



Companies Act 1948

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PART IV

MANAGEMENT AND ADMINISTRATION.

Inspection.

164 Investigation of company's affairs on application of members.

- (1) The Board of Trade may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Board, direct—
 - (a) in the case of a company having a share capital, on the application either of not less than two hundred members or of members holding not less than one tenth of the shares issued;
 - (b) 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 Board Of Trade may require for the purpose of showing that the applicants have good reason for requiring the investigation, and the Board may, before appointing an inspector, require the applicants to give security, to an amount not exceeding one hundred pounds, for payment of the costs of the investigation.

165 Investigation of company's affairs in other cases.

Without prejudice to their powers under the last foregoing section, the Board of Trade—

- (a) shall appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Board direct, if—
 - (i) the company by special resolution; or
 - (ii) the court by order;

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declares that its affairs ought to be investigated by an inspector appointed by the Board; and

- (b) may do so if it appears to the Board that there are circumstances suggesting—
 - (i) that its business is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members or that it was formed for any fraudulent or unlawful purpose; or
 - (ii) that persons concerned with its formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members; or
 - (iii) that its members have not been given all the information with respect to its affairs which they might reasonably expect.

166 Power of inspectors to carry investigation into affairs of related companies.

If an inspector appointed under either of the two last foregoing sections to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of any other body corporate which is or has at any relevant time been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary, he shall have power so to do, and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.

167 Production of documents, and evidence, on investigation.

- (1) It shall be the duty of all officers and agents of the company and of all officers and agents of any other body corporate whose affairs are investigated by virtue of the last foregoing section to produce to the inspectors all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power and otherwise to give to the inspectors all assistance in connection with the investigation which they are reasonably able to give.
- (2) An inspector may examine on oath the officers and agents of the company or other body corporate in relation to its business, and may administer an oath accordingly.
- (3) If any officer or agent of the company or other body corporate 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 or other body corporate, as the case may be, the inspectors may certify the refusal under their hand to the court, and the court may thereupon inquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the court.
- (4) If an inspector thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath should be so examined, he may apply to the court and the court may if it sees fit order that person to attend and be examined on oath before it on any matter relevant to the investigation, and on any such examination—
 - (a) the inspector may take part therein either personally or by solicitor or counsel;
 - (b) the court may put such questions to the person examined as the court thinks fit;

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- (c) the person examined shall answer all such questions as the court may put or allow to be put to him, but may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him;

and 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 :

Provided that, notwithstanding anything in paragraph (c) of this subsection, the court may allow the person examined such costs as in its discretion it may think fit, and any costs so allowed shall be paid as part of the expenses of the investigation.

- (5) In this section, any reference to officers or to agents shall include past, as well as present, officers or agents, as the case may be, and for the purposes of this section the expression “agents ”, in relation to a company or other body corporate shall include the bankers and solicitors of the company or other body corporate and any persons employed by the company or other body corporate as auditors, whether those persons are or are not officers of the company or other body corporate.

168 Inspectors' report.

- (1) The inspectors may, and, if so directed by the Board of Trade, shall, make interim reports to the Board, and on the conclusion of the investigation shall make a final report to the Board.

Any such report shall be written or printed, as the Board direct.

- (2) The Board of Trade shall—
 - (a) forward a copy of any report made by the inspectors to the registered office of the company;
 - (b) if the Board think fit, furnish a copy thereof on request and on payment of the prescribed fee to any other person who is a member of the company or of any other body corporate dealt with in the report by virtue of section one hundred and sixty-six of this Act or whose interests as a creditor of the company or of any such other body corporate as aforesaid appear to the Board to be affected;
 - (c) where the inspectors are appointed under section one hundred and sixty-four of this Act, furnish, at the request of the applicants for the investigation, a copy to them; and
 - (d) where the inspectors are appointed under section one hundred and sixty-five of this Act in pursuance of an order of the court, furnish a copy to the court;and may also cause the report to be printed and published.

169 Proceedings on inspectors' report.

- (1) If from any report made under the last foregoing section it appears to the Board of Trade that any person has, in relation to the company or to any other body corporate whose affairs have been investigated by virtue of section one hundred and sixty-six of this Act, been guilty of any offence for which he is criminally liable, the Board shall proceed as follows:—

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- (a) in the case of an offence in England, if it appears to the Board that the case is one in which the prosecution ought to be undertaken by the Director of Public Prosecutions, the Board shall refer the matter to him;
 - (b) in the case of an offence in Scotland, the Board shall refer the matter to the Lord Advocate.
- (2) If, where any matter is referred to the Director of Public Prosecutions under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company or other body corporate as aforesaid, as the case may be (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which they are reasonably able to give.
- Subsection (5) of section one hundred and sixty-seven of this Act shall apply for the purposes of this subsection as it applies for the purposes of that section.
- (3) If, in the case of any body corporate liable to be wound up under this Act, it appears to the Board of Trade, from any such report as aforesaid that it is expedient so to do by reason of any such circumstances as are referred to in sub-paragraph (i) or (ii) of paragraph (b) of section one hundred and sixty-five of this Act, the Board may, unless the body corporate is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable that it should be wound up or a petition for an order under section two hundred and ten of this Act or both.
- (4) If from any such report as aforesaid it appears to the Board of Trade that proceedings ought in the public interest to be brought by any body corporate dealt with by the report for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that body corporate or the management of its affairs, or for the recovery of any property of the body corporate which has been misapplied or wrongfully retained, they may themselves bring proceedings for that purpose in the name of the body corporate.
- (5) The Board of Trade shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with any proceedings brought by virtue of the last foregoing subsection.

170 Expenses of investigation of company's affairs.

- (1) The expenses of and incidental to an investigation by an inspector appointed by the Board of Trade under the foregoing provisions of this Act shall be defrayed in the first instance by the Board of Trade, but the following persons shall, to the extent mentioned, be liable to repay the Board:—
- (a) any person who is convicted on a prosecution instituted as a result of the investigation by the Director of Public Prosecutions or by or on behalf of the Lord Advocate, or who is ordered to pay damages or restore any property in proceedings brought by virtue of subsection (4) of the last foregoing section, may in the same proceedings be ordered to pay the said expenses to such extent as may be specified in the order;
 - (b) any body corporate in whose name proceedings are brought as aforesaid shall be liable to the amount or value of any sums or property recovered by it as a result of those proceedings; and
 - (c) unless as a result of the investigation a prosecution is instituted by the Director of Public Prosecutions or by or on behalf of the Lord Advocate,—

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- (i) any body corporate dealt with by the report, where the inspector was appointed otherwise than of the Board's own motion, shall be liable, except so far as the Board otherwise direct; and
 - (ii) the applicants for the investigation, where the inspector was appointed under section one hundred and sixty-four of this Act, shall be liable to such extent (if any) as the Board may direct;
- and any amount for which a body corporate is liable by virtue of paragraph (b) of this subsection shall be a first charge on the sums or property mentioned in that paragraph.
- (2) The report of an inspector appointed otherwise than of the Board of Trade's own motion may, if he thinks fit, and shall, if the Board so direct, include a recommendation as to the directions (if any) which he thinks appropriate, in the light of his investigation, to be given under paragraph (c) of the foregoing subsection.
- (3) For the purposes of this section, any costs or expenses incurred by the Board of Trade in or in connection with proceedings brought by virtue of subsection (4) of the last foregoing section (including expenses incurred by virtue of subsection (5) thereof) shall be treated as expenses of the investigation giving rise to the proceedings.
- (4) Any liability to repay the Board of Trade imposed by paragraphs (a) and (b) of subsection (1) of this section shall, subject to satisfaction of the Board's right to repayment, be a liability also to indemnify all persons against liability under paragraph (c) thereof, and any such liability imposed by the said paragraph (a) shall, subject as aforesaid, be a liability also to indemnify all persons against liability under the said paragraph (b); and any person liable under the said paragraph (a) or (b) or either sub-paragraph of the said paragraph (c) shall be entitled to contribution from any other person liable under the same paragraph or sub-paragraph, as the case may be, according to the amount of their respective liabilities thereunder.
- (5) The expenses to be defrayed by the Board of Trade under this section shall, so far as not recovered thereunder, be paid out of moneys provided by Parliament, but subsection (3) of section thirteen of the Economy (Miscellaneous Provisions) Act, 1926 (which provides for the issue out of the Bankruptcy and Companies Winding-up (Fees) Account of sums towards meeting the charges estimated by the Board of Trade in respect of salaries and expenses under this Act in relation to the winding up of companies in England) shall have effect as if the said expenses were expenses incurred by the Board under this Act in relation to the winding up of companies in England.

171 Inspectors' report to be evidence.

A copy of any report of any inspectors appointed under the foregoing provisions of 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.

172 Appointment and powers of inspectors to investigate ownership of company.

- (1) Where it appears to the Board of Trade that there is good reason so to do, they may appoint one or more competent inspectors to investigate and report on the membership of any company and otherwise with respect to the company for the purpose 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 the policy of the company.

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- (2) The appointment of an inspector under this section may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.
- (3) Where an application for an investigation under this section with respect to particular shares or debentures of a company is made to the Board of Trade by members of the company, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under section one hundred and sixty-four of this Act, the Board of Trade shall appoint an inspector to conduct the investigation unless they are satisfied that the application is vexatious, and the inspector's appointment shall not exclude from the scope of his investigation any matter which the application seeks to have included therein, except in so far as the Board of Trade are satisfied that it is unreasonable for that matter to be investigated.
- (4) Subject to the terms of an inspector's appointment his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.
- (5) For the purposes of any investigation under this section sections one hundred and sixty-six to one hundred and sixty-eight of this Act, shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, so, however, that—
 - (a) the said sections shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be; and
 - (b) the Board of Trade shall not be bound to furnish the company or any other person with a copy of any report - by an inspector appointed under this section or with a complete copy thereof if they are of opinion that there is good reason for not divulging the contents of the report or of parts thereof, but shall cause to be kept by the registrar a copy of any such report or, as the case may be, the parts of any such report, as respects which they are not of that opinion.
- (6) The expenses of any investigation under this section shall be defrayed by the Board of Trade out of moneys provided by Parliament.

173 Power to require information as to persons interested in shares or debentures.

- (1) Where it appears to the Board of Trade that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, they may require any person whom they have reasonable cause to believe—
 - (a) to be or to have been interested in those shares or debentures; or
 - (b) to act or to have acted in relation to those shares or debentures as the solicitor or agent of someone interested therein;

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to give them any information which he has or can reasonably be expected to obtain as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

- (2) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture if he has any right to acquire or dispose of the share or debenture or any interest therein or to vote- in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.
- (3) Any person who fails to give any information required of him under this section, or who in giving any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both.

174 Power to impose restrictions on shares or debentures.

- (1) Where in connection with an investigation under either of the two last foregoing sections it appears to the Board of Trade that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Act, the Board may by order direct that the shares shall until further order be subject to the restrictions imposed by this section.
- (2) So long as any shares are directed to be subject to the restrictions imposed by this section—
 - (a) any transfer of those shares, or in the case of unissued shares any transfer of the right to be issued therewith and any issue thereof, shall be void;
 - (b) no voting rights shall be exercisable in respect of those shares;
 - (c) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof;
 - (d) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.
- (3) Where the Board of Trade make an order directing that shares shall be subject to the said restrictions, or refuse to make an order directing that shares shall cease to be subject thereto, any person aggrieved thereby may apply to the court, and the court may, if it sees fit, direct that the shares shall cease to be subject to the said restrictions.
- (4) Any order (whether of the Board of Trade or of the court) directing that shares shall cease to be subject to the said restrictions which is expressed to be made with a view to permitting a transfer of those shares may continue the restrictions mentioned in paragraphs (c) and (d) of subsection (2) of this section, either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.
- (5) Any person who—
 - (a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to the said restrictions or of any right to be issued with any such shares; or

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- (b) votes in respect of any such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or
 - (c) being the holder of any such shares, fails to notify of their being subject to the said restrictions any person whom he does not know to be aware of that fact but does know to be entitled, apart from the said restrictions, to vote in respect of those shares whether as holder or proxy;
- shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both.
- (6) Where shares in any company are issued in contravention of the said restrictions, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds.
 - (7) A prosecution shall not be instituted in England under this section except by or with the consent of the Board of Trade.
 - (8) This section shall apply in relation to debentures as it applies in relation to shares.

175 Saving for solicitors and bankers.

Nothing in the foregoing provisions of this Part of this Act shall require disclosure to the Board of Trade or to an inspector appointed by them—

- (a) by a solicitor of any privileged communication made to him in that capacity, except as respects the name and address of his client; or
- (b) by a company's bankers as such of any information as to the affairs of any of their customers other than the company.