



# Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

## PART IV

MANAGEMENT AND ADMINISTRATION.

### *Registered Office and Name.*

#### **107 Registered office of company.**

- (1) A company shall, as from the day on which it begins to carry on business or as from the fourteenth day after the date of its incorporation, whichever is the earlier, have a registered office to which all communications and notices may be addressed.
- (2) Notice of the situation of the registered office, and of any change therein, shall be given within fourteen days after the date of the incorporation of the company or of the change, as the case may be, to the registrar of companies, 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 shall be liable to a default fine.

#### **108 Publication of name by company.**

- (1) Every company—
  - (a) shall 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) shall have its name engraven in legible characters on its seal;
  - (c) shall have its name mentioned in legible characters in all business letters of the company and in all notices and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the

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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 shall be liable to a fine not exceeding five pounds, 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 shall be liable to a default fine.
- (3) If a company fails to comply with paragraph (b) or paragraph (c) of subsection (1) of this section, the company shall be liable to a fine not exceeding fifty pounds.
- (4) If an 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; or
  - (b) issues or authorises the issue of any business letter of the company or any notice 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, endorsement, 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 shall be liable to a fine not exceeding fifty pounds, 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.

*Restrictions on Commencement of Business.*

**109 Restrictions on commencement of business.**

- (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; and
  - (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and
  - (c) no money is or may become liable to be repaid to applicants for any shares or debentures which have been offered for public subscription by reason of any failure to apply for or to obtain permission for the shares or debentures to be dealt in on any stock exchange; and
  - (d) there has been delivered to the registrar of companies for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with.
- (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—

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- (a) there has been delivered to the registrar of companies for registration a statement in lieu of prospectus; and
  - (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and
  - (c) there has been delivered to the registrar of companies for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that paragraph (b) of this subsection has been complied with.
- (3) The registrar of companies shall, on the delivery to him of the said statutory 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, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.
- (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 shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues.
- (7) Nothing in this section shall apply to—
- (a) a private company; or
  - (b) a company registered before the first day of January, nineteen hundred and one; or
  - (c) a company registered before the first day of July, nineteen hundred and eight, which has not issued a prospectus inviting the public to subscribe for its shares.

#### *Register of Members.*

### **110 Register of members.**

- (1) Every company shall keep a register of its members and enter therein the following particulars:—
- (a) the names and addresses 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 so long as the share has a 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 of companies, the register shall show

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the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (a) of this subsection.

- (2) The register of members shall be kept at the registered office of the company:

Provided that,—

- (a) if the work of making it up is done at another office of the company, it may be kept at that other office; and
- (b) if the company arranges with some other person for the making up of the register to be undertaken on behalf of the company by that other person, it may be kept at the office of that other person at which the work is done;

so, however, that it shall not be kept, in the case of a company registered in England, at a place outside England, and, in the case of a company registered in Scotland, at a place outside Scotland.

- (3) Every company shall send notice to the registrar of companies of the place where its register of members is kept and of any change in that place:

Provided that a company shall not be bound to send notice under this subsection where the register has, at all times since it came into existence or, in the case of a register in existence at the commencement of this Act, at all times since then, been kept at the registered office of the company.

- (4) Where a company makes default in complying with subsection (1) of this section or makes default for fourteen days in complying with the last foregoing subsection, the company and every officer of the company who is in default shall be liable to a default fine.

### **111 Index of members.**

- (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 fourteen 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 shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.
- (3) The index shall be at all times kept at the same place as the register of members.
- (4) 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.

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

- (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, namely:—
  - (a) the fact of the issue of the warrant;
  - (b) a statement of the shares included in the warrant, distinguishing each share by its number so long as the share has a number; and
  - (c) the date of the issue of the warrant.

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- (2) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.
- (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 bearer of a share warrant in respect of the shares therein specified without the warrant being surrendered and cancelled.
- (4) Until the warrant is surrendered, the particulars specified in subsection (1) of this section 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 bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles.

### **113 Inspection of register and index.**

- (1) Except when the register of members is closed under the provisions of this Act, the register, and index of the names, of the members of a company shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge and of any other person on payment of one shilling, 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 sixpence, or such less sum as the company may prescribe, for every hundred 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 ten 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 shall be liable in respect of each offence to a fine not exceeding two pounds and further to a default fine of two pounds.
- (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.

### **114 Consequences of failure to comply with requirements as to register owing to agent's default.**

Where, by virtue of proviso (b) to subsection (2) of section one hundred and ten of this Act, the register of members is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with subsection (3) of that section, subsection (3) of section one hundred and eleven of this Act, or the last foregoing section or with any requirements of this Act as to the production of the register, that other person shall be liable to the same penalties as if he were an officer of the company who was in default, and the power of the court under subsection (4) of the last foregoing section shall extend to the making of orders against that other person and his officers and servants.

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**115 Power to close register.**

A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year.

**116 Power of court to rectify register.**

- (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 of companies, the court, when making an order for rectification of the register shall by its order direct notice of the rectification to be given to the registrar.

**117 Trusts not to be entered on register in England.**

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 England.

**118 Register to be evidence.**

The register of members shall be prima facie evidence of any matters by this Act directed or authorised to be inserted therein.

*Dominion Register.*

**119 Power for company to keep dominion register.**

- (1) A company having a share capital whose objects comprise the transaction of business in any part of His Majesty's dominions outside Great Britain, the Channel Islands or the Isle of Man may cause to be kept in any such part of His Majesty's dominions in which it transacts business a branch register of members resident in that part (in this Act called a “dominion register”).

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- (2) The company shall give to the registrar of companies notice of the situation of the office where any dominion register is kept and of any change in its situation, and if it is discontinued of its discontinuance, and any such notice shall be given within fourteen days of the opening of the office or of the change or discontinuance, as the case may be.
- (3) If default is made in complying with subsection (2) of this section, the company and every officer of the company who is in default shall be liable to a default fine.
- (4) References to a colonial register occurring in any articles registered before the first day of November, nineteen hundred and twenty-nine, shall be construed as references to a dominion register.

## **120 Regulations as to dominion register.**

- (1) A dominion register shall be deemed to be part of the company's register of members (in this section called “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 the district where the dominion register is kept, and that any competent court in that part of His Majesty's dominions where the register is kept may exercise the same jurisdiction of rectifying the register as is under this Act exercisable by the court, and that the offences of refusing inspection or copies of a dominion register, and of authorising or permitting the refusal may be prosecuted summarily before any tribunal having summary criminal jurisdiction in -that part of His Majesty's dominions.
- (3) The company shall—
  - (a) transmit to its registered office a copy of every entry in its dominion register as soon as may be after the entry is made; and
  - (b) cause to be kept at the place where the company's principal register is kept a duplicate of its dominion register duly entered up from time to time.

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 dominion register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a dominion register shall, during the continuance of that registration, be registered in any other register.
- (5) A company may discontinue to keep a dominion register, and thereupon all entries in that register shall be transferred to some other dominion register kept by the company in the same part of His Majesty's dominions 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 dominion registers.
- (7) If default is made in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a default fine; and where, by virtue of proviso (b) to subsection (2) of section one hundred and ten of this Act, the principal register is kept at the office of some person other than the company and by reason of any default of his the company fails to comply with paragraph (b) of

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subsection (3) of this section, he shall be liable to the same penalty as if he were an officer of the company who was in default.

**121 Stamp duties in case of shares registered in dominion registers.**

An instrument of transfer of a share registered in a dominion register, other than such a register kept in Northern Ireland, shall be deemed to be a transfer of property situate out of the United Kingdom, and, unless executed in any part of the United Kingdom, shall be exempt from stamp duty chargeable in Great Britain.

**122 Power to extend provisions as to dominion registers to other countries.**

- (1) The Foreign Jurisdiction Act, 1890, shall have effect as if the last three foregoing sections were included among the enactments which by virtue of section five of that Act may be applied by Order in Council to foreign countries in which for the time being His Majesty has jurisdiction.
- (2) His Majesty may by Order in Council direct that the said sections, including any enactments for the time being in force amending or substituted for those sections, shall extend, with or without any exceptions, adaptations or modifications specified in the Order, to any territories under His Majesty's protection to which those sections cannot be extended under the Foreign Jurisdiction Act, 1890, as amended by subsection (1) of this section.

His Majesty may by Order in Council revoke or vary any Order made under this subsection.

**123 Provisions as to branch registers of dominion companies kept in the United Kingdom.**

- (1) If by virtue of the law in force in any part of His Majesty's dominions outside Great Britain companies incorporated under that law have power to keep in Great Britain branch registers of their members resident in Great Britain, His Majesty may by Order in Council direct that subsection (2) of section one hundred and ten (except the proviso thereto) and sections one hundred and thirteen and one hundred and sixteen of this Act shall, subject to any modifications and adaptations specified in the Order, apply to and in relation to any such branch registers kept in Great Britain as they apply to and in relation to the registers of companies within the meaning of this Act.
- (2) For the purposes of this section, the expression " His Majesty's dominions " includes any territory which is under His Majesty's protection or in respect of which a mandate under the League of Nations has been accepted by His Majesty.
- (3) For the purposes of the Mandated and Trust Territories Act, 1947 (which makes provision as to the application and modification of enactments in relation to such mandates as aforesaid and the trusteeship system of the United Nations), subsections (1) and (2) of this section shall be deemed to be contained in an Act of an earlier session than that Act.

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*Annual Return.*

**124 Annual return to be made by company having a share capital.**

- (1) Every company having a share capital shall, once at least in every year, make a return containing with respect to the registered office of the company, registers of members and debenture holders, shares and debentures, indebtedness, past and present members and directors and secretary, the matters specified in Part I of the Sixth Schedule to this Act, and the said return shall be in the form set out in Part II of that Schedule or as near thereto as circumstances admit:

Provided that—

- (a) a company need not make a return under this subsection either in the year of its incorporation or, if it is not required by section one hundred and thirty-one of this Act to hold an annual general meeting during the following year, in that year;
  - (b) where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the list referred to in paragraph 5 of Part I of the said Sixth Schedule 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 required by that paragraph ;
  - (c) the return may, in any year, if the return for either of the two immediately preceding years has given as at the date of that return the full particulars required by the said paragraph 5, give only such of the particulars required by that paragraph as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date or to changes as compared with that date in the amount of stock held by a member; and
  - (d) the annual return of a company made next after the expiry of paragraph (1) of regulation three of the Defence (Companies) Regulations, 1940 (under which the annual return of a company having a share capital need not contain any list of members, except in the case of a company's first annual return or of a private company), need not, if that paragraph applied to the annual return last made by the company, give the particulars required by the said paragraph 5 as to past members of the company or as to shares transferred.
- (2) In the case of a company keeping a dominion register—
- (a) references in proviso (c) to the foregoing subsection to the particulars required by the said paragraph 5 shall be taken as not including any such particulars contained in the dominion register, in so far as copies of the entries containing those particulars are not received at the registered office of the company before the date when the return in question is made; and
  - (b) where an annual return is made between the date when any entries are made in the dominion register and the date when copies of those entries are received at the registered office of the company, the particulars contained in those entries, so far as relevant to an annual return, shall be included in the next or a subsequent annual return as may be appropriate having regard to the particulars included in that return with respect to the company's register of members.
- (3) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine.

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- (4) For the purposes of this section and of Part I of the Sixth Schedule to this Act the expressions “director ” and “officer ” shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

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

- (1) Every company not having a share capital shall once at least in every calendar year make a return stating—
- (a) the address of the registered office of the company;
  - (b) in a case in which the register of members is, under the provisions of this Act, kept elsewhere than at that office, the address of the place where it is kept;
  - (c) in a case in which any register of holders of debentures of the company or any duplicate of any such register or part of any such register is, under the provisions of this Act, kept, in England in the case of a company registered in England or in Scotland in the case of a company registered in Scotland, elsewhere than at the registered office of the company, the address of the place where it is kept;
  - (d) all such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is secretary of the company as are by this Act required to be contained with respect to directors and the secretary respectively in the register, of directors and secretaries of a company:

Provided that a company need not make a return under this subsection either in the year of its incorporation or, if it is not required by section one hundred and thirty-one of this Act to hold an annual general meeting during the following year, in that year.

- (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 (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies under this Act, or which would have been required so to be registered if created after the first day of July, nineteen hundred and eight. .
- (3) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine.
- (4) For the purposes of this section the expressions “officer ” and “director ” shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

**126 Time for completion of annual return.**

- (1) The annual return must be completed within forty-two days after the annual general meeting for the year, whether or not that meeting is the first or only ordinary general meeting, or the first or only general meeting, of the company in the year, and the company must forthwith forward to the registrar of companies a copy signed both by a director and by the secretary of the company.
- (2) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine.

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For the purposes of this subsection the expression “officer ” shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

#### **127 Documents to be annexed to annual return.**

- (1) Subject to the provisions of this Act, there shall be annexed to the annual return—
- (a) a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which the return relates (including every document required by law to be annexed to the balance sheet); and
  - (b) a copy, certified as aforesaid, of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet;

and where any such balance sheet or document required by law to be annexed thereto is in a foreign language, there shall be annexed to that balance sheet a translation in English of the balance sheet or document certified in the prescribed manner to be a correct translation.

- (2) If any such balance sheet as aforesaid or document required by law to be annexed thereto 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 or documents aforesaid, as the case may be, there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and -the fact that the copy has been so amended shall be stated thereon.
- (3) If a company fails to comply with this section, the company and every-officer of the company who is in default shall be liable to a default fine.

For the purposes of this subsection, the expression “officer ” shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

- (4) This section shall not apply to an assurance company which has complied with the provisions of subsection (4) of section seven of the Assurance Companies Act, 1909.

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

A private company shall send with the annual return required by section one hundred and twenty-four of this Act a certificate signed both by a director and by the secretary of the company that the company has not, since the date of the last return, or, in the case of a first return, since the date of the incorporation of the company, issued 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 paragraph (b) of subsection (1) of section twenty-eight of this Act are not to be included in reckoning the number of fifty.

#### **129 Exemption, in certain cases, of private companies from requirements of s.127.**

- (1) A private company shall be excepted from the requirements imposed by section one hundred and twenty-seven of this Act if, but only if,—

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- (a) the conditions mentioned in the next following subsection are satisfied at the date of the return and have been satisfied at all times since the commencement of this Act; and
- (b) there is sent with the return a certificate, signed by the persons signing the certificates required to be so sent by the last foregoing section, that to the best of their knowledge and belief the said conditions are and have been satisfied as aforesaid:

Provided that if at any time it is shown that the said conditions are then satisfied in the case of any private company, the Board of Trade may on the application of the company's directors direct that, in relation to any subsequent annual returns of the company, it shall not be necessary for the said conditions to have been satisfied before that time, and the certificates sent with those returns shall in that event relate only to the period since that time.

- (2) The said conditions are—
  - (a) that the conditions contained in the Seventh Schedule to this Act are satisfied as to the persons interested in the company's shares and debentures; and
  - (b) that the number of persons holding debentures of the company is not more than fifty (joint holders being treated as a single person); and
  - (c) that no body corporate is a director of the company and neither the company nor any of the directors is party or privy to any arrangement whereby the policy of the company is capable of being determined by persons other than the directors, members and debenture holders or trustees for debenture holders.
- (3) A prosecution shall not be instituted in England in respect of any failure of a private company to comply with section one hundred and twenty-seven of this Act except by or with the consent of the Board of Trade.
- (4) Any reference in this Act to an exempt private company shall be construed as referring to a company with respect to which the conditions mentioned in subsection (2) of this section are satisfied and have been satisfied at all times since the commencement of this Act or since the giving by the Board of Trade of a direction under the proviso to subsection (1) of this section.
- (5) References in this section to the said conditions having been satisfied since the commencement of this Act shall, in relation to a company first registered after the commencement of this Act, be construed as referring to the conditions having been satisfied since the company's registration.

*Meetings and Proceedings.*

**130 Statutory meeting and statutory report.**

- (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 three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called “the statutory meeting”.

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- (2) The directors shall, at least fourteen days before the day on which the meeting is held, forward a report (in this Act referred to as “the statutory report”) to every member of the company:

Provided that if the statutory report is forwarded later than is required by this subsection, it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed by all the members entitled to attend and vote at the meeting.

- (3) The statutory report shall be certified by not less than two directors of the company 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 seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;
  - (d) the names, addresses and descriptions of the directors, auditors, if any, managers, if any, and secretary of the company; and
  - (e) the particulars of any contract the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.
- (4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.
- (5) The directors shall cause a copy of the statutory report, certified as required by this section, to be delivered to the registrar of companies 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 knowingly and wilfully guilty of the default or, in the

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case of default by the company, every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

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

### **131 Annual general meeting.**

- (1) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that, so long as a company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

- (2) If default is made in holding a meeting of the company in accordance with the foregoing subsection, the Board of Trade may, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the Board think expedient, including directions modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company's articles; and it is hereby declared that the directions that may be given under this subsection include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.
- (3) A general meeting held in pursuance of the last foregoing subsection shall, subject to any directions of the Board of Trade, be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated.
- (4) Where a company resolves that a meeting shall be so treated, a copy of the resolution shall, within fifteen days after the passing thereof, be forwarded to the registrar of companies and recorded by him.
- (5) If default is made in holding a meeting of the company in accordance with subsection (1) of this section, or in complying with any directions of the Board of Trade under subsection (2) thereof, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds, and if default is made in complying with subsection (4) of this section, the company and every officer of the company who is in default shall be liable to a default fine of two pounds.

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

- (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 the said date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

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- (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 twenty-one 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 of three months from the said 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 one hundred and forty-one of this Act.

### **133 Length of notice for calling meetings.**

- (1) Any provision of a company's articles shall be void in so far as it provides for the calling of a meeting of the company (other than an adjourned meeting) by a shorter notice than—
  - (a) in the case of the annual general meeting, twenty-one days' notice in writing; and
  - (b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, fourteen days' notice in writing in the case of a company other than an unlimited company and seven days' notice in writing in the case of an unlimited company.
- (2) Save in so far as the articles of a company make other provision in that behalf (not being a provision avoided by the foregoing subsection) a meeting of the company (other than an adjourned meeting) may be called—
  - (a) in the case of the annual general meeting, by twenty-one days' notice in writing; and
  - (b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, by fourteen days' notice in writing in the case of a company other than an unlimited company and by seven days' notice in writing in the case of an unlimited company.
- (3) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in the last foregoing subsection or in the company's articles, as the case may be, be deemed to have been duly called if it is so agreed—
  - (a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

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- (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than ninety-five per cent. in nominal value of the shares giving a right to attend and vote at the meeting, or, in the case of a company not having a share capital, together representing not less than ninety-five per cent. of the total voting rights at that meeting of all the members.

#### **134 General provisions as to meetings and votes.**

The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf:—

- (a) 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;
- (b) 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 five per cent. in number of the members of the company may call a meeting;
- (c) 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;
- (d) any member elected by the members present at a meeting may be chairman thereof;
- (e) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each ten pounds of stock held by him, and in any other case every member -shall have one vote.

#### **135 Power of court to order meeting.**

- (1) 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 it is hereby declared that the directions that may be given under this subsection include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.
- (2) Any meeting called, held and conducted in accordance with an order under the foregoing subsection shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

#### **136 Proxies.**

- (1) Any member of a company entitled to attend and vote at a meeting of the company, shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and a proxy appointed to attend and vote instead of a member of a private company shall also have the same right as the member to speak at the meeting:

Provided that, unless the articles otherwise provide,—

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- (a) this subsection shall not apply in the case of a company not having a share capital; and
  - (b) a member of a private company shall not be entitled to appoint more than one proxy to attend on the same occasion; and
  - (c) a proxy shall not be entitled to vote except on a poll.
- (2) In every notice calling a meeting of a company having a share capital there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, one or more proxies to attend and vote instead of him, and that a proxy need not also be a member; and if default is made in complying with this subsection, as respects any meeting, every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.
- (3) Any provision contained in a company's articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than forty-eight hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.
- (4) If for the purpose of any meeting of a company invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer of the company who knowingly and wilfully authorises or permits their issue as aforesaid shall be liable to a fine not exceeding one hundred pounds:
- Provided that an officer shall not be liable under this subsection by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.
- (5) This section shall apply to meetings of any class of members of a company as it applies to general meetings of the company.

### **137 Right to demand a poll.**

- (1) Any provision contained in a company's articles shall be void in so far as it would have the effect either—
- (a) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or
  - (b) of making ineffective a demand for a poll on any such question which is made either—
    - (i) by not less than five members having the right to vote at the meeting; or
    - (ii) by a member or members representing not less than one tenth of the total voting rights of all the members having the right to vote at the meeting; or
    - (iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one tenth of the total sum paid up on all the shares conferring that right.

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- (2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of the foregoing subsection a demand by a person as proxy for a member shall be the same as a demand by the member.

**138 Voting on a poll.**

On a poll taken at a meeting of a company or a meeting of any class of members of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

**139 Representation of corporations at meetings of companies and of creditors.**

- (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.

**140 Circulation of members' resolutions, &c.**

- (1) Subject to the following provisions of this section it shall be the duty of a company, on the requisition in writing of such number of members as is hereinafter specified and (unless the company otherwise resolves) at the expense of the requisitionists,—
- (a) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting;
  - (b) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.
- (2) The number of members necessary for a requisition under the foregoing subsection shall be—
- (a) any number of members representing not less than one twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or
  - (b) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than one hundred pounds.

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- (3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting, and notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company:

Provided that the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

- (4) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—
- (a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company—
    - (i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting; and
    - (ii) in the case of any other requisition, not less than one week before the meeting; and
  - (b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof.

- (5) The company shall also not be bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.
- (6) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section, and for the purposes of this subsection notice shall be deemed to have been so given notwithstanding the accidental omission, in giving it, of one or more members.
- (7) In the event of any default in complying with the provisions of this section, every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds.

#### **141 Extraordinary and special resolutions.**

- (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

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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 twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given:

Provided that, if it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than ninety-five per cent. in nominal value of the shares giving that right, or, in the case of a company not having a share capital, together representing not less than ninety-five per cent. of the total voting rights at that meeting of all the members, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one 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) In computing the majority on a poll demanded on the question that an extraordinary resolution or a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution.
- (5) 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.

#### **142 Resolutions requiring special notice.**

Where by any provision hereafter contained in this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than twenty-one days before the meeting:

Provided that if, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight 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.

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

- (1) A printed copy of every resolution or agreement to which this section applies shall, within fifteen days after the passing or making thereof, be forwarded to the registrar of companies and recorded by him:

Provided that an exempt private company need not forward a printed copy of any such resolution or agreement if instead it forwards to the registrar of companies a copy in some other form approved by him.

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- (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 shilling or such less sum as the company may direct.
- (4) This section shall apply 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) resolutions requiring a company to be wound up voluntarily, passed under paragraph (a) of subsection (1) of section two hundred and seventy-eight of this Act.
- (5) If a company fails to comply with subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a default fine of two pounds.
- (6) If a company fails to comply with subsection (2) or subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.
- (7) For the purposes of the two last foregoing subsections, a liquidator of the company shall be deemed to be an officer of the company.

#### **144 Resolutions passed at adjourned meetings.**

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.

#### **145 Minutes of proceedings of meetings of company and of directors and managers.**

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

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- (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.
- (4) If a company fails to comply with subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

#### **146 Inspection of minute books.**

- (1) The books containing the minutes of proceedings of any general meeting of a company held on or after the first day of November, nineteen hundred and twenty-nine, 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 not less than two 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 within seven days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding sixpence for every hundred 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 the company who is in default shall be liable in respect of each offence to a fine not exceeding two pounds and further to a default fine of two pounds.
- (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.*

#### **147 Keeping of books of account.**

- (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.
- (2) For the purposes of the foregoing subsection, proper books of account shall not be deemed to be kept with respect to the matters aforesaid. if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.
- (3) 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:

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Provided that if books of account are kept at a place outside Great Britain there shall be sent to, and kept at a place in, Great Britain and be at all times open to inspection by the directors such accounts and returns with respect to the business dealt with in the books of account so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding six months and will enable to be prepared in accordance with this Act the company's balance sheet, its profit and loss account or income and expenditure account, and any document annexed to any of those documents giving information which is required by this Act and is thereby allowed to be so given.

- (4) 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 shall, in respect of each offence, be, liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that—

- (a) in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty; and
- (b) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

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

- (1) The directors of every company shall at some date not later than eighteen 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 nine months, or, in the case of a company carrying on business or having interests abroad, by more than twelve months:

Provided that the Board of Trade, if for any special reason they think fit so to do, may, in the case of any company, extend the period of eighteen months aforesaid, and in the case of any company and with respect to any year extend the periods of nine and twelve months aforesaid.

- (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.
- (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 shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that—

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- (a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty; and
- (b) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

#### **149 General provisions as to contents and form of accounts.**

- (1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year.
- (2) A company's balance sheet and profit and loss account shall comply with the requirements of the Eighth Schedule to this Act, so far as applicable thereto.
- (3) Save as expressly provided in the following provisions of this section or in Part III of the said Eighth Schedule, the requirements of the last foregoing subsection and the said Eighth Schedule shall be without prejudice either to the general requirements of subsection (1) of this section or to any other requirements of this Act.
- (4) The Board of Trade may, on the application or with the consent of a company's directors, modify in relation to that company any of the requirements of this Act as to the matters to be stated in a company's balance sheet or profit and loss account (except the requirements of subsection (1) of this section) for the purpose of adapting them to the circumstances of the company.
- (5) Subsections (1) and (2) of this section shall not apply to a company's profit and loss account if—
  - (a) the company has subsidiaries; and
  - (b) the profit and loss account is framed as a consolidated profit and loss account dealing with all or any of the company's subsidiaries as well as the company and—
    - (i) complies with the requirements of this Act relating to consolidated profit and loss accounts; and
    - (ii) shows how much of the consolidated profit or loss for the financial year is dealt with in the accounts of the company.
- (6) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects any accounts laid before the company in general meeting with the provisions of this section and with the other requirements of this Act as to the matters to be stated in accounts, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that,—

- (a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of

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- seeing that the said provisions or the said other requirements, as the case may be, were complied with and was in a position to discharge that duty; and
- (b) a person shall not be sentenced to imprisonment for any such offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.
- (7) For the purposes of this section and the following provisions of this Act, except where the context otherwise requires,—
- (a) any reference to a balance sheet or profit and loss account shall include any notes thereon or document annexed thereto giving information which is required by this Act and is thereby allowed to be so given; and
- (b) any reference to a profit and loss account shall be taken, in the case of a company not trading for profit, as referring to its income and expenditure account, and references to profit or to loss and, if the company has subsidiaries, references to a consolidated profit and loss account shall be construed accordingly.

#### **150 Obligation to lay group accounts before holding company.**

- (1) Where at the end of its financial year a company has subsidiaries, accounts or statements (in this Act referred to as “group accounts ”) dealing as hereinafter mentioned with the state of affairs and profit or loss of the company and the subsidiaries shall, subject to the next following subsection, be laid before the company in general meeting when the company's own balance sheet and profit and loss account are so laid.
- (2) Notwithstanding anything in the foregoing subsection—
- (a) group accounts shall not be required where the company is at the end of its financial year the wholly owned subsidiary of another body corporate incorporated in Great Britain; and
- (b) group accounts need not deal with a subsidiary of the company if the company's directors are of opinion that—
- (i) it is impracticable, or would be of no real value to members of the company, in view of the insignificant amounts involved, or would involve expense or delay out of proportion to the value to members of the company; or
- (ii) the result would be misleading, or harmful to the business of the company or any of its subsidiaries; or
- (iii) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking;
- and, if the directors are of such an opinion about each of the company's subsidiaries, group accounts shall not be required:

Provided that the approval of the Board of Trade shall be required for not dealing in group accounts with a subsidiary on the ground that the result would be harmful or on the ground of the difference between the business of the holding company and that of the subsidiary.

- (3) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects the company with the provisions of this section, he shall, in

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respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that,—

- (a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty; and
  - (b) 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.
- (4) For the purposes of this section a body corporate shall be deemed to be the wholly owned subsidiary of another if it has no members except that other and that other's wholly owned subsidiaries and its or their nominees.

#### **151 Form of group accounts.**

- (1) Subject to the next following subsection, the group accounts laid before a holding company shall be consolidated accounts comprising—
  - (a) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in group accounts;
  - (b) a consolidated profit and loss account dealing with the profit or loss of the company and those subsidiaries.
- (2) If the company's directors are of opinion that it is better for the purpose—
  - (a) of presenting the same or equivalent information about the state of affairs and profit or loss of the company and those subsidiaries; and
  - (b) of so presenting it that it may be readily appreciated by the company's members;

the group accounts may be prepared in a form other than that required by the foregoing subsection, and in particular may consist of more than one set of consolidated accounts dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries or of separate accounts dealing with each of the subsidiaries, or of statements expanding the information about the subsidiaries in the company's own accounts, or any combination of those forms.
- (3) The group accounts may be wholly or partly incorporated in the company's own balance sheet and profit and loss account.

#### **152 Contents of group accounts.**

- (1) The group accounts laid before a company shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with thereby as a whole, so far as concerns members of the company.
- (2) Where the financial year of a subsidiary does not coincide with that of the holding company, the group accounts shall, unless the Board of Trade on the application or with the consent of the holding company's directors otherwise direct, deal with the subsidiary's state of affairs as at the end of its financial year ending with or last before that of the holding company, and with the subsidiary's profit or loss for that financial year.'

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- (3) Without prejudice to subsection (1) of this section, the group accounts, if prepared as consolidated accounts, shall comply with the requirements of the Eighth Schedule to this Act, so far as applicable thereto, and if not so prepared shall give the same or equivalent information :

Provided that the Board of Trade may, on the application or with the consent of a company's directors, modify the said requirements in relation to that company for the purpose of adapting them to the circumstances of the company.

### **153 Financial year of holding company and subsidiary.**

- (1) A holding company's directors shall secure that except where in their opinion there are good reasons against it, the financial year of each of its subsidiaries shall coincide with the company's own financial year.
- (2) Where it appears to the Board of Trade desirable for a holding company or a holding company's subsidiary to extend its financial year so that the subsidiary's financial year may end with that of the holding company, and for that purpose to postpone the submission of the relevant accounts to a general meeting from one calendar year to the next, the Board may on the application or with the consent of the directors of the company whose financial year is to be extended direct that, in the case of that company, the submission of accounts to a general meeting, the holding of an annual general meeting or the making of an annual return shall not be required in the earlier of the said calendar years.

### **154 Meaning of “holding company ” and “subsidiary ”.**

- (1) For the purposes of this Act, a company shall, subject to the provisions of subsection (3) of this section, be deemed to be a subsidiary of another if, but only if,—
- (a) that other either—
    - (i) is a member of it and controls the composition of its board of directors; or
    - (ii) holds more than half in nominal value of its equity share capital; or
  - (b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.
- (2) For the purposes of the foregoing subsection, the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say—
- (a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid; or
  - (b) that a person's appointment thereto follows necessarily from his appointment as director of that other company; or
  - (c) that the directorship is held by that other company itself or by a subsidiary of it.
- (3) In determining whether one company is a subsidiary of another—

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- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;
  - (b) subject to the two following paragraphs, any shares held or power exercisable—
    - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity); or
    - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity;
 shall be treated as held or exercisable by that other;
  - (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded ;
  - (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in the last foregoing paragraph) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.
- (4) For the purposes of this Act, a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.
- (5) In this section the expression “company ” includes any body corporate, and the expression “equity share capital ” means, in relation to a company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

#### **155 Signing of balance sheet.**

- (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.
- (2) In the case of a banking company registered after the fifteenth day of August, eighteen hundred and seventy-nine, 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, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

#### **156 Accounts and auditors' report to be annexed to balance sheet.**

- (1) The profit and loss account and, so far as not incorporated in the balance sheet or profit and loss account, any group accounts laid before the company in general meeting, shall be annexed to the balance sheet, and the auditors' report shall be attached thereto.
- (2) Any accounts so annexed shall be approved by the board of directors before the balance sheet is signed on their behalf.

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- (3) If any copy of a balance sheet is issued, circulated or published without having annexed thereto a copy of the profit and loss account or any group accounts required by this section to be so annexed, or without having attached thereto a copy of the auditors' report, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

#### **157 Directors report to be attached to balance sheet.**

- (1) There shall be attached to every balance sheet laid before a company in general meeting 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 reserves within the meaning of the Eighth Schedule to this Act.
- (2) The said report shall deal, so far as is material for the appreciation of the state of the company's affairs by its members and will not in the directors' opinion be harmful to the business of the company or of any of its subsidiaries, with any change during the financial year in the nature of the company's business, or in the company's subsidiaries, or in the classes of business in which the company has an interest, whether as member of another company or otherwise.
- (3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of subsection (1) of this section, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that,—

- (a) in any proceedings, against a person in respect of an offence under the said subsection (1), it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of that subsection were complied with and was in a position to discharge that duty; and
- (b) a person shall not be liable to be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

#### **158 Right to receive copies of balance sheets and auditors' report.**

- (1) A copy of every balance sheet, including every document required by law to be annexed thereto, which is to be laid before a company in general meeting, together with a copy of the auditors' report, shall, not less than twenty-one days before the date of the meeting, be sent to every member of the company (whether he is or is not entitled to receive notices of general meetings of the company), every holder of debentures of the company (whether he is or is not so entitled) and all persons other than members or holders of debentures of the company, being persons so entitled:

Provided that—

- (a) in the case of a company not having a share capital this subsection shall not require the sending of a copy of the documents aforesaid to a member of the company who is not entitled to receive notices of general meetings of the company or to a holder of debentures of the company who is not so entitled;
- (b) this subsection shall not require a copy of those documents to be sent—

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- (i) to a member of the company or a holder of debentures of the company, being in either case a person who is not entitled to receive notices of general meetings of the company and of whose address the company is unaware;
  - (ii) to more than one of the joint holders of any shares or debentures none of whom are entitled to receive such notices; or
  - (iii) in the case of joint holders of any shares or debentures some of whom are and some of whom are not entitled to receive such notices, to those who are not so entitled; and
- (c) if the copies of the documents aforesaid are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.
- (2) Any member of a 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, whether he is or is not so entitled, 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.
- (3) If default is made in complying with subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty pounds, and if, when any person makes a demand for any document with which he is by virtue of subsection (2) of this section entitled to be furnished, default is made in complying with the demand within seven days after the making thereof, the company and every officer of the company who is in default shall be liable to a default fine, unless it is proved that that person has already made a demand for and been furnished with a copy of the document.
- (4) The foregoing provisions of this section shall not have effect in relation to a balance sheet of a private company laid before it before the commencement of this Act, and the right of any person to be furnished with a copy of any such balance sheet and the liability of the company in respect of a failure to satisfy that right shall be the same as they would have been if this Act had not passed.

## **159 Appointment and remuneration of auditors.**

- (1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that, until the conclusion of the next, annual general meeting.
- (2) At any annual general meeting a retiring auditor, however appointed, shall be reappointed without any resolution being passed unless—
- (a) he is not qualified for reappointment; or
  - (b) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be reappointed; or
  - (c) he has given the company notice in writing of his unwillingness to be reappointed:

Provided that where notice is given of an intended resolution to appoint some person or persons in place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution

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cannot be proceeded with, the retiring auditor shall not be automatically reappointed by virtue of this subsection.

- (3) Where at an annual general meeting no auditors are appointed or reappointed, the Board of Trade may appoint a person to fill the vacancy.
- (4) The company shall, within one week of the Board's power under the last foregoing subsection becoming exercisable, give them notice of that fact, and, if a company fails to give notice as required by this subsection, the company and every officer of the company who is in default shall be liable to a default fine.
- (5) Subject as hereinafter provided, the first auditors of a company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until the conclusion of that meeting:

Provided that—

- (a) the company may at a general meeting remove any such auditors and appoint in their place any other 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 fourteen 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 said 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—
    - (a) in the case of an auditor appointed by the directors or by the Board of Trade, may be fixed by the directors or by the Board, as the case may be;
    - (b) subject to the foregoing paragraph, shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

For the purposes of this subsection, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

## **160 Provisions as to resolutions relating to appointment and removal of auditors.**

- (1) Special notice shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be reappointed.
- (2) On receipt of notice of such an intended resolution as aforesaid, the company shall forthwith send a copy thereof to the retiring auditor (if any).
- (3) Where notice is given of such an intended resolution as aforesaid and the retiring auditor makes with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so,—
  - (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

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- (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company);

and if a copy of the representations is not sent as aforesaid because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

- (4) The last foregoing subsection shall apply to a resolution to remove the first auditors by virtue of subsection (5) of the last foregoing section as it applies in relation to a resolution that a retiring auditor shall not be reappointed.

## **161 Disqualifications for appointment as auditor.**

- (1) A person shall not be qualified for appointment as auditor of a company unless either—
- (a) he is a member of a body of accountants established in the United Kingdom and for the time being recognised for the purposes of this provision by the Board of Trade; or
  - (b) he is for the time being authorised by the Board of Trade to be so appointed either as having similar qualifications obtained outside the United Kingdom or as having obtained adequate knowledge and experience in the course of his employment by a member of a body of accountants recognised for the purposes of the foregoing paragraph or as having before the sixth day of August, nineteen hundred and forty-seven, practised in Great Britain as an accountant:

Provided that this subsection shall not apply in the case of a private company which at the time of the auditor's appointment is an exempt private company.

- (2) None of the following persons shall be qualified for appointment as auditor of a company—
- (a) an officer or servant of the company;
  - (b) a person who is a partner of or in the employment of an officer or servant of the company;
  - (c) a body corporate:

Provided that paragraph (b) of this subsection shall not apply in the case of a private company which at the time of the auditor's appointment is an exempt private company.

References in this subsection to an officer or servant shall be construed as not including references to an auditor.

- (3) A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of the last foregoing subsection, disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

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- (4) Notwithstanding anything in the foregoing provisions of this section, a Scottish firm shall be qualified for appointment as auditor of a company if, but only if, all the partners are qualified for appointment as auditor thereof.
- (5) Any body corporate which acts as auditor of a company shall be liable to a fine not exceeding one hundred pounds.

**162 Auditors' report and right of access to books and to attend and be heard at general meetings.**

- (1) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet, every profit and loss account and all group accounts laid before the company in general meeting during their tenure of office, and the report shall contain statements as to the matters mentioned in the Ninth Schedule to this Act.
- (2) The auditors' report shall be read before the company in general meeting and shall be open to inspection by any member.
- (3) 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 officers of the company such information and explanation as he thinks necessary for the performance of the duties of the auditors.
- (4) The auditors of a company shall be entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which any member of the company is entitled to receive and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

**163 Construction of references to documents annexed to accounts.**

References in this Act to a document annexed or required to be annexed to a company's accounts or any of them shall not include the directors' report or the auditors' report:

Provided that any information which is required by this Act to be given in accounts, and is thereby allowed to be given in a statement annexed, may be given in the directors' report instead of in the accounts and, if any such information is so given, the report shall be annexed to the accounts and this Act shall apply in relation thereto accordingly, except that the auditors shall report thereon only so far as it gives the said information.

*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;

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- (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;
 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.

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- (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;
  - (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

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- 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:—
  - (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.

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## **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,—
    - (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

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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.
- (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

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- (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;
- 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;

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- (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
  - (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.

#### *Directors and other Officers.*

#### **176 Directors.**

Every company registered on or after the first day of November, nineteen hundred and twenty-nine (other than a private company) shall have at least two directors, and every company registered before that date (other than a private company), and every private company, shall have a director.

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**177 Secretary.**

- (1) Every company shall have a secretary and a sole director shall not also be secretary.
- (2) Anything required or authorised to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorised generally or specially in that behalf by the directors.

**178 Prohibition of certain persons being sole director or secretary.**

No company shall—

- (a) have as secretary to the company a corporation the sole director of which is a sole director of the company; or
- (b) have as sole director of the company a corporation the sole director of which is secretary to the company.

**179 Avoidance of acts done by person in dual capacity as director and secretary.**

A provision requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

**180 Validity of acts of directors.**

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

**181 Restrictions on appointment or advertisement of director.**

- (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 of companies 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; or
    - (ii) taken from the company and paid or agreed to pay for his qualification shares, if any; or
    - (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

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- (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) References in this section to the share qualification of a director or proposed director shall be construed as including only a share qualification required on appointment or within a period determined by reference to the time of appointment, and references therein to qualification shares shall be construed accordingly.
- (4) On the application for registration of the memorandum and articles of a company, the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding fifty pounds.
- (5) This section shall not apply to—
  - (a) a company not having a share capital; or
  - (b) a private company; or
  - (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.

## **182 Share qualifications of directors.**

- (1) Without prejudice to the restrictions imposed by the last foregoing section, 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 two months after his appointment, or such shorter time as may be fixed by the articles.
- (2) For the purpose 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 two 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 reappointed 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 not exceeding five pounds 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.

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### **183 Appointment of directors to be voted on individually.**

- (1) At a general meeting of a company other than a private company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.
- (2) A resolution moved in contravention of this section shall be void, whether or not its being so moved was objected to at the time:  
  
Provided that—
  - (a) this subsection shall not be taken as excluding the operation of section one hundred and eighty of this Act; and
  - (b) where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment shall apply.
- (3) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.
- (4) Nothing in this section shall apply to a resolution altering the company's articles.

### **184 Removal of directors.**

- (1) A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him:  
  
Provided that this subsection shall not, in the case of a private company, authorise the removal of a director holding office for life on the eighteenth day of July, nineteen hundred and forty-five, whether or not subject to retirement under an age limit by virtue of the articles or otherwise.
- (2) Special notice shall be required of any resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.
- (3) Where notice is given of an intended resolution to remove a director under this section and the director concerned makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so,—
  - (a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and
  - (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company);and if a copy of the representations is not sent as aforesaid because received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

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Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

- (4) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.
- (5) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.
- (6) Nothing in this section shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

#### **185 Retirement of directors under age limit.**

- (1) Subject to the provisions of this section, no person shall be capable of being appointed a director of a company which is subject to this section if at the time of his appointment he has attained the age of seventy.
- (2) Subject as aforesaid, a director of a company which is subject to this section shall vacate his office at the conclusion of the annual general meeting commencing next after he attains the age of seventy:

Provided that acts done by a person as director shall be valid notwithstanding that it is afterwards discovered that his appointment had terminated by virtue of this subsection.

- (3) Where a person retires by virtue of the last foregoing subsection, no provision for the automatic reappointment of retiring directors in default of another appointment shall apply; and if at the meeting at which he retires the vacancy is not filled it may be filled as a casual vacancy.
- (4) Subsection (2) of this section shall not apply to a director who is in office at the commencement of this Act so as to terminate his then appointment before the conclusion of the third annual general meeting commencing after the commencement of this Act, but shall apply so as to terminate it at the conclusion of that meeting if he has attained the age of seventy before the commencement of the meeting.
- (5) Nothing in the foregoing provisions of this section shall prevent the appointment of a director at any age, or require a director to retire at any time, if his appointment is or was made or approved by the company in general meeting, but special notice shall be required of any resolution appointing or approving the appointment of a director for it to have effect for the purposes of this subsection and the notice thereof given to the company and by the company to its members must state or must have stated the age of the person to whom it relates.

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- (6) A person reappointed director on retiring by virtue of subsection (2) of this section, or appointed in place of a director so retiring, shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the retiring director was last appointed before his retirement; but, except as provided by this subsection, the retirement of a director out of turn by virtue of the said subsection (2) shall be disregarded in determining when any other directors are to retire.
- (7) In the case of a company first registered after the beginning of the year nineteen hundred and forty-seven, this section shall have effect subject to the provisions of the company's articles; and in the case of a company first registered before the beginning of that year—
- (a) this section shall have effect subject to any alterations of the company's articles made after the beginning thereof; and
  - (b) if at the beginning thereof the company's articles contained provision for retirement of directors under an age limit or for preventing or restricting appointments of directors over a given age this section shall not apply to directors to whom that provision applies.
- (8) A company shall be subject to this section if it is not a private company or if, being a private company, it is the subsidiary of a body corporate incorporated in the United Kingdom which is neither a private company nor a company registered under the law relating to companies for the time being in force in Northern Ireland and having provisions in its constitution which would, if it had been registered in Great Britain, entitle it to rank as a private company; and for the purposes of any other section of this Act which refers to a company subject to this section, a company shall be deemed to be subject to this section notwithstanding that all or any of the provisions thereof are excluded or modified by the company's articles.

#### **186 Duty of directors to disclose age to company.**

- (1) Any person who is appointed or to his knowledge proposed to be appointed director of a company subject to the last foregoing section at a time when he has attained any retiring age applicable to him as director either under this Act or under the company's articles shall give notice of his age to the company:

Provided that this subsection shall not apply in relation to a person's reappointment on the termination of a previous appointment as director of the company.

- (2) Any person who—
- (a) fails to give notice of his age as required by this section; or
  - (b) acts as director under any appointment which is invalid or has terminated by reason of his age;

shall be liable to a fine not exceeding five pounds for every day during which the failure continues or during which he continues to act as aforesaid.

- (3) For the purposes of the last foregoing subsection, a person who has acted as director under an appointment which is invalid or has terminated shall be deemed to have continued so to act throughout the period from the invalid appointment or the date on which the appointment terminated, as the case may be, until the last day on which he is shown to have acted thereunder.

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### **187 Provisions as to undischarged bankrupts acting as directors.**

- (1) If any person being an undischarged bankrupt acts 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 shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both such imprisonment and fine:

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 he was on the third day of August, nineteen hundred and twenty-eight, 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) In England the leave of the court for the purposes 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 the expression “company ” includes an unregistered company and a company incorporated outside Great Britain which has an established place of business within Great Britain, and the expression “official receiver ” means the official receiver in bankruptcy.
- (4) Subsection (1) of this section in its application to Scotland shall have effect as if the words “sequestration of his estates was awarded ” were substituted for the words “he was adjudged bankrupt ”.

### **188 Power to restrain fraudulent persons from managing companies.**

- (1) Where—
- (a) a person is convicted on indictment of any offence in connection with the promotion, formation or management of a company; or
  - (b) in the course of winding up a company it appears that a person—
    - (i) has been guilty of any offence for which he is liable (whether he has been convicted or not) under section three hundred and thirty-two of this Act; or
    - (ii) has otherwise been guilty, while an officer of the company, of any fraud in relation to the company or of any breach of his duty to the company;

the court may make an 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 or take part, in the management of a company for such period not exceeding five years as may be specified in the order.

- (2) In the foregoing subsection the expression “the court ”, in relation to the making of an order against any person by virtue of paragraph (a) thereof, includes the court before which he is convicted, as well as any court having jurisdiction to wind up the company, and in relation to the granting of leave means any court having jurisdiction to wind up the company as respects which leave is sought.

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- (3) A person intending to apply for the making of an order under this section by the court having jurisdiction to wind up a company shall give not less than ten days' notice of his intention to the person against whom the order is sought, and on the hearing of the application the last-mentioned person may appear and himself give evidence or call witnesses.
- (4) An application for the making of an order under this section by the court having jurisdiction to wind up a company may be made by the official receiver, or by the liquidator of the company or by any person who is or has been a member or creditor of the company; and on the hearing of any application for an order under this section by the official receiver or the liquidator, or of any application for leave under this section by a person against whom an order has been made on the application of the official receiver or the liquidator, the official receiver or liquidator shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.
- (5) An order may be made by virtue of sub-paragraph (ii) of paragraph (b) of subsection (1) of this section 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, and for the purposes of the said sub-paragraph (ii) the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.
- (6) If any person acts in contravention of an order made under this section, he shall, in respect of each offence, be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both.

#### **189 Prohibition of tax-free payments to directors.**

- (1) It shall not be lawful for a company to pay a director remuneration (whether as director or otherwise) free of income tax or of income tax other than surtax, or otherwise calculated by reference to or varying with the amount of his income tax or his income tax other than surtax, or to or with the rate or standard rate of income tax, except under a contract which was in force on the eighteenth day of July, nineteen hundred and forty-five, and provides expressly, and not by reference to the articles, for payment of remuneration as aforesaid.
- (2) Any provision contained in a company's articles, or in any contract other than such a contract as aforesaid, or in any resolution of a company or a company's directors, for payment to a director of remuneration as aforesaid shall have effect as if it provided for payment, as a gross sum subject to income tax and surtax, of the net sum for which it actually provides.
- (3) This section shall not apply to remuneration due before the commencement of this Act or in respect of a period before the commencement of this Act.

#### **190 Prohibition of loans to directors.**

- (1) It shall not be lawful for a company to make a loan to any person who is its director or a director of its holding company, or to enter into any guarantee or provide any security in connection with a loan made to such a person as aforesaid by any other person:

Provided that nothing in this section shall apply either—

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- (a) to anything done by a company which is for the time being an exempt private company; or
  - (b) to anything done by a subsidiary, where the director is its holding company; or
  - (c) subject to the next following subsection, to anything done to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or
  - (d) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business.
- (2) Proviso (c) to the foregoing subsection shall not authorise the making of any loan, or the entering into any guarantee, or the provision of any security, except either—
- (a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or
  - (b) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.
- (3) Where the approval of the company is not given as required by any such condition, the directors authorising the making of the loan, or the entering into the guarantee, or the provision of the security, shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

**191 Approval of company requisite for payment by it to director for loss of office, &c.**

It shall not be lawful for a company to make to any director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, without particulars with respect to the proposed payment (including the amount thereof) being disclosed to members of the company and the proposal being approved by the company.

**192 Approval of company requisite for any payment, in connection with transfer of its property, to director for loss of office, &c.**

- (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.

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**193 Duty of director to disclose payment for loss of office, &c, made in connection with transfer of shares in company.**

(1) Where, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from—

- (a) an offer made to the general body of shareholders;
- (b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company;
- (c) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one third of the voting power at any general meeting of the company; or
- (d) any other offer which is conditional on acceptance to a given extent;

a payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, 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.

(2) If—

- (a) any such director fails to take reasonable steps as aforesaid; or
- (b) any person who has been properly required by any such director to include the said particulars in or send them with any such notice as aforesaid fails so to do;

he shall be liable to a fine not exceeding twenty-five pounds.

(3) If—

- (a) the requirements of subsection (1) of this section are not complied with in relation to any such payment as is therein mentioned; or
- (b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of the said shares,

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, and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

(4) Where the shareholders referred to in paragraph (b) of the last foregoing subsection are not all the members of the company and no provision is made by the articles for summoning or regulating such a meeting as is mentioned in that paragraph, the provisions of this Act and of the company's articles relating to general meetings of the company shall, for that purpose, apply to the meeting either without modification or with such modifications as the Board of Trade on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

(5) If at a meeting summoned for the purpose of approving any payment as required by paragraph (b) of subsection (3) of this section a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall be deemed for the purposes of that subsection to have been approved.

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#### **194 Provisions supplementary to three foregoing sections.**

- (1) Where in proceedings for the recovery of any payment as having, by virtue of subsections (1) and (2) of the last but one foregoing section or subsections (1) and (3) of the last foregoing section, been received by any person in trust, it is shown that—
  - (a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement or the offer leading thereto; and
  - (b) the company or any person to whom the transfer was made was privy to that arrangement;the payment shall be deemed, except in so far as the contrary is shown, to be one to which the subsections apply.
- (2) If in connection with any such transfer as is mentioned in either of the two last foregoing sections—
  - (a) 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
  - (b) any valuable consideration is given to any such director;the excess or the money value of the consideration, as the case may be, shall, for the purposes of that 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.
- (3) It is hereby declared that references in the three last foregoing sections to payments made to any director of a company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, do not include any bona fide payment by way of damages for breach of contract or by way of pension in respect of past services, and for the purposes of this subsection the expression “pension” includes any superannuation allowance, superannuation gratuity or similar payment.
- (4) Nothing in the two last foregoing sections 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 therein mentioned or with respect to any other like payments made or to be made to the directors of a company.

#### **195 Register of directors' shareholdings, &c.**

- (1) Every company shall keep a register showing as respects each director of the company (not being its holding company) the number, description and amount of any shares in or debentures of the company or any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, which are held by or in trust for him or of which he has any right to become the holder (whether on payment or not):

Provided that the register need not include shares in any body corporate which is the wholly-owned subsidiary of another body corporate, and for this purpose a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members but that other and that other's wholly-owned subsidiaries and its or their nominees.

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- (2) Where any shares or debentures fall to be or cease to be recorded in the said register in relation to any director by reason of a transaction entered into after the commencement of this Act and while he is a director, the register shall also show the date of, and price or other consideration for, the transaction:

Provided that where there is an interval between the agreement for any such transaction and the completion thereof, the date shall be that of the agreement.

- (3) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him in the said register shall, if he so requires, be indicated in the register.
- (4) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put upon inquiry as to, the rights of any person in relation to any shares or debentures.
- (5) The said register shall, subject to the provisions of this section, be kept at the company's registered office and shall be open to inspection 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 two hours in each day be allowed for inspection) as follows:—
- (a) during the period beginning fourteen days before the date of the company's annual general meeting and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company; and
  - (b) during that or any other period, it shall be open to the inspection of any person acting on behalf of the Board of Trade.

In computing the fourteen days and the three days mentioned in this subsection, any day which is a Saturday or Sunday or a bank holiday shall be disregarded.

- (6) Without prejudice to the rights conferred by the last foregoing subsection, the Board of Trade may at any time require a copy of the said register, or any part thereof.
- (7) The said register shall also be produced at the commencement of the company's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.
- (8) If default is made in complying with the last foregoing subsection the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds; and if default is made in complying with subsection (1) or (2) of this section, or if any inspection required under this section is refused or any copy required thereunder is not sent within a reasonable time, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds and further to a default fine of two pounds.
- (9) In the case of any such refusal, the court may by order compel an immediate inspection of the register.
- (10) For the purposes of this section—
- (a) any person in accordance with whose directions or-instructions the directors of a company are accustomed to act shall be deemed to be a director of the company; and

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- (b) a director of a company shall be deemed to hold, or to have any interest or right in or over, any shares or debentures if a body corporate other than the company holds them or has that interest or right in or over them, and either—
  - (i) that body corporate or its directors are accustomed to act in accordance with his directions or instructions; or
  - (ii) he is entitled to exercise or control the exercise of one third or more of the voting power at any general meeting of that body corporate.

## **196 Particulars in accounts of directors' salaries, pensions, &c.**

- (1) In any accounts of a company laid before it in general meeting, or in a statement annexed thereto, there shall, subject to and in accordance with the provisions of this section, be shown so far as the information is contained in the company's books and papers or the company has the right to obtain it from the persons concerned—
  - (a) the aggregate amount of the directors' emoluments;
  - (b) the aggregate amount of directors' or past directors' pensions; and
  - (c) the aggregate amount of any compensation to directors or past directors in respect of loss of office.

- (2) The amount to be shown under paragraph (a) of subsection (1) of this section—
  - (a) shall include any emoluments paid to or receivable by any person in respect of his services as director of the company or in respect of his services, while director of the company, as director of any subsidiary thereof or otherwise in connection with the management of the affairs of the company or any subsidiary thereof; and
  - (b) shall distinguish between emoluments in respect of services as director, whether of the company or its subsidiary, and other emoluments;

and for the purposes of this section the expression “emoluments”, in relation to a director, includes fees and percentages, any sums paid by way of expenses allowance in so far as those sums are charged to United Kingdom income tax, any contribution paid in respect of him under any pension scheme and the estimated money value of any other benefits received by him otherwise than in cash.

- (3) The amount to be shown under paragraph (b) of the said subsection (1)—
  - (a) shall not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions thereunder are substantially adequate for the maintenance of the scheme, but save as aforesaid shall include any pension paid or receivable in respect of any such services of a director or past director of the company as are mentioned in the last foregoing subsection, whether to or by him or, on his nomination or by virtue of dependence on or other connection with him, to or by any other person; and
  - (b) shall distinguish between pensions in respect of services as director, whether of the company or its subsidiary, and other pensions;

and for the purposes of this section the expression “pension” includes any superannuation allowance, superannuation gratuity or similar payment, and the expression “pension scheme” means a scheme for the provision of pensions in respect of services as director or otherwise which is maintained in whole or in part by means of contributions, and the expression “contribution” in relation to a pension scheme means any payment (including an insurance premium) paid for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions will or may become payable under the scheme, except that it does not include any

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payment in respect of two or more persons if the amount paid in respect of each of them is not ascertainable.

- (4) The amount to be shown under paragraph (c) of the said subsection (1)—
- (a) shall include any sums paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while director of the company or on or in connection with his ceasing to be a director of the company, of any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary thereof; and
  - (b) shall distinguish between compensation in respect of the office of director, whether of the company or its subsidiary, and compensation in respect of other offices;

and for the purposes of this section references to compensation for loss of office shall include sums paid as consideration for or in connection with a person's retirement from office.

- (5) The amounts to be shown under each paragraph of the said subsection (1)—
- (a) shall include all relevant sums paid by or receivable from—
    - (i) the company; and
    - (ii) the company's subsidiaries; and
    - (iii) any other person;except sums to be accounted for to the company or any of its subsidiaries or, by virtue of section one hundred and ninety-three of this Act, to past or present members of the company or any of its subsidiaries or any class of those members; and
  - (b) shall distinguish, in the case of the amount to be shown under paragraph (c) of the said subsection (1), between the sums respectively paid by or receivable from the company, the company's subsidiaries and persons other than the company and its subsidiaries.

- (6) The amounts to be shown under this section for any financial year shall be the sums receivable in respect of that year, whenever paid, or, in the case of sums not receivable in respect of a period, the sums paid during that year, so, however, that where—
- (a) any sums are not shown in the accounts for the relevant financial year on the ground that the person receiving them is liable to account therefor as mentioned in paragraph (a) of the last foregoing subsection, but the liability is thereafter wholly or partly released or is not enforced within a period of two years; or
  - (b) any sums paid by way of expenses allowance are charged to United Kingdom income tax after the end of the relevant financial year;

those sums shall, to the extent to which the liability is released or not enforced or they are charged as aforesaid, as the case may be, be shown in the first accounts in which it is practicable to show them or in a statement annexed thereto, and shall be distinguished from the amounts to be shown therein apart from this provision.

- (7) Where it is necessary so to do for the purpose of making any distinction required by this section in any amount to be shown thereunder, the directors may apportion any payments between the matters in respect of which they have been paid or are receivable in such manner as they think appropriate.

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- (8) If in the case of any accounts 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 thereon, so far as they are reasonably able to do so, a statement giving the required particulars.
- (9) In this section any reference to a company's subsidiary—
- (a) in relation to a person who is or was, while a director of the company, a director also, by virtue of the company's nomination, direct or indirect, of any other body corporate, shall, subject to the following paragraph, include that body corporate, whether or not it is or was in fact the company's subsidiary; and
  - (b) shall for the purposes of subsections (2) and (3) be taken as referring to a subsidiary at the time the services were rendered, and for the purposes of subsection (4) be taken as referring to a subsidiary immediately before the loss of office as director of the company.

### **197 Particulars in accounts of loans to officers, &c.**

- (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 made during the company's financial year to—
    - (i) any officer of the company; or
    - (ii) any person who, after the making of the loan, became during that year an officer of the company;

by the company or a subsidiary thereof or by any other person under a guarantee from or on a security provided by the company or a subsidiary thereof (including any such loans -which were repaid during that year); and
  - (b) the amount of any loans made in manner aforesaid to any such officer or person as aforesaid at any time before the company's financial year and outstanding at the expiration thereof.
- (2) The foregoing subsection shall not require the inclusion in accounts of particulars of—
- (a) a loan made in the ordinary course of its business by the company or a subsidiary thereof, where the ordinary business of the company or, as the case may be, the subsidiary, includes the lending of money; or
  - (b) a loan made by the company or a subsidiary thereof to an employee of the company or subsidiary, as the case may be, if the loan does not exceed two thousand pounds and is certified by the directors of the company or subsidiary, as the case may be, to have been made in accordance with any practice adopted or about to be adopted by the company or subsidiary with respect to loans to its employees;
- not being, in either case, a loan made by the company under a guarantee from or on a security provided by a subsidiary thereof or a loan made by a subsidiary of the company under a guarantee from or on a security provided by the company or any other subsidiary thereof.
- (3) 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.

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- (4) References in this section to a subsidiary shall be taken as referring to a subsidiary at the end of the company's financial year (whether or not a subsidiary at the date of the loan).

**198 General duty to make disclosure for purposes of three foregoing sections.**

- (1) It shall be the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purposes of sections one hundred and ninety-five and one hundred and ninety-six of this Act and of the last foregoing section except so far as it relates to loans made, by the company or by any other person under a guarantee from or on a security provided by the company, to an officer thereof.
- (2) Any such notice given for the purposes of the said section one hundred and ninety-five shall be in writing and, if it is not given at a meeting of the directors, the director giving it shall take reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given.
- (3) Subsection (1) of this section shall apply—
- (a) for the purposes of the last foregoing section, in relation to officers other than directors; and
  - (b) for the purposes of the said section one hundred and ninety-six and the last foregoing section, in relation to persons who are or have at any time during the preceding five years been officers;
- as it applies in relation to directors.
- (4) Any person who makes default in complying with the foregoing provisions of this section shall be liable to a fine not exceeding fifty pounds.

**199 Disclosure by directors of interests in contracts.**

- (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, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested.
- (3) For the purpose 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:

Provided that no such notice shall be of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

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- (4) Any director who fails to comply with the provisions of this section shall be liable to a fine not exceeding one hundred pounds.
- (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.

## **200 Register of directors and secretaries.**

- (1) Every company shall keep at its registered office a register of its directors and secretaries.
- (2) The said register shall contain the following particulars with respect to each director, that is to say,—
  - (a) in the case of an individual, his present Christian name and surname, any former Christian name or surname, his usual residential address, his nationality, his business occupation, if any, particulars of any other directorships held by him and, in the case of a company subject to section one hundred and eighty-five of this Act, the date of his birth; and
  - (b) in the case of a corporation, its corporate name and registered or principal office:

Provided that it shall not be necessary for the register to contain particulars of directorships held by a director in companies of which the company is the wholly-owned subsidiary, or which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary, and for the purposes of this proviso—

- (i) the expression “company ” shall include any body corporate incorporated in Great Britain; and
  - (ii) a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.
- (3) The said register shall contain the following particulars with respect to the secretary or, where there are joint secretaries, with respect to each of them, that is to say,—
    - (a) in the case of an individual, his present Christian name and surname, any former Christian name and surname and his usual residential address; and
    - (b) in the case of a corporation or a Scottish firm, its corporate or firm name and registered or principal office:

Provided that, where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the said particulars.

- (4) The company shall, within the periods respectively mentioned in the next following subsection, send to the registrar of companies a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register, specifying the date of the change.
- (5) The periods referred to in the last foregoing subsection are the following, namely,—
  - (a) the period within which the said return is to be sent shall "be a period of fourteen days from the appointment of the first directors of the company; and

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- (b) the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof

Provided that, in the case of a return containing particulars with respect to any person who is the company's secretary at the commencement of this Act, the period shall be fourteen days from the commencement of this Act.

- (6) 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 two 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 one shilling, or such less sum as the company may prescribe, for each inspection.
- (7) If any inspection required under this section is refused or if default is made in complying with subsection (1), (2), (3), or (4) of this section, the company and every officer of the company who is in default shall be liable to a default fine.
- (8) In the case of any such refusal, the court may by order compel an immediate inspection of the register.
- (9) For the purposes of this section—
- (a) 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;
  - (b) the expression “Christian name” includes a forename;
  - (c) in the case of a peer or person usually known by a title different from his surname, the expression “surname” means that title;
  - (d) references to a former Christian name or surname do not include—
    - (i) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title; or
    - (ii) in the case of any person, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been changed or disused for a period of not less than twenty years; or
    - (iii) in the case of a married woman, the name or surname by which she was known previous to the marriage.

## **201 Particulars with respect to directors in trade catalogues, circulars, &c.**

- (1) Every company to which this section applies shall, in all trade catalogues, trade circulars, showcards and business letters on or in which the company's name appears and which are issued or sent by the company to any person in any part of His Majesty's dominions, state in legible characters with respect to every director being a corporation, the corporate name, and with respect to every director being an individual, the following particulars—
- (a) his present Christian name, or the initials thereof, and present surname;
  - (b) any former Christian names and surnames;
  - (c) his nationality, if not British:

Provided that, if special circumstances exist which render it in the opinion of the Board of Trade expedient that such an exemption should be granted, the Board may by order

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grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by this subsection.

- (2) This section shall apply to—
- (a) every company registered under this Act or under the Companies Act, 1929, or the Acts repealed thereby unless it was registered before the twenty-third day of November, nineteen hundred and sixteen; and
  - (b) every company incorporated outside Great Britain which has an established place of business within Great Britain, unless it had established such a place of business before the said date; and
  - (c) every company licensed under the Moneylenders Act, 1927, whenever it was registered or whenever it established a place of business.
- (3) If a company makes default in complying with this section every officer of the company who is in default shall be liable on summary conviction for each offence to a fine not exceeding five pounds, and for the purposes of this subsection, where a corporation is an officer of the company, any officer of the corporation shall be deemed to be an officer of the company.

Provided that in England no proceedings shall be instituted under this section except by, or with the consent of, the Board of Trade.

- (4) For the purposes of this section—
- (a) the expression “director ” includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act and the expression “officer ” shall be construed accordingly;
  - (b) the expression “initials ” includes a recognised abbreviation of a Christian name; and
  - (c) the expression “showcards ” means cards containing or exhibiting articles dealt with, or samples or representations thereof;
- and paragraphs (b), (c) and (d) of subsection (9) of the last foregoing section shall apply as they apply for the purposes of that section.

## **202 Limited company may have directors with unlimited liability.**

- (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 and any managers of the company and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and before the person accepts the office or acts therein, notice in writing that his liability will be unlimited shall be given to him by the following or one of the following persons, namely, the promoters of the company, the directors of the company, any managers of the company and the secretary of the company.
- (3) If any director, manager or proposer makes default in adding such a statement, or if any promoter, director, manager or secretary makes default in giving such a notice, he shall be liable to a fine not exceeding one hundred pounds, 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.

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**203 Special resolution of limited company making liability of directors unlimited.**

- (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 or 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.

**204 Provisions as to assignment of office by directors.**

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 of office made in pursuance of the said provision shall, notwithstanding anything to the contrary contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company.

*Avoidance of Provisions in Articles or Contracts relieving Officers from Liability.*

**205 Provisions as to liability of officers and auditors.**

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 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) 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
- (b) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such 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 four hundred and forty-eight of this Act in which relief is granted to him by the court.

*Arrangements and Reconstructions.*

**206 Power to compromise, with creditors and members.**

- (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them, the court may, on the application 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.

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- (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) of this section shall have no effect until an office copy of the order has been delivered to the registrar of companies 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) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.
- (5) An order under subsection (1) of this section pronounced in Scotland by the judge acting as vacation judge in pursuance of section four of the Administration of Justice (Scotland) Act, 1933, shall not be subject to review, reduction, suspension or stay of execution.
- (6) In this and the next following section the expression “company” means any company liable to be wound up under this Act, and the expression “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.

## **207 Information as to compromises with creditors and members.**

- (1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under the last foregoing section there shall—
  - (a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and
  - (b) in every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.
- (2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.
- (3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor

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or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

- (4) Where a company makes default in complying with any requirement of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds, and for the purpose of this subsection any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company:

Provided that a person shall not be liable under this subsection if that person shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

- (5) It shall be the duty of any director of the company and of any trustee for debenture holders of the company to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section, and any person who makes default in complying with this subsection shall be liable to a fine not exceeding fifty pounds.

## **208 Provisions for facilitating reconstruction and amalgamation of companies.**

- (1) Where an application is made to the court under section two hundred and six of this Act 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 “a 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 directs, 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.

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- (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 of companies for registration within seven 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 shall be liable to a default fine.
- (4) In this section the expression “property ” includes property, rights and powers of every description, and the expression “liabilities ” includes duties.
- (5) Notwithstanding the provisions of subsection (6) of section two hundred and six of this Act, the expression “company ” in this section does not include any company other than a company within the meaning of this Act.

**209 Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.**

- (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 four 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 whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and when 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 entitled 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 :

Provided that where shares in the transferor company of the same class or classes as the shares whose transfer is involved are already held as aforesaid to a value greater than one tenth of the aggregate of their value and that of the shares (other than those already held as aforesaid) whose transfer is involved, the foregoing provisions of this subsection shall not apply unless—

- (a) the transferee company offers the same terms to all holders of the shares (other than those already held as aforesaid) whose transfer is involved, or, where those shares include shares of different classes, of each class of them; and
  - (b) the holders who approve the scheme or contract, besides holding not less than nine tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three fourths in number of the holders of those shares.
- (2) Where, in pursuance of any such scheme or contract as aforesaid, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include nine tenths in value of the shares in the first-mentioned company or of any class of those shares, then—
    - (a) the transferee company shall within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it

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has already complied with this requirement) give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and

- (b) any such holder may within three months from the giving of the notice to him require the transferee company to acquire the shares in question;

and where a shareholder gives notice under paragraph (b) of this subsection with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed or as the court on the application of either the transferee company or the shareholder thinks fit to order.

- (3) Where a, notice has been given by the transferee company under subsection (1) of 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 together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee 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:

Provided that an instrument of transfer shall not be required for any share for which a share warrant is for the time being outstanding.

- (4) 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.
- (5) In this section the expression “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.
- (6) In relation to an offer made by the transferee company to shareholders of the transferor company before the commencement of this Act, this section shall have effect—
- (a) with the substitution, in subsection (1), for the words “the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary) ”, of the words “the shares affected ” and with the omission of the proviso to that subsection;
- (b) with the omission of subsection (2); and
- (c) with the omission, in subsection (3), of the words " together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company " and of the proviso to that subsection.

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*Minorities.*

**210 Alternative remedy to winding up in cases of oppression.**

- (1) Any member of a company who complains that the affairs of the company are being conducted in a manner oppressive to some part of the members (including himself) or, in a case falling within subsection (3) of section one hundred and sixty-nine of this Act, the Board of Trade, may make an application to the court by petition for an order under this section.
- (2) If on any such petition the court is of opinion—
  - (a) that the company's affairs are being conducted as aforesaid; and
  - (b) that to wind up the company would unfairly prejudice that part of the members, but otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up;

the court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.
- (3) Where an order under this section makes any alteration in or addition to any company's memorandum or articles, then, notwithstanding anything in any other provision of this Act but subject to the provisions of the order, the company concerned shall not have power without the leave of the court to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order; but, subject to the foregoing provisions of this subsection, the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company and the provisions of this Act shall apply to the memorandum or articles as so altered or added to accordingly.
- (4) An office copy of any order under this section altering or adding to, or giving leave to alter or add to, a company's memorandum or articles shall, within fourteen days after the making thereof, be delivered by the company to the registrar of companies for registration; and if a company makes default in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.
- (5) In relation to a petition under this section, section three hundred and sixty-five of this Act shall apply as it applies in relation to a winding-up petition, and proceedings under this section shall, for the purposes of Part V of the Economy (Miscellaneous Provisions) Act, 1926, be deemed to be proceedings under this Act in relation to the winding up of companies.