures (as per details annexed) .....		
			III. Director's fees from the date of formation of company to date of winding up order		
			IV. Dividends declared during same period		
			V. Losses and depreciation written off in company's books (1) —		
			Bad debts .....		
			Losses on investments .....		
			Depreciation on property .....		
			Preliminary expenses .....		
			VI. Losses and depreciation not written off in company's books, now written off by directors (1) —		
			Bad debts .....		
			Losses on investments .....		
			Depreciation on property .....		
			Preliminary expenses .....		
			VII. Other losses and expenses .....		
Total amount to be accounted for (2)			Total amount accounted for (2)	\$	
\$					

NOTES. — (1) Where particulars are numerous they should be inserted in a separate schedule.  
 (2) These figures should agree.

Signature

Dated

20

LIST "O" (2)

Deficiency Account

(2) DEFICIENCY ACCOUNT WHERE WINDING UP ORDER MADE MORE THAN 3 YEARS AFTER FORMATION OF COMPANY

	\$	¢		\$	¢
I. Excess of assets over capital and liabilities on the (1) day of 20 (if any) as per company's Balance Sheet (This and any previous Balance Sheets to be annexed or handed to O.R.) .....			I. Excess of capital and liabilities over assets on the (1) day of 20 (if any), as per company's Balance Sheet. (This and any previous Balance Sheets to be annexed or handed to O.R.) .....		
II. Gross profits (if any) arising from carrying on business from the (1) day of 20, to date of winding up order as per Trading Account annexed .....			II. Expenses in carrying on business from the (1) day of 20, to date of winding up order, viz —		
III. Receipt, (if any) during same period from undermentiones sources —					
Interest on loans .....					
Interest on deposits .....					
Transfers fees .....					
Amount paid on shares issued and subsequently forfeited (as per lists) annexed .....			II. General Expenditure —	\$	¢
IV. Other receipts, (if any) during same period not included under any of the above headings			Salaries .....		
V. Deficiency as per statement of affairs (Part II) .....			Wages not charged in Trading Account .....		
			Rent .....		
			Law costs .....		
			Commission .....		
			Interest on Loans .....		
			Interest on Debentures		
			Miscellaneous Expenditures (as per details annexed) .....		
			III. Directors' fees from (1) of 20, to date of winding up order		
			IV. Dividends declared during same period		
			V. Losses and depreciation from the day of 20, (1), written off in company's books (2) —		
			Bad debts .....		
			Losses on investments .....		
			Depreciation on property .....		
			Preliminary expenses .....		
			VI. Losses and depreciation not written off in company's books, now written off by directors (2) —		
			Bad debts .....		
			Losses on investments .....		
			Depreciation on property .....		
			Preliminary expenses .....		
			VII. Other losses and expenses (2) .....		
Total amount to be accounted for (3)	\$		Total amount accounted for (3)	\$	

NOTES. — (1) 3 years before date of winding up order.  
 (2) Where particulars are numerous they should be inserted in a separate folder.  
 (3) These figure should agree.

Signature

Dated

20

## LIST "P"

IN SUBSTITUTION FOR SUCH OF THE LISTS NAMED "A" to  
"O" AS WILL HAVE TO BE RETURNED BLANK

List	Particulars, as per front sheet	Remarks <i>Where no particulars are entered on any one or more of the Lists named "A" to "O" the word "Nil" should be inserted in this column opposite the particular List or Lists left blank</i>
A	Unsecured creditors .....	
B	Creditors fully secured (not including debenture holders) ...	
C	Creditors partly secured .....	
D	Liabilities on bills discounted other than the company's own acceptances for value .....	
E	Other liabilities .....	
F	Preferential creditors for rates, taxes, wages &c .....	
G	Loans on debenture bonds .....	
H	Property .....	
I	Book debts .....	
J	Bills of Exchange or other similar securities on hand .....	
K	Unpaid calls .....	
L	Founder's shares .....	
M	Ordinary shares .....	
N	Preference shares .....	
O	Deficiency Account .....	

Signature

Dated

20

## FORM 24

(rule 45)

## REPORT OF RESULT OF MEETING OF CREDITORS OR CONTRIBUTORIES

In the matter etc.

I, A.B., the Official Receiver of the Court [*or as the case may be*] chairman of a meeting of the creditors [*or contributories*] of the above named company summoned by advertisement [*or notice*] dated the      day of      , 20      , and held on the      day of      20      , at      , in the      , do hereby report to the Court the result of such meeting as follows —

The said meeting was attended, either personally or by proxy, by      creditors whose proofs of debt against the said company were admitted for voting purposes, amounting in the whole to the value of \$      [*or by      contributories, holding in the whole      shares in the said company, and entitled respectively by the regulations of the company to the number of votes hereinafter mentioned*].

The question submitted to the said meeting was, whether the creditors [*or contributories*] of the said company wished that [*here state proposal submitted to the meeting*];

The said meeting was unanimously of opinion that the said proposal should [*or should not*] be adopted; [*or the result of the voting upon such question was as follows:*] (*a*)

(*a*) Here set out the majorities by which the respective resolutions were carried.

FORM 24 — (continued)

RESOLUTIONS AT MEETINGS	Voting on resolutions					
	For			Against		
	No.	Amount		No.	Amount	
(State the substance of any resolutions passed and give names of committee of inspection (if any), and amount of their proofs if creditors or shares if contributories).						
CREDITORS —						
	No.	Shares	Votes	No.	Shares	Votes
CONTRIBUTORIES —						

Dated this      day of                      20

(Signed)

*H.T.*

Chairman

FORM 25

(rule 45)

## ORDER APPOINTING LIQUIDATOR

*(Title)*

the day of 20

Upon the application of the Official Receiver and provisional liquidator of the above named company, by summons dated \_\_\_\_\_ and upon hearing the applicant in person and upon reading the order to wind up the said company dated \_\_\_\_\_ 20\_\_\_\_, and the reports of the Official Receiver of the results of the meetings of creditors and contributories made to the Court and respectively dated the \_\_\_\_\_, and the affidavit of \_\_\_\_\_ as to the fitness of the liquidator hereinafter named filed \_\_\_\_\_. It is ordered that \_\_\_\_\_ of \_\_\_\_\_ be appointed liquidator of the above named company.

*(a)* It is also ordered that the following persons be appointed a committee of inspection to act with the said liquidator, namely —

And it is ordered that the said liquidator do within 7 days from the date of this order give security to the satisfaction of the Official Receiver as provided by the Companies (Winding Up) Rules.

And notice of this order is to be gazetted and advertised in the *(b)*.

*(a)* To be struck out if no committee of inspection appointed.

*(b)* State name of newspaper (if any).



## FORM 26

(rule 47)

CERTIFICATE THAT LIQUIDATOR OR  
SPECIAL MANAGER HAS GIVEN SECURITY*(Title)*

This is to certify that *A.B.*, of \_\_\_\_\_, who was on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, appointed liquidator [*or* special manager of the above named company], has duly given security to the satisfaction of the Official Receiver.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

(Signed)

*J.S.*

Official Receiver

## FORM 27

(rule 45)

## ADVERTISEMENT OF APPOINTMENT OF LIQUIDATOR

In the matter of \_\_\_\_\_, Berhad.

By order of the \_\_\_\_\_, dated the \_\_\_\_\_ of \_\_\_\_\_ 20\_\_\_\_

Mr. \_\_\_\_\_ of \_\_\_\_\_ has been appointed liquidator of the above named company with [or without] a committee of inspection.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

FORM 28

(rule 46)

Fee \$3.00

*NOTICE OF APPOINTMENT OF LIQUIDATOR*MEMBERS OR CREDITORS VOLUNTARY WINDING UP OR  
WINDING UP BY THE COURT

## PURSUANT TO SECTION 238

Name of company or title of proceedings (as the case may be)

To The Registrar of Companies.

I, (or We) of hereby give you notice that I (or We) have  
 been appointed liquidator(s) of Company, Berhad by (a)

(Signature)

(b)

Dated this day of 20

Presented for filing by

(a) *State whether appointed by resolution of the company or by the creditors or by order of the Court and give date of resolution or order.*

(b) *To be signed by each liquidator if more than one.*

## FORM 29

(rules 52)

## ORDER DIRECTING PUBLIC EXAMINATION

*(Title)*

Upon reading the reports of the Official Receiver in the above matter, dated respectively the day of 20 , the day of 20 and .

It is ordered that the several persons whose names and addresses are set forth in the schedule hereto do attend before the Court on a day and at a place to be named for the purpose, and be publicly examined as to the promotion or formation of the company, and as to the conduct of the business of the company, and as to their conduct and dealings as directors or officers of the company.

## THE SCHEDULE REFERRED TO

Name	Address	Connection with the company

## FORM 30

(rule 45)

## ORDER FOR APPOINTING TIME FOR PUBLIC EXAMINATION

*(Title)*

Upon the application of the Official Receiver in the above matter, it is ordered that the public examination of who, by the order of the Court dated the day of 20 , was directed to attend before the Court to be publicly examined, be held at the High Court on the day of 20 , at o'clock in the noon.

And it is ordered that the above named do attend at the place and time above mentioned.

Dated this day of 20

*NOTES.* — Notice is hereby given that if you, the above named fail, without reasonable excuse, to attend at the time and place aforesaid, you will be liable to committed to prison without further notice.

## FORM 31

(rule 54)

## NOTICE TO ATTEND PUBLIC EXAMINATION

*(Title)*

Whereas by an order of this Court, made on the      day of      20      , it was ordered that you, the under mentioned      should attend before the Court on the day and at a place to be named for the purpose, and be publicly examined as to the promotion or formation of the company, and as to the conduct of the business or the company, and as to your conduct and dealings as *(a)*

And whereas the      day of      20      , at      o'clock, in the      noon before the      sitting at      has been appointed as the time and place for holding the said examination.

Notice is hereby given that you are required to attend at the said time and place, and at any adjournments of the examination which may be ordered, and to bring with you and produce all books, papers, and writing and other documents in your custody or power in any way relating to the above named company.

And take notice that if you fail, without reasonable excuse, to attend at such time and place, and at the adjournments of the said public examination which may be ordered, you will be liable to be committed to prison without further notice.

Dated this      day of      20

To

Official Receiver

*(a) Insert director or officer [as the case may be].*

## FORM 32

(rule 60)

APPLICATION FOR APPOINTMENT OF SHORTHAND WRITER TO TAKE  
DOWN NOTES OF PUBLIC EXAMINATION AND ORDER THEREON*(Title)**Ex parte* the Official Receiver.

I, \_\_\_\_\_ the Official Receiver herein, do hereby, pursuant to rule 60 of the Companies (Winding Up) Rules, apply to the Court for an order for the appointment of \_\_\_\_\_ of \_\_\_\_\_ to take down in shorthand the notes of examination of \_\_\_\_\_ at their public examination, the costs of taking such notes, and of making a transcript thereof, to be paid in accordance with rule 60.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20

Official Receiver

Before

Upon the application of the Official Receiver the Court hereby appoints \_\_\_\_\_ of \_\_\_\_\_ to take down in shorthand the notes of examination, or at any adjournment thereof pursuant to rule 60 of the Companies (Winding up) Rules the costs of taking such notes, and of making a transcript thereof, to be paid in accordance with rule 60.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20

FORM 33

(rule 60)

DECLARATION BY SHORTHAND WRITER

*(Title)*

Before

I, \_\_\_\_\_, of \_\_\_\_\_, the shorthand writer appointed by this Court to take down the examination of \_\_\_\_\_, do solemnly and sincerely declare that I will truly and faithfully take down the questions and answers put to and given by the said \_\_\_\_\_ in this matter, and will deliver true and faithful transcripts thereof as the Court may direct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20

[Declared before me at the time and place \_\_\_\_\_ above mentioned.]

FORM 34

(rule 57)

NOTES OF PUBLIC EXAMINATION WHERE  
SHORTHAND WRITER IS NOT APPOINTED*(Title)**PUBLIC EXAMINATION OF (a)*

Before                      at the Court                      this                      day of                      20

The above named                      , being sworn and examined at the time and place above mentioned, upon the several questions following being put and propounded to him, gave the several answers thereto respectively following each question, that is say —

A

These are the notes of the public examination referred to in the memorandum of public examination of                      taken before me this                      day of                      20 .

*(a) Mr. an officer [or as the case may be] of the above named company.*

FORM 35

(rule 57)

NOTES OF PUBLIC EXAMINATION WHERE  
SHORTHAND WRITER IS NOT APPOINTED

*(Title)*

*PUBLIC EXAMINATION OF (a)*

Before \_\_\_\_\_ at the Court

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

The above named \_\_\_\_\_, being sworn and examined at the time and place above mentioned, upon his oath saith as follows —

A

These are the notes of the public examination referred to at the memorandum of public examination of \_\_\_\_\_, taken before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

*(a) Mr. an officer [or as the case may be] of the above named company.*



## FORM 36

(rule 61)

REPORT TO COURT WHERE PERSON EXAMINED REFUSES TO  
ANSWER TO SATISFACTION OF REGISTRAR OR OFFICER*(Title)*

At the examination of (a) \_\_\_\_\_ held before me this day  
day of \_\_\_\_\_ 20 \_\_\_\_\_, the following question was [allowed by me to be] put to the  
said [ \_\_\_\_\_ ].

*Q. (b)*

The (c) \_\_\_\_\_ refused to answer the said question.

(or) The (c) \_\_\_\_\_ answered the said question as follows —

*A. (d)*

I thereupon named the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, at as the time and place for  
such [refusal to] answer to be reported to the Hon. Mr Justice

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Registrar

[or as the case may be]

*(a) e.g., A.B., a person ordered to attend for examination.**(b) Here state question.**(c) Witness.**(d) Here insert answers (if any).*

FORM 37

(section 207)

## ORDER ON PERSONS TO ATTEND AT CHAMBERS TO BE EXAMINED

*(Title)*

*A.B.* of & c. and *E.F.* of & c. are hereby severally ordered to attend at (a) on the       day of       , at       of the clock in the       noon, to be examined on the part of the Official Receiver [*or* the liquidator] for the purpose of proceedings directed by the Court to be taken in the above matter. [And the said *A.B.*, is hereby required to bring with him and produce, at the time and place aforesaid, the documents mentioned in the schedule hereto, and all other books, papers, deeds, writings, and other documents in his custody or power in anywise relating to the above named company].

Dated this       day of       20

This order was made on the application of *Messrs. C. and D.*, of  
Solicitors for

The schedule above referred to

(a) *State place of examination.*

FORM 38

(rule 56)

## WARRANT AGAINST PERSON WHO FAILS TO ATTEND EXAMINATION

*(Title)*

To the bailiff of our said Court, and to each and all the police officers and to the Director of Prisons.

WHEREAS by an order of this Court, made on the        day of        20    ,  
(a)        was ordered to attend before the Court on a day and at a place to be named for the purpose of being publicly examined.

AND WHEREAS by evidence taken upon oath, it has been made to appear to the satisfaction of the Court that the        day of        , 20    , at        o'clock in the noon before the High Court sitting at        was appointed as the time and place for holding the said examination, and that notice of the said order and of the said time and place so appointed was duly served upon the said (a).

(AND WHEREAS the said (a)        did without good cause fail to attend on the said        day of        , 20    , for the purpose of being examined, according to the requirements of the said order of this Court made on the        day of        , 20    , directing him so to attend).

(or, and that the said (a)        has absconded) (or, and that there is good reason to believe that the said (a)        is about to abscond) with a view of avoiding examination under the Companies Act.

THESE ARE THEREFORE to require you the said bailiff and police officers to take the said (a)        and to deliver him to the Director of Prisons, and you the said Director of Prisons to receive the said (a)        and him safely keep in prison until such time as the Court may order.

Dated the        day of        , 20   

Judge

(a) *Name of person required to attend.*

[GN 68/1985]



FORM 40

(rule 63)

## NOTICE OF DISCLAIMER OF LEASE

*(Title)*

Take notice that, pursuant to an order of the Court dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I, \_\_\_\_\_, the liquidator of the above named company, by writing under my hand bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, disclaimed all interest in the lease dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, whereby the premises (a) \_\_\_\_\_ were demised to \_\_\_\_\_ at a rent of \$ \_\_\_\_\_ per annum for a term of \_\_\_\_\_.

The above mentioned disclaimer has been filed at the office of the Registrar at \_\_\_\_\_ and notice thereof filed in the Land Office.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Liquidator

To

(address)

(a) *Insert description of property disclaimed.*

## FORM 41

(rule 67)

NOTICE BY LIQUIDATOR REQUIRING PAYMENT OF MONEY  
OR DELIVERY OF BOOKS, &c., TO LIQUIDATOR*(Title)*

Take notice that I, the undersigned *(a)* \_\_\_\_\_ have been appointed liquidator of the above named company, and that you, the under mentioned *(b)* \_\_\_\_\_, are required, within \_\_\_\_\_ days after service hereof, to pay to me [surrender, or transfer to or into my hands] \_\_\_\_\_ as liquidator of the said company at my office, situate at *(c)* \_\_\_\_\_ &c., the sum of \$ \_\_\_\_\_ being the amount of debt appearing to be due from you on your account with the said company [or any sum or balance, books, papers, estate or effects], [*or specifically describe the property*] now being in your hands, and to which the said company is entitled [*or otherwise as the case may be*].

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

(Signed)

To *(b)*

Liquidator

(Address)

*(a) Name of liquidator.**(b) Name of person to whom notice is addressed.**(c) Address of liquidator's office.*

## FORM 42

(rule 68)

PROVISIONAL LIST OF CONTRIBUTORIES TO BE  
MADE OUT BY LIQUIDATOR*(Title)*

The following is a list of company liable to be placed on the list of contributories of the said company, made out by me from the books and papers of the said company, together with their respective addresses and the number of shares [*or* extent of interest] to be attributed to each and the amount called up and the amount paid-up in respect of such shares (or interest) so far as I have been able to make out or ascertain the same.

In the first part of the list, the persons who are contributories in their own right are distinguished.

In the second part of the said list, the persons who are contributories as being representatives of, or being liable to the debts of others, are distinguished.

## FIRST PART — CONTRIBUTORIES IN THEIR OWN RIGHT

Serial No.	Name	Address	Description	In what character included	Number of shares [ <i>or</i> extent or interest]	Amount called up ( <i>a</i> )	Amount paid up ( <i>a</i> )
						\$	\$

## FORM 42 — (continued)

SECOND PART — CONTRIBUTORIES AS BEING  
REPRESENTATIVES OF, OR LIABLE TO THE DEBTS OF, OTHERS

Serial No.	Name	Address	Description	In what character included	Number of shares [or extent or interest]	Amount called up (a)	Amount paid up (a)
						\$	\$

(a) At date of commencement of winding up.



## FORM 43

(rule 69)

NOTICE TO CONTRIBUTORIES OF APPOINTMENT  
TO SETTLE LIST OF CONTRIBUTORIES*(Title)*

Take notice that I, \_\_\_\_\_ the liquidator of the above named company, have appointed the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_ of the clock in the \_\_\_\_\_ noon, at *(a)* \_\_\_\_\_, to settle the list of the contributories of the above named company, made out by me, pursuant to the Companies Act and the rules thereunder, and that you are included in such list. The character and the number of shares [*or* extent of interest] in and for which you are included and the amount called up and the amount paid-up in respect of such shares (or interest) is stated below; and if no sufficient cause is shown by you to the contrary at the time and place aforesaid, the list will be settled, including you therein.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Liquidator

*(a) Insert place of appointment.*

To Mr. *A.B.* [and to Mr *C.D.*,  
his solicitor]. }

No. on List	Name	Address	Description	In what character included	Number of shares [ <i>or</i> extent or interest]	Amount called up <i>(a)</i>	Amount paid up <i>(a)</i>
						\$	\$

*(a) At date of commencement of winding up.*

## FORM 44

(rule 69)

AFFIDAVIT OF POSTAGE OF NOTICES OF APPOINTMENT  
TO SETTLE LIST OF CONTRIBUTORIES*(Title)*

I, \_\_\_\_\_ a *(a)* \_\_\_\_\_ make oath and say as follows —

1. That I did on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, send to each contributory mentioned in the list of contributories made out by the [Official Receiver and] liquidator on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, and now on the file of proceedings of the above named company, at the address appearing in such list, a notice of the time and place of the appointment to settle the list of contributories in the form hereunto annexed, marked “A”, except that in the tabular form at the foot of such copies respectively I inserted the number, name, address, description, in what character included and *(b)* \_\_\_\_\_ the amount called up and the amount paid-up in respect of the shares (or interest) of the person on whom such copy of the said notice was served.

2. That I sent the said notices by putting the same prepaid into the post office at \_\_\_\_\_ before the hour of \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon on the said day \_\_\_\_\_.

Sworn, &c.

*(a) State the description of the deponent.*

*(b) “Number of shares” or “extent of interest”.*

## FORM 45

(rule 70)

CERTIFICATE OF LIQUIDATOR OF FINAL STATEMENT  
OF LIST OF CONTRIBUTORIES*(Title)*

Pursuant to the Companies Act and to the rules made thereunder, I, the undersigned, being the liquidator of the above named company, hereby certify that the result of the settlement of the list of contributories of the above named company, so far as the said list has been settled, up to the date of this certificate, is as follows —

1. The several persons whose names are set forth in the second column of the First Schedule hereto have been included in the said list of contributories as contributories of the said company in respect of the *(a)* set opposite the names of such contributories respectively in the said Schedule.

I have, in the first part of the said Schedule, distinguished such of the said several persons included in the said lists as are contributories in their own right.

I have, in the second part of the said Schedule, distinguished such of the said several persons included in the said list as are contributories as being representatives of or being liable to the debts of others.

2. The several persons whose names are set forth in the second column of the Second Schedule hereto, and were included in the provisional list of contributories, have been excluded from the said list of contributories.

3. I have, in the sixth column of the first part of the First Schedule and in the seventh column of the second part of the First Schedule and in the same column of the Second Schedule, set forth opposite the name of each of the several persons respectively the date when such person was included in or excluded from the said list of contributories.

4. I have in the seventh and eighth columns of the first part of the First Schedule hereto and in the eighth and ninth columns of the second part of the said Schedule, set forth opposite the names of each of the said persons respectively the amount called up at the date of the commencement of the winding up and the amount paid at such date in respect of their shares (or interest).

## FORM 45 — (continued)

5. Before setting the said list, I was satisfied by the affidavit of \_\_\_\_\_, clerk to \_\_\_\_\_, duly filed with the proceedings herein, that notice was duly sent by post to each of the persons mentioned in the said list, informing him that he was included in such list in the character and for the (a) stated therein and of the amount called up and the amount paid-up in respect of such shares (or interest) and of the day appointed for finally settling the said list.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

In the matter of \_\_\_\_\_ Berhad.

(a) "Number of shares" or "extent of interest".

The FIRST SCHEDULE above referred to

## FIRST PART — CONTRIBUTORIES IN THEIR OWN RIGHT

Serial No. in List	Name	Address	Description	Number of shares [or extent or interest]	Date when included in the List	Amount called up	Amount paid up
						\$	\$

In the matter of \_\_\_\_\_ Berhad.

## FORM 45 — (continued)

SECOND PART — CONTRIBUTORIES AS BEING  
REPRESENTATIVES OF OR LIABLE TO THE DEBTS OF OTHERS

Serial No. in List	Name	Address	Description	In what character included	Number of shares [or extent or interest]	Date when included in the List	Amount called up	Amount paid up
							\$	\$

In the matter of

Berhad.

The SECOND SCHEDULE above referred to

Serial No. in List	Name	Address	Description	In what character proposed to be included]	Number of shares [or extent of interest]	Date when excluded from the List
						\$

FORM 46

(rule 71)

NOTICE TO CONTRIBUTORY OF FINAL SETTLEMENT OF LIST OF  
CONTRIBUTORIES AND THAT HIS NAME IS INCLUDED

(Title)

Take notice that I, \_\_\_\_\_, the liquidator of the above named company, have, by certificate, dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, under my hand, finally settled the list of contributories of the said company, and that you are included in such list. The character and the number of shares [*or* extent of interest] in and for which you are included and the amount called up and the amount paid-up in respect of such shares (or interest) is stated below.

Any application by you to vary the said list of contributories or, that your name be excluded therefrom, must be made by you to the Court by summons within 21 days from the service on you of this notice, or the same will not be entertained.

The said list may be inspected by you at the chambers of the Registrar at the Courts of Justice on any day between the hours of \_\_\_\_\_ and \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

(Signed)

Liquidator

To Mr  
[*or* to Mr  
his solicitor



No. in List	Name	Address	Description	In what character included	Number of shares [ <i>or</i> extent or interest]	Amount called up (a)	Amount paid-up (a)
						\$	\$

(a) *At date of commencement of winding up.*

(FORM 47

(rule 73)

## SUPPLEMENTAL LIST OF CONTRIBUTORIES

*(Title)*

1. The following is a list of persons who, since making out the list of contributories herein, dated the        day of                    20     , I have ascertained are, or have been, holders of shares in [*or* members of] the above named company, and to the best of my judgment are contributories of the said company.

2. The said supplemental list contains the names of such persons together with their respective addresses and the number of shares [*or* extent of interest] and the amount called up at the commencement of the winding up and the amount paid at such date in respect of the shares (or interest) to be attributed to each.

3. In the first part of the said list such of the said persons as are contributories in their own right are distinguished.

4. In the second part of the said list such of the said persons as are contributories as being representatives of, or being liable to the debts of others, are distinguished.

*[The supplemental list is to be made out in the same form as the original list.]*

FORM 48

(rule 71)

## AFFIDAVIT OF SERVICE OF NOTICE TO CONTRIBUTORY

*(Title)*

I, \_\_\_\_\_ (*a*) \_\_\_\_\_ of \_\_\_\_\_, make oath and say as follows —

1. I did on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, in the manner hereinafter mentioned, serve a true copy of the notice now produced and shown to me and marked “A”, upon each of the respective persons whose names, addresses, and descriptions appear in the second, third, and fourth columns of the First Schedule to the list of contributories of the said company made out by the [Official Receiver and] liquidator of the company on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, and now on the file of proceedings of the said company. In the tabular form at the foot of such copies respectively I inserted the number on list, name, address, description, in what character included, and (*b*) \_\_\_\_\_ and the amount paid-up and the amount called up at the date of the commencement of the winding up in respect of the shares (or interest) of the person on whom such copy of the said notice was served, in the same words and figures as the same particulars are set forth in the said schedule.

2. I served the said respective copies of the said notice, by putting such copies respectively, duly addressed to such persons respectively, according to their respective names and addresses appearing in the said Schedule, and my placing the same prepaid in the Post Office at before the hour of \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon of the said \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Sworn &c.

*(a) State full description of the deponent.*

*(b) “Number of shares” or “extent of interest”.*



## FORM 49

(rule 72)

## ORDER ON APPLICATION TO VARY LIST OF CONTRIBUTORIES

*(Title)*

Upon the application of *W.N.*, by summons dated the       day of 20       , for an order that the list of contributories of the company and the liquidator's certificate finally settling the same be varied by excluding the name of the applicant therefrom [*or, as the case may be*], and upon hearing &c., and upon reading &c. It is ordered, that the list of contributories of the company and the liquidator's certificate finally settling the same be varied by excluding the name of the said *W.N.* from the said list of contributories, or by including the name of the said *W.N.* as a contributory in the said list for shares, [*or, as the case may be*] [*or the Court does not think fit to make any order on the said application, except that the said *W.N.* do pay to the liquidator of the said company his costs of this application, to be taxed in case the parties differ*].

FORM 50

(rule 74(1))

NOTICE TO EACH MEMBER OF COMMITTEE OF INSPECTION OF MEETING  
FOR SANCTION TO PROPOSED CALL*(Title)*

Take notice that a meeting of the committee of inspection of the above company will be held at \_\_\_\_\_ on the (a) day of 20 , at o'clock in the noon, for the purpose of considering and obtaining the sanction of the committee to a call of \$ \_\_\_\_\_ per share proposed to be made by the liquidator on the contributories.

Annexed hereto is a statement showing the necessity for the proposed call and the amount required.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20

(Signed)

Liquidator

*(a) To be a date not less than seven days from the date when the notice will in course of post reach the person to whom it is addressed.*

**Statement**

1. The amount due in respect of proofs admitted against the company, and the estimated amount of the costs, charges, and expenses of the winding up, form in the aggregate the sum of \$ \_\_\_\_\_ or thereabouts.

2. The assets of the company are estimated to realise the sum of \$ \_\_\_\_\_. There are no other assets, except the amount due from certain of the contributories to the company, and in my opinion it will not be possible to realise in respect of the said amounts more than \$ \_\_\_\_\_.

3. The list of contributories has been duly settled, and persons have been settled on the list in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the company, and of paying the costs, charges, and expenses, of the winding up, I estimate that a sum of \$ \_\_\_\_\_ will be required in addition to the amount of the company's assets hereinbefore mentioned.

FORM 50 — *(continued)*

5. In order to provide the said sum of \$ \_\_\_\_\_ it is necessary to make a call on the contributories, and having regard to the probability that some of them will partly or wholly fail to pay the amount of the call, I estimate that for the purpose of realising the amount required it is necessary that a call of \$ \_\_\_\_\_ per share should be made.

*(Annex tabular statement showing amounts of debts, costs &c., and of assets)*

## FORM 51

(rule 74(2))

ADVERTISEMENT OF MEETING OF COMMITTEE OF INSPECTION  
TO SANCTION PROPOSED CALL

*(Title)*

Notice is hereby given that the undersigned liquidator of the above named company proposes that a call should be made “on all the contributories of the said company”, *or, as the case may be,* \_\_\_\_\_ of \$ \_\_\_\_\_ per share, and that he has summoned a meeting of the committee of inspection of the company, to be held at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, to obtain their sanction to the proposed call.

Each contributory may attend the meeting, and be heard or make any communication in writing to the liquidator or the members of the committee of inspection in reference to the intended call.

A statement showing the necessity of the proposed call and the purpose for which it is intended may be obtained on application to the liquidator at his office at *(a)*.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Liquidator

*(a) Insert address.*

FORM 52

(rule 74(4))

## RESOLUTION OF COMMITTEE OF INSPECTION SANCTIONING CALL

*(Title)*

Resolved, that a call of \$            per share be made by the liquidator on all the contributories of the company [*or, as the case may be*].

(Signed)

Members of the Committee of Inspection

Dated this        day of            20

FORM 53

(rule 77)

NOTICE OF CALL SANCTIONED BY COMMITTEE OF INSPECTION  
TO BE SENT TO CONTRIBUTORY*(Title)*

Take notice that the committee of inspection in the winding up of this company have sanctioned a call of            per share on all the contributories of the company.

The amount due from you in respect of the call is the sum of \$            . This sum should be paid by you direct to me at my office (a)            on or before the day of            20 .

Dated this            day of            20

To Mr

Liquidator

---

*NOTE* — If you do not pay the sum due from you by the date mentioned interest will be claimed on such sum at the rate of 6 *per cent per annum* from the said date until payment.

*(a) Insert address.*

## FORM 54

(rule 75)

## SUMMONS FOR LEAVE TO MAKE CALL

*(Title)*

Let the several persons whose names and addresses are set forth in the second column of the Schedule hereto, being contributories of the above named company, as shown in the third column of the said schedule, attend at \_\_\_\_\_ on the day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, on the hearing of an application on the part of the [Official Receiver and] liquidator of the company for an order that he may be at liberty to make a call to the amount of \_\_\_\_\_ per share on all the contributories [*or as the case may be*] of the said company.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

This summons was taken out by \_\_\_\_\_ of \_\_\_\_\_ Solicitors for the [Official Receiver and] liquidator.

To \_\_\_\_\_

*NOTE* — If you do not attend either in person or by your solicitor, at the time and place above mentioned, such order will be made and proceedings taken as the Court may think just and expedient.

## SCHEDULE

Number on List	Name and address	In what character included

## FORM 55

(rule 75)

## AFFIDAVIT OF LIQUIDATOR IN SUPPORT OF PROPOSAL FOR CALL

*(Title)*

I, \_\_\_\_\_ of, &c., the liquidator of the above named company, make oath and say as follows —

1. I have in the Schedule now produced and shown to me, and marked with the letter “A”, set forth a statement showing the amount due in respect of the debts proved and admitted against the said company, and the estimated amount of the costs, charges, and expenses of and incidental to the winding up the affairs thereof, and which several amounts form in the aggregate the sum of \$ \_\_\_\_\_ or thereabouts.

2. I have also in the said Schedule set forth a statement of the assets in hand belonging to the said company, amounting to the sum of \$ \_\_\_\_\_ and no more. There are no other assets belonging to the said company, except the amounts due from certain of the contributories of the said company, and, to the best of my information and belief, it will be impossible to realise in respect of the said amounts more than the sum of \$ \_\_\_\_\_ or thereabouts.

3. \_\_\_\_\_ persons have been settled by me on the list of contributories of the said company in respect of the total number of \_\_\_\_\_ shares.

4. For the purpose of satisfying the several debts and liabilities of the said company and of paying the costs, charges, and expenses of and incidental to the winding up the affairs thereof, I believe the sum of \$ \_\_\_\_\_ will be required in addition to the amount of the assets of the said company mentioned in the said Schedule A, and the said sum of \$ \_\_\_\_\_.

5. In order to provide the said sum of \$ \_\_\_\_\_, it is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and, having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that, for the purpose of realising the amount required as before mentioned, it is necessary that a call of \$ \_\_\_\_\_ per share should be made.

Sworn, &c.

## FORM 56

(rule 75)

## ADVERTISEMENT OF APPLICATION FOR LEAVE TO MAKE CALL

*(Title)*

In the matter of

Notice is hereby given that the High Court has appointed the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, at \_\_\_\_\_, to hear an application for leave to make a call on all contributories of the said company [*or as the case may be*] and that the liquidator of the said company proposes that such call shall be for \$ \_\_\_\_\_ per share. All persons interested are entitled to attend at such day, hour and place, to offer objection to such call.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Liquidator

## FORM 57

(rule 75)

## ORDER GIVING LEAVE TO MAKE CALL

*(Title)*

Upon the application of the [Official Receiver and] liquidator of the above named company, the order to wind up the above named company, the list of contributories of the said company and the liquidator's certificate of the final settlement of the same, and the affidavit of the said [Official Receiver and] liquidator, filed the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, and the exhibit marked "A" therein referred to, and an affidavit of \_\_\_\_\_ filed the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

It is ordered that leave be given to the [Official Receiver and] liquidator to make a call of \$ \_\_\_\_\_ per share on all the contributories of the said company (a) \_\_\_\_\_.

And it is ordered that each such contributory do on or before the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, pay to the [Official Receiver and] liquidator of the company, the amount which will be due from him or her in respect of such call.

*(a) or as the case may be.*

FORM 58

(rule 76)

## DOCUMENT MAKING CALL

*(Title)*

I, \_\_\_\_\_ the [Official Receiver and] liquidator of the above named company, in pursuance of (a) \_\_\_\_\_ made (*or passed*) this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, hereby make a call of \_\_\_\_\_ per share on all the contributories of the company, which sum is to be paid at any office (b) on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

(a) *An order of Court, or resolution of the committee of inspection.*

(b) *Insert address.*



FORM 59

(rule 77)

## NOTICE TO BE SERVED WITH ORDER SANCTIONING CALL

*(Title)*

The amount due from you, *A.B.*, in respect of the call made pursuant to leave given by the above [*or within*] order is the sum of \$ \_\_\_\_\_, which sum is to be paid by you to me as the liquidator of the said company at my office, (*a*) \_\_\_\_\_.

In default of payment interest at the rate of 6 *per cent per annum* will be charged upon the amount unpaid from the \_\_\_\_\_ day of \_\_\_\_\_ until payment.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

To Mr *A.B.*

Liquidator

*(a) Insert address.*

FORM 60

(rule 78)

AFFIDAVIT IN SUPPORT OF APPLICATION  
FOR ORDER FOR PAYMENT OF CALL

(Title)

I, \_\_\_\_\_ of &c., the liquidator of the above named company, make oath and say as follows —

1. None of the contributories of the said company, whose names are set forth in the schedule hereto annexed, marked “A”, have paid or caused to be paid the sums set opposite their respective names in the said schedule, which sums are the amounts now due from them respectively under the call of \_\_\_\_\_ per share, duly made under the Companies Act, dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

2. The respective amount or sums set opposite the names of such contributories respectively in such schedule are the true amounts due and owing by such contributories respectively in respect of the said call.

A

THE SCHEDULE ABOVE REFERRED TO

No. on List	Name	Address	Description	In what character included	Amount due	
					\$	¢.

Sworn &c.

*NOTE* — In addition to the above affidavit, an affidavit of the service of the application for the call will be required in cases in which the committee of inspection of the Court has authorised a call to be made.

## FORM 61

(rule 78)

## ORDER FOR PAYMENT OF CALL DUE FROM A CONTRIBUTORY

The day of , 20

(Title)

Upon the application of the liquidator of the above named company, and upon reading an affidavit of filed the day of , 20 , and an affidavit of the liquidator filed the day of , 20 , it is ordered that *C.D.*, of, &c., [*or E.F.*, of &c., the legal personal representative of *L.M.*, late of, &c., deceased], one of the contributories of the said company [*or, if against several contributories*, the several persons named in the second column of the schedule to this order, being respectively contributories of the said company], do, on or before the day , 20 , or within 4 days after service of this order, pay to *A.B.*, the liquidator of the said company at his office, (*a*) , the sum of \$ [*if against a legal personal representative add*, out of the assets of the said *L.M.* deceased, in his hands as such legal personal representative as aforesaid, to be administered in due course of administration, if the said *E.F.* has in his hands so much to be administered, or, if against several contributories, the several sums of money set opposite to the respective names in the sixth column of the said schedule hereto], such sum [*or sums*] being the amount [*or amounts*] due from the said *C.D* [*or L.M.*], [*or the said several persons respectively*], in respect of the call of \$ per share duly made, dated the day of , 20 .

And it is ordered that the said several persons do within the like period and at the place aforesaid pay to the said *A.B.*, as such liquidator as aforesaid, interest at the rate of 6 *per cent per annum* on the amounts specified in the sixth column of the said schedule from day of 20 to the date of payment.

And it is ordered that the said several persons do within the like period and at the place aforesaid pay to the said *A.B.*, as such liquidator as aforesaid, the several sums set opposite their respective names in the seventh column of the said schedule, such sums being the proportion of the applicant's costs of the said application payable by such several persons respectively.

[Add appropriate paragraphs as to amounts payable by married women and legal personal representatives, if any].

## FORM 61 — (continued)

## SCHEDULE REFERRED TO IN THE FOREGOING ORDER

No. on List	Name	Address	Description	In what character included	Amount due	
					\$	¢.

NOTE — The copy for service of the above order must be indorsed as follows —

“If you, the under mentioned *A.B.*, neglect to obey this order by the time mentioned therein you will be liable to process of execution, for the purpose of compelling you to obey the same.”

## FORM 62

(rule 78)

## AFFIDAVIT OF SERVICE OF ORDER FOR PAYMENT OF CALL

(Title)

I, *F.B.*, of &c., make oath and say as follows —

1. I did on the      day of      20      , personally serve *G.F.*, of &c., with an order made in this matter by this Court, dated the      day of      , 20      , whereby it was ordered [*set out the order*] by delivering to and leaving with, the said *G.F.*, at      , a true copy of the said order, and at the same time producing and showing unto him, the said *G.F.*, the said original order.

2. There was indorsed on the said copy when so served the following words, that is to say, “*If you, the under mentioned G.F., neglect to obey this order by the time mentioned therein, you will be liable to process of execution for the purpose of compelling you to obey the same*”.

Sworn, &c.



FORM 63 — *(continued)*

Sworn at \_\_\_\_\_ in Brunei Darussalam, } [Deponent's  
 this \_\_\_\_\_ day of \_\_\_\_\_ 20 } signature]  
 Before me

*NOTE* — The proof cannot be admitted for voting at the first meeting unless it is properly completed and lodged with the Official Receiver before the time named in the notice convening the meeting.

*Bills of exchange or other negotiable securities must be produced before the proof can be admitted.*

FORM 64

(rule 90)

PROOF OF DEBT OF WORKMEN

*(Title)*

I (a) \_\_\_\_\_ of (b) \_\_\_\_\_ make an oath and say:

1. That the above named company was on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, and still is justly and truly indebted to the several persons whose names, addresses, and descriptions appear in the schedule endorsed hereon in sums severally set against their names in the sixth column of such schedule for wages due to them respectively as workmen or others in the employ of the company in respect of services rendered by them respectively to the company during such periods as are set out against their respective names in the fifth column of such schedule, for which said sums, or any part thereof, I say that they have not, nor hath any of them had or received any manner of satisfaction or security whatsoever.

Sworn at \_\_\_\_\_ }  
 in Brunei Darussalam. this \_\_\_\_\_ day of \_\_\_\_\_ 20 } Dependent's Signature  
 Before me

*(a) Fill in full name, address, and occupation of deponent.*

*(b) On behalf of the workmen and others employed by the above named company.*

## FORM 64 — (continued)

SCHEDULE referred to on the other side

1	2	3	4	5	6	
No.	Full name of workman	Address	Description	Period over which wages due	Amount due	
					\$	¢.

Signature of Deponent





## FORM 66 — (continued)

Name of creditor	Proofs tendered				
	Amount of proof		Whether admitted, rejected, or standing over for further consideration	If admitted, amount	
	\$	¢.		\$	¢.

## FORM 67

(rule 142(1))

## NOTICE TO CREDITORS OF INTENTION TO DECLARE DIVIDEND

*(Title)*

A (a) dividend is intended to be declared in the above matter. You are mentioned in the statement of affairs, but you have not yet proved your debt.

If you do not prove your debt by the      day of      20      , you will be excluded from this dividend.

Dated this      day of      20

Liquidator

To      [Address]

(a) Insert here "first" or "second", or "final", or as the case may be.



FORM 69

(rule 142(5))

CERTIFIED LIST OF PROOFS FILED UNDER RULE 142(5) COMPANIES  
(WINDING UP) RULES, SPECIAL BANK CASE

(Title)

I hereby certify that the following list has been compared with the proofs filed, and that the names of the creditors and the amounts for which the proofs are admitted are correctly stated.

(Signature)

Dated this                      day of                      20

I hereby certify that a dividend of                      percent has been declared, and that the creditors whose names are set forth below are entitled to the amounts set opposite their respective names.

Liquidator

Dated this                      day of                      20

To the Official Receiver

Full name	Amount of proof		Amount of dividend	
	\$	¢.	\$	¢.

FORM 70

(rule 142(1))

NOTICE TO PERSONS CLAIMING TO BE CREDITORS OF INTENTION TO  
DECLARE FINAL DIVIDEND

*(Title)*

Take notice that a final dividend is intended to be declared in the above matter, and that if you do not establish your claim to the satisfaction of the Court on or before the day of 20 , or such later day as the Court may fix, your claim will be expunged, and I shall proceed to make a final dividend without regard to such claim.

Dated this day of 20

Liquidator

To X.Y.

[Address]

FORM 71

(rule 142(3))

## NOTICE OF DIVIDEND

*(Title)*

Dividend cheques are cancelled at the expiration of 6 months from date of issue and money orders at the expiration of 12 months from date of issue.

[Please bring this Dividend Notice with you]

*(Title)*

Dividend of \_\_\_\_\_ *per cent*

[Address]

[Date]

Notice is hereby given that a \_\_\_\_\_ dividend of \_\_\_\_\_ *per cent* has been declared in this matter, and that the same may be received at my office, as above, on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, or on any subsequent between, the hours of \_\_\_\_\_ and \_\_\_\_\_.

Upon applying for payment **this notice must be produced entire**, together with any bills of exchange, promissory notes or other negotiable securities held by you. If you desire the dividend to be paid to some other person you can sign and lodge with the liquidator an authority in the prescribed Form 72. Otherwise if you do not attend personally you must fill up and sign the subjoined forms of *receipt and authority to deliver*, when a cheque or money order payable to your order will be delivered in accordance with the *authority*.

To

(Signed)

Liquidator

---

*NOTE* — The receipt or authority should, in the case of a firm, be signed in the firm's name, or in the case of a limited company by an officer of the company, so described.

FORM 71 — (continued)

RECEIPT

20

Received of \_\_\_\_\_ in this matter the sum of dollars \_\_\_\_\_ and cents \_\_\_\_\_  
 being the amount payable to me/us in respect of the \_\_\_\_\_ dividend  
 of \_\_\_\_\_ per cent on my/our claim against this company. \_\_\_\_\_  
Payee's Signature

\_\_\_\_\_  
 \$ \_\_\_\_\_  
 \_\_\_\_\_

AUTHORITY FOR DELIVERY

SIR,

PLEASE deliver to

*(Insert the name of the person who is to receive the cheque or money order, or the words "me/(us by post)", at "my/(our risk", if you wish it sent to you in that way.)*

the cheque or money order for the dividend payable to me/us in this matter.

Payee's Signature

To the [Official Receiver and] Liquidator

Date

FORM 72

(rule 142(7))

## AUTHORITY TO LIQUIDATOR TO PAY DIVIDENDS TO ANOTHER PERSON

*(Title)*

To the [Official Receiver and] Liquidator

SIR,

I/We hereby authorise and request you to pay to M

of

(a specimen of whose signature is given below), all dividends as they are declared in the above named matter, and which may become due and payable to me/us in respect of the proof of debt for the sum of \$ \_\_\_\_\_ against the above named company, made [by Mr. \_\_\_\_\_] on my/our behalf.

And I/we further request that the cheque or cheques drawn in respect of such dividends may be made payable to the order of the said M \_\_\_\_\_ whose receipt shall be sufficient authority to you for the issue of such cheque or cheques in his name.

It is understood that this authority is to remain in force until revoked by me/us in writing.

## Signatures

Witness to the signature

of

Witness to the signature

of

## Date

Specimen of signature of person appointed as above

Witness to the signature

of

Witness to the signature of person appointed as above





FORM 73 — (continued)

RECEIPT

No.

20

Received of the \_\_\_\_\_ in this matter the sum of dollars \_\_\_\_\_ and  
cents \_\_\_\_\_ being the amount payable to \_\_\_\_\_ in respect of the  
return of \_\_\_\_\_ per share held by in this company.

Contributory's signature

\_\_\_\_\_  
\$  
\_\_\_\_\_

---

AUTHORITY FOR DELIVERY

SIR,

PLEASE deliver to

*(Insert the name of the person who is to receive the cheque or money order, or the words "me/us by post", at "my/our risk", if you wish it sent to you in that way.)*

the cheque or money order for the return payable to me/us in this matter.

Contributory's signature

To the [Official Receiver and] Liquidator

FORM 74

(rule 143)

SCHEDULE OR LIST OF CONTRIBUTORIES HOLDING PAID-UP SHARES TO WHOM RETURN IS TO BE PAID (a)

In the matter of \_\_\_\_\_ No. \_\_\_\_\_ of 20 .

Number in settled List	Name of contributory as in settled List	Address	Number of shares held as per settled List	Total called up value		Total paid-up value		Arrears of calls at date of return		Previous return of capital appropriated by liquidator for arrears of calls		Amount of return payable at per share		Net return payable		Date and particulars of transfer of interest or other variation in List	
				\$	¢	\$	¢	\$	¢	\$	¢	\$	¢	\$	¢		\$

(a) Where the articles provide that the amount divisible among the members or any class of the members shall be divisible in proportion to the amount paid-up or which ought to have been paid-up at the date of winding up, or contain any other provision which will necessitate further information before a return can be made, columns should be added showing the amount called up and the amount paid-up at such date in respect of shares then held by such members or class of members or such other facts as may be requisite.

FORM 75

(rule 114)

## NOTICE OF MEETING [GENERAL FORM]

*(Title)*

Take notice that a meeting of creditors [or contributories] in the above matter will be held at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon.

*Agenda**(a)*

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

(Signed) *(b)*

Forms of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged not later than \_\_\_\_\_ o'clock on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

*(a) [Here insert purpose for which meeting called].**(b) "Liquidator" or "Official Receiver".*

FORM 76

(rule 115)

## AFFIDAVIT OF POSTAGE OF NOTICES OF MEETING

*(Title)*

I, \_\_\_\_\_ a (a) \_\_\_\_\_, make oath and say as follows —

1. That I did on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, send to each creditor mentioned in the company's statement of affairs [*or* to each contributory mentioned in the register of members of the company] a notice of the time and place of the (b) in the form hereunto annexed marked "A".

2. That the notices for creditors were addressed to the said creditors respectively, according to their respective names and addresses appearing in the statement of affairs of the company or the last known addresses of such creditors.

3. That the notices for contributories were addressed to the contributories respectively according to their respective names and registered or last known addresses appearing in the register of the company.

4. That I sent the said notices by putting the same prepaid into the post office at \_\_\_\_\_ before the hour of \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon on the said day.

Sworn &c.

(a) *State the description of the deponent.*

(b) *Insert here "general" or "adjourned general" or "first" meeting of creditors [or contributories, as the case may be].*

FORM 77

(rule 115)

## CERTIFICATE OF POSTAGE OF NOTICES (GENERAL)

*(Title)*

I, \_\_\_\_\_ a clerk in the office of the Official Receiver, hereby certify —

1. That I did on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, send to *(a)* \_\_\_\_\_ a notice of the time and place of the first meeting, or *(b)* \_\_\_\_\_ in the form hereunto annexed marked “A”.

Paragraphs 2, 3 and 4 as in Form 76.

Signature

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

*(a) Each creditor mentioned in the statement of affairs, or each contributory mentioned in the register of members of the company, or as the case may be.*

*(b) “A general meeting”, or “adjourned general meeting”, or as the case may be.*

FORM 78

(rule 122)

## MEMORANDUM OF ADJOURNMENT OF MEETING

*(Title)*

Before \_\_\_\_\_ at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock.

Memorandum — The *(a)* \_\_\_\_\_ meeting of *(b)* \_\_\_\_\_ in the above matter was held at the time and place above mentioned; but it appearing that *(c)* the meeting was adjourned until the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, then to be held at the same place.

Chairman

*(a) "First" or as the case may be.*

*(b) Insert "creditors" or "contributories", as the case may be.*

*(c) Here state reason for adjournment.*

## FORM 79

(rule 118)

AUTHORITY TO DEPUTY TO ACT AS CHAIRMAN  
OF MEETING AND USE PROXIES*(Title)*

I, \_\_\_\_\_ the Official Receiver [or the liquidator] do hereby nominate Mr. \_\_\_\_\_ of \_\_\_\_\_ to be chairman of the meeting of creditors [or contributories] in the above matter, appointed to be held at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, [and I depute him (a) \_\_\_\_\_ to attend such meeting and use, on my behalf, any proxy or proxies held by me in this matter].

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Official Receiver,  
or Liquidator

*(a) Where authority given by the Official Receiver. Here insert "being a person under my official control".*

## FORM 80

(rule 132)

## GENERAL PROXY

*(Title)*

I/We, \_\_\_\_\_ of \_\_\_\_\_, a creditor (or contributory) hereby appoint (1) \_\_\_\_\_ to be my/our general proxy to vote at the meeting of creditors (or contributories) to be held in the above matter on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, or at any adjournment thereof.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

(Signed) (2)





## FORM 81

(rule 132)

## SPECIAL PROXY

*(Title)*

I/We, \_\_\_\_\_ of \_\_\_\_\_, a creditor (or contributory), hereby appoint (1) \_\_\_\_\_ as my/our proxy at the meeting of creditors (or contributories) to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, or at any adjournment thereof, to vote (a) \_\_\_\_\_ the resolution numbered \_\_\_\_\_ in the \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

(Signed) (2)

*(a) Here insert the word "for" or the word "against" as the case may require, and specify the particular resolution.*

## NOTES. —

1. *The person appointed proxy may be the Official Receiver, the liquidator, or such other person as the creditor (or contributory) may approve, and the proxy form when signed must be lodged by the time and at the address named for that purpose in the notice convening the meeting at which it is to be used. A creditor (or contributory) may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters —*

- (a) for or against the appointment or continuance, in office of any specified person as liquidator or as member of the committee of inspection;*
- (b) on all questions relating to any matter, other than those above referred to, arising at a specified meeting or adjournment thereof.*

2. *If a firm, sign the firm's trading title, and add "by A.B., a partner in the said firm". If the appointer is a corporation, then the form of proxy must be under its common seal or under the hand of some officer duly authorised in the behalf, and the fact that he is so authorised must be stated.*

*Certificate to be signed by person other than creditor or contributory filling up the above proxy.*

FORM 81 — *(continued)*

I, \_\_\_\_\_ of \_\_\_\_\_, being a *(b)* \_\_\_\_\_ hereby certify that all insertions in the above proxy are in my own handwriting, and have been made by me at the request of the above named \_\_\_\_\_ and in his presence before he attached his signature (or mark) thereto.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

(Signature)

*(b) Here state whether clerk or manager in the regular employment or the creditor or contributory or solicitor employed by him in connection with the matter or a commissioner to administer oaths in the Supreme Court.*

In a voluntary winding up the liquidator, or if there is no liquidator, the chairman of a meeting, may but the Official Receiver may not be appointed proxy. The proxy form will be altered accordingly.

FORM 82

(rule 157)

APPLICATION TO OFFICIAL RECEIVER TO  
AUTHORISE SPECIAL BANK ACCOUNT*(Title)*

We, the committee of inspection, being of opinion that Mr. \_\_\_\_\_ of \_\_\_\_\_, the liquidator in the above matter, should have a special bank account for the purpose of (a) \_\_\_\_\_ hereby apply to the Official Receiver to authorise him to make his payments into and out of the \_\_\_\_\_ bank.

All cheques to be counter signed by \_\_\_\_\_, a member of the committee of inspection, and by \_\_\_\_\_ of \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ } Committee of Inspection

(a) Here insert grounds of application.



FORM 84

(rule 160)

CERTIFICATE AND REQUEST BY COMMITTEE OF INSPECTION  
AS TO INVESTMENT OF FUNDS

*(Title)*

We, the committee of inspection in the above matter, hereby certify that in our opinion the cash balance standing to the credit of the above named company is in excess of the amount which is required for the time being to answer demands in respect of such company's estate, and request that the Official Receiver will invest the sum of \$ \_\_\_\_\_ by placing the same upon fixed deposit for the space of \_\_\_\_\_ months with the \_\_\_\_\_ Bank of \_\_\_\_\_ (or as may be recommended) for the benefit of the said company.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ } Committee of Inspection

FORM 85

(rule 160)

REQUEST BY COMMITTEE OF INSPECTION TO OFFICIAL RECEIVER  
TO REALISE INVESTMENT

*(Title)*

We, the committee of inspection in the above matter, hereby certify that a sum of \$ \_\_\_\_\_, forming part of the assets of the above named company, has been invested by placing the same on fixed deposit with the \_\_\_\_\_ Bank of \_\_\_\_\_ (or as the case may be) and that the sum of \$ \_\_\_\_\_ is now required to answer demands in respect of the said company. And we request that so much of the said investment as may be necessary for the purpose of answering such demands may be realised by the Official Receiver and placed to the credit of the said company.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ } Committee of Inspection

FORM 86

(rule 161)

CERTIFICATE BY COMMITTEE OF INSPECTION AS TO  
AUDIT OF LIQUIDATOR'S ACCOUNTS

*(Title)*

We, the undersigned, members of the committee of inspection in the winding up of the above named company, hereby certify that we have examined the foregoing account with the vouchers, and that to the best of our knowledge and belief the said account contains a full, true and complete account of the liquidator's receipts and payments.

Dated this      day of                      20

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ } Committee of Inspection

FORM 87

(rule 162)

STATUTORY DECLARATION VERIFYING LIQUIDATOR'S ACCOUNT  
UNDER SECTION 196

*(Title)*

I, *G.H.*, of \_\_\_\_\_, the liquidator of the above named company, do solemnly and sincerely declare —

That *\*the account hereunto annexed marked B contains a full and true account of my receipts and payments in the winding up of the above named company from the day of \_\_\_\_\_, 20\_\_\_\_, to the \_\_\_\_\_ day of, \_\_\_\_\_ 20\_\_\_\_, inclusive \*and that I have not, nor has any other person by my order or for my use, during such period received any moneys on account of the said company \*other than and except the items mentioned and specified in the said account.*

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, Chapter 12.

Declare at &c. {

*Liquidator*

*\* NOTE — If no receipts or payments strike out the words in italics.*



FORM 88

(rule 163)

LIQUIDATOR'S TRADING ACCOUNT UNDER SECTION 188

(Title)

G.H. the liquidator of the above named company in account with the estate.

RECEIPTS

PAYMENTS

<i>Dr.</i>					<i>Cr.</i>
<i>Date</i>				<i>Date</i>	

Liquidator  
(Date)

We have examined this account with the vouchers and find the same correct, and we are of opinion the expenditure has been proper.

Dated this      day of                      20

Committee of Inspection  
[or member of the Committee of Inspection]

FORM 89

(rule 163)

STATUTORY DECLARATION VERIFYING LIQUIDATOR'S  
TRADING ACCOUNT UNDER SECTION 188*(Title)*

I, \_\_\_\_\_ the liquidator of the above named company, do solemnly and sincerely declare that the account hereto annexed is a full, true, and complete account of all money received and paid by me or by any person on my behalf in respect of the carrying on of the trade or business of the company, and that the sums paid by me as set out in such account have, as I believe, been necessarily expended in carrying on such trade or business.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, Chapter 12.

Declared, &c.

Liquidator

FORM 90

(rule 169)

## REQUEST TO DELIVER BILL FOR TAXATION

*(Title)*

I hereby request that you will, within \_\_\_\_\_ days of this date, or such further time as the Court may allow, deliver to me for taxation by the proper officer your bill of costs [or charges] as (a) \_\_\_\_\_ failing which, I shall, in pursuance of the Companies Act, and rules proceed to declare and distribute a dividend without regard to any claim which you may have against the assets of the company, and your claim against the assets of the company will be liable to be forfeited.

*(a) Here state nature of employment*

## FORM 91

(rule 174)

## CERTIFICATE OF TAXATION

*(Title)*

I hereby certifying that I have taxed the bill of costs [*or charges*] [*or expenses*] of Mr. *C.D.* [*here state capacity in which employed or engaged*] [*where necessary add*] “pursuant to an order of the Court dated the        day of        20        ”, and have allowed the same at the sum of dollars        [where necessary add “which sum is to be paid to the said *C.D.* by        as directed by the said order”].

Dated this        day of        20

*Registrar*

\_\_\_\_\_

\$

## FORM 92

(rules 181 and 182)

STATEMENT OF RECEIPTS AND PAYMENTS AND  
GENERAL DIRECTION AS TO STATEMENTS*[Re*

This is the Exhibit marked “B” referred to in the affidavit of        ;  
sworn before me this        day of  
20

Magistrate

*(Name of company)***Size of sheets.**

- (1) Every statement must be on sheets 13 inches by 16 inches.

## FORM 92 — (continued)

**Form and contents of statement.**

(2) Every statement must contain a detailed account of all the liquidator's realisations and disbursements in respect of the company, the statement of realisations should contain a record of all receipts derived from assets existing at the date of the winding up order or resolution and subsequently realised, including balance in bank, book debts and calls collected, property sold, &c.; and the account of disbursements should contain all payments for costs and charges, or to creditors, or contributories. Where property has been realised, the gross proceeds of sale must be entered under realisations, and the necessary payments incidental to sales must be entered as disbursements. These accounts should not contain payments into the companies liquidation account (except unclaimed dividends — *see* para. 5) or payments into or out of bank, or temporary investments by the liquidator, or the proceeds of such investments when realised, which should be shown separately —

(a) by means of the bank pass book;

(b) by a separate detailed statement of moneys invested by the liquidator, and investments realised.

Interest allowed or charged by the bank, bank commission &c. and profit or loss upon the realisation of temporary investments, should however, be inserted in the accounts of realisations or disbursements, as the case may be. Each receipt and payment must be entered in the account in such a manner as sufficiently to explain its nature. The receipts and payments must severally be added up at the foot of each sheet, *and the totals carried forward from one account to another without any intermediate balance, so that the gross totals shall represent the total amounts received and paid by the liquidator respectively.*

**Trading account.**

(3) When the liquidator carries on a business, a trading account must be forwarded as a distance account, and the totals of receipts and payments on the trading account must alone be set out in the statement.

**Dividends &c.**

(4) When dividends or instalments of compositions are paid to creditors, or return of surplus assets is made to contributories, the total amount of each dividend, or instalment of composition, or return to contributories, actually paid, must be entered in the statement of disbursements as one sum; and the liquidator must forward separate accounts showing in lists the amount of the claim of each creditor, and the amount of dividend or composition payable to each creditor, and of surplus assets payable to each contributory, distinguishing in each list the dividends or instalments of composition and shares or surplus assets actually paid and those remaining unclaimed. Each list must be on sheets 13 inches by 18 inches.

## FORM 92 — (continued)

(5) When unclaimed dividends, instalments of compositions or returns of surplus assets are paid into the companies liquidation account, the total amount so paid in should be entered in the statement of disbursements as one sum.

(6) Credit should not be taken in the statement of disbursements for any amount in respect of liquidator's remuneration unless it has been duly allowed by resolution of the committee of inspection or of the creditors or of the company in general meeting, or by order of Court as the case may require.

**Liquidator's Statement of Account**

*Pursuant to section 269 of the Companies Act*

Nature of proceedings

Nature of proceedings (whether wound up by the Court, or under the supervision of the Court, or voluntarily)

}

Date of commencement of winding up

Date to which statement is brought down

Name and address of liquidator

This statement is required in duplicate

**Liquidator's Statement of Account pursuant to section 269 of the Companies Act**

REALISATIONS				DISBURSEMENTS					
Date	Of whom received	Nature of assets realised	Amount		Date	Of whom paid	Nature of disbursements	Amount	
		<i>Brought forward ...</i>	\$	¢.			<i>Brought forward ...</i>	\$	¢.
		<i>Carried forward ...</i>					<i>Carried forward ...</i>		

\* *NOTE* — No balance should be shown on this account, but only the total realisations and disbursements, which should be carried forward to the next account.

FORM 92 — (continued)

**Analysis of Balance**

	\$	¢
Total realisations .....		
Total disbursements .....		
Balance ...	\$	¢
	\$	¢
The Balance is made up as follows —		
1. Cash in hands of liquidator .....		
2. Total payments into Bank, including balance at date of commencement of winding up ( <i>as per Bank Book</i> ) .....		
Total withdrawals from Bank .....		
Balance at Bank .....		
3. Amount in companies liquidation account .....	\$	¢
4. Amount invested by liquidator		
Less amount realised from same .....		
Balance .....		
Total balance as shown above .....	\$	

*NOTE — Full details of investment should be given in a separate statement.*

*NOTE — The liquidator shall also state —*

(1) The amount of the estimated assets and liabilities at the date of the commencement of the winding up	}	Assets (after deducting amounts charged to secured creditors and debenture holders) .....\$												
	}	Liabilities } <table style="margin-left: 20px; border-collapse: collapse;"> <tr> <td style="width: 10px;">}</td> <td style="width: 10px;">}</td> <td style="width: 80%;">secured creditors</td> <td style="width: 10%;">.....\$</td> </tr> <tr> <td></td> <td></td> <td>debenture holders</td> <td>.....\$</td> </tr> <tr> <td></td> <td></td> <td>unsecured creditors</td> <td>.....\$</td> </tr> </table>	}	}	secured creditors	.....\$			debenture holders	.....\$			unsecured creditors	.....\$
}	}	secured creditors	.....\$											
		debenture holders	.....\$											
		unsecured creditors	.....\$											
(2) The total amount of the capital paid-up at the date of the commencement of the winding up	}	Paid-up in cash ..... \$ Issued as paid up otherwise than for cash ..... \$												
(3) The general description and estimated value of outstanding assets (if any)	}													
(4) The causes which delay the termination of the winding up	}													

## FORM 92 — (continued)

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(5) The period within which the winding up may  
probably be completed

---

## FORM 93

(rules 181 and 182)

AFFIDAVIT VERIFYING STATEMENT OF LIQUIDATOR'S ACCOUNT  
UNDER SECTION 269

(Title)

(Name of Company)

I, \_\_\_\_\_, of \_\_\_\_\_, the liquidator of the above named company, make oath and say —

That *\*the account hereunto annexed marked "B", contains a full and true account of my receipts and payments in the winding up of the above named company, from the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, inclusive, \*and that I have not, nor has any other person by my order or for my use during such period, received or paid any moneys on account of the said company, \*other than and except the items mentioned and specified in the said account.*

I further say that the particulars given in the annexed Form 92, marked "B", with respect to the proceedings in and position of the liquidation, are true to the best of my knowledge and belief.

Sworn at \_\_\_\_\_ }

*\*NOTE — If no receipts or payments, strike out the words in italics.*

The affidavit is not required in duplicate, but it must in every case be accompanied by a statement on Form 92 in duplicate.

FORM 94

(rules 181 and 185)

LIQUIDATOR'S TRADING ACCOUNT UNDER SECTION 269

*(Name of Company)*

*Insert here the name of the company. Insert here the name of the liquidator.*  
 the liquidator of the above named company in account with the estate.

This account is required in duplicate in addition to Form 92.

RECEIPTS					PAYMENTS			
<i>Dr.</i>					<i>Date</i>			<i>Cr.</i>
					Date			
						Liquidator		



## FORM 95

(rules 181 and 185)

## LIST OF DIVIDENDS OR COMPOSITION

*(Name of Company)*

I, \_\_\_\_\_ hereby certify that a dividend (or composition) of \_\_\_\_\_ *per cent* was declared payable on and after the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, and the creditors whose names are set forth below are entitled to the amounts set opposite their respective names, and have been paid such amounts except in the cases specified as unclaimed.

Liquinator

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

To the Official Receiver

Full name	Amount of proof		Amount of dividend for composition			
			Paid		Unclaimed	
	\$	¢.	\$	¢.	\$	¢.

This List is required in duplicate

## FORM 96

(rules 181 and 185)

## LIST OF AMOUNTS PAID OR PAYABLE TO CONTRIBUTORIES

*(Name of Company)*

I, \_\_\_\_\_ hereby certify that a return of surplus assets was declared payable, to contributories on and after the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at the rate of \_\_\_\_\_ per share, and that the contributories whose names are set forth below are entitled to the amounts set opposite their respective names, and have been paid such amounts except in the cases specified as unclaimed.

Liquidator

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

To the Official Receiver

Full name	No. of shares	Amount returned on share			
		Paid		Unpaid	
		\$	¢.	\$	¢.

List is required in duplicate

FORM 97

(rule 184)

AFFIDAVIT VERIFYING ACCOUNT OF UNCLAIMED  
AND UNDISTRIBUTED FUNDS

*(Title)*

I, \_\_\_\_\_ of \_\_\_\_\_ make oath and say that the particulars entered in the statement hereunto annexed, marked "A", are correct, and truly set forth all money in my hands or under my control, representing unclaimed or undistributed assets of the above company, and that the amount due by me to the companies liquidation account respect of unclaimed dividends and undistributed funds is \$ \_\_\_\_\_ .

Signature

Sworn &c.

FORM 98

(rule 189)

NOTICE TO CREDITORS AND CONTRIBUTORIES  
OF INTENTION TO APPLY FOR RELEASE*(Title)*

Take notice that I, the undersigned liquidator of the above named company, intend to apply to the Court for my release, and further take notice that any objection you may have to the granting of my release must be notified to the Court within 21 days of the date hereof.

A summary of my receipts and payments as liquidator is hereto annexed.

Dated this      day of      20

Liquidator

To

*NOTE — Section 190(3) of the Companies Act, Chapter 39, enacts that “An order of the Court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact”.*

FORM 99

(rule 189)

## APPLICATION BY LIQUIDATOR TO THE COURT FOR RELEASE

*(Title)*

I, \_\_\_\_\_ the liquidator of the above named company, do hereby report to this Honourable Court as follows —

1. That the whole of the property of the company has been realised for the benefit of the creditors and contributories [and a dividend to the amount of \$ \_\_\_\_\_ *per cent* has been paid as shown by the statement her unto annexed, and a return of \_\_\_\_\_ per share has been made to the contributories of the company];

*[or* That so much of the property of the company as can, according to the joint opinion of myself and the committee of inspection, hereunto annexed, in writing under our hands, be realised without needlessly protracting the liquidation, has been realised, as shown by the statement hereunto annexed, and a dividend to the amount of \$ \_\_\_\_\_ *per cent* has been paid, together with a return of \_\_\_\_\_ per share to the contributories of the company]; *(a)*

2. I have caused a report on my accounts to be prepared, and I request this Honourable Court to grant me a certificate of release on being satisfied therewith.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Liquidator

*(a) Add if necessary "That the rights of the contributories between themselves have been adjusted".*

FORM 100

(rule 189)

STATEMENT TO ACCOMPANY NOTICE  
OF APPLICATION FOR RELEASE

(Title)

STATEMENT SHOWING POSITION OF COMPANY  
AT DATE OF APPLICATION FOR RELEASE

<i>Dr.</i>	Estimated to produce as per company's statement of affairs		Re- ceipts		Pay- mentS		<i>Cr.</i>
	\$	¢.	\$	¢.	\$	¢.	
							By court fees (including stationery, printing and postages in respect of contributories creditors, and debtor and fee for audit) .....
					\$	¢.	
							Law costs of petition .....
							Law costs of solicitor to liquidator .....
							Other law costs .....
							Liquidator's remuneration, viz —
					\$	¢.	<i>per cent on \$</i>
To total receipts from date of winding up order, viz — (State particulars under the several headings specified in the statement of affairs).							assets realised .....
Receipts per trading Account .....							<i>per cent on \$</i>
Other receipts .....							assets distributed in dividend .....
Total .....							Shorthand writer's charges .....
	\$	¢.					Special manager's charges .....
Less —							Person appointed to assist in preparation of statement of affairs .....
Payments to redeem securities .....							Auctioneer's charges as taxed .....
Costs of execution .....							Other taxed costs .....
Payments per trading account .....							Costs of possession and maintenance of estate .....
							Costs of notices in <i>Gazette</i> and local papers .....
							Incidental outlay .....
							Total costs and charges .....
							\$
							<i>Creditors, viz —</i>
					\$	¢.	(a) Preferential .....
							(a) Unsecured dividend of \$
							<i>per cent</i> .....
							<i>The estimate of amount expected to rank for</i> .....
							Amount return to contributories .....
Net realisations .....							Balance .....
Amounts received from calls on contributories made by the liquidator .....							
	\$						

(a) State number of creditors

FORM 100 — *(continued)*

Assets not yet realised, including calls, estimated to produce \$

*(Add here any special remarks the liquidator thinks desirable).*

Creditors can obtain any further information by inquiry at the office of the liquidator.

Dated this      day of                      20

*(Signature of Liquidator)*

*(Address)*

## FORM 101

(rule 201)

## REGISTER OF WINDING UP ORDERS TO BE KEPT IN COURT

Number of winding up order	Number of Petition	Date of Petition	Date of winding up order	Dates of Public Examinations (if any)	Liquidator

## FORM 102

(rule 201)

## REGISTER OF PETITIONS TO BE KEPT IN COURT

No. of Petition	Name of company	Address of registered office	Description of company	Date of Petition	Petitioner	Date of winding up order

## FORM 103

(rule 202)

NOTICES FOR *GAZETTE*

## (1) NOTICE OF WINDING UP ORDER

(rule 36(1)(c))

Name of company

Address of registered office

Number of matter

Date of order

Date of presentation of petition \*

---

(\*Where it is known that a voluntary winding up preceded the presentation of the petition, the date of the resolution for voluntary winding up should also be given).



FORM 103 — *(continued)*

## (2) NOTICE OF FIRST MEETING

(rule 107)

Name of company		Address of registered office
	Number of matter	Creditors, Date
Hour	Place	Contributories, Date
Hour	Place	

## (3) NOTICE OF DAY APPOINTED FOR PUBLIC EXAMINATION

(rule 55(1))

Name of company		Address of registered office
	Number of matter	Date fixed for examination
Name of persons to be examined		Hour
	Place	

## (4) NOTICE OF INTENDED DIVIDEND

(rule 142(1))

Name of company	Address of registered office
Number of matter	Last day for receiving proofs
Name of liquidator	Address

FORM 103 — *(continued)*

## (5) NOTICE OF DIVIDEND

(rule 142(3))

Name of company	Address of registered office
Number of matter	Amount <i>per cent</i>
First and final or otherwise	When payable
Where payable	

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## (6) NOTICE OF RETURN TO CONTRIBUTORIES

(rule 143)

Name of company	Address of registered office
Number of matter	Amount per share
First and final or otherwise	When payable
Where payable	

---

## (7) NOTICE OF APPOINTMENT OF LIQUIDATOR

(rule 45(5))

Name of company	Address of registered office
Number of matter	Liquidator's name
Address	Date of appointment

---

FORM 103 — *(continued)*

## (8) NOTICE OF REMOVAL OF LIQUIDATOR

(rule 45(7))

Name of company	Address of registered office
Number of matter	Liquidator's name
Liquidator's address	Date of removal

## (9) NOTICE OF RELEASE OF LIQUIDATOR

(rule 189(2))

Name of company	Address of registered office
Number of matter	Liquidator's name
Liquidator's address	Date of release

## FORM 104

(rule 203)

## MEMORANDUM OF ADVERTISEMENT OR GAZETTING

*(Title)*

Name of paper	Date of issue	Date of filing	Nature of order, &c.

(Signed)

FORM 105

(rule 183(4) and section 270(1))

CERTIFICATE OF RECEIPT FOR MONEY PAID  
INTO COMPANIES LIQUIDATION ACCOUNT

*(Title)*

This is to certify that Mr \_\_\_\_\_, liquidator of the above named company has this day paid into the companies liquidation account through me the sum of \$ \_\_\_\_\_ representing unclaimed or undistributed assets of the above named company.

Date this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Official Receiver

**THIRTEENTH SCHEDULE**

[S 26/1998]

(sections 149E(2) and 149M(2))

## POWERS OF EXECUTIVE MANAGER AND JUDICIAL MANAGER

1. Power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient.
2. Power to sell or otherwise dispose of the property of the company by public auction or private contract.
3. Power to raise or borrow money and grant security therefor over the property of the company.
4. Power to appoint a solicitor or accountant or other professionally qualified person in Brunei Darussalam or elsewhere to assist him in the performance of his functions.
5. Power to bring or defend any action or other legal proceedings (including proceedings directed at seeking the assistance of a Court outside Brunei Darussalam) in Brunei Darussalam or elsewhere in the name and on behalf of the company or in his own name.
6. Power to refer to arbitration any question affecting the company.
7. Power to effect and maintain insurances in respect of the business and property of the company.
8. Power to use the seal of the company.
9. Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document.
10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.
11. Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.
12. Power to do all such things (including the carrying out of works) as may be necessary or desirable for the protection, preservation, or realisation of the property of the company wherever situate.

THIRTEENTH SCHEDULE — *(continued)*

13. Power to make any payment which is necessary or incidental to the performance of his functions.
14. Power to carry on the business of the company.
15. Power to establish subsidiaries of the company.
16. Power to transfer to subsidiaries of the company the whole or any part of the business and property of the company.
17. Power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.
18. Power to make any arrangements or compromise on behalf of the company.
19. Power to call up any uncalled capital of the company.
20. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person.
21. Power to present or defend a petition for the winding up of the company.
22. Power to change the situation of the registered office of the company.
23. Power to do all other things incidental to the exercise of the foregoing powers.

**FOURTEENTH SCHEDULE**

## COMPANIES (JUDICIAL MANAGEMENT) RULES

## ARRANGEMENT OF RULES

## Rule

1. Citation
2. Interpretation
3. Application
4. Form of petition by Minister of Finance
5. Affidavit to support petition by Minister of Finance
6. Filing of petition by Minister of Finance
7. Service of petition and affidavit
8. Affidavit to support petition under section 149H
9. Independent report on company's affairs
10. Contents of affidavit
11. Form of petition under section 149H
12. Filing of petition under section 149H
13. Service of petition
14. Manner in which service to be effected
15. Proof of service
16. Hearing
17. Effect of presentation of petition
18. Notice and advertisement of Judicial Management order
19. Notice requiring statement of affairs
20. Verification and filing
21. Limited disclosure
22. Expenses of statement of affairs

23. Non-application of rules 24 to 26
24. Judicial Manager's proposals
25. Statement to be annexed to proposals
26. Meeting of creditors
27. Judicial Management order under section 149J
28. Meeting to consider Judicial Manager's proposals
29. Chairman at meetings
30. Entitlement to vote
31. Admission and rejection of claims
32. Secured creditors
33. Holders of negotiable instruments
34. Retention of title creditors
35. Hire-purchase, conditional sale and chattel leasing agreements
36. Resolutions and minutes
37. Notices to creditors
38. Informal creditors' committee
39. Fixing of remuneration
40. Disposal of charged property etc.
41. Application of rule 40
42. Sums payable in respect of contracts of employment
43. Application of rule 42
44. Unenforceability of *liens*
45. Application of rule 44
46. Abstract of receipts and payments
47. Resignation
48. Judicial Manager deceased
49. Vacancy
50. Release



51. Application of rules 47 to 50
52. Protection of interests of creditors and members
53. Non-application and application of rule 52
54. Extension of time
55. Petition etc. to be sealed

## FOURTEENTH SCHEDULE

(sections 149E, 149H, 149I, 149J, 149K, 149M, 149Q and 149T)

## COMPANIES (JUDICIAL MANAGEMENT) RULES

**Citation**

1. These Rules may be cited as the Companies (Judicial Management) Rules.

**Interpretation**

2. Save where the context otherwise requires, in these Rules —

(a) references to section numbers are references to sections of the Companies Act;

(b) references to rule numbers are references to rules of the Companies (Judicial Management) Rules.

**Application**

3. (1) Rules 4 to 7 apply where a petition is presented by the Minister of Finance under section 149J and do not apply where a petition is presented by any other person under section 149K.

- (2) Rules 8 to 16 apply where a petition is presented by any person under section 149H and do not apply where a petition is presented by the Minister of Finance under section 149J.

- (3) Rule 17 applies where a petition is presented by the Minister of Finance or by any other person.

- (4) Save where otherwise expressly indicated, rules 18 to 40, 42, 44, 46 to 50 and 52 to 55 apply where a Judicial Management order is made on the petition of the Minister of Finance or of any other person.

**Form of petition by Minister of Finance**

4. (1) The petition shall state the company's name and address for service and shall specify the name and address of the person proposed to be appointed as Judicial Manager.

- (2) If the purposes or one of the purposes for which the Judicial Management order is sought is the promotion of the public interest, the petition shall specify that purpose.

FOURTEENTH SCHEDULE — *(continued)***Affidavit to support petition by Minister of Finance**

5. (1) An affidavit in support of the petition shall be sworn by or on behalf of the Minister of Finance or by any other person authorised to do so on his behalf.

(2) The affidavit shall state —

(a) the deponent's belief that the making of a Judicial Management order will be in the public interest;

(b) which of the purposes specified in section 149J(3) is expected to be achieved by the making of the order; and

(c) such other matters as the deponent considers will assist the Court in deciding whether to make a Judicial Management order.

**Filing of petition by Minister of Finance**

6. (1) The petition shall be filed in Court, with a sufficient number of copies for service and use as provided in rule 7(1).

(2) Each of the copies delivered shall have applied to it the seal of the Court and be issued to the Minister of Finance; and on each copy there shall be endorsed the date and time of filing.

(3) Subject to rule 7(2), the Court shall fix a date, time and place for the hearing of the petition and this shall be endorsed on each copy of the petition issued under sub-rule (2).

**Service of petition and affidavit**

7. (1) Subject to rule 7(2), the petition and affidavit shall be served not less than 5 days before the date fixed for hearing and shall be served upon —

(a) the company, by delivering the same to its registered office or to its last known place of business in Brunei Darussalam or to any of the directors at their proper or usual or last known address or in such other manner as the Court may direct;

(b) any person holding a charge over all or substantially all of the property of the company which, as created, was a floating charge; and

(c) if there is pending a petition for the winding up of the company, on the petitioner and on any provisional liquidator.

FOURTEENTH SCHEDULE — *(continued)*

- (2) Notwithstanding rule 7(1), the Court may, if it thinks fit —
- (a) hear the petition of the Minister of Finance immediately upon presentation thereof;
  - (b) dispense with service or abridge the time for service, on all or any of the persons specified above; and
  - (c) make a Judicial Management order forthwith.

**Affidavit to support petition under section 149H**

8. (1) Where it is proposed to apply to the Court by petition under section 149K for a Judicial Management order to be made in relation to a company under section 149H, an affidavit complying with rule 10 must be prepared and sworn, with a view to its being filed in Court in support of the petition.

(2) If the petition is to be presented by the company or by the directors, the affidavit must be made by one of the directors, or the secretary of the company, stating himself to make it on behalf of the company or, as the case may be, on behalf of the directors.

(3) If the petition is to be presented by creditors, the affidavit must be made by a person acting under the authority of them all, whether or not himself one of their number. In any case there must be stated in the affidavit the nature of his authority and the means of his knowledge of the matters to which the affidavit relates.

**Independent report on company's affairs**

9. (1) There may be prepared, with a view to its being exhibited to the affidavit in support of the petition, a report by an independent person to the effect that the appointment of a Judicial Manager for the company is expedient.

(2) The report may be by the person proposed as Judicial Manager or the Executive Manager, or by any other person having adequate knowledge of the company's affairs, not being a director, secretary, manager, member or employee of the company.

(3) The report shall specify the purposes which, in the opinion of the person preparing it, may be achieved for the company by the making of a Judicial Management order, being purposes particularly specified in section 149I.

FOURTEENTH SCHEDULE — *(continued)***Contents of affidavit**

**10.** (1) The affidavit shall state —

(a) the deponent's belief that the company is, or is likely to become, unable to pay its debts, or that the value of the assets of the company is less than the amount of its liabilities, taking into account its contingent and prospective liabilities, and the grounds of that belief; and

(b) which of the purposes specified in section 149I is expected to be achieved by the making of a Judicial Management order.

(2) There shall in the affidavit be provided a statement of the company's financial position, specifying to the best of the deponent's knowledge and belief, assets and liabilities, including contingent and prospective liabilities.

(3) Details shall be given of any security known or believed to be held by creditors of the company.

(4) If any petition has been presented for the winding up of the company, details of it shall be given in the affidavit, so far as within the immediate knowledge of the deponent.

(5) If there are other matters which, in the opinion of those intending to present the petition for a Judicial Management order, will assist the Court in deciding whether to make such an order, those matters so far as lying within the knowledge or belief of the deponent shall also be stated.

(6) If a report has been prepared for the company under rule 9, that fact shall be stated.

**Form of petition under section 149H**

**11.** (1) If presented by the company or by the directors, the petition shall state the name of the company and its address for service, which in the absence of special reasons to the contrary, is that of the company's registered office.

(2) If presented by a single creditor, the petition shall state his name and address for service.

(3) If the petition is presented by the directors, it shall state that it is so presented under section 149K; but from and after presentation it is to be treated for all purposes as the petition of the company.

FOURTEENTH SCHEDULE — *(continued)*

(4) If the petition is presented by two or more creditors, it shall state it is so presented, naming them; but from and after presentation, it is to be treated for all purposes as the petition of one only of them, named in the petition as petitioning on behalf of himself and other creditors. An address for service for that one shall be specified.

(5) The petition shall specify the name and address of the person proposed to be appointed as Judicial Manager.

(6) There shall be exhibited to the affidavit in support of the petition —

(a) a copy of the petition;

(b) a written consent by the proposed Judicial Manager to accept appointment, if a Judicial Management order is made; and

(c) if a report has been prepared under rule 9, a copy of it.

**Filing of petition under section 149H**

**12.** (1) The petition and affidavit shall be filed in Court, with a sufficient number of copies for service and use as provided by rule 13.

(2) Each of the copies delivered shall have applied to it the seal of the Court and be issued to the petitioner; and on each copy there shall be endorsed the date and time of filing.

(3) The Court shall fix a date, time and place for the hearing of the petition and this also shall be endorsed on each copy of the petition issued under sub-rule (2).

(4) After the petition is filed, it is the duty of the petitioner to notify the Court in writing of any winding up petition presented against the company, as soon as he becomes aware of it.

**Service of petition**

**13.** (1) In the following sub-rules of this rule, references to the petition are to a copy of the petition issued by the Court under rule 12(2) together with the affidavit in support of it and the document, other than the copy petition, exhibited to the affidavit.

(2) The petition shall be served —

(a) upon the Minister of Finance;

FOURTEENTH SCHEDULE — *(continued)*

(b) if there is pending a petition for the winding up of the company, on the petitioner and also on the provisional liquidator, if any; and

(c) on the person proposed as Judicial Manager.

(3) If the petition for the making of a Judicial Management order is presented by creditors of the company, the petition shall be served on the company.

**Manner in which service to be effected**

**14.** (1) Service of the petition in accordance with rule 13 shall be effected by the petitioner, or his solicitor, or by a person instructed by him or his solicitor, not less than 5 days before the date fixed for the hearing.

(2) Service shall be effected as follows —

(a) on the company, subject to sub-rule (3), by delivering the documents to its registered office;

(b) on any other person, subject to sub-rule (4), by delivering the documents to his proper address;

(c) in either case, in such other manner as the Court may direct.

(3) If delivery to the company's registered office is not practicable, service may be effected by delivery to its last known principal place of business in Brunei Darussalam or by serving any of the directors at their proper or usual or last known address or in such other manner as the Court may direct.

(4) For the purposes of sub-rule(2)(b), a person's proper address is any which he has previously notified as his address for service; but if he has not notified any such address, service may be effected by delivery to his usual or last known address.

**Proof of service**

**15.** (1) Service of the petition shall be verified by affidavit, specifying the date on which, and the manner in which, service was effected.

(2) The affidavit, with a sealed copy of the petition exhibited to it, shall be filed in Court forthwith after service, and in any event not less than one day before the hearing of the petition.

FOURTEENTH SCHEDULE — *(continued)***Hearing**

16. (1) At the hearing of the petition, any of the following may appear or be represented —

(a) the petitioner;

(b) the company;

(c) any person holding a charge over all or substantially all the property of the company which, as created, was a floating charge;

(d) any receiver or manager appointed over all or substantially all of the property of the company;

(e) any person who has presented a petition for the winding up of the company;

(f) the person proposed for appointment as Judicial Manager; and

(g) with the leave of the Court, any other person who appears to have an interest justifying his appearance.

(2) If the Court makes a Judicial Management order, the costs of the petitioner, and of any person appearing whose costs are allowed by the Court, are payable as an expense of the Judicial Management.

**Effect of presentation of petition**

17. (1) During the period beginning with the presentation of a petition for a Judicial Management order and ending with the making of such an order or the dismissal of the petition —

(a) no resolution may be passed or order made for the winding up of the company;

(b) no steps may be taken to enforce any security over the property of the company, or to repossess goods in the possession of the company under any hire-purchase agreement;



FOURTEENTH SCHEDULE — *(continued)*

(c) no other legal proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the Court and subject to such terms as the Court may impose.

(2) In this rule, references to hire-purchase agreements include conditional sale agreements, chattel leasing agreements and retention of title agreements.

**Notice and advertisement of Judicial Management order**

**18.** (1) If the Court makes a Judicial Management order, it shall forthwith give notice to the person appointed as Judicial Manager.

(2) Forthwith after the order is made, the order shall be gazetted by the Judicial Manager or as the Court may otherwise direct.

(3) The Judicial Manager shall also forthwith give notice of the making of the order —

(a) if there is pending a petition for the winding up of the company, to the petitioner and also to the provisional liquidator, if any; and

(b) to the Registrar of Companies.

(4) Two sealed copies of the order shall be sent by the Court to the Judicial Manager, one of which shall be sent by him to the Registrar of Companies, and a copy of the same shall be supplied by the Judicial Manager to any Executive Manager.

(5) If under section 149J or 149K the Court makes any other order, it shall give directions as to the persons to whom, and how, notice of it is to be given.

**Notice requiring statement of affairs**

**19.** (1) Where the Judicial Manager determines to require a statement of the affairs of the company to be made out and submitted to him in accordance with section 149T, he shall send notice to each of the persons whom he considers should be made responsible under that section, requiring them to prepare and submit the statement.

(2) The persons to whom the notice is sent are referred to in this rule and in rules 20 and 22 as “the deponents”.

(3) The notice shall inform each of the deponents of the following—

FOURTEENTH SCHEDULE — *(continued)*

- (a) the names and addresses of all others, if any, to whom the same notice has been sent;
- (b) the time within which the statement must be delivered;
- (c) the effect of section 149U; and
- (d) the application to him, and to each of the other deponents, of section 149N.

**Verification and filing**

**20.** (1) The statement of affairs shall be in such form as the Judicial Manager may require, and shall be verified by affidavit by the deponents using the same form.

(2) The Judicial Manager may require any of the persons mentioned in section 149T(2) to submit an affidavit of concurrence, stating that he concurs in the statement of affairs.

(3) An affidavit of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the affidavit is not in agreement with the deponents, or he considers the statement to be erroneous or misleading, or he is without the direct knowledge necessary for concurring with it.

(4) The statement of affairs shall be delivered to the Judicial Manager by the deponent making the affidavit of verification or by one of them, if more than one, together with a copy of the verified statement.

(5) Every affidavit of concurrence shall be delivered by the person who makes it, together with a copy.

(6) The Judicial Manager shall file the verified copy of the statement, and the affidavits of concurrence, if any, in Court.

**Limited disclosure**

**21.** (1) Where the Judicial Manager thinks that it would prejudice the conduct of the Judicial Management for the whole or part of the statement of affairs to be disclosed, he may apply to the Court for an order of limited disclosure in respect of the statement, or any specified part of it.

FOURTEENTH SCHEDULE — *(continued)*

(2) The Court may, on the application, order that the statement or, as the case may be, the specified part of it, not be filed in Court, or that it is to be filed separately and not be open to inspection otherwise than with leave of the Court.

(3) The Court's order may include directions as to the delivery of documents to the Registrar of Companies and the disclosure of relevant information to other persons.

**Expenses of statement of affairs**

**22.** (1) A deponent making the statement of affairs and affidavit shall be allowed, and paid by the Judicial Manager out of his receipts, any expenses incurred by the deponent in so doing which the Judicial Manager considers reasonable.

(2) Nothing in this rule relieves a deponent from any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to the Judicial Manager.

**Non-application of rules 24 to 26**

**23.** Rules 24 to 26 do not apply where a Judicial Management order has been made on the petition of the Minister of Finance and the sole purpose or one of the purposes for the achievement of which the order was made was the promotion of the public interest.

**Judicial Manager's proposals**

**24.** Where a Judicial Management order has been made, the Judicial Manager shall within 3 months of his appointment or such longer period as the Court may allow —

(a) formulate and send to all creditors of the company so far as he is aware of their addresses, a statement of his proposals for achieving the purposes for which the Judicial Management order was made; and

(b) lay a copy of the statement before a meeting of the creditors of the company summoned for that purpose on not less than 14 days' notice.

**Statement to be annexed to proposals**

**25.** (1) There shall be annexed to the Judicial Manager's proposals, when laid before the creditors' meeting to be summoned under rule 24, a statement by him showing —

(a) details relating to his appointment as Judicial Manager, the purposes for which a Judicial Management order was applied for and made, and any subsequent variation of those purposes;

FOURTEENTH SCHEDULE — *(continued)*

- (b) the names of the directors and secretary of the company;
- (c) an account of the circumstances giving rise to the application for a Judicial Management order;
- (d) if a statement of affairs has been submitted, a copy or summary of it, with the Judicial Manager's comments, if any;
- (e) if no statement of affairs has been submitted, details of the financial position of the company at the latest practicable date which must, unless the Court otherwise orders, be a date not earlier than that of the Judicial Management order;
- (f) the manner in which the affairs and business of the company —
  - (i) have, since the date of the Judicial Manager's appointment, been managed and financed; and
  - (ii) will, if the Judicial Manager's proposals are approved, continue to be managed and financed; and
- (g) such other information, if any, as the Judicial Manager thinks necessary to enable creditors to decide whether or not to vote for the adoption of the proposals.

(2) Where the Judicial Manager intends to apply to the Court under section 149Q for the Judicial Management order to be discharged at a time before he has sent a statement of his proposals to creditors in accordance with rule 24, he shall, at least 10 days before he makes such an application, send to all creditors of the company, so far as he is aware of their addresses, a report containing the information required by sub-rule (1)(a) to (f)(i).

**Meeting of creditors**

**26.** (1) A meeting of creditors summoned under rule 24 shall decide whether or not to approve the Judicial Manager's proposals.

(2) The meeting may approve the Judicial Manager's proposals with modifications, but shall not do so unless the Judicial Manager consents to each modification.

(3) If the meeting approves the Judicial Manager's proposals, he shall manage the affairs, business and property in accordance with those proposals subject to such revisions as may from time to time be made.

## FOURTEENTH SCHEDULE — (continued)

(4) If the meeting declines to approve the Judicial Manager's proposals, upon the application of the Judicial Manager, the Court may discharge the Judicial Management order and make such consequential provisions as it thinks fit, or make any other order that it thinks fit.

**Judicial Management order under section 149J**

**27.** (1) This rule applies to a Judicial Management order made on the petition of the Minister of Finance under section 149J where the sole purpose or one of the purposes for the achievement of which the order was made was the promotion of the public interest.

(2) The Judicial Manager shall, as soon as practicable, formulate his proposals for the achievement of the purposes for which the Judicial Management order was made and lay the same before the Minister of Finance.

(3) If the Minister of Finance approves the proposals, the Judicial Manager shall manage the affairs, business and property of the company in accordance with the proposals.

(4) If the Minister of Finance declines to approve the Judicial Manager's proposals, the Court may discharge the Judicial Management order and make such consequential provision as it thinks fit, or make any other order that it thinks fit.

(5) If the Judicial Manager thinks fit, and if the Minister of Finance considers it expedient in the public interest and so directs, the Judicial Manager may —

(a) lay a statement of his proposals containing such of the information referred to in rule 25 as the Judicial Manager considers appropriate before a meeting of creditors of the company summoned for that purpose. The meeting of creditors shall not be entitled to vote on, approve, decline to approve, or modify the proposals, but the Judicial Manager may, if he thinks fit, have regard to any views expressed at such meeting; and

(b) publish in the *Gazette* a notice stating an address to which members of the company should write for copies of the statement of proposals to be sent to them free of charge.

**Meeting to consider Judicial Manager's proposals**

**28.** (1) Notice of the creditors' meeting to be summoned under rule 24 or, if such is summoned, under rule 27, shall be given to all the creditors of the company who are identified in the statement of affairs, or are known to the Judicial Manager and had claims against the company at the date of the Judicial Management order.

FOURTEENTH SCHEDULE — *(continued)*

(2) The notice shall specify the purpose of the meeting, contain a statement of the effect of rule 30 and with the notice summoning the meeting there shall be sent out forms of proxy.

(3) Notice of the meeting shall also, unless the Court otherwise directs, be given by advertisement in the *Gazette*.

(4) Notice to attend the meeting shall be sent out at the same time to any directors or officers of the company including persons who have been directors or officers in the past, whose presence at the meeting is, in the Judicial Manager's opinion, required.

(5) The meeting may be adjourned, if the chairman thinks fit, but not for more than 14 days from the date on which it was fixed to commence.

**Chairman at meetings**

**29.** At any meeting of creditors summoned by the Judicial Manager, either he shall be chairman or a person nominated by him in writing to act in his place.

**Entitlement to vote**

**30.** (1) Subject as follows, at a meeting of creditors in Judicial Management proceedings, a person is entitled to vote only if —

(a) he has given to the Judicial Manager, not later than 12.00 hours on the business day before the day fixed for the meeting, details in writing of the debt which he claims to be due to him from the company and the claim has been duly admitted under the following provisions of this rule; and

(b) there has been lodged with the Judicial Manager any proxy which he intends to be used on his behalf.

Details of the debt must include any calculation for the purposes of rules 32 to 34.

(2) The chairman of the meeting may allow a creditor to vote, notwithstanding that he has failed to comply with sub-rule (1)(a) if satisfied that the failure was due to circumstances beyond the creditor's control.

(3) The Judicial Manager or, if other, the chairman of the meeting may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim.

FOURTEENTH SCHEDULE — *(continued)*

(4) Votes are calculated according to the amount of a creditor's debt as at the date of the Judicial Management order, deducting any amounts paid in respect of the debt after that date.

(5) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairman decides to put upon the debt an estimated value for the purposes of entitlement to vote and admits the claim for that purpose.

**Admission and rejection of claims**

**31.** (1) At any creditors' meeting, the chairman has power to admit or reject a creditor's claim for the purpose of his entitlement to vote; and the power is exercisable with respect to the whole or any part of the claim.

(2) The chairman's decision under this rule, or in respect of any matter arising under rule 30, is subject to appeal to the Court by any creditor.

(3) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the claim is sustained.

(4) If on an appeal, the chairman's decision is reversed or varied, or a creditor's vote is declared invalid, the Court may order that another meeting be summoned, or make such other order as it thinks just.

(5) In the case of the meeting summoned under rule 24 to consider the Judicial Manager's proposals, an application to the Court by way of appeal under this rule against a decision of the chairman shall not be made later than 28 days after the date of the meeting.

(6) Neither the Judicial Manager nor any person nominated by him to be chairman is personally liable for costs incurred by any person in respect of an appeal to the Court under this rule, unless the Court makes an order to that effect.

**Secured creditors**

**32.** At a meeting of creditors, a secured creditor is entitled to vote only in respect of the balance, if any, of his debt after deducting the value of his security as estimated by him.

FOURTEENTH SCHEDULE — *(continued)***Holders of negotiable instruments**

**33.** A creditor shall not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing to —

(a) treat the liability to him on the bill or note of every person who is liable on it antecedently to the company, and against whom a receiving order has not been made or, in the case of a company, which has not gone into liquidation, as a security in his hands; and

(b) estimate the value of the security and, for the purpose of his entitlement to vote, to deduct it from his claim.

**Retention of title creditors**

**34.** For the purposes of entitlement to vote at a creditors' meeting in Judicial Management proceedings, a seller of goods to the company under a retention of title agreement shall deduct from his claim the value, as estimated by him, of any rights arising under that agreement in respect of goods in the possession of the company.

**Hire-purchase, conditional sale and chattel leasing agreements**

**35.** (1) Subject as follows, an owner of goods under a hire-purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable to him by the company as at the date of the Judicial Management order.

(2) In calculating the amount of any debt for this purpose, no account shall be taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of the presentation of the petition for a Judicial Management order or any matter arising in consequence of that, or the making of the order.

**Resolutions and minutes**

**36.** (1) Subject to sub-rule (2), at a creditors' meeting in Judicial Management proceedings, a resolution is passed when a majority, in value, of those present and voting, in person or by proxy, have voted in favour of it.

(2) Any resolution is invalid if those voting against it include more than half in value of the creditors to whom notice of the meeting was sent and who are not, to the best of the chairman's belief, persons connected with the company. A person is connected with a company if —



FOURTEENTH SCHEDULE — *(continued)*

(a) he is —

- (i) a director of the company;
- (ii) a person in accordance with whose directions or instructions the directors of the company are accustomed to act;
- (iii) a husband or wife or relative of such person referred to in subparagraph (i) or (ii); or

(b) if he is entitled directly or indirectly to exercise or control the exercise of one-third or more of the voting power at any general meeting of the company.

(3) The chairman of the meeting shall cause minutes of its proceedings to be entered in the company's minute book.

(4) The minutes shall include a list of the creditors who attended, personally or by proxy, and if an informal creditors' committee has been established, the names and addresses of those appointed or elected to be members of the committee.

**Notices to creditors**

**37.** (1) Within 14 days of the conclusion of a meeting of creditors to consider the Judicial Manager's proposals, the Judicial Manager shall send notice of the result of the meeting including, where appropriate, details of the proposals as approved, to every creditor who received notice of the meeting under these Rules, and to any other creditor of whom the Judicial Manager has since become aware.

(2) Within 14 days of the end of every period of 12 months beginning with the date of approval of the Judicial Manager's proposals, the Judicial Manager shall send to all creditors of the company a report on the progress of the Judicial Management.

(3) On vacating office, the Judicial Manager shall send to creditors a report on the Judicial Management up to that time. This does not apply where the Judicial Management is immediately followed by the company going into liquidation, nor when the Judicial Manager is removed from office by the Court.

**Informal creditors' committee**

**38.** (1) The Judicial Manager may at any time he considers it appropriate, establish an informal creditors' committee for the purposes of the Judicial Management.

(2) The informal creditors' committee shall assist the Judicial Manager in discharging his functions, and act in relation to him in such manner as may be agreed from time to time.

FOURTEENTH SCHEDULE — *(continued)***Fixing of remuneration**

**39.** (1) Subject to the powers of the Court under section 149L(1)(c), the remuneration of the Judicial Manager shall be fixed in accordance with this rule.

(2) The remuneration of the Judicial Manager shall be determined by the Court, having regard to the time properly given by the Judicial Manager and his firm, employees or agents in attending to matters arising in the Judicial Management.

(3) In arriving at that determination, the Court shall have regard to the following matters —

(a) the complexity or otherwise of the case;

(b) any respects in which, in connection with the company's affairs, there falls on the Judicial Manager any responsibility of an exceptional kind or degree;

(c) the effectiveness with which the Judicial Manager appears to be carrying out, or to have carried out, his duties as such; and

(d) the value and nature of the property with which he has to deal.

(4) If the Judicial Manager is an accountant or advocate and solicitor and employs his own firm, or any partner in or employee of it, to act on behalf of the company, profit costs shall be paid unless the Court otherwise orders.

**Disposal of charged property etc.**

**40.** (1) The Judicial Manager is entitled to —

(a) dispose of any property of the company subject to a security as if the property was not subject to the security;

(b) dispose of any goods in the possession of the company under a hire-purchase agreement as if all rights of the owner under the hire-purchase agreement were vested in the company; and

(c) require any receiver or manager of all or any part of the property of the company to vacate office.

FOURTEENTH SCHEDULE — *(continued)*

(2) Where property is disposed of under sub-rule (1), the holder of such security or owner of the goods has the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security or in respect of the goods.

(3) Save where the Judicial Manager requires to employ all or part of the proceeds of a disposal under sub-rule (1) for the purposes of the trading of the company, the net proceeds of such disposal shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

(4) If the Judicial Manager requires to employ all or part of the proceeds of a disposal under sub-rule (1) for the purposes of the trading of the company, the holder of the security or owner of the goods has the same priority in respect of any other property of the company as he would have had under sub-rule (2) as if such other property of the company had directly or indirectly represented the property disposed of.

(5) In this rule, references to hire-purchase agreements include conditional sale agreements, chattel leasing agreements and retention of title agreements.

**Application of rule 40**

**41.** Rule 40 applies to disposals of property by an Executive Manager of a company pursuant to section 149E(4) as if the expression “Executive Manager” were substituted for the expression “Judicial Manager” wherever the latter appears in rule 40.

**Sums payable in respect of contracts of employment**

**42.** (1) For the purposes of section 149M(4), sums payable in respect of contracts of employment adopted by the Judicial Manager are only such sums as are payable in respect of qualifying liabilities under such contracts.

(2) For the purposes of sub-rule (1), qualifying liabilities are only those liabilities which are —

(a) liabilities to pay a sum by way of wages or salary or contribution to an occupational pension scheme; and

(b) in respect of services rendered after the adoption of the contract,

and there shall be disregarded so much of any qualifying liability as represents liability or payment in respect of services rendered before the adoption of the contract.

## FOURTEENTH SCHEDULE — (continued)

**Application of rule 42**

43. Rule 42 applies to sums payable pursuant to section 149E(6) as if —

(a) the expression “Executive Manager” were substituted for the expression “Judicial Manager” wherever the latter appears in rule 42; and

(b) the expression “section 149E(6)” were substituted for the expression “section 149M(4)” wherever the latter appears in rule 42.

**Unenforceability of liens**

44. (1) Where a Judicial Management order has been made, a *lien* or other right of possession of any of the documents of the company is unenforceable to the extent that its enforcement would deny possession of any such documents to the Judicial Manager.

(2) This applies to a *lien* on documents which give a title to property and are held as such.

(3) In this rule, “document” has the meaning given by section 149G(3).

**Application of rule 44**

45. Rule 44 applies where an Executive Manager has been appointed as if —

(a) the expression “where an Executive Manager has been appointed” were substituted for the expression “where a Judicial Management order has been made” in rule 44(1); and

(b) the expression “Executive Manager” were substituted for the expression “Judicial Manager” in rule 44(1).

**Abstract of receipts and payments**

46. (1) The Judicial Manager shall —

(a) within 2 months after the end of 12 months from the date of his appointment, and of every subsequent period of 12 months; and

(b) within 2 months after he ceases to act as Judicial Manager,

send to the Court, and to the Registrar of Companies, the requisite accounts of the receipts and payments of the company.

FOURTEENTH SCHEDULE — *(continued)*

(2) The Court may, on the Judicial Manager's application, extend the period of 2 months mentioned in sub-rule (1).

(3) The accounts are to be in the form of an abstract showing —

(a) receipts and payments during the relevant period of 12 months; or

(b) where the Judicial Manager has ceased to act, receipts and payments during the period from the end of the last 12 month period to the time when he so ceased. Alternatively, if there has been no previous abstract, receipts and payments in the period since his appointment as Judicial Manager.

**Resignation**

47. (1) The Judicial Manager may give notice of his resignation on grounds of ill health or because there is some conflicts of interest, or change of personal circumstances, which precludes or makes impracticable the further discharge by him of the duties of Judicial Manager.

(2) The Judicial Manager may, with the leave of the Court, give notice of his resignation on grounds other than those specified in sub-rule (1).

(3) The Judicial Manager must give to the persons specified below at least 7 days' notice of his intention to resign, or to apply for the Court's leave to do so if —

(a) there is a continuing Judicial Manager of the company, to him;

(b) there is no such Judicial Manager, to the informal creditors' committee;  
and

(c) there is no such Judicial Manager and no informal creditors' committee, to the company and its creditors.

**Judicial Manager deceased**

48. (1) Subject as follows, where the Judicial Manager has died, it is the duty of his personal representatives to give notice of the fact to the Court, specifying the date of the death.

(2) This does not apply if notice has been given under any of the following sub-rules.

FOURTEENTH SCHEDULE — *(continued)*

(3) If the deceased Judicial Manager was a partner in a firm, notice may be given by a partner in the firm.

(4) Notice of the death may be given by any person producing to the Court the relevant death certificate or a copy of it.

**Vacancy**

49. If a vacancy occurs by death, resignation or otherwise in the office of Judicial Manager, the Court may by order fill the vacancy.

**Release**

50. The Judicial Manager has his release —

(a) where he has died, at the time notice is given to the Court under rule 49;

(b) in any other case, at such time as the Court may determine.

**Application of rules 47 to 50**

51. Rules 47 to 50 inclusive apply to the resignation, death and release of an Executive Manager of a company as if the expression “Executive Manager” were substituted for the expression “Judicial Manager” wherever the latter appears.

**Protection of interests of creditors and members**

52. (1) At any time when a Judicial Management order is in force, a creditor or member may apply to the Court by petition for an order under this rule on the ground that —

(a) the company’s affairs, business and property are being or have been managed by the Judicial Manager in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or some part of the creditors or members including at least himself; or

(b) any actual or proposed act of the Judicial Manager is or would be so prejudicial.

(2) On an application for an order under this rule the Court may make such order as it thinks fit for giving relief in respect of the matters complained of, or make any other order that it thinks fit.

(3) An order under this rule shall not prejudice or prevent —

FOURTEENTH SCHEDULE — *(continued)*

(a) the implementation of any compromise or arrangement sanctioned by the Court under section 151; or

(b) where the application was made more than 28 days after the approval of proposals under rule 26, the implementation of those proposals.

**Non-application and application of rule 52**

**53.** (1) Rule 52 does not apply where a Judicial Management order has been made on the petition of the Minister of Finance and the sole purpose or one of the purposes for the achievement of which the order was made was the promotion of the public interest.

(2) Rule 52 applies where a Judicial Management order has been made on the petition of the Minister of Finance and the sole purpose for the achievement of which the order was made was one or more of the purposes specified in section 149I, but in such case no application under rule 50(1) may be made except with the prior written consent of the Minister of Finance and subject to such terms, if any, as he may require.

**Extension of time**

**54.** (1) The Court may, in any case where it sees fit, extend or abridge the time appointed by these Rules or fixed by any order of the Court for doing any act.

(2) In all proceedings before the Court, or any Registrar or officer thereof, or over which the Court has jurisdiction under these Rules, where no other provision is made by these Rules, the practice and procedure shall be in accordance with the rules and practice of the Court unless in any particular proceedings the Court otherwise directs.

**Petition etc. to be sealed**

**55.** In any case where it thinks fit, the Court may direct that all or any part of any petition, affidavit, report or other document, or copy thereof, is to be sealed and not open to inspection by any person save with the leave of the Court and on such terms as the Court may impose.