

DRAFT MYANMAR COMPANIES LAW

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PART I

PRELIMINARY

Division 1: Citation, commencement and definitions

1. Citation and commencement of this Law and definitions

- (a) This Law may *be cited as the Myanmar Companies Law 2015*.
- (b) This Law commences on the date of notification determined by the President of the Union.
- (c) In this Law, unless the context otherwise implies:
 - (i) “*applicable law*” means any law, regulation, rule, order, notification, directive or other authority or instrument having the force of law in the Union which may have an affect on the matter concerned;
 - (ii) “*associate*”:
 - (A) specifically, in relation to a company, means:
 - (I) a director or secretary of the company;
 - (II) a related body corporate;
 - (III) a director or secretary of a related body corporate; and
 - (IV) a person who controls the company, or who is controlled by the company; and
 - (B) generally, in relation to a person (including a company), means:
 - (I) a person in concert with whom the person is acting, or proposes to act in relation to the relevant matter;
 - (II) a person with whom the person is, or proposes to become, associated, whether formally or informally, in any other way in relation to the relevant matter; and
 - (III) a prescribed person in relation to the relevant matter,but does not in any case include someone who may otherwise be considered an associate under paragraphs (A)(IV) or (B) merely because they:
 - (IV) give advice to the person, or act on the person’s behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship; or
 - (V) have been appointed to as a proxy or representative of a person at a meeting of members, or of a class of members, of a company.

- (iii) “**authorised officer**” means a person ordinarily resident in the Union who is appointed by an overseas corporation to act as its representative for the purpose of this Law;
- (iv) “**board**” or “**board of directors**” mean in relation to a company or other body corporate mean directors of the company acting together as a board of directors (which will be the single director in the case of a single director company);
- (v) “**company**” means a company formed and registered under this Law or an existing company;
- (vi) “**contributory**” means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory;
- (vii) “**corporation**” means a body corporate formed under a law other than this Law, including a law of a jurisdiction other than the Union, whether or not it is registered under this Law;
- (viii) “**Court**” means the Court having jurisdiction under this Law;
- (ix) “**debenture**” means a security issued by a company to borrow money and includes debenture stock;
- (x) “**director**” of a company or other body corporate means:
 - (A) an individual person who is appointed to the position of director or is appointed to the position of alternate director and is acting in that capacity; or
 - (B) a person who, while not appointed to the position of director or alternate director:
 - (I) acts as if appointed in the position of director; or
 - (II) has wishes or provides instructions that the directors of the company or body are accustomed to acting in accordance with or who otherwise exercises or controls the exercise of powers which would fall to be exercised by the board.

Sub-section (B)(II) does not apply merely because the directors act on the advice of a person given in the proper performance of the person’s professional functions or due to a business relationship that the person has with the directors, company or body.;
- (xi) “**existing company**” means a company formed and registered under any repealed law , or under the previous law;
- (xii) “**expert**” includes, for the purposes of section 214, an engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him;

- (xiii) “**financial assistance**” includes the giving of financial assistance by means of the making of a loan, the giving of a guarantee, the provision of security, the release of an obligation or the release of a debt or otherwise;
- (xiv) “**foreign company**” means a company in which an overseas corporation or other foreign person (or combination of them) owns or controls, directly or indirectly, an ownership interest of more than the prescribed ownership amount;
- (xv) “**holding company**” in relation to a body corporate, means a body corporate of which the first body corporate is a subsidiary;
- (xvi) “**Ministry**” means a Ministry of the Union or a successor body, or such other body as may be formed under an applicable law which is responsible for the administration of this Law and the implementation or supervision of the Registrar’s functions;
- (xvii) “**officer**” of a company or a body corporate means a person who:
 - (A) makes, or participates in the making of decisions that affect the whole, or a substantial part, of the business of the company or body; or
 - (B) has the capacity to significantly affect the company’s or body’s financial standing;
- (xviii) “**option**” means a right to acquire or dispose a share or security at an agreed price at a point in time;
- (xix) “**ordinarily resident**” means a person who is resident in the Union for at least the number of days in each 12 month period, as prescribed by the Union Minister;
- (xx) “**ordinary resolution**” means a resolution which has been passed by a simple majority of members entitled to vote as are present in person or by proxy (where allowed) at a general meeting of which notice specifying the intention to propose the resolution as an ordinary resolution has been duly given;
- (xxi) “**overseas corporation**” means a body corporate that is incorporated outside the Union;
- (xxii) “**ownership interest**” means a legal, equitable or prescribed interest in a company which may arise though means including:
 - (A) a direct shareholding in the company;
 - (B) a direct or indirect shareholding in another company which itself holds a direct shareholding, or an indirect shareholding, in the first company; or
 - (C) through an agreement which provides the holder with a direct or indirect right to exercise control over the voting rights which may be cast on any resolution of the company;
- (xxiii) “**penalty unit**” means the pecuniary amount for (1) penalty unit, expressed in Kyat, prescribed by the Union Minister from time to time;

- (xxiv) “**prescribed**” means prescribed by or in a regulation, rule, order, notification, directive, table or form made under this Law;
- (xxv) “**prescribed ownership amount**” means the amount, expressed as a percentage, prescribed by the Union Minister from time to time;
- (xxvi) “**previous law**” means the Myanmar Companies Act 1914;
- (xxvii) “**private company**” means a company incorporated under this Law or under any repealed law or under the previous law which must:
- (A) limit the number of its members to fifty not including persons who are in the employment of the company; and
 - (B) not issue any invitation to the public to subscribe for the shares, debentures or other securities of the company:
- Provided that where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this definition, be treated as a single member;
- (xxviii) “**promoter**” means, for the purposes of section 214, a promoter who was a party to the preparation of the prospectus, or the portion thereof containing the misleading or untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company;
- (xxix) “**prospectus**” means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures or other securities of a company, but shall not include any trade advertisement which shows on the face of it that a formal prospectus has been prepared and filed;
- (xxx) “**public company**” means a company incorporated under this Law, or under any repealed law or under the previous law, which is not a private company;
- (xxxi) “**registrable interests**” means any securities for which a company maintains a register in accordance with Division 13;
- (xxxii) “**registered office**”, for the purposes of jurisdiction to wind up companies, means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up;
- (xxxiii) “**Registrar**” means the Directorate of Investment and Company Administration, its successor, or such other Union level body or person as may be appointed to perform under this Law the duty of registration of companies and exercise the other powers and perform the other functions and duties assigned to the Registrar under this Law or other applicable law;
- (xxxiv) “**related body corporate**” of a body corporate means:
- (A) a holding company of the body corporate;
 - (B) a subsidiary of the body corporate; or

(C) a subsidiary of a holding company of the body corporate;

(xxxv) “**related party**” means:

(A) in relation to a body corporate, a person which controls the body corporate; and

(B) in relation to a person (including a body corporate):

(I) an associate of the person (other than a related body corporate of the person);

(II) a spouse, parent or child of an associate of the person; and

(III) a body corporate controlled by any of the persons referred to in sub-section (A) or 1(c)(xxxv)(B)(I) and (II) above.

(xxxvi) “**relevant date**” means, for the purposes of section 315, in a case where a provisional liquidator is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding up order.

(xxxvii) “**scheduled bank**” means a bank authorized or permitted under the Financial Institutions Law 2016 or other applicable legislation to perform the relevant act or function;

(xxxviii) “**security interest**” means a charge, lien, mortgage or pledge or any other form of security interest prescribed or recognized under this Law or other applicable law;

(xxxix) “**share**” means a share in the share capital of the company;

(xl) “**signature**” means in relation to any document to be submitted to or produced by the Registrar, a tangible indication of assent to the document to which it is attached, which need not be an original ink signature on paper and may consist of entry of the signer’s name in an electronic form by a method deemed acceptable by the Registrar;

(xli) “**small company**” means a company, other than a public company or subsidiary of a public company, which satisfies the following conditions:

(A) it and its subsidiaries have no more than 30 employees (or such other number as may be prescribed under this Law); and

(B) it and its subsidiaries had annual revenue in the prior financial year of less than 50,000,000 Kyats in aggregate (or such other amount as may be prescribed under this Law);

(xlii) “**solvency test**” means that:

(A) the company is able to pay its debts as they become due in the normal course of business; and

(B) the company’s assets exceed its liabilities,

in each case as determined in accordance with the accounting standards applicable to such companies or prescribed from time to time;

- (xliii) “**special resolution**” means a resolution which has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy where allowed at a general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given;
- (xliv) “**subsidiary**” means:
 - (A) a company in which another company:
 - (I) controls the composition of the board of the first-mentioned company;
 - (II) is in a position to exercise, or control the exercise of, more than one-half the maximum number of votes that can be exercised at a meeting of the first-mentioned company;
 - (III) holds more than one-half of the issued shares of the first-mentioned company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
 - (IV) is entitled to receive more than one-half of every dividend paid on shares issued by the first-mentioned company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
 - (B) a subsidiary of the first-mentioned company will also be a subsidiary of the second-mentioned company;
- (xlv) “**transition period**” means the *period* of 12 months from the date of commencement of this Law;
- (xlvi) “**ultimate holding company**”, in relation to a body corporate, means a body corporate that is a holding company of the first-mentioned body corporate and is itself not a subsidiary of any body corporate;
- (xlvii) “**Union**” means the Republic of the Union of Myanmar;
- (xlviii) “**Union Minister**” means a Union Minister of the Government of the Union (or such other person who holds an office of an equivalent level) whose responsibilities include the administration of this Law and the supervision of the Registrar;
- (xlix) “**unregistered company**”, for the purposes of Division 27, shall not include a company registered under this Law, but shall include any corporation, partnership, association or body corporate that may have been established under any other applicable law;

- (l) “*vendor*”, for the purposes of section 205, shall be every person who has entered into any contract for the sale or purchase, or for any option to purchase, of any property to be acquired by the company, in any case where:
- (A) the purchase-money is not fully paid at the date of issue of the prospectus; or
 - (B) the purchase-money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or
 - (C) the validity or fulfillment of the contract depends on the result of the issue offered for subscription by the prospectus.

PART II

CONSTITUTION, INCORPORATION AND POWERS OF COMPANIES

Division 2: Companies and corporations

2. **Companies that may be incorporated and registered**

The following types of body corporate may be incorporated and registered under this Law:

- (a) a company limited by shares, which may be either:
 - (i) a private company which may have no more than 50 members; or
 - (ii) a public company which may have any number of members;
- (b) a company limited by guarantee which may have any number of members; and
- (c) an unlimited company which may have any number of members.

3. **Other corporations that may be registered under this Law**

As further provided by and subject to Division 9 of this Part, the following bodies corporate formed under this or other laws may be registered under this Law:

- (a) a business association;
- (b) an overseas corporation;
- (c) any other corporation which is entitled to register as a company by this Law or any other law in force in the Union; and
- (d) such other entities as may be prescribed by the Union Minister from time to time.

Division 3: Essential requirements and powers of companies

4. **Essential requirements of companies**

- (a) A company registered under this Law must have:
 - (i) a name;
 - (ii) a constitution;
 - (iii) at least one share in issue (provided that a company limited by guarantee need not have a share capital);
 - (iv) at least one member;
 - (v) subject to sub-section (vi), at least one director who must be ordinarily resident in the Union;
 - (vi) if the company is a public company, at least three directors, at least one of whom must be ordinarily resident in the Union; and

- (vii) a registered office address in the Union.
- (b) A company may:
 - (i) appoint a company secretary; and
 - (ii) have a common seal.

5. **Capacity and powers of companies**

- (a) A company:
 - (i) will be a legal entity in its own right separate from its members having full rights, powers, and privileges and continuing in existence until it is removed from the Register; and
 - (ii) subject to this Law and any other law, a company has, both within and outside the Union full legal capacity to carry on any business or activity, do any act, or enter into any transaction, including the power to:
 - (A) issue shares, debentures or securities which convert into shares in the company;
 - (B) grant options to subscribe for shares or debentures in the company;
 - (C) grant a security interest over any of its property; and
 - (D) distribute any of the company's property among the members, in kind or otherwise, and
- (b) The constitution of a company may contain a provision relating to the capacity, rights, powers, or privileges of the company only if the capacity of the company or those rights, powers, and privileges are restricted.
- (c) A company may act as a holding company of another company and incorporate and hold shares in any number of subsidiaries.

Division 4: Incorporations and registrations under this Law

6. **Mode of incorporating a company**

- (a) Any person or persons may apply to the Registrar to incorporate and register a company for any lawful purpose, with or without limited liability (that is to say), either:
 - (i) a company having the liability of its members limited by the constitution to the amount, if any, unpaid on the shares respectively held by them (in this Law termed a company limited by shares);
 - (ii) a company having the liability of its members limited by the constitution to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Law termed a company limited by guarantee); or
 - (iii) a company not having any limit on the liability of its members (in this Law termed an unlimited company).

- (b) The application to the Registrar must be made in the prescribed form and must state:
- (i) the proposed name of the company;
 - (ii) the proposed type of company;
 - (iii) the full name and address of each applicant;
 - (iv) the full name, date of birth, gender, nationality and address of every director and any secretary of the proposed company;
 - (v) that each person named as a director or secretary of the proposed company has given their written consent to act as a director or secretary of the proposed company;
 - (vi) the address of the registered office of the proposed company, which in the absence of any other notice will be taken to be the address for service of documents to the proposed company;
 - (vii) the address of the company's principal place of business if different to the registered office; and
 - (viii) in the case of a private, public or unlimited company:
 - (A) the full name and address of every member of the proposed company;
 - (B) that each member of the proposed company has given their written consent to be a member and subscribe for the shares to be allotted to them;
 - (C) the number and class of shares to be issued to each member;
 - (D) the currency in which the company's share capital is to be denominated;
 - (E) the amount (if any) each member agrees to pay for each share;
 - (F) whether these shares will be fully paid on registration;
 - (G) whether the proposed company has an ultimate holding company;
 - (H) whether the proposed company will, on incorporation, be a foreign company; and
 - (ix) in the case of a company limited by guarantee:
 - (A) the full name and address of every member of the proposed company;
 - (B) that each member of the proposed company has given their written consent to be a member;
 - (C) the proposed amount of the guarantee that each member agrees to provide; and
 - (D) if the company is to have a share capital:
 - (I) the number and class of shares to be issued;

- (II) the currency in which the company's share capital is to be denominated;
 - (III) the amount (if any) each member agrees to pay for each share; and
 - (IV) whether these shares will be fully paid on registration.
 - (c) An application for registration must be:
 - (i) signed by each applicant;
 - (ii) include a declaration by each applicant that all matters stated in the application are true and correct; and
 - (iii) where the company proposes to use a constitution which differs in any substantive way from the form of constitution set out in the Schedule to this Law, accompanied by a copy of the proposed company's constitution certified by at least one applicant, otherwise a statement that the company proposes to use the form provided in the Schedule.
 - (d) The prescribed fee must be paid to the Registrar when filing the application.
 - (e) Duplicate originals of the application and all documents accompanying it must be kept by the applicants together with the originals of the consents referred to in sub-sections (b)(v), (viii) and (ix). On incorporation, these should be passed to the company and then maintained with the company's records.
7. The penalty for an applicant making a false declaration in an application under section 6 shall be a fine not exceeding 50 penalty units.
8. **Registration**
- (a) When the Registrar receives a completed application which upon any necessary examination meets the requirements of this Law, the Registrar must:
 - (i) register the application; and
 - (ii) issue a certificate of incorporation which states:
 - (A) the company's name;
 - (B) the company's type;
 - (C) that the company is incorporated and registered as a company under this Law;
 - (D) the date of registration; and
 - (E) any other matters that may be prescribed.
 - (b) The Registrar must keep a record of the registration.
 - (c) The Registrar may not require the submission of any other documents in connection with the registration other than those referred to in sections 6(b) and (c) or save as may be prescribed by the Union Minister.

9. **Effect of registration**

From the date of registration mentioned in the certificate of incorporation, the members named in the application shall become members of the company having a separate legal personality and the name contained in the certificate of incorporation. Without limiting section 5 or any other provision of this Law, the company will be capable forthwith of exercising all the functions of an incorporated company, and have perpetual succession, and, if desired by the company, a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Law.

10. **Conclusiveness of certificate of incorporation**

A certificate of incorporation given by the Registrar under section 8 shall be conclusive evidence that all the requirements of this Law in respect of registration and of matters precedent and incidental thereto have been complied with, and that from the date of incorporation stated in the certificate the company is incorporated and duly registered under this Law.

Division 5: Company constitution

11. **Requirement for and effect of the constitution**

- (a) Each company will have a constitution the effect of which is to bind, in accordance with its terms, the company and the members thereof to the same extent as if they respectively had been signed by each member and contained a covenant on the part of each member, the member's heirs, and legal representatives, to observe all the provisions of the constitution, subject to the provisions of this Law.
- (b) The company, the board, each director and each member of the company will have the rights, powers, duties and obligations set out in this Law except to the extent that they are modified, in accordance with this Law, by the constitution.
- (c) Each of the members of the company named in the application for incorporation and each subsequent member shall be deemed to be bound by the constitution.
- (d) All money payable by any member to the company under the constitution shall be a debt due from the member to the company.

12. **Contents of a constitution**

- (a) The constitution may contain the matters contemplated in this Law for inclusion and such other matters that the company wishes to include, provided that at all times the constitution has no effect to the extent that it is inconsistent with this Law.
- (b) The constitution may be based on the form set out in the Schedule to this Law.
- (c) At the election of the members, the constitution may set out the objects of the company.
- (d) The constitution must state that the registered office of the company will be situated in the Union.
- (e) Subject to sub-section 12(f), the Memorandum of Association, any Articles of Association and any other constituent document of an existing company shall take effect as the constitution of such company following the commencement of this Law.

- (f) The objects expressed in the former Memorandum of Association of an existing company will (unless removed by the members voting to amend the constitution in accordance with the requirements of this Law) continue to apply until the end of the transition period. The objects will be deemed to have been removed after this time unless a notice in the prescribed form confirming the passing of a special resolution to maintain them is filed with the Registrar. This sub-section is without prejudice to section 29.

13. Additional requirements for constitutions of limited companies

In the case of a company limited by shares the constitution shall state:

- (a) the name of the company, with "Limited" or "Ltd" as the last word in its name if it is a private company and "Public Limited Company" or "PLC" if it is a public company;
- (b) that the liability of the members is limited;
- (c) the classes of shares which the company proposes to issue and the currency denomination of such shares; and
- (d) that none of the initial subscribers for shares in the company and no subsequent subscriber shall take less than one share.

14. Additional requirements for the constitutions of a company limited by guarantee

- (a) In the case of a company limited by guarantee, the constitution shall state:
 - (i) the name of the company, with "Limited by Guarantee" or "Ltd Gty" as the last words in its name;
 - (ii) that the liability of the members is limited by the amount of the guarantee; and
 - (iii) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amounts as may be required not exceeding a specified amount.
- (b) If the company is to have a share capital:
 - (i) the constitution shall also state the classes of shares which the company proposes to issue and the currency denomination of such shares; and
 - (ii) no subscriber of the constitution shall take less than one share.
- (c) In the case of a company limited by guarantee and not having a share capital, and registered after the commencement of the previous law, every provision in the constitution or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.
- (d) For the purpose of the provisions of this Law relating to the constitution of a company limited by guarantee and of this section, every provision in the constitution, or in any resolution, of any company limited by guarantee and registered after the commencement of the previous law, purporting to divide the undertaking of the company into shares or

interests, shall be treated as a provision for a share capital, notwithstanding that the amount or number of the shares or interests is not specified thereby.

15. **Additional requirements for the constitution of an unlimited company**

In the case of an unlimited company the constitution shall state:

- (a) the name of the company (with "Unlimited" as the last word in its name);
- (b) that the liability of members is unlimited;
- (c) the classes of shares which the company proposes to issue and the currency denomination of such shares; and
- (d) that none of the initial subscribers for shares in the company and no subsequent subscriber shall take less than one share.

16. **Format of constitution**

The constitution:

- (a) must be prepared in Myanmar language; and
- (b) may also be prepared in English language (in addition to Myanmar language) at the election of the company; and
- (c) must be divided into paragraphs numbered consecutively.

17. **Alteration of constitution**

- (a) Subject to the provisions of this Law, and to any additional conditions contained in its constitution, a company may, by special resolution, alter or add to the provisions of its constitution, and any alteration or addition so made shall be as valid as if originally contained in the constitution, and be subject in like manner to alteration by special resolution.
- (b) The power of altering the constitution under this section shall, in the case of any company formed and registered under Act No. XIX of 1857 and Act No. VII of 1860 or either of them, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

18. **Procedure on approval of the alteration**

- (a) Notice in the prescribed form together with a copy of the constitution as altered, shall, within 28 days from the date of the passing of the special resolution to amend it, be filed by the company with the Registrar, and he shall register the same and the certificate shall be conclusive evidence that all the requirements of this Law with respect to the alteration have been complied with, and thenceforth the constitution so altered shall be the constitution of the company.
- (b) The Court may by order at any time extend the time for the filing of documents with the Registrar under this section for such period as the Court thinks proper.

19. **Effect of failure to register the alteration within 28 days**

No such alteration of the constitution shall have any effect until registration thereof has been duly effected in accordance with the provisions of section 18, and if such registration is not effected within 28 days after the passing of the special resolution to amend the constitution, or within such further time as may be allowed by the Court in accordance with the provisions of section 18, such alteration therewith shall, at the expiration of such period of 28 days or such further time, as the case may be, become absolutely null and void:

Provided that the Court may, on sufficient cause shown, revive the order on application made within a further period of 28 days.

20. **Effect of alteration of constitution**

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

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

21. **Copies of constitution to be given to members**

Every company shall send to every member, at his request and within 14 days thereof, on payment of such reasonable sum as the company may prescribe not to exceed such amount as may be prescribed, a copy of the constitution.

22. If a company makes default in complying with the requirements of section 21, it shall be liable for each offence to a fine not exceeding 2 penalty units.

23. **Alteration of constitution to be noted in every copy**

Where an alteration is made to the constitution of a company, every copy of the constitution issued after the date of the alteration shall be in accordance with the alteration.

24. If, where an alteration has been made to the constitution of a company, the company at any time after the date of the alteration issues any copies of the constitution which are not in accordance with the alteration, it shall be liable to a fine not exceeding 1 penalty unit for each copy so issued, and every director or other officer of the company who is knowingly and wilfully in default shall be liable to the same penalty.

Division 6: Company names

25. **Name of company and change of name**

(a) A company shall not be registered by a name identical with that by which a body corporate in existence is already registered, or so nearly resembling that name as to be calculated to deceive or otherwise likely to mislead or cause confusion, except where the body corporate in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar requests.

(b) If a company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a body corporate in existence is previously registered, or so nearly resembling it as to be calculated to deceive or

otherwise likely to mislead or cause confusion, the first-mentioned body corporate may, with the sanction of the Registrar, change its name.

- (c) Except with the previous consent in writing of the Union Minister no company shall be registered by a name which-
 - (i) contains any of the following words, namely, “National Government”, “State”, “Central Bank”, “Union Government”, “President”, "Ministry" or any word which suggests or is calculated to suggest the patronage of the Government of Myanmar or of any Ministry, Department, Office or Agency thereof; or
 - (ii) contains the word “Municipal”, or any word which suggests or is calculated to suggest connection with any state, regional, municipality or other local authority or with any society or body incorporated by other law:
- (d) Any company may, by special resolution and subject to compliance with this Law and the filing of notice in the prescribed form with the Registrar, change its name.
- (e) The company must make the filing within 28 days of the special resolution being passed.
- (f) Where a company changes its name, the Registrar shall, provided that the new name is available and does not breach this Law or any other law, enter the new name on the Register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case. On the issue of such a certificate, the change of name shall take effect.
- (g) No such alteration of the name shall have any operation until registration thereof has been duly effected in accordance with the provisions of sub-sections (e) and (f), and if such registration is not effected within 28 days after the passing of the special resolution such alteration shall, at the expiration of such period of 28 days or such further time, as the case may be, become absolutely null and void.
- (h) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

26. Direction to change name

- (a) If the Registrar believes on reasonable grounds that a company should not have been registered under the name it was registered under, the Registrar may serve written notice on the company to change its name by a date specified in the notice, being a date not less than 60 days after the date on which the notice is served.
- (b) If the company does not change its name within the period specified in the notice, the Registrar may enter on the Register a new name for the company selected by the Registrar, being a name under which the company may be registered under this Part.
- (c) If the Registrar registers a new name under sub-section (b), the Registrar must issue a certificate of incorporation for the company recording the new name of the company, and section 25 applies in relation to the registration of the new name as if the name of the company had been changed under that section.

27. Use of a company name

A company must ensure that its name is clearly stated in:

- (a) every written communication sent by, or on behalf of, the company; and
- (b) every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company.

Division 7: Company dealings

28. Validity of Actions

- (a) Without limiting any provision of this Law, no act of a company and no transfer of property to or by a company is invalid merely because the company did not have the capacity, the right, or the power to do the act or to transfer or take a transfer of the property.
- (b) The fact that an act may not be considered in the best interests of a company does not affect the capacity of the company to do the act.

29. Contracts and execution of documents

- (a) Subject to any law that requires a particular procedure to be complied with in relation to a contract, a company's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the company's express or implied authority and on behalf of the company. The power may be exercised without using a common seal.
- (b) A company may execute a document without using a common seal if the document is signed by:
 - (i) if the company has only 1 director - that director;
 - (ii) 2 directors of the company; or
 - (iii) a director and a company secretary of the company.
- (c) A company with a common seal may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:
 - (i) if the company has only 1 director - that director;
 - (ii) 2 directors of the company; or
 - (iii) a director and a company secretary of the company.
- (d) A company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with sub-section (b) or (c).
- (e) This section does not limit the ways in which a company may execute a document (including a deed), including as may be provided elsewhere in this Law.

30. **Dealings between a company and other persons**

- (a) A person is entitled to make the assumptions in section 31 in relation to dealings with a company. The company or any guarantor of the company is not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.
- (b) A person is entitled to make the assumptions in section 31 in relation to dealings with another person who has, or purports to have, acquired title to property from a company. The company and the other person are not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.
- (c) The assumptions may be made even if a director, officer or agent of the company acts fraudulently, or forges a document, in connection with the dealings.
- (d) A person is not entitled to make an assumption in section 31 if at the time of the dealings they knew or suspected that:
 - (i) the assumption was incorrect;
 - (ii) a director, officer or agent acted fraudulently;
 - (iii) the relevant document was a forgery; or
 - (iv) the relevant matter was contrary to an applicable law.

31. **Assumptions that may be made by persons dealing with companies**

- (a) A person may assume that the company's constitution has been complied with.
- (b) A person may assume that anyone who appears from information on the Register to be a director or a secretary of the company:
 - (i) has been duly appointed; and
 - (ii) has authority to exercise the powers and perform the duties customarily exercised or performed by a director or secretary (as applicable).
- (c) A person may assume that anyone who is held out by the company to be any other officer or an agent of the company:
 - (i) has been duly appointed; and
 - (ii) has authority to exercise the powers and perform the duties customarily exercised or performed by that kind of officer or agent.
- (d) A person may assume that anyone held out by the company as a director, or other officer, secretary or agent of the company with authority to exercise a power which a director or other officer, secretary or agent of a company does not customarily have authority to exercise, does have authority to exercise that power.
- (e) A person may assume that the directors, other officers, secretaries and agents of the company properly perform their duties to the company.
- (f) A person may assume that a document has been duly executed by the company if the document appears to have been signed in accordance with sub-section 29(b).

- (g) A person may assume that a document has been duly executed by the company if:
 - (i) the company's common seal appears to have been fixed to the document in accordance with sub-section 29(c); and
 - (ii) the fixing of the common seal appears to have been witnessed in accordance with that sub-section.
- (h) A person may assume that a director, other officer, secretary or agent of the company who has authority to issue a document or a certified copy of a document on its behalf also has authority to warrant that the document is genuine or is a true copy.

Division 8: Activities prior to registration

32. Pre-incorporation expenses

Subject to the following provisions in this Division, the expenses properly incurred before registration in promoting and setting up a company may be paid out of the company's assets.

33. Pre-incorporation contracts

- (a) In this section and in sections 34 to 36, the term pre-incorporation contract means:
 - (i) a contract purporting to be made by a company before its incorporation; or
 - (ii) a contract made by a person on behalf of a company before and in contemplation of its incorporation.
- (b) A pre-incorporation contract may be ratified by the company within any period specified in the contract, or if no period is specified, then within a reasonable time after the incorporation of the company.
- (c) A contract that is ratified is as valid and enforceable as if the company had been a party to the contract when it was made.
- (d) A pre-incorporation contract may be ratified by a company by the directors passing a resolution to this effect or otherwise in the same manner as a contract may be entered into on behalf of a company under section 29.
- (e) If a pre-incorporation contract has not been ratified by a company, or validated by the court under section 35, the company may not enforce it or take the benefit of it.

34. Implied warranty in pre-incorporation contracts

- (a) Subject to any express provision in the pre-incorporation contract, there is an implied warranty by the person who purports to make a pre-incorporation contract:
 - (i) that the company will be incorporated within any period specified in the contract, or if no period is specified, then within a reasonable time after the making of the contract; and
 - (ii) that the company will ratify the contract within any period specified in the contract, or if no period is specified, then within a reasonable time after the incorporation of the company.

- (b) The amount of damages recoverable in an action for breach of a warranty implied by sub-section (a) is the same as the amount of damages that would be recoverable in an action against the company for damages for breach by the company of the unperformed obligations under the contract if the contract had been ratified and cancelled.
- (c) If, after its incorporation, a company enters into a contract in the same terms as, or in substitution for, a pre-incorporation contract (not being a contract ratified by the company under section 33), the liability of a person under sub-section (a) (including any liability under an order made by the court for the payment of damages) is discharged.

35. Failure to ratify

- (a) A party to a pre-incorporation contract that has not been ratified by the company after its incorporation may apply to the court for an order:
 - (i) directing the company to return property, whether real or personal, acquired under the contract to that party;
 - (ii) for any other relief in favour of that party relating to that property or the contract; or
 - (iii) validating the contract whether in whole or in part.
- (b) The court may, if it considers it just and equitable to do so, make any order or grant any relief it thinks fit and may do so whether or not an order has been made under sub-section 34(b).

36. Breach of pre-incorporation contract

In proceedings against a company for breach of a pre-incorporation contract which has been ratified by the company, the court may, on the application of the company, any other party to the proceedings, or of its own motion, make such order for the payment of damages or other relief as the court considers just and equitable, in addition to or in substitution for any order which may be made against the company, against a person by whom the contract was made.

Division 9: Other corporations authorised to register or taken to be registered under this Law

Corporations formed under other laws in force in the Union

37. Corporations capable of being registered

- (a) With the exceptions and subject to the provisions contained in this Division, any corporation formed under any other applicable law in force at any time in the Union may register under this Law as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up.
- (b) All corporations formed under the Special Company Act 1950 or any Companies Acts in force prior to the previous law which are in existence upon the commencement of this Law shall be registered under this Law as companies limited by shares, pursuant to this Law and subject to any requirements as may be prescribed.
- (c) Sections 37, 38 and 39 do not apply to overseas corporations.

38. **Addition of “Limited” to name**

When a corporation is registered in pursuance of this Law with limited liability, the words “Limited” or “Public Limited Company” or equivalent applicable terms set out in Division 6 shall form and be registered as part of its name.

39. **Certificate of registration of existing corporations**

On compliance with the requirements of this Division and the applicable requirements of Part II with respect to registration, and on payment of the application fee prescribed under Part II, the Registrar shall register the corporation under this Law and, thereupon the corporation shall be taken to be registered and incorporated under this Law, and shall have perpetual succession and, if it elects, a common seal.

Associations

40. **Limits on associations**

Without limiting, and subject to, any other applicable law:

- (a) No association shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the association, or by the individual members thereof.
- (b) Every member of an association carrying on business in contravention of this section shall be personally liable for all liabilities incurred in such business.

41. Any person who is a member of an association formed in contravention of section 40 shall be punishable with fine not exceeding 2 penalty units.

Business Associations

42. **Power to register associations established for commerce and similar purposes**

- (a) Where it is proved to the satisfaction of the Union Minister that an association capable of being formed as a limited company has been or is about to be formed for promoting commerce, or any other economic development object, and applies or intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Union Minister may, direct the Registrar to register by licence the association as a corporation under this Law with limited liability, with the addition of the word “Incorporated” to its name, and the association may be registered accordingly.
- (b) A licence by the Union Minister under this section may be granted subject to such regulations and on such conditions as the Union Minister thinks fit, and those conditions and regulations shall be binding on the association, and shall, if the Union Minister so directs, be inserted in the constitution of the association.
- (c) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word “Limited” as any part of its name, and of publishing its name, and of sending lists of members to the Registrar.
- (d) A licence under this section may at any time be revoked by the Union Minister, and upon revocation the Registrar shall remove the association from the register, and the association shall cease to enjoy the exemptions and privileges granted by this section:

Provided that, before a licence is so revoked, the Union Minister shall give to the association reasonable notice in writing, being not less than 28 days, of that intention, and shall afford the association during this notice period an opportunity of submitting a representation in opposition to the revocation.

- (e) The Registrar may:
 - (i) vary the licence by making it subject to such conditions and regulations as the Registrar thinks fit, in lieu of, or in addition to, the conditions and regulations, if any, to which the licence may formerly be subject, or
 - (ii) issue a new licence in lieu of the licence formerly granted.
- (f) The Union Minister may give a direction to the Registrar in respect of the variation or issue of a licence or the exercise of the Registrar's discretion under sub-section (e).
- (g) This section applies without limiting, and subject to, any other applicable law.

Registration of overseas corporations

43. When an overseas corporation may carry on business in the Union

- (a) An overseas corporation or any other body corporate must not carry on business in the Union unless it is registered under this Division.
- (b) An overseas corporation or other body corporate is not deemed to carry on business in the Union merely because in the Union it:
 - (i) is or becomes a party to a legal proceeding or settles a legal proceeding or a claim or dispute;
 - (ii) holds meetings of its directors or shareholders or carries on other activities concerning the management of its internal affairs;
 - (iii) maintains a bank account;
 - (iv) effects a sale of property through an independent contractor;
 - (v) solicits or procures an order that becomes a binding contract only if the order is accepted outside the Union;
 - (vi) loans money, creates evidence of a debt or creates a charge on property;
 - (vii) secures or collects any of its debts or enforces its rights in relation to securities relating to those debts;
 - (viii) conducts an isolated transaction that is completed within a period of 30 days, not being one of a number of similar transactions repeated from time to time; or
 - (ix) invests its funds or holds property.
- (c) The Registrar may issue or cause the issue of further guidelines from time to time regarding the matter of whether an overseas corporation or other body corporate is carrying on business in the Union, provided such guidelines are not inconsistent with this section.

- (d) The Union Minister may also prescribe, whether on the application of any person or of the Union Minister's own motion, whether or not a body corporate, or a class of bodies corporate in the same circumstances, will be taken to be carrying on business in the Union.

44. Name of the overseas corporation

- (a) An overseas corporation shall not be registered if it has a name identical to that of a body corporate in existence that is already registered, or so nearly resembling that name as to be calculated to deceive or otherwise likely to mislead or cause confusion, except where the body corporate in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar requires. The overseas corporation may also include its country of incorporation or some other distinguishing word or phrase in its name to avoid such potential confusion.
- (b) An overseas corporation that changes its name must file with the Registrar a notice in the prescribed form of the change of name within 28 days of the change of name. The provisions of sub-section (a) apply to a registration of a change of name with all necessary changes and, subject to compliance with this Law, the Registrar will register the change of name.
- (c) The Registrar may direct an overseas corporation to change the name under which it is registered if necessary to ensure compliance with this Law and the overseas corporation must comply with such direction by doing all that is necessary to change its registered name within two months of receiving the Registrar's direction.

45. If an overseas corporation fails to comply with any part of section 44 it and every director and the authorised officer will be liable to a fine not exceeding 3 penalty units.

46. Validity of transactions

A failure by an overseas corporation to comply with sections 43 or 44 does not affect the validity or enforceability of any transaction entered into by the overseas corporation.

47. Application for registration

- (a) An application for registration of an overseas corporation under this Part must be delivered to the Registrar and must be:
 - (i) in the prescribed form; and
 - (ii) signed by or on behalf of the overseas corporation.
- (b) Without limiting sub-section (a), the application must:
 - (i) state the name of the overseas corporation;
 - (ii) state the full names, date of birth, gender, nationality and residential addresses of the directors and any secretary of the overseas corporation at the date of the application;
 - (iii) state that the overseas corporation has appointed an authorised officer, and provide the full name, date of birth and residential address of the authorised officer appointed by the overseas corporation (who will be authorised to accept

service of documents in the Union of documents on behalf of the overseas corporation);

- (iv) state that the person named as the authorised officer has given their written consent to act as authorised officer the overseas corporation;
- (v) state the full address of the place of business in the Union of the overseas corporation or, if the overseas corporation has more than one place of business in the Union, the full address of the principal place of business in the Union of the overseas corporation;
- (vi) state the full address of its registered office or principal place of business in its place of origin;
- (vii) include a declaration by the overseas corporation that all matters stated in the application are true and correct; and
- (viii) have attached evidence of incorporation of the overseas corporation and a copy of the instrument constituting or defining the constitution of the corporation, and, if not in Myanmar language, a Myanmar language translation of such documents and a summary statement in the English language, duly certified by a director in that behalf shall be filed.

- (c) The prescribed fee must be paid to the Registrar when filing the application.
- (d) Duplicate originals of the application and all documents accompanying, together with the original of the consent referred to in sub-sections (b)(iv), must be kept by the authorised officer and maintained with the overseas corporation's records.

48. The penalty for the overseas corporation making a false declaration in an application under section 47 shall be a fine not exceeding 100 penalty units.

49. **Registration of overseas corporation**

- (a) As soon as the Registrar receives a completed application which meets the requirements of this Law, the Registrar must register the application in a section of the Register maintained for this Division and issue a certificate of registration which states:
 - (i) the company's name;
 - (ii) that the company is registered as an overseas corporation under this Law;
 - (iii) the date of registration; and
 - (iv) any other matters that may be prescribed.
- (b) The Registrar must keep a record of the registration.
- (c) Unless the Registrar forms the view on reasonable grounds that additional documentation is needed to establish the good standing of the overseas corporation, the Registrar may not require the submission of any other documents in connection with the Registration other than those referred to in or required under section 47 or save as may be prescribed by the Union Minister.

50. **Use of name by overseas corporation**

Every overseas corporation that carries on business in the Union must ensure that its full name, and the name of the country where it was incorporated:

- (a) are clearly stated in written communications sent by, or on behalf of, the corporation;
- (b) are clearly stated in documents issued or signed by, or on behalf of, the company that evidence or create a legal obligation of the corporation; and
- (c) are prominently displayed at the registered office and principal place of business of the overseas corporation in Myanmar.

51. **Alteration of details**

An overseas corporation that carries on business in the Union must ensure that, within 28 days, or such other period as is specified, of the change or alteration notice in the prescribed form is given to the Registrar of:

- (a) an alteration to the instrument constituting or defining the constitution of the overseas corporation;
- (b) a change in the directors or in the names or residential addresses of the directors of the overseas corporation;
- (c) a change in the address of the registered office or principal place of business of the overseas corporation overseas;
- (d) a change in the address of the principal place of business of the overseas corporation in the Union. Notice of the proposed change must be given prior to the company effecting the change in the address of its principal place of business; and
- (e) a change in the authorised officer or the address of the authorised officer or the appointment or change in details of any other person authorised to accept service of documents in the Union on behalf of the overseas corporation. Notice of this change must be made within 7 days.

52. If an overseas corporation fails to comply with section 51, it and every director and the authorised officer will be liable to a fine not exceeding 3 penalty units.

53. **Annual filings by overseas corporation**

- (a) Every overseas corporation conducting business in the Union shall file with the Registrar:
 - (i) within 28 days of the end of its financial year, an annual return in the prescribed form; and
 - (ii) at least once each calendar year and at intervals of no more than 15 months:
 - (A) a balance sheet made up to the end of its last financial year;
 - (B) a copy of its cash flow statement for its last financial year; and
 - (C) a copy of its profit and loss statement for its last financial year;

in such form and containing such particulars and including copies of such documents as the corporation is required to prepare by the law in its place of origin.

- (b) The Registrar may require the company to prepare and file any of the financial statements referred to in sub-section (a) in respect of its business in the Union if the corporation is not required under a law in its place of origin to file the statements referred to in sub-section (a). Such statements will be prepared in such form as the corporation would have been required to prepare if it was incorporated as a public company under this Law, or in such form as may otherwise be prescribed. In exercising its discretion under this sub-section the Registrar may consider whether the overseas corporation's business in the Union would qualify it as a small company.
 - (c) The Registrar may require any financial statements filed under this section to be audited. In exercising its discretion under this sub-section the Registrar may consider whether the overseas corporation's business in the Union would qualify it as a small company.
54. If an overseas corporation fails to comply with any requirements of section 53, it and every director and the authorised officer will be liable to a fine not exceeding 3 penalty units in respect of each breach.
55. **Overseas corporation ceasing to carry on business in the Union**
- (a) Within 21 days after ceasing to carry on business in the Union, an overseas corporation must file a note in the prescribed form stating that it has so ceased, and, subject to being satisfied of compliance with other applicable laws, the Registrar will remove the overseas corporation's name from the register.
 - (b) Where the Registrar receives notice from an authorised officer of an overseas corporation that the overseas corporation has been dissolved or deregistered, the Registrar must remove the overseas corporation's name from the register.
 - (c) Where the Registrar reasonably believes that an overseas corporation does not carry on business in the Union, it may send to the overseas corporation a notice to that effect and stating that, if no answer showing cause to the contrary is received within 28 days from the date of the notice, a notice will be published in the Gazette with a view to striking the overseas corporation's name off the register.
 - (d) Unless the Registrar receives, within 28 days after the date of the notice, an answer to the effect that the overseas corporation is still carrying on business in the Union, it may publish in the Gazette, and send to the overseas corporation a further notice that, at the end of 3 months after the date of the notice, the overseas corporation's name will, unless cause to the contrary is shown, be struck off the register.
 - (e) At the end of the period specified in a notice sent under sub-section (d), the Registrar may, unless cause to the contrary has been shown, remove the overseas corporation's name off the register and must publish in the Gazette notice of the removal.
 - (f) The Registrar must remove an overseas corporation from the register after receipt of a notice given by an official liquidator in accordance with the provisions of Part V.
 - (g) Where an overseas corporation commences to be wound up, or is dissolved or deregistered, in its place of origin:

- (i) the authorised officer must, within the period of 28 days after that day file notice of that fact and, when a liquidator is appointed, notice of the appointment; and
 - (ii) the Court must, on application by the person who is the liquidator for the overseas corporation's place of origin, or by the Registrar, appoint a liquidator of the overseas corporation.
- (h) A liquidator of an overseas corporation who is appointed by the Court:
- (i) must, before any distribution of the overseas corporation's property is made, by advertisement in a daily newspaper circulating generally in the Union, invite all creditors to make their claims against the overseas corporation within a reasonable time before the distribution; and
 - (ii) must not, without obtaining an order of the Court, pay out a creditor of the overseas corporation to the exclusion of another creditor of the overseas corporation; and
 - (iii) must, unless the Court otherwise orders, recover and realise the property of the overseas corporation in this jurisdiction and must pay the net amount so recovered and realised to the liquidator of the overseas corporation for its place of origin.
- (i) Where an overseas corporation has been wound up so far as its property in this jurisdiction is concerned and there is no liquidator for its place of origin, the liquidator may apply to the Court for directions about the disposal of the net amount recovered under sub-section (h).

56. Service of documents on overseas corporations registered under this Law

- (a) A document may be served on an overseas corporation by leaving it at, or by sending it by post to:
 - (i) its registered office in the Union; or
 - (ii) the address of its authorised officer,in each case, as most recently notified in accordance with this Law.
- (b) Without limiting the operation of sub-section (a), if 2 or more directors of the overseas corporation reside in the Union, a document may be served on the overseas corporation by delivering a copy of the document personally to each of 2 of those directors.
- (c) Where a liquidator of an overseas corporation has been appointed, a document may be served on the overseas corporation by leaving it at, or by sending it by post to, the last address of the office of the liquidator notice of which has been lodged.
- (d) Nothing in this section affects the power of the Court to authorise a document to be served on an overseas corporation in any other manner provided by an applicable law.

Division 10: Change of company type

57. Changing of company type

- (a) A company may change to a company of a different type as provided in this section by passing a special resolution resolving to change type and complying with this Division.
- (b) The following changes may be made subject to compliance with this Division:
 - (i) a private company may change to a public company;
 - (ii) a public company may change to a private company;
 - (iii) a company limited by guarantee may change to a public or a private company; and
 - (iv) an unlimited company may change to a public or a private company.

58. Applying for a change of type

- (a) To change type the company must lodge an application with the Registrar together with:
 - (i) a statement confirming that the special resolution that resolves to change the type of the company, specifying the new type and the company's new name (if a change of name is made) has been duly passed;
 - (ii) a statement confirming that the special resolution that resolves to amend the company's constitution (if any) has been duly passed and a copy of the amended constitution (where the company proposes to use a constitution which differs in any substantive way from the form of constitution set out in the Schedule);
 - (iii) a statement which updates any other changes arising in connection with the change of company type to the particulars of the company which are maintained on the public register by the Registrar; and
 - (iv) for a company limited by guarantee changing to a private or a public company:
 - (A) a statement confirming that in the directors' opinion the company's creditors are not likely to be materially prejudiced by the change of type and that sets out their reasons for that opinion; and
 - (B) if the company limited by guarantee did not have a share capital, a statement confirming that special resolution approving the issue of shares has been duly passed and a statement containing the information required by section 6(b)(viii).
- (b) The Registrar must give notice in the gazette and by publication in a daily newspaper circulating generally in the Union that it intends to alter the details of the company's registration if it is satisfied that the application complies with sub-section (a).
- (c) The notice issued by the Registrar under sub-section (b) must also state that the Registrar will alter the details of the company's registration 28 days after the notice has been published in the gazette unless an order by the Court prevents it from doing so.
- (d) Subject to an order made by the Court within that 28 day period, after the 28 day period has passed the Registrar must alter the details of the company's registration to reflect the company's new type.

- (e) A change of type under this section takes effect when the Registrar alters the details of the company's registration and the Registrar must give the company a new certificate of registration after it alters the details of the company's registration. The company's name is the name specified in the certificate of registration issued under this section.

59. **Effect of change of type**

- (a) A change of type does not:
 - (i) create a new legal entity;
 - (ii) affect the company's existing property, rights or obligations (except as against the members of the company in their capacity as members); or
 - (iii) render defective any legal proceedings by or against the company or its members.
- (b) On the change of type of a company from a company limited by guarantee to a company limited by shares:
 - (i) the liability of each member and past member as a guarantor on the winding up of the company is extinguished;
 - (ii) the members whose membership arose solely from the giving or the agreement to give the guarantee cease to be members of the company (however they will continue to be members of the company if they are issued with shares in the company upon the change of company type); and
 - (iii) if shares are to be issued to a person as specified in the list of members required to be included in the statement required under sub-section 58(a)(iv)(B):
 - (A) the shares are taken to be issued to that person; and
 - (B) the person is taken to have consented to be a member of the company; and
 - (C) the person becomes a member of the company.

PART III

SHARES AND MATTERS RELATING TO A COMPANY'S CAPITAL

Division 11: Shares and other securities

Share Capital

60. Nature of shares and other securities

- (a) The shares or other securities of any member in a company shall be moveable property, transferable in the manner provided or permitted by this Law and any other relevant law and subject to the constitution of the company.
- (b) A share will not have a nominal or par value.

61. Rights and powers attaching to shares

- (a) Subject to sub-section (b), a share in a company confers on the holder of such share:
 - (i) the right to one vote on a poll at a meeting of the company on any resolution;
 - (ii) the right to an equal share in dividends; and
 - (iii) the right to an equal share in the distribution of assets of the company.
- (b) The rights specified in sub-section (a) may be negated, altered, or added to by the constitution of the company or in accordance with the terms on which the share is issued.

62. Types of shares and other securities in a company

- (a) A company's power to issue shares and other securities, and determine the terms of such shares and other securities, includes the power to issue:
 - (i) shares of different classes;
 - (ii) shares which may be redeemable;
 - (iii) shares which have preferential or restricted rights to distributions of capital or income;
 - (iv) shares which have special, limited, or conditional voting rights; and
 - (v) shares which do not have voting rights,as provided by and subject to this Law, any other applicable law, the constitution of the company or the terms of issue.
- (b) A company may also issue:
 - (i) options to acquire shares;
 - (ii) other securities which convert into shares; and

(iii) other interests;

as provided by and subject to this Law, any other applicable law, the constitution of the company or the terms of issue.

Share Issues

63. Issue of shares

- (a) Subject to the constitution of the company, this Law and any other applicable law, the board of a company may issue shares or other securities at any time, to any person, on the terms and in any number the board thinks fit.
- (b) Subject to the constitution of the company, shares may be issued fully or partly paid. If the shares are issued partly paid, the terms of issue must specify when calls may be made and the shareholder is liable to pay such calls.
- (c) A company's constitution may provide that where the directors decide to increase the capital of the company by the issue of further shares, such shares shall be offered to the members in proportion to the existing shares held by each member (irrespective of class), and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

64. Consideration for issues of shares

- (a) The consideration for which a share is issued may take any form as determined by the board.
- (b) If the consideration for the issue is to be other than cash the board must:
 - (i) record the consideration in sufficient detail to identify it;
 - (ii) determine the reasonable present cash value of the consideration for the issue and record this and the basis for assessing it; and
 - (iii) resolve that, in its opinion:
 - (A) the consideration for and the terms of the issue of shares are fair and reasonable to the company and to all existing members; and
 - (B) the present cash value of such consideration is not less than the amount to be credited for the issue of the shares.
- (c) Any contract entered into in connection with the subscription for and issue of shares for consideration other than cash must be stamped as required under applicable law and maintained with the books and records of the company.

65. The penalty for a director who fails to comply with sub-section 64(b) is a fine not exceeding 5 penalty units

66. **Exceptions regarding non-cash consideration**

Sub-section 64(b) shall not apply to:

- (a) the exercise of any option to acquire shares in the company;
- (b) the conversion of any other securities which convert into shares in the company;
- (c) the issue of shares that are fully paid up from the reserves of the company to all members of the same class in proportion to the number of shares held by each member;
- (d) the consolidation and division of shares or any class of shares in the company in proportion to those shares or the shares in that class; or
- (e) the subdivision of shares or any class of shares in the company in proportion to those shares or the shares in that class.

67. **Consideration for issues of convertible securities**

- (a) The consideration for which an option to acquire shares in a company or other convertible security is issued may take any form as determined by the board.
- (b) If the consideration for the issue of these options or other convertible securities, or the shares to be issued on the subsequent exercise or conversion of them, is to be other than cash the board must:
 - (i) record the consideration in sufficient detail to identify it;
 - (ii) determine the reasonable present cash value of the consideration for the issue and subsequent exercise or conversion and record this and the basis for assessing it; and
 - (iii) resolve that, in its opinion:
 - (A) the consideration for and the terms of the issue of options or other convertible securities, and the shares upon the subsequent exercise or conversion of these securities, is fair and reasonable to the company and to all existing members; and
 - (B) the present cash value of such consideration is not less than the amount to be credited for the issue of the shares.
- (c) Any contract entered into in connection with the subscription for and issue of options or other convertible securities for consideration other than cash must be stamped as required under applicable law and maintained with the books and records of the company.

68. The penalty for a director who fails to comply with sub-section 67(b) is a fine not exceeding 5 penalty units.

69. **Consent to issue of shares affecting liability**

The issue of a share that either increases the liability of, or imposes a liability on, a person to the company is void if that person does not first consent in writing to becoming the holder of the share.

70. Power of company to arrange for different amounts being paid on shares

A company, subject to its constitution, may do any one or more of the following things, namely:

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him although no part of that amount has been called up;
- (c) pay a dividend in proportion to the amount paid up on each share.

71. Recording and timing of issues of securities

- (a) Within 21 days of the issue of shares or other securities the company must:
 - (i) update the relevant register of the company; and
 - (ii) file notice in the prescribed form with the Registrar in respect of the issue of shares or other securities. The notice must record the consideration paid for the issue of shares or other securities and whether the shares or other securities are fully or partly paid.
- (b) A share or other security is deemed to be issued when the name of the holder is entered on the relevant register of the company.
- (c) A failure to comply with this section does not affect the validity of an issue of shares or other securities.

72. If a company fails to comply with section 71, every director of the company knowingly involved is liable to a fine not exceeding 5 penalty units.

Preference Shares

73. Requirements for issue of preference shares

A company may issue preference shares if the rights attached to the preference shares with respect to the following matters are set out in the company's constitution or have been approved by special resolution of the company in respect of such shares:

- (a) repayment of capital;
- (b) participation in surplus assets and profits;
- (c) cumulative and non-cumulative dividends;
- (d) voting;
- (e) priority of payment of capital and dividends in relation to other shares or classes of preference shares; and
- (f) whether the shares are redeemable and, if so, the terms of redemption.

74. Redemption of redeemable preference shares

- (a) Redeemable preference shares are preference shares that are issued on the terms that they are liable to be redeemed.

- (b) Subject to sub-section (c), a redeemable preference share may be redeemed:
 - (i) at a fixed time or on the happening of a particular event;
 - (ii) at the company's option; or
 - (iii) at the shareholder's option.
 - (c) The company may only redeem redeemable preference shares:
 - (i) if the shares are fully paid up;
 - (ii) out of profits or out of the profits of a new issue of shares made for the purpose of the redemption; and
 - (iii) if the Directors determine on reasonable grounds that the company would pass the solvency test following the redemption.
 - (d) Once the resolution is passed under sub-section (c) the amount becomes an amount due and payable on the date fixed for redemption.
 - (e) The redeemable preference shares are cancelled on redemption.
 - (f) The company must notify the Registrar of the redemption in the form prescribed within 21 days of the redemption.
 - (g) A failure to comply with this section does not affect the validity of the redemption.
75. If a company fails to comply with section 74, every director of the company knowingly involved is liable to a fine not exceeding 5 penalty units.

Debentures

76. Perpetual debentures

A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Law, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote or on the expiration of a period however long.

77. Power to re-issue redeemed debentures in certain cases

- (a) Where either before or after the commencement of this Law a company has redeemed any debentures previously issued, the company, unless its constitution or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of reissue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

- (b) Where with the object of keeping debentures alive for the purpose of re-issue they have, either before or after the commencement of this Law, been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.
- (c) Where a company has, either before or after the commencement of this Law, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.
- (d) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the commencement of this Law, shall be treated as the issue of a new debenture for the purposes of stamp-duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

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

- (e) Nothing in this section shall prejudice any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

78. Specific performance of contract to subscribe for debentures

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

Transitional provisions regarding share warrants

79. Effect of share-warrants

Subject to sections 81 and 82, a share-warrant in issue as at the commencement of this Law shall entitle the bearer thereof to the shares or securities therein specified, and the shares or securities may be transferred by delivery and cancellation of the warrant.

80. Registration of name of bearer of share-warrant

Subject to sections 81 and 82, the bearer of a share-warrant shall, subject to the constitution of the company, be entitled, on surrendering it for cancellation, to have their name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share-warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled.

81. No further issuance of share warrants following commencement of this Law

Following the commencement of this Law, a company must not issue any share warrants.

82. Deemed phasing out of share warrants

- (a) All outstanding share warrants issued prior to the commencement of this Law will, if not previously surrendered, continue to be valid, in accordance with their terms, until the end of the transition period or such other period as determined under sub-section (c), following which they will be deemed to have been surrendered and cancelled.
- (b) The company shall not be responsible for any loss incurred by any person by reason of such cancellation of share warrants pursuant to sub-section (a).
- (c) On the written application of the relevant company the Registrar may extend the period referred to in sub-section (a) and make incidental arrangements for the phasing out of the relevant warrants if satisfied on reasonable grounds that the deemed cancellation and surrender of the warrants at the end of the transition period would not be in the best interests of the company.

Division 12: Transfers of shares and other securities

83. Transfer requirements

- (a) Subject to the constitution of the company and without limiting any other applicable law, shares and other registrable interests in a company may be transferred by entry of the name of the transferee on to the relevant register of the company maintained under Division 13.
- (b) An application for the registration of the transfer of shares or other registrable interests in a company may be made either by the transferor or the transferee and, subject to the provisions of sub-sections (c) and (d), the company shall enter in the relevant register the name of the transferee and the other information required under Division 13.
- (c) Save as provided under any other applicable law, a company must not register a transfer of shares in or other registrable interests in the company unless an instrument of transfer in the prescribed form, duly stamped and executed by the transferor and the transferee to the company, the transferee, has been delivered to the company along with:
 - (i) the relevant certificate evidencing the shares or interests proposed to be transferred; and
 - (ii) a declaration by the transferor or transferee (or both of them) as to whether as a result of the transfer an overseas corporation or other foreign person (or combination of them) will acquire or cease to have an ownership interest in the company's shares.
- (d) The company may, if expressly authorised by its constitution or the terms of the relevant security, or if otherwise permitted under this Law or other applicable law, or if required to ensure compliance with this Law or other applicable law, refuse to register a transfer if the board, within 21 days of receipt of the application for transfer and other documents required by this section, passes a resolution to this effect setting out the reason for refusing the transfer and sends to the transferee and the transferor notice of the refusal, including the reasons for such refusal, within a further 7 days of passing the resolution.

- (e) Nothing in sub-section (c) shall prejudice any power of the company to register as shareholder or holder of any registrable interest in the company any person to whom the right to any shares or interest in the company has been transmitted by operation of law.
84. If default is made in complying with sub-sections 83(c) or 83(d), every director, knowingly involved is liable to a fine not exceeding 3 penalty units.
85. If a transferee or transferor knowingly or recklessly makes an incorrect statement to the company in a declaration made under sub-section 83(c)(ii), then they will be liable to a fine not exceeding 15 penalty units.
86. **Notification of transfer**
- (a) Within 21 days of the registration of the transfer of shares or other registrable securities the company must file notice of the transfer in the prescribed form with the Registrar.
- (b) If as a result of the transfer the company has either become or ceased to become a foreign company the notice must state this.
- (c) A failure to comply with this section does not affect the validity of a transfer of shares or other registrable securities.
87. If a company fails to comply with section 86, every director of the company knowingly involved is liable to a fine not exceeding 5 penalty units.

88. **Transfer by legal representative**

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

Division 13: Registers and certification of interests in a company

89. **Certificate of shares to be evidence of title**

- (a) A certificate, under the common seal of the company or otherwise executed by the company in accordance with section 29, specifying any shares or security held by any member, shall be *prima facie* evidence of the title of the member to the shares or security therein specified.
- (b) Subject to any other applicable law, every company shall, within 28 days after the allotment of any of its shares, debentures, debenture stock or other registrable securities, and within 28 days after the registration of the transfer of any such shares, debentures, debenture stock or other registrable securities, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock or other registrable securities allotted or transferred, unless the conditions of issue of the shares, debentures, debenture stock or other registrable securities otherwise provide.
- (c) Every share certificate issued in accordance with sub-section (b) must state:
- (i) the name of the company;
- (ii) the address of the registered office of the company;

- (iii) in the case of a share certificate, the number of shares, class of the shares, the amount paid on the shares, the amount (if any) unpaid on the shares and the extent to which the shares are paid up; and
 - (iv) in the case of a certificate for other registrable securities, the number, type, and amount paid for such securities and, if the securities are convertible, the number of shares or other interests they convert into.
- (d) Failure to comply with this section shall not affect the rights of any holder of shares or registrable securities.

90. **Register of members**

- (a) The persons named as members in the application for incorporation of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.
- (b) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.
- (c) Subject to any other applicable law, every company must keep an up to date register of its members, and enter therein the following particulars:
 - (i) the names, addresses and nationality of the members;
 - (ii) the date at which each person was entered in the register as a member; and
 - (iii) the date at which any person ceased to be a member.
- (d) If the company has a share capital, then the company's register of members must also show:
 - (i) the date on which every allotment of shares takes place;
 - (ii) the number of shares in each allotment;
 - (iii) the shares held by each member;
 - (iv) the class of shares;
 - (v) the share numbers and share certificate numbers of the shares;
 - (vi) the amount paid on the shares;
 - (vii) whether or not the shares are fully paid; and
 - (viii) the amount unpaid on the shares (if any).

91. **Index of members of company**

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

- (b) The index must in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

92. **Register of option holders**

- (a) Subject to any other applicable law, every company that grants options over unissued shares or other interests in it must keep a register of option holders which records the following particulars:
 - (i) the names, addresses and nationalities of the option holders and a statement of the number and description of the shares or other interests in the company over which the options were granted;
 - (ii) the date at which each person was entered in the register as a holder of options over shares in the company;
 - (iii) the period during which the options may be exercised or the time at which the options may be exercised;
 - (iv) any event that must happen before the options can be exercised;
 - (v) any consideration paid for the grant of the options; and
 - (vi) any consideration to be paid for the exercise of the options or the method by which that consideration is to be determined.
- (b) Because the register of option holders is a register of the holders of options over shares in the company that are still exercisable, the register of option holders must be updated whenever options are exercised or expire.
- (c) A company shall only be required to update the register of option holders in respect of any transfer of an option if the person transferring the option gives the company notice of the transfer. A failure of a company to register the transfer of the option shall not affect the validity of the transfer of the option.

93. **Register of debenture holders**

Subject to any other applicable law, every company that issues debentures must keep a register of debenture holders which records the following particulars:

- (a) the names, addresses and nationalities of the debenture holders and a statement describing the debentures that were issued;
- (b) the date at which each person was entered in the register as a debenture holder; and
- (c) the amount of the debentures held.

94. **Registers of other interests**

- (a) Subject to any other applicable law, a company shall maintain a register in respect of any other interest in its share capital, or security giving a right to acquire such an interest, that it has issued, which records the following particulars:
 - (i) the names, addresses and nationalities of the interest holders and a statement describing the interests that were issued to them;

- (ii) the date at which each person was entered in the register as the holder of the interest;
 - (iii) the amount of the interest held; and
 - (iv) if applicable, details relevant to the expiry, exercise or conversion of the interest.
- (b) If the register of an interest under this section is a register of the holders of securities which convert into shares in the company, the register must be updated whenever the interests are converted or expire.
- (c) A company shall only be required to update a register of the type referred to in sub-section (b) in respect of any transfer of the registered interest if the person transferring the interest gives the company notice of the transfer. A failure of a company to register the transfer of the interest shall not affect the validity of the transfer of the interest.
95. **Registers and indexes to be maintained at the company's registered office or as otherwise notified to the Registrar**
- (a) Subject to sub-sections (b) and (c), all registers and indexes in respect of a company maintained under this Division must be kept at the registered office or principal place of business of the company.
 - (b) A company may appoint some other person within the Union to maintain the company's registers and indexes. In such cases, the company's registers and indexes may be maintained on the company's behalf at the office of that other person.
 - (c) Every company must, within 21 days of the company's registers and indexes being maintained at a place other than the company's registered office or principal place of business, file with the Registrar a notice in the prescribed form of the place where the company's registers and indexes, as applicable, are maintained and must, within 21 days of any change in the place at which the company's registers and indexes, as applicable, are maintained, file with the Registrar a notice in the prescribed form of the change.
96. **Notification of changes to a register**
- (a) A company must file with the Registrar a notice in the prescribed form detailing any changes it makes to a register in accordance with this Division.
 - (b) The filing must be made within 21 days of the relevant change.
97. **Annual return, list of members and summary**
- (a) Every company must within 2 months from its incorporation and thereafter once at least in every year (but no later than 1 month after the anniversary of its incorporation) file a return of its particulars with the Registrar in the prescribed form.
 - (b) Save as may be excepted under any applicable law, the return must include the following information:
 - (i) the registered name of the company;
 - (ii) the registration number of the company;

- (iii) the address of the registered office of the company and, if different, the address of the place where the register of members is kept;
 - (iv) in the case of a public company, a list of the 50 members (or such other number of members if the company has less than 50 members) holding the largest number of shares in the company and their respective names, addresses and nationalities and shareholdings;
 - (v) in any other case, a list of all members of the company and their respective names, addresses and nationalities and shareholdings and a list of persons who ceased to be members since the date of the last filing;
 - (vi) the date of the last annual general meeting of the company (if applicable);
 - (vii) particulars of the company's principal activity or activities at the date to which the accounts of the company are made up and at the date of the annual return;
 - (viii) a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash;
 - (ix) the amount of the share capital of the company, and the number of the shares into which it is divided;
 - (x) the amount called up on each share;
 - (xi) the total number of shares forfeited or cancelled since the date of the last return;
 - (xii) whether the company is a foreign company;
 - (xiii) the names of the company's subsidiaries, holding companies and ultimate holding company, if any;
 - (xiv) the names, addresses, gender and nationality of the persons who at the date of the return are the directors of the company and of the persons (if any) who at the said date are the secretaries of the company, and the changes in the personnel of the directors and secretaries since the last return together with the dates on which they took place;
 - (xv) confirmation that the mortgages and charges which are required to be registered with the Registrar under this Law have been registered; and
 - (xvi) such other items as may be prescribed from time to time.
- (c) In addition to filing such particulars with the Registrar, the above list and summary must be contained in a separate part of the register of members. The return and copy maintained with the register must be signed by a director or by a secretary of the company and state that the list and summary state the facts as they stood on the day aforesaid.
- (d) A private company must send with the annual return required by sub-section (a) a certificate signed by a director, secretary or other officer 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.

98. **Trusts not to be entered on register**

- (a) No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the Registrar.
- (b) Notwithstanding sub-section (a), the legal representative of a deceased person who is registered as holding a share or interest in a register of a company is, with the consent of the company, entitled to be registered as the holder of that share or interest as personal representative of the deceased person.
- (c) Notwithstanding sub-section (a), the trustee, executor, administrator or assignee of the property of a bankrupt person who is registered as holding a share or interest in a register of a company is, with the consent of the company, entitled to be registered as the holder of that share or interest as trustee, executor, administrator or assignee of the property of the bankrupt person.

99. **Inspection of registers**

- (a) All registers and indexes in respect of a company maintained under this Law must, 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 during ordinary business hours), be open to the inspection of any member gratis, and, in the case of a public company, to the inspection of any other person on payment of a reasonable sum prescribed by the directors for each inspection. Any such member or other person may make extracts therefrom.
- (b) Any member or, in the case of a public company, other person may require a copy of a register, index, or of any part thereof, or of the list and summary required by this Law, or any part thereof, on payment of a reasonable sum prescribed by the directors and the company must cause any copy so required by the member or person to be sent to that member or person within a period of 10 days commencing on the day next after the day on which the requirement is received by the company with the applicable payment.

100. If any inspection required under sub-section 99(a) is refused, or if any copy required under sub-section 99(b) is not sent within the proper period, the company and every director and other officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding 5 penalty unit and the Registrar may by an order compel an immediate inspection of the register and index or direct that copies required must be sent to the persons requiring them.

101. **Power of Court to rectify register**

- (a) If:
 - (i) the name of any person is wrongly entered in or omitted from a register maintained by a company under this Law; or
 - (ii) 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.

- (b) 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, and may make such order as to costs as it in its discretion thinks fit.
- (c) On any 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 security holders, or alleged members or alleged security holders, or between members or alleged members or security holders or alleged security holders 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:

Provided that the Court may direct an issue to be tried in which any question of law may be raised; and an appeal from the decision on such an issue shall lie in the manner directed by the Code of Civil Procedure on the grounds mentioned in section 100 of that Code.

102. Notice to Registrar of rectification of register

The Court, when making an order for rectification of the register, shall, by its order, direct notice of the rectification to be filed with the Registrar within 14 days from the date of the completion of the order.

103. Register of members to be evidence

- (a) Without prejudice to any other provision of this Law or other applicable law, the register of members shall be *prima facie* evidence of any matters by this Law directed or authorized to be inserted therein, including the title to the shares of the registered member.
- (b) A company may treat the registered holder of a share as the only person entitled to:
 - (i) exercise the right to vote attaching the share;
 - (ii) receive notices;
 - (iii) receive distributions in respect of the share; and
 - (iv) exercise all rights and powers attaching to the share.

104. Defaults in relation to registers and filings

It shall be the duty of every director and officer of a company to take reasonable steps to ensure that the registers and indexes are maintained and made available, that relevant filings are made in accordance with this Division and that all other obligations of the company under this Division are met.

105. If a default is made in complying with section 104, the company and every director and other officer of the company who is knowingly and wilfully involved in the default shall be liable to a fine not exceeding 5 penalty units.

Division 14: Dividends

106. Making of dividends

- (a) Subject to sections 107 and 109 and its constitution, the board of a company, other than a company limited by guarantee, may determine that a dividend is payable to its shareholders and fix the amount, the time for payment and the method of payment.
- (b) The methods of payment may include cash, the issue of shares, the grant of options and the transfer of assets.
- (c) Subject to the constitution, the determination of a dividend does not cause the company to incur a debt and the determination may be revoked at any time before payment. A debt arises when the time fixed for payments arrives.

107. Requirements for dividends

- (a) The company may not pay a dividend unless:
 - (i) the company will, immediately after the payment of the dividend, satisfy the solvency test;
 - (ii) the making of the dividend is fair and reasonable to the company's shareholders as a whole; and
 - (iii) the payment of the dividend does not materially prejudice the company's ability to pay its creditors.
- (b) If, after a dividend is determined and before it is paid, the board ceases to be satisfied that the requirements of sub-section (a) will be met, the dividend may not be paid and if such dividend is paid by the company it shall be deemed not to have been authorised.

108. Default in complying with section 107

- (a) If a company makes default in complying with the requirements of section 107 it shall be liable to a fine not exceeding 10 penalty units, and every director or other officer of the company who knowingly and wilfully permits the default shall be liable to the same penalty.
- (b) In addition to sub-section (a), if the company becomes insolvent following and in connection with the payment of a dividend, every director of the company who knowingly and wilfully permitted the payment of the dividend in default of section 107 shall also be liable to the creditors of the company to the extent of the dividend where the debts due by the company to the respective creditors exceed the recoverable assets of the company and such amount may be recovered from them by the creditors or the liquidator suing on behalf of the creditors.

109. Further matters affecting the payment of dividends

- (a) The board of a company must not determine a dividend:
 - (i) in respect of some but not all of the shares in a class; or
 - (ii) that is of a greater value per share in respect of some shares of a class than it is in respect of other shares of the same class,

unless, in respect of partly paid shares, the amount of the dividend in respect of a share of that class is in proportion to the amount paid on those shares.

- (b) A company may, subject to its constitution, issue shares to any shareholders who have agreed to accept the issue of shares, wholly or partly, in lieu of a proposed dividend, provided that:
- (i) the right to receive shares, wholly or partly, in lieu of the proposed dividend has been offered to all shareholders of the same class on the same terms;
 - (ii) all shareholders' agreeing to receive shares relative voting rights and distribution rights would be maintained;
 - (iii) the offer must remain open for acceptance for a period of at least 21 days;
 - (iv) the shares issued to each shareholder are issued on the same terms and subject to the same rights as the shares issued to all shareholders in that class who agree to receive the shares; and
 - (v) the provisions of section 63 and section 71 have, insofar as applicable, been complied with.
110. If a company makes default in complying with the requirements of section 109, it shall be liable to a fine not exceeding 5 penalty units, and every director or other officer of the company who knowingly and wilfully permits the default shall be liable to the same penalty.

111. Capitalisation of profits

Without limiting section 109, a company may capitalise profits. The capitalisation need not be accompanied by the issue of shares.

Division 15: Transactions and matters affecting share capital

Alteration of share capital

112. Power of company limited by shares to alter its share capital

- (a) A company limited by shares, subject to its constitution, may alter its share capital as follows, it may:
- (i) increase its capital by the issue of new shares of such amount as it thinks expedient in accordance with Division 11;
 - (ii) by ordinary resolution passed at a general meeting, consolidate and divide all or any of its share capital into shares of larger amount than its existing shares, with any amount unpaid on the shares being divided equally among the replacement shares;
 - (iii) by ordinary resolution passed at a general meeting, sub-divide its shares, or any of them, into shares of smaller amount than originally issued, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

- (iv) by special resolution passed at a general meeting convert an ordinary share into a preference share;
 - (v) by special resolution passed at a general meeting convert a preference share to an ordinary share;
 - (vi) redeem any redeemable preference shares in accordance with in accordance with Division 11;
 - (vii) reduce its share capital in the manner set out later in this Division;
 - (viii) buy-back shares in the manner set out later in this Division; and
 - (ix) provide financial assistance in connection with the purchase of its shares in the manner set out later in this Division.
- (b) Sub-section (a) does not limit any other right to alter share capital which may be permitted under this or other applicable law, nor prejudice the application of any other part of this law.

113. Notice to Registrar of consolidation of share capital

Where a company having a share capital has altered its share capital in the manner provided by sub-sections 112(a)(ii) to (vii) it shall within 21 days of the relevant alteration file notice with the Registrar in the prescribed form of the same, specifying the shares consolidated and divided or sub-divided.

114. If a company makes default in complying with the requirements of section 113, it shall be liable to a fine not exceeding 5 penalty units, and every director or other officer of the company who knowingly and wilfully authorizes or permits the default shall be liable to the same penalty.

Reduction of Share Capital

115. Reduction of share capital

- (a) A company limited by shares, subject to its constitution, may reduce its share capital in any of the following ways (without limiting any other way which may be permitted by this Law or another applicable law):
- (i) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
 - (ii) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
 - (iii) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company.
- (b) The reduction must not be undertaken unless:
- (i) the company will, immediately after the reduction, satisfy the solvency test;
 - (ii) the reduction is fair and reasonable to the company's shareholders as a whole;

- (iii) the reduction does not materially prejudice the company's ability to pay its creditors; and
- (iv) it is approved by shareholders under section 116.
- (c) The reduction by a company under this section may be equal or selective.
- (d) An equal reduction is a reduction that satisfies the following conditions:
 - (i) it relates only to ordinary shares;
 - (ii) it applies to each holder of ordinary shares in proportion to the number of ordinary shares they hold; and
 - (iii) it is made on the same terms for each ordinary shareholder.
- (e) All other reductions under this section, except as set out in sub-section (d), are selective.

116. Shareholder approval

- (a) If the reduction is an equal reduction, it must be approved by a resolution passed at a general meeting of the company.
- (b) If the reduction is a selective reduction, it must be approved by either:
 - (i) a special resolution passed at a general meeting of the company, with no votes being cast in favour of the resolution by any person who is to receive consideration as part of the reduction or whose liability to pay amounts unpaid on shares is to be reduced, or by their associates; or
 - (ii) a resolution agreed to, at a general meeting, by all ordinary shareholders.
- (c) If the reduction involves the cancellation of shares, the reduction must also be approved by a special resolution passed at a meeting of the shareholders whose shares are to be cancelled.
- (d) The company must include with the notice of the meeting a statement setting out all information known to the company that is material to the decision on how to vote on the resolution, including confirmation that the requirements of sub-sections 115(b)(i) to (iii) will be met.
- (e) Before the notice of the meeting is sent to shareholders, the company must lodge with the Registrar a copy of:
 - (i) the notice of the meeting; and
 - (ii) any document relating to the reduction that will accompany the notice of the meeting sent to shareholders.

The company must also publish in a daily newspaper circulating generally in the Union a notice of its intention to call a meeting to approve a reduction and advising that the notice of meeting and associated documents have been filed with the Registrar.

- (f) The Registrar will have 28 days following receipt of the documents referred to in sub-section 116(e) to determine whether the company may the release of the notice of meeting to shareholders. If the Registrar determines that the notice may be sent, or a

determination is not issued within this period, then the company may send the notice of meeting.

- (g) In making a determination under sub-section (f) the Registrar may require the company to clarify or vary any document submitted under sub-section (e) where this is considered reasonably necessary for the protection of shareholders or creditors.
- (h) The Registrar may determine that the company must not release of the notice of meeting within the time provided by sub-section (f) if satisfied on reasonable grounds that the requirements of sub-section (d) of this section have not been met or for similarly significant cause.
- (i) The company must lodge with the Registrar a copy of any resolution under sub-section (b) within 21 days after it is passed and publish a notice of the passing of such resolution and the summary details of the reduction in a daily newspaper circulating generally in the Union. The company must not make the reduction until 28 days after publication of such notice in the newspaper.
- (j) The Registrar assumes and shall not to owe any obligations to a company, a company's members or to any other person in connection with the performance of its functions under sub-sections (f) to (h) of this section, including in circumstances where a notice of determination is given or deemed to be given or the company becomes insolvent following the capital reduction.
- (k) Sub-section (j) does not limit the right which a company may have under section 428 to appeal a relevant decision of the Registrar under this section.

117. Consequences of failure to comply with reduction requirements

- (a) The company must not make the reduction under section 115 unless it complies with that section 115 and section 116.
- (b) A contravention of sub-section (a) does not affect the validity of the reduction or of any contract or transaction connected with it.

118. If a company makes default in complying with the requirements of sub-section 117(a) it shall be liable to a fine not exceeding 100 penalty units, and every director or other officer of the company who knowingly and wilfully permits the default shall be liable to the same penalty.

119. In addition to section 118, if the company becomes insolvent following and in connection with such reduction, every director of the company who knowingly and wilfully permitted a reduction in default of sub-section 117(a) shall also be liable to the creditors of the company to the extent of the reduction where the debts due by the company to the respective creditors exceeded the recoverable assets of the company and such amount may be recovered from them by the creditors or the liquidator suing on behalf of the creditors.

Share Buy-Backs

120. Share buy-backs

- (a) A company may buy back its own shares if:
 - (i) the company will, immediately after the buy-back, satisfy the solvency test;

- (ii) the buy-back is fair and reasonable to the company's shareholders as a whole;
 - (iii) the buy-back does not materially prejudice the company's ability to pay its creditors; and
 - (iv) it is approved by shareholders under section 121 and the procedures in section 122 are followed.
- (b) The buy-back may be equal or selective.
- (c) An equal buy-back is one that satisfies the following conditions:
- (i) the buy-back offers relate only to ordinary shares;
 - (ii) the offers are to be made to every person who holds ordinary shares to buy back the same percentage of their ordinary shares;
 - (iii) all of those persons have a reasonable opportunity to accept the offers made to them;
 - (iv) buy back agreements are not entered into until a specified time for acceptances of offers has closed; and
 - (v) the terms of all the offers are the same.
- (d) All other buy-backs under this section, except as set out in sub-section (c), are selective buy-backs.

121. Shareholder approval

- (a) An agreement for an equal buy-back must be approved by a resolution passed at a general meeting of the company or must be made conditional to such approval.
- (b) An agreement for a selective buy-back must be approved, or be made subject to approval, by either:
 - (i) a special resolution passed at a general meeting of the company, with no votes being cast in favour of the resolution by any person who is to receive consideration as part of the buy-back, or by their associates; or
 - (ii) a resolution agreed to, at a general meeting, by all ordinary shareholders.
- (c) The company must include with the notice of the meeting a statement setting out all information known to the company that is material to the decision on how to vote on the resolution, including confirmation that the requirements of sub-sections 120(a)(i) to (iii) will be met.
- (d) Before the notice of the meeting is sent to shareholders and before any buy-back offer is executed, the company must lodge with the Registrar a copy of:
 - (i) the notice of the meeting;
 - (ii) a document setting out the terms of the buy-back offer; and
 - (iii) any document relating to the buy-back that will accompany the offer or the notice of the meeting sent to shareholders.

The company must also publish in a daily newspaper circulating generally in the Union a notice of its intention to call a meeting to approve a buy-back offer and advising that the notice of meeting and associated documents have been filed with the Registrar.

- (e) The Registrar will have 28 days following receipt of the documents referred to in sub-section 121(d) to determine whether the company may enter into the buy-back offer and release the notice of meeting to shareholders. If the Registrar determines that the notice may be sent, or a determination is not issued within this period, then the company may send the notice of meeting and, if desired, and subject to shareholder approval, execute the buy-back offer.
- (f) In making a determination under sub-section (e) the Registrar may require the company to clarify or vary any document submitted under sub-section (d) where this is considered reasonably necessary for the protection of shareholders or creditors.
- (g) The Registrar may determine that the company must not enter into the buy-back offer and release the notice of meeting within the time provided by sub-section (e) if satisfied on reasonable grounds that the requirements of sub-section (c) of this section have not been met or for similarly significant cause.
- (h) The company must lodge with the Registrar a copy of any resolution under sub-section (b) within 21 days after it is passed and publish a notice of the passing of such resolution and the summary details of the buy-back in a daily newspaper circulating generally in the Union. The company must not complete the buy-back until 28 days after publication of such notice in the newspaper.
- (i) The Registrar assumes and shall not to owe any obligations to a company, a company's members or to any other person in connection with the performance of its functions under sub-sections (e) to (g) of this section, including in circumstances where a notice of determination is given or deemed to be given or the company becomes insolvent following the buy-back.
- (j) Sub-section (i) does not limit the right which a company may have under section 428 to appeal a relevant decision of the Registrar under this section.

122. Matters relevant to the buy-back offer

- (a) The company must include with any offer to buy back shares a statement setting out all information known to the company that is material to the decision whether to accept the offer.
- (b) Once a company has entered into an agreement to buy back shares, all rights attaching to the shares are suspended. The suspension is lifted if the agreement is terminated.
- (c) A company must not dispose of shares it buys back. An agreement entered into in contravention of this sub-section is void.
- (d) Immediately after the registration of the transfer to the company of the shares bought back, the shares are cancelled.

123. Consequences of failure to comply with buy-back requirements

- (a) The company must not complete the buy-back under section 120 unless it complies with that section and sections 121 and 122.

- (b) A contravention of sub-section (a) does not affect the validity of the buy-back or of any contract or transaction connected with it.
124. If a company makes default in complying with the requirements of sub-section 123(a) it shall be liable to a fine not exceeding 100 penalty units, and every director or other officer of the company who knowingly and wilfully permits the default shall be liable to the same penalty.
125. In addition to section 124, if the company becomes insolvent following and in connection with such buy-back, every director of the company who knowingly and wilfully permitted the buy-back in default of sub-section 123(a) shall also be liable to the creditors of the company to the extent of the consideration paid for the buy-back where the debts due by the company to the respective creditors exceeded the recoverable assets of the company and such amount may be recovered from them by the creditors or the liquidator suing on behalf of the creditors.

Variation of Shareholders' Rights

126. Varying rights of holders of classes of shares

- (a) If a company's constitution sets out the procedure for varying or cancelling rights attached to shares in a class of shares or, for a company without a share capital, rights of members in a class of members, those rights may be varied or cancelled only in accordance with the procedure. The procedure may be changed only if the procedure itself is complied with.
- (b) If a company's constitution does not include a procedure referred to in sub-section (a), those same rights may be varied or cancelled only by special resolution of the company and:
 - (i) by special resolution passed at a meeting:
 - (A) for a company with a share capital, of the class of members holding shares in the class; or
 - (B) for a company without a share capital, of the class of members whose rights are being varied or cancelled; or
 - (ii) with the written consent of members with at least 75% of the votes in the class.
- (c) The company must give written notice of the variation or cancellation to the members of the class within 7 days after the variation or cancellation is made.
- (d) Subject to any application having been made under sub-section (e), within 21 days of the passing of the relevant resolutions or receipt of the relevant consents the company must file with the Registrar notice in the prescribed form of the variations made pursuant to this section and any resulting changes to its share capital structure.
- (e) If the holders of not less in the aggregate than ten per cent of the issued shares of a class that has been varied pursuant to this section, being persons who did not consent to or vote in favour of the resolution for the variation, continue to oppose the variation, they may apply to the Court to have the variation cancelled, and where any such application is made the variation shall not have effect unless and until it is confirmed by the Court.
- (f) An application under sub- section (e) must be made within 21 days after the date on which the consent was given or the resolution was passed, as the case may be, and may be

made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

- (g) On any such application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application, may, if it is satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.
 - (h) The decision of the Court on any such application shall be final.
 - (i) The company shall within 21 days after the service on the company of any order made on any such application forward a copy of the order to the Registrar.
 - (j) It shall be the duty of every officer of a company to take reasonable steps to ensure that the procedures of this section are followed and that all relevant filings are made.
 - (k) The expression “variation” in this section includes “abrogation” and the expression “varied” shall be construed accordingly.
127. If a default is made in complying with sub-section 126(j), the company and every director or other officer of the company who is knowingly and wilfully involved in the default shall be liable to a fine not exceeding 5 penalty units.

Financial Assistance

128. Restrictions on a company providing financial assistance for purchase of its own shares

- (a) Save as provided in this section or section 130, no company limited by shares, other than a private company not being a subsidiary of a public company, shall give, whether directly or indirectly, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company or a holding company of the company:

Provided that nothing in this section shall be taken to prohibit, where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business.

- (b) Nothing in this section shall affect the right of a company to redeem any shares, reduce its share capital or undertake another transaction or procedure affecting its share capital as provided in this Division 15 .
129. If a company acts in contravention of section 128, the company and every director or other officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding 40 penalty units.

130. Where a company is permitted to provide financial assistance

- (a) A company to which section 128 applies may financially assist a person to acquire shares in the company or a holding company of the company only if:
 - (i) the board is satisfied on reasonable grounds and resolves that:
 - (A) the company should give the financial assistance;

- (B) the giving of the financial assistance is in the best interests of the company;
 - (C) the giving of the financial assistance is fair and reasonable to the company's shareholders as a whole;
 - (D) the financial assistance does not materially prejudice the company's ability to pay its creditors; and
 - (E) the company will, immediately after giving the financial assistance, satisfy the solvency test; or
- (ii) the assistance is approved by shareholders under section 133 below.
- (b) If, after the giving of financial assistance is authorized by the board under sub-section (a)(i) and before it is made, the board ceases to be satisfied on reasonable grounds that the company will, immediately after the financial assistance is given, satisfy the requirements of sub-section (a)(i), any financial assistance made by the company shall be deemed not to have been authorised,
131. If a company makes default in complying with the requirements of section 130 it shall be liable to a fine not exceeding 50 penalty units, and every director or other officer of the company who knowingly and wilfully permits the default shall be liable to the same penalty.
132. In addition to section 131, if the company becomes insolvent following and in connection with the giving of such financial assistance, every director of the company who knowingly and wilfully permitted the giving of financial assistance in default of sub-section 130(a) shall also be liable to the creditors of the company to the extent of the amount of financial assistance provided where the debts due by the company to the respective creditors exceeded the recoverable assets of the company and such amount may be recovered from them by the creditors or the liquidator suing on behalf of the creditors.
133. **Shareholder Approval**
- (a) Shareholder approval for financial assistance by a company must be given by:
 - (i) a special resolution passed at a general meeting of the company, with no votes being cast in favour of the resolution by the person acquiring the shares or by their associates; or
 - (ii) a resolution agreed to, at a general meeting, by all ordinary shareholders.
 - (b) If the company will be a subsidiary of a public company listed in Myanmar immediately after the acquisition referred to in section 130 occurs, the financial assistance must also be approved by a special resolution passed at a general meeting of that company.
 - (c) If, immediately after the acquisition, the company will have a holding company that:
 - (i) is a company incorporated under this Law but not listed; and
 - (ii) is not itself a subsidiary of another company incorporated under this Law;the financial assistance must also be approved by a special resolution passed at a general meeting of the company that will be the holding company.

A company that calls a meeting for the purpose of sub-section (a), (b) or (c) must include with the notice of the meeting a statement setting out all the information known to the company that is material to the decision on how to vote on the resolution.

- (d) Before the notice of a meeting for the purpose of sub-section (a), (b) or (c) is sent to members of a company, the company must lodge with the Registrar a copy of:
 - (i) the notice of the meeting; and
 - (ii) any document relating to the financial assistance that will accompany the notice of the meeting sent to the members.
 - (e) The company must lodge with the Registrar, at least 21 days before giving the financial assistance, a notice in the prescribed form stating that the assistance has been approved under this section.
 - (f) A special resolution passed for the purpose of sub-section (a), (b) or (c) must be lodged with the Registrar by the company, listed domestic corporation or holding company within 14 days after it is passed.
 - (g) It shall be the duty of every director and other officer of a company to take reasonable steps to ensure that the procedures of this section are followed and that all relevant filings are made.
134. If a default is made in complying with sub-section 133(g), the company and every director or other officer of the company who is knowingly and wilfully involved in the default shall be liable to a fine not exceeding 50 penalty units.

135. **Effect of contravention**

If a company provides financial assistance in contravention of section 128 the contravention does not affect the validity of the financial assistance or of any contract or transaction connected with it.

Prohibition on self-acquisition of shares

136. **Directly acquiring shares**

A company must not acquire shares in itself except:

- (a) as a result of a buy-back made under this Division; or
- (b) as a result of an order by the Court.

137. **Taking security over shares**

A company must not take security over shares in itself or a holding company that controls it.

138. **Issuing or transferring shares to a subsidiary**

The issue of shares by a company or the transfer of shares in a company to a subsidiary is void unless:

- (a) the subsidiary transferee holds the shares as a trustee only and without any beneficial interest in the shares; or

- (b) the transfer is by a holding company and the subsidiary transferee is also a subsidiary of that holding company.

139. **Exemptions**

Without limiting any power outside of this section, the Union Minister may prescribe circumstances where any of the matters prohibited or made void by sections 136 to 138 may be permitted and effective.

Continuing Duties

140. **Other duties continue to apply**

A director is not relieved from any of their duties under this Law (including under Part IV), or their fiduciary duties, in connection with a transaction or matter affecting share capital referred to in this Division merely because the transaction or matter is authorised by a provision of this Division or the constitution or is approved by a resolution of members under a provision of this Division.

PART IV

MANAGEMENT, ADMINISTRATION AND GOVERNANCE; OFFERS OF SECURITIES TO THE PUBLIC; GRANT OF SECURITY BY A COMPANY; MAINTENANCE OF COMPANY ACCOUNTS

Division 16: Office and name

141. **Registered office of company**

- (a) A company shall as from the date of its incorporation have a registered office to which all communications and notices may be addressed.
- (b) The company need not carry on business in the premises at the address of its registered office however in this case it must obtain and retain with its records the consent to the company's use of the premises as its registered office by the person who occupies such place. If such consent is withdrawn, the Company must identify a new registered office. The Registrar may require the Company to produce evidence of the consent required under this sub-section.
- (c) Notice of the situation of the registered office setting out complete address details shall be given in the application for incorporation and notice of any subsequent proposed change therein shall be given in the prescribed form prior to the date of the change to the Registrar who shall record the same.
- (d) The inclusion in the annual return of a company of the statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this section.
- (e) If the Registrar believes that:
 - (i) if the registered office was at a premises in which the company was carrying on business, the company is no longer carrying on business at those premises; or
 - (ii) if the registered office was not at a premises in which the company was carrying on business, the occupier of those premises has not consented or has withdrawn its consent to the company's use of those premises as its registered office or such occupier themselves no longer occupies such premises,

the Registrar may give notice to any resident director that it intends to change the address of the registered office to that director's address. If the company has not notified the Registrar of a new registered office address within 28 days of the issue of such notice then the Registrar may so change the registered office address.

142. If a company fails to comply with the requirements of section 141, it shall be liable to a fine not exceeding 8 penalty units.

143. **Publication of name by a limited company**

Every limited company:

- (a) shall display its name at its registered office and at every office or place in which its business is carried on that is open to the public, in a conspicuous position, in letters easily legible and in Myanmar or English characters;
- (b) shall have its name engraven in legible characters on its seal (if any); and
- (c) shall have its name mentioned in legible Myanmar or English characters in all:
 - (i) written communications sent by or on behalf of the company; and
 - (ii) documents issued or signed by or on behalf the company that evidence or create a legal obligation of the company.

144. Penalties for non-publication of name

- (a) If a limited company does not conspicuously display its name in manner directed by this Law, it shall be liable to a fine not exceeding 1 penalty unit, and every officer of the company, who knowingly and wilfully authorizes or permits the default, shall be liable to the same penalty.
- (b) If any officer of a limited company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any communication or document referred to in section 143(c) wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding 1 penalty unit , and shall further, in the case of a document evidencing or creating a legal obligation of the company, be personally liable to the same extent as the company if the company fails to discharge the obligation unless:
 - (i) the person who issued and signed the document proves that the person in whose favour the obligation was incurred was aware or was entitled to assume that the obligation was incurred by the company; or
 - (ii) the Court is satisfied that it would not be just or equitable for the person who issued or signed the document to be so liable.

Division 17: Meetings and proceedings

145. Directors' meetings

- (a) Subject to the company's constitution:
 - (i) a directors' meeting may be called by a director giving reasonable notice to every other director;
 - (ii) the meeting may be called or held using any technology consented to by all directors or as provided in the company's constitution;
 - (iii) the quorum for a directors' meeting is two directors or such other number as specified in the company's constitution and a quorum must be present at all times during the meeting; and
 - (iv) a resolution must be passed by a majority of the votes cast by the directors entitled to vote on the resolution.

- (b) The directors must elect a chair to chair meetings of directors and meetings of the company. If the elected chair is absent from all or part of a meeting, a replacement chair may be elected.
- (c) Subject to the constitution, the chair has a casting vote at meetings of directors.

146. **Annual general meeting**

- (a) Subject to this section, a general meeting of every company shall be held as its annual general meeting within eighteen months from the date of its incorporation and thereafter once at least in every calendar year and not more than fifteen months after the holding of the last preceding annual general meeting.
- (b) The business of the annual general meeting may, or, where required by this Law or other applicable law, must include the following, even if not referred to in the notice of meeting:
 - (i) where the company is required to prepare such reports, the consideration of the annual financial report, directors' report and auditor's report;
 - (ii) the election of directors; and
 - (iii) where the company is required to appoint an auditor, the appointment of the auditor.
- (c) The chair must allow a reasonable opportunity for the members to ask questions or make comments about the management of the company.
- (d) The company's auditor must attend the annual general meeting and the chair must allow a reasonable opportunity for the members to ask the auditor questions about the audit, audit report or accounts of the company.
- (e) This section does not apply to a small company unless:
 - (i) the constitution of the company applies this section or includes any similar requirements;
 - (ii) the members determine to apply this section by passing an ordinary resolution; or
 - (iii) the Registrar determines that this section should apply.

147. **Default in complying with section 146**

If default is made in holding an annual general meeting in accordance with the provisions of section 146:

- (a) the company and every director or officer of the company who is knowingly and wilfully a party to the default shall be liable to a fine not exceeding 5 penalty units; and
- (b) the Court may, on the application of any member of the company, call or direct the calling of an annual general meeting of the company and make such ancillary directions regarding the conduct of the meeting as the Court thinks fit.

148. **Statutory meeting of company**

- (a) Every public company and every company limited by guarantee and having a share capital shall, within a period of not less than 28 days nor more than six months from the date at which the company is incorporated, hold a general meeting of the members of the company, which shall be called the statutory meeting.
- (b) The directors shall, at least 21 days before the day on which the meeting is held, circulate a report (in this Law referred to as the statutory report) certified as required by this section to every member of the company.
- (c) The statutory report shall be certified by not less than two directors of the company, or by the chairman of the directors if authorized in this behalf by the directors, or by the sole director in the case of a company with only one director, and shall state:
 - (i) the total number of shares allotted, distinguishing between shares allotted for cash and 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;
 - (ii) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;
 - (iii) an abstract of the receipts of the company and of the payments made thereout up to a date within 7 days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company showing separately any commission or discount paid on the issue or sale of shares;
 - (iv) the names, addresses, nationality and descriptions of the directors, auditors and secretary, if any, of the company and the changes, if any, which have occurred since the date of the incorporation;
 - (v) 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;
 - (vi) the extent to which underwriting contracts, if any, have been carried out;
 - (vii) the arrears, if any, due on calls from directors; and
 - (viii) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares to any director or officer.
- (d) 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, be certified as correct by the auditors of the company.
- (e) The directors shall cause a copy of the statutory report certified as required by this section to be delivered to the Registrar for registration forthwith after the sending thereof to the members of the company.

- (f) The directors shall cause a list showing the names, descriptions, nationality 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.
- (g) 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 constitution or this Law shall be passed.
- (h) 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 constitution or this Law, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.
- (i) If a petition is presented to the Court in the manner provided by Part V for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held as the statutory meeting, or make such other order as may be just.

149. In the event of any default in complying with the provisions of section 148, every director of the company who is guilty of or who knowingly and wilfully authorizes or permits the default shall be liable to a fine not exceeding 5 penalty units.

150. **Types of general meetings**

A general meeting of a company may be classified as:

- (a) an annual general meeting held pursuant to section 146;
- (b) a statutory meeting held pursuant to section 148; or
- (c) a special general meeting which will be any other general meeting of members called pursuant to the rights and procedures set out in this Law, including sub-section 151(a).

151. **Calling and holding of general meetings**

- (a) A general meeting of a company:
 - (i) must be held for a proper purpose and at a reasonable time and place;
 - (ii) will be quorate if at least two members are present at all times during the meeting (or such larger number as may be prescribed in the company's constitution);
 - (iii) subject to the company's constitution, will be chaired by a person elected by the directors, provided that if such person does not attend the meeting the members present will elect the chair;
 - (iv) subject to the company's constitution, must be adjourned if members present holding a majority of votes at the meeting agree or direct the chair to do so;

- (v) may be attended by the company's auditor, and the auditor is entitled to receive all notices of meeting and be heard at the meeting on any part of the business of the meeting that concerns the auditor;
 - (vi) may be called by the chairman of the board from time to time;
 - (vii) subject to the constitution, may be called by any other director or other person or persons as provided in the constitution;
 - (viii) must be called by the directors if duly requisitioned by members in accordance with sub-section (b);
 - (ix) may be called and arranged by members holding not less than one-tenth of the votes that may be cast at a general meeting of the company, provided such members pay the expenses of calling and holding the meeting and call the meeting in the same manner, as nearly as possible, in which meetings of the company may be called by directors; and
 - (x) may be called by order of the Court if it is impracticable to be called in any other way or if it otherwise just and equitable to do so. The Court may make the order on application by any director or member who would be entitled to vote at the meeting and the Court may make such ancillary directions regarding the conduct of the meeting as the Court thinks fit.
- (b) Notwithstanding anything in the constitution, the directors of a company which has a share capital shall, on the requisition of the holders of shares providing not less than one-tenth of the votes that may be cast at a general meeting of the company or by at least 100 members who are entitled to vote at a general meeting, forthwith proceed to call a general meeting of the company if the proposed business to be conducted is of the kind that could properly be considered at a general meeting.
- (c) The requisition must be in writing, state the objects of the meeting and any resolution to be proposed, 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.
- (d) Save where the directors have reasonably determined that the meeting should not be called under sub-section (b) and notified this fact to the requisitionists, if the directors do not proceed within 21 days from the date of the requisition being so deposited to cause a meeting to be called, the requisitionists, or a voting majority of them, may themselves call the meeting, but in either case any meeting so called shall be held within three months from the date of the deposit of the requisition.
- (e) Any meeting called under this section by the requisitionists shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by directors and if the requisitionists ask the company for a copy of the register for this purpose the company must provide it to them.
- (f) 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 for their services to such of the directors as were in default.

- (g) Members holding shares providing not less than one-tenth of the votes that may be cast at a general meeting of the company, or at least 100 members who are entitled to vote at a general meeting, may give notice to the company of a proposed resolution to be moved at a meeting of the company.
- (h) Any notice under sub-section (g) must be in writing, set out the wording of the proposed resolution and be signed by the members proposing to move it. The notice may also be accompanied by a short explanatory statement.
- (i) If the proposed resolution referred to in sub-section (g) is one that could be put at a general meeting and neither the proposed resolution or any accompanying explanatory statement is unduly long or defamatory, then the company must include the notice and any explanatory statement with the next notice of meeting to be sent by the company, provided that the notice need not be sent if the next general meeting is to occur within two months of receipt of the notice of resolution but further provided that the notice must be sent and a general meeting held within 12 months of receipt.
- (j) Subject to compliance with the requirements for meeting notification and voting provided under this Law, and further provided that the company must ensure at all times that meetings are held in a manner that enables all members to participate and for the meeting to be properly conducted, a company may provide in its constitution for a general meeting to be called or held using any technology which is available to members.

152. Provisions as to notification of meetings and voting

- (a) The following provisions shall have effect with respect to the calling of meetings of a company:
 - (i) a meeting of a company may be called by not less than 21 days' notice in writing (or such longer period provided by the company's constitution), or 28 days notice in writing in the case of a public company; but with the consent of all the members entitled to receive notice of some particular meeting that meeting may be convened by such shorter notice and in such manner as those members may think fit;
 - (ii) written notice of the meeting of a company shall be given to every member entitled to vote at the meeting, every director and the auditor. The notice may be given:
 - (A) personally;
 - (B) by post or other direct delivery to the member's address recorded in the register of members or such other address notified by the member for this purpose;
 - (C) electronically to the fax number or electronic address notified by the member for this purpose; or
 - (D) otherwise in the manner prescribed in the constitution;

but the accidental omission to give notice to, or the non-receipt of notice by, any member shall not invalidate the proceedings at any meeting;

- (iii) the notice of meeting must:
 - (A) set out the place, date and time for the meeting;
 - (B) state the general nature of the meeting's business;
 - (C) state whether the meeting is an annual general meeting, statutory meeting or special general meeting;
 - (D) set out the resolutions to be proposed at the meeting, including whether any are special resolutions or resolutions proposed by members, with any necessary explanatory material;
 - (E) provide information and instructions regarding the appointment of proxies or corporate representatives, including the time by which notices of such appointments may be received and the manner in which such notices of appointments may be sent; and
 - (F) include any other information required to be provided by the constitution or under this Law; and
 - (iv) any shareholder whose name is entered in the register of shareholders of the company shall enjoy the same rights and be subject to the same liabilities as all other shareholders of the same class.
- (b) Subject to the company's constitution, the following provisions shall have effect with respect to voting at meetings of a company:
- (i) subject to the rights or restrictions attached to any class of shares, at a meeting of a company:
 - (A) on a show of hands each member has one vote;
 - (B) on a poll, each member has one vote for each share they hold;
 - (C) if a share is jointly held, only one of the named holders is entitled to vote; and
 - (D) the chair has a casting vote;
 - (ii) a challenge to any voting rights may only be made at the meeting and must be finally determined by the chair;
 - (iii) a resolution put to the vote at a meeting must be decided by a show of hands unless a poll is demanded;
 - (iv) a poll may be demanded on any resolution by:
 - (A) the chair;
 - (B) at least five members; or
 - (C) members with at least 10% of the votes that may be cast on the poll;

- (v) the poll may be demanded before a vote on a show of hands is taken or before or immediately after the results of the vote on a show of hands are declared;
 - (vi) the poll will be conducted in the manner directed by the chair;
 - (vii) before any vote is taken on a show of hands or a poll the chair must inform the meeting of any proxy votes received and how such votes are to be cast; and
 - (viii) on a show of hands, a declaration by the chair is conclusive evidence of the result, provided this reflects the show of hands and proxies received.
- (c) 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 constitution of the company or this Law, 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 given may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

153. Appointment of corporate representatives to attend meetings of companies

- (a) A company which is a member of another company may, by resolution of the directors, authorize any of its officials or any other individual person to act as its representative at any meeting of that other company, and the person so authorized shall be entitled to exercise the same powers on behalf of the company that the company itself could exercise at a meeting of the other company or in voting on a resolution.
- (b) A company may appoint more than one person under sub-section (a), however only one representative may exercise those powers at any one time.
- (c) In connection with the participation in a meeting of a company by a corporate representative appointed under sub-section (a), the company may request to see evidence of the due appointment of the corporate representative and may by resolution of directors prescribe a form of appointment for this purpose.

154. Appointment of proxies to attend meetings of companies

- (a) A member entitled to attend and vote at a meeting of a company may appoint a proxy to attend the meeting and exercise the right of the member to votes on their behalf in accordance with this section and subject to the company's constitution.
- (b) The proxy need not be a member of the company and shall be entitled to exercise the same powers on behalf of the member appointing them that the member itself could exercise at the meeting of the company or in voting on a resolution.
- (c) The company may by resolution of directors prescribe the form by which a member may appoint a proxy and if it does this it must send the form to all members. The company may include with the form a list of persons willing to act as proxies.

- (d) Whether or not a form has been prescribed under sub-section (c), an appointment of a proxy will be valid if it is signed by the member appointing the proxy and contains the following information:
 - (i) the member's name and address;
 - (ii) the company's name;
 - (iii) the proxy's name; and
 - (iv) the meetings at which the proxy may be used (which may be all meetings).
- (e) For an appointment to be effective the instrument appointing a proxy must be received by the company at least 48 hours prior to the holding of the relevant meeting. The instrument may in all cases be sent to the company's registered office or to another place, address or number as may be notified by the company in the notice of meeting.
- (f) If a company has received more than one instrument from a member appointing a proxy, the last received instrument will be taken to revoke the earlier one.
- (g) The instrument appointing the proxy must specify how the proxy is to vote on any resolution, or may provide that the proxy may exercise the voting rights at the proxy's discretion, and, if manner of voting is specified, the proxy must vote in this way.
- (h) If the member would not be entitled to vote on a resolution for any reason, the proxy may not vote on the resolution on behalf of the member.

155. Ordinary resolutions

On any matter where the company is required by the Law or its constitution to pass a resolution the matter may be passed by an ordinary resolution except where the Law or the company's constitution expressly requires the matter to be approved by a special resolution or other specified percentage or number of members.

156. Written resolutions in lieu of meetings

- (a) A company with only one director need not have directors' meetings and may instead pass any necessary resolutions by recording them in writing and signing them.
- (b) A company with only one member need not have members' meetings and may instead pass any necessary resolutions by recording them in writing and signing them.
- (c) Any company may pass a directors resolution without a directors' meeting being held if all the directors' entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of the document in the same form may be signed and the resolution is passed when the last director signs.
- (d) Any private company may pass a members' resolution without a general meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of the document in the same form may be signed and the resolution is passed when the last member signs.

- (e) A company that passes a resolution under sub-section (d) is taken to satisfy any requirement of its constitution or this Law that a resolution be passed at a general meeting and further satisfies any requirement under this Law:
 - (i) to give members information or a document relating to the resolution—by giving members that information or document with the document to be signed;
 - (ii) to lodge with the Registrar a copy of a notice of meeting to consider the resolution—by lodging a copy of the document to be signed by members; and
 - (iii) to lodge a copy of a document that accompanies a notice of meeting to consider the resolution—by lodging a copy of the information or documents referred to in sub-section 156(e)(i).

157. Minutes of proceedings of general meetings and of its directors and of written resolutions

- (a) Every company shall cause minutes of all proceedings of general meetings and of its directors and of any written resolutions that are passed to be entered in books kept for that purpose. The relevant minutes or resolutions must be recorded in this books within 21 days of the holding of the meeting or passing of the written resolution and must be signed by the chairman or other authorised director.
- (b) Any such minute or written resolution, if purporting to be signed by the chair of the meeting at which the proceedings were had, or by the chair of the next succeeding meeting, shall be evidence of the proceedings or passing of the resolution.
- (c) Until the contrary is proved, every general meeting of the company or meeting of directors in respect of the proceedings whereof minutes have been so made and signed shall be deemed to have been duly called and held, and all proceedings had thereat to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid.
- (d) The books containing the minutes of proceedings of any general meeting of a company and any written resolution of members, shall be kept at the registered office of the company or other place where the register of the company is kept in accordance with this Law and shall during business hours (subject to such reasonable restrictions as the company may by its constitution 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.
- (e) Any member shall at any time after 7 days from the meeting be entitled to be furnished within 7 days after he has made a request in that behalf to the company with a copy of any minutes or resolutions referred to in sub-section (d) at a reasonable sum prescribed by the directors.

158. If any inspection required under sub-section 157(d) is refused, or if any copy required under sub-section 157(e) of this section is not furnished within the time specified in sub-section 157(e), the company and every director or other officer of the company who is knowingly and wilfully in default shall be liable in respect of each offence to a fine not exceeding 3 penalty units.
159. In the case of any refusal or default specified in section 158, the Court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or written resolutions passed or direct that the copies required shall be sent to the persons requiring them.

Division 18: Directors and their powers and duties

Powers of directors

160. Powers of directors

- (a) The business of a company is to be managed by or under the direction of the board of directors or, in the case of a single director company, the single director.
- (b) In managing the business of the company the directors (or single director) may exercise all the powers of the company, subject to any powers which are required to be exercised by members as expressly set out in this Law or the company's constitution.
- (c) Subject to the company's constitution, the board may confer on a managing director any of the powers that the directors can exercise.
- (d) Subject to the company's constitution, the board may delegate any of its powers to:
 - (i) a committee of directors;
 - (ii) a director;
 - (iii) an employee of the company; or
 - (iv) any other person.
- (e) A delegate of powers under sub-section (d) must exercise such powers in accordance with any directions given by the board and the exercise of powers by the delegate is as effective as if the directors had exercised them.
- (f) If the directors delegate a power under sub-section (d), a director is responsible for the exercise of the power by the delegate as if the power had been exercised by the directors themselves unless the director can show they believed:
 - (i) on reasonable grounds at all times that the delegate would exercise the power in conformity with the duties imposed on directors of the company by this Law and the company's constitution; and
 - (ii) on reasonable grounds, in good faith and after making proper inquiry (if the circumstances indicated the need for inquiry) that the delegate was reliable and competent in relation to the power delegated.

161. Directors' access to information

- (a) A director may inspect the books and records of the company at all reasonable times.

- (b) A person who has ceased to be a director may, at all reasonable times during the period of seven years after ceasing to be a director, inspect and take copies of the books and records of the company for the purposes of a legal proceeding:
 - (i) to which the person is party;
 - (ii) that the person proposes in good faith to bring; or
 - (iii) that the person has reason to believe will be brought against them.

162. Restrictions on powers of directors

The directors of a public company, or of a subsidiary of a public company, or, if so provided in its constitution of a private company shall not, except with the consent of the company concerned in general meeting:

- (a) sell or dispose of the main undertaking of the company; or
- (b) remit any debt due by a director.

163. Restrictions on voting

- (a) Subject to the company's constitution and this section, if a director of a company has a material personal interest in a matter that relates to the affairs of the company that is being considered at a board meeting, the director must not be present while the matter is being considered at the meeting or vote on the matter.
- (b) Subject to the company's constitution, a director may be present at a board meeting at which a matter in which the director has a material personal interest is being considered and vote on a matter if:
 - (i) under section 172 the director has disclosed the nature and extent of the interest and its relation to the affairs of the company and the other directors pass a resolution that identifies the director and the nature of the interest and states that those directors are satisfied that the interest should not disqualify the director from being present at the meeting or voting;
 - (ii) a resolution to the same effect as the board resolution referred to in sub-section 163(b)(i) is passed at a general meeting; or
 - (iii) the interest is one that does not need to be disclosed under section 172.
- (c) Subject to the company's constitution, if the requirements of sub-section (b) are satisfied:
 - (i) the director may vote on matters that relate to the interest;
 - (ii) any transactions that relate to the interest may proceed;
 - (iii) the director may retain benefits under the transaction even though the director has the interest; and
 - (iv) the company cannot avoid the transaction merely because of the existence of the interest.

Duties of directors and officers

164. Duties

Sections 165 to 172 (inclusive) below contain the main duties imposed on directors and officers but do not limit duties imposed elsewhere under this Law or any other applicable law.

165. Duty to act with care and diligence

- (a) A director or officer must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:
 - (i) were a director or officer of the company in the company's circumstances; or
 - (ii) occupied the office held by, and had the same responsibilities within the company as, the director or officer.
- (b) A director or other officer who, in the exercise of their powers and discharge of their duties, makes a decision to take, or not take, an action in relation to the operation of the company's business, is taken to meet the requirements of sub-section (a), and any like legal or equitable duties, and the duty in section 170, if they:
 - (i) make the decision in good faith for a proper purpose;
 - (ii) do not have a material personal interest in the subject matter of the decision;
 - (iii) inform themselves about the subject matter of the decision to the extent they reasonably believe to be appropriate; and
 - (iv) rationally believe that the decision is in the best interests of the company.

166. Duty to act in good faith in the company's best interest

- (a) Subject to this section, a director or officer must exercise their powers and discharge their duties:
 - (i) in good faith and in the best interest of the company; and
 - (ii) for a proper purpose.
- (b) A director or officer of a company that is a wholly-owned subsidiary may, when exercising powers or performing duties as a director or officer, if expressly permitted to do so by the constitution of the company, act in a manner which he or she believes is in the best interests of that company's holding company even though it may not be in the best interests of the company.
- (c) A director or officer of a company that is a subsidiary (but not a wholly-owned subsidiary) may, when exercising powers or performing duties as a director or officer, if expressly permitted to do so by the constitution of the company and with the prior agreement of the members (other than its holding company), act in a manner which he or she believes is in the best interests of that company's holding company even though it may not be in the best interests of the company.
- (d) A director or officer of a company that is carrying out a joint venture between the shareholders may, when exercising powers or performing duties as a director in

connection with the carrying out of the joint venture, if expressly permitted to do so by the constitution of the company, act in a manner which he or she believes is in the best interests of a shareholder or shareholders, even though it may not be in the best interests of the company.

- (e) In connection with the obligation under sub-section (a)(i), when exercising their powers and discharging their duties a director or officer may have regard to:
 - (i) the likely long-term consequences of the decision, including its impact on the:
 - (A) company's employees;
 - (B) company's business relationships with customers and suppliers;
 - (C) environment; and
 - (D) company's reputation; and
 - (ii) the need to act fairly as between members of the company.

167. Duty regarding use of position

A director or officer must not improperly use their position to:

- (a) gain an advantage for themselves or someone else; or
- (b) cause detriment to the company.

168. Duty regarding use of information

A director or officer must not improperly use information obtained by them as a director or officer to:

- (a) gain an advantage for themselves or someone else; or
- (b) cause detriment to the company.

169. Duty to comply with the Law and constitution

A director or officer must not act, or agree to the company acting, in a manner that contravenes this Law or the company's constitution.

170. Duty to avoid reckless trading

A director or officer must not cause or allow the business of the company to be carried on, or agree to the business being carried on, in a manner likely to create a substantial risk of serious loss to the company's creditors.

171. Duty in relation to obligations

A director or officer must not agree to a company incurring an obligation unless that director or officer believes at the time on reasonable grounds that the company will be able to perform the obligation when required to do so.

172. Duty to disclose certain interests

- (a) A director of a company who has a material personal interest in a matter that relates to the affairs of the company must give the other directors notice of the interest unless:

- (i) the interest:
 - (A) arises because the director is a member of the company and is held in common with the other members of the company;
 - (B) arises in relation to the director's remuneration as a director of the company;
 - (C) relates to a contract the company is proposing to enter into that is subject to approval by the members and will not impose any obligation on the company if it is not approved by the members;
 - (D) arises merely because the director is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the company;
 - (E) arises merely because the director has a right of subrogation in relation to a guarantee or indemnity referred to in sub-paragraph (D);
 - (F) relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the company (but only if the contract does not make the company or a related body corporate the insurer);
 - (G) relates to any payment by the company or a related body corporate in respect of an indemnity permitted under section 181 or any contract relating to such an indemnity; or
 - (H) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a related body corporate and arises merely because the director is a director of the related body corporate;
 - (ii) the director has already given notice of the nature and extent of the interest and its relation to the affairs of the company in accordance with this section and the notice remains valid; or
 - (iii) the company only has one director and that director, and any related parties of the director, are the only shareholders of the company. If the sole director company has additional shareholders, then a notice required to be given under sub-section (a) must be given to those shareholders.
- (b) Notice of an interest may be given from time to time as required or the director of a company who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest.
 - (c) The standing notice may be given at any time and whether or not the matter relates to the affairs of the company at the time the notice is given, provided that if a new director is appointed to the board any standing notices that have been previously given must be refreshed at a new meeting of the board.
 - (d) A standing notice will also cease to be valid if the nature or extent of the interest materially increases above that disclosed in the notice.
 - (e) Any notice given under this section must:

- (i) give details of the nature and extent of the interest; and
 - (ii) be given at a board meeting and recorded in the minutes.
- (f) A contravention of this section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.
- (g) This section applies in addition to any other general law regarding conflicts of interest and to anything in the company's constitution.

Appointment, remuneration and cessation of appointment of directors

173. Appointment of directors

- (a) In default of and subject to any regulations in the constitution of a company:
- (i) the initial directors of a company will be the persons named in the application for incorporation made under Part II of this Law;
 - (ii) thereafter, the directors of the company shall be appointed by the members passing an ordinary resolution in a general meeting; and
 - (iii) any casual vacancy occurring among the directors may be filled up by the directors, even if those directors would not at the time constitute a quorum, but the person so appointed shall be subject to approval of members at the next general meeting of the company held after their appointment, which must be called within six months of the appointment.
- (b) In the case of public companies, subject to the constitution of the company or any other applicable law, at each annual general meeting one third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest to one third shall retire from office. The directors to retire in any such meeting will be those who have been longest in office since the last election, but as between persons who became directors on the same day those to retire shall be determined by the chairman.
- (c) A resolution at a general meeting to appoint a director may only refer to one proposed director, however separate resolutions to appoint additional directors may be made at the same meeting.
- (d) The directors may appoint one or more of themselves to the office of managing director of the company for the period and on the terms as the directors see fit. A person ceases to be a managing director if he ceases to be a director.
- (e) With the approval of the other directors, a director may appoint an alternate to exercise some or all of the directors' powers for a specified period and when such alternate exercises the directors' powers the exercise is just as effective as if done by the director. The appointment must be made in writing and given to the company. The appointment may be revoked by the appointing director at any time.
- (f) The director of a private company who is the only director and only shareholder of the company may appoint another director by written resolution.

- (g) If a person who is a sole director and only shareholder of a company dies or becomes subject to an incapacity, the person's personal representative or trustee may appoint a person as director of the company.
- (h) If there are no directors of a company or the number of directors is less than the quorum required for a board meeting and it is not possible or practicable to appoint directors in accordance with this Law or the company's constitution then a shareholder or the Registrar may apply to the Court to appoint one or more directors to the company. The Court may make the appointment if it considers it is in the company's best interest to do so and any appointment may be made on such terms and conditions as the Court thinks fit.

174. Removal of directors

A company may by ordinary resolution passed at a general meeting called for this purpose or by written resolution passed in accordance with this Law remove any director.

175. Qualification of director

- (a) It shall be the duty of every director who is by the company's constitution required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after the director's appointment, or such shorter time as may be fixed by the constitution.
- (b) Only a natural person who is at least 18 may be appointed as a director.
- (c) A director must be of sound mind.
- (d) A person who has been disqualified from acting as a director under this Law or any other applicable law must not act as a director during the period of their disqualification.
- (e) A person who is an undischarged bankrupt must not act as a director.
- (f) This section is without prejudice to any additional qualifications which a company may include in its constitution (however no constitutional qualification will be valid to the extent it is inconsistent with any of the qualifications required under this section).
- (g) A person acting as a director may still be found liable for a breach of obligation or duty of a director under this Law or any other applicable law notwithstanding that any of the qualifications to them being appointed as a director have not been met.

176. Validity of acts of directors

The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or their failure to meet any applicable qualification for appointment whether under this Law or the company's constitution: Provided that nothing in this section shall be deemed to validate any acts which would have been invalid even if the person's appointment as a director had been effective.

177. Assignment of office by directors

If in the case of any company provision is made in the constitution or by any agreement entered into between any person and the company for empowering a director or officer 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:

Provided that the exercise by a director of a power to appoint an alternate director to act for him during periods of unavailability shall not be deemed to be an assignment of office within the meaning of this section:

Provided always that any such alternate director shall not exercise any powers as a director if and when the appointor is available.

178. **Vacation of office of director**

- (a) The office of a director shall be vacated if the director-
 - (i) fails to obtain within the time specified in sub-section 175(a), or at any time thereafter ceases to hold, the share qualification, if any, necessary for the director's appointment;
 - (ii) is found to be of unsound mind by a Court of competent jurisdiction; or
 - (iii) is adjudged bankrupt or an insolvent;
 - (iv) fails to pay calls made on the director in respect of shares held by the director within six months from the date of such calls being made;
 - (v) absents themselves from three consecutive meetings of the directors or from all meetings of the directors for a continuous period of three months, whichever is the longer, without leave of absence from the board of directors or without appointing an alternate;
 - (vi) resigns from their position as director by giving written notice to the company;
 - (vii) dies;
 - (viii) is removed from office in accordance with this law or the constitution of the company; or
 - (ix) ceases to hold or meet any of the qualifications required for the position of director set out in this Law or the constitution of the company.
- (b) Nothing contained in this section shall be deemed to preclude a company from providing by its constitution that the office of director shall be vacated on grounds additional to those specified in this section.

179. ***Company Secretaries***

- (a) A secretary may be appointed by a resolution of the directors.
- (b) Only a natural person who is at least 18 may be appointed as a secretary.
- (c) A secretary must be of sound mind.
- (d) A person who has been disqualified from acting as a director, officer or secretary under this Law or any other applicable law may not act as a secretary during the period of their disqualification.

- (e) This section is without prejudice to any additional qualifications required to be held by a secretary which a company may include in its constitution (however no constitutional qualification will be valid to the extent it is inconsistent with any of the qualifications required under this section).
- (f) The acts of a secretary shall be valid notwithstanding any defect that may afterwards be discovered in their appointment or their failure to meet any applicable qualification for appointment whether under this Law or the company's constitution: Provided that nothing in this section shall be deemed to validate any acts which would have been invalid even if the person's appointment as a secretary had been effective.

Restrictions on indemnities, insurance, relief from liability and provision for unlimited liability

180. Avoidance of provisions exempting liability of directors, officers and auditors

Save as provided in this Division, any provision, whether contained in the constitution of a company or in any contract with a company or otherwise, for exempting any director or officer of the company, or any person (whether an officer of the company or not) employed by the company as auditor, from any liability to the company which by virtue of this Law or any other 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.

181. Indemnities

- (a) Subject to this section, a company or a related body corporate must not, directly or indirectly, indemnify a person against any of the following liabilities incurred as a director, officer or auditor of the company:
 - (i) a liability owed to the company or a related body corporate; or
 - (ii) a liability that is owed to someone other than the company or a related body corporate and did not arise out of conduct in good faith.
- (b) Sub-section (a) does not prohibit a company or a related body corporate from indemnifying a person for a liability against legal costs incurred in defending an action for a liability incurred as a director, officer or auditor of the company unless the costs are incurred:
 - (i) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under sub-section (a);
 - (ii) in defending or resisting criminal proceedings in which the person is found guilty;
 - (iii) in defending or resisting proceedings brought by the Registrar or a liquidator for a Court order if the grounds for making the order are found by the Court to have been established; or
 - (iv) in connection with proceedings for relief to the person under this Law in which the Court denies the relief.
- (c) For the purposes of sub-section (b), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

182. Insurance

- (a) A company or a related body corporate must not pay, or agree to pay, directly or indirectly, a premium for a contract insuring a person who is or has been a director, officer or auditor of the company against a liability (other than one for legal costs) arising out of:
 - (i) conduct involving a wilful breach of duty in relation to the company; or
 - (ii) a contravention of section 167 or 168.
- (b) Subject to any other applicable law, sub-section (a) does not prohibit a company or a related body corporate from paying, or agreeing to pay, directly or indirectly, a premium for a contract insuring a person who is or has been a director, officer or auditor of the company against a liability other than a liability referred to in sub-sections (a)(i) or (a)(ii).

183. Limited company may have directors with unlimited liability

Without limiting any other provision of this Law or other applicable law, in a limited company which is incorporated prior to the commencement of this Law, the liability of the directors or of any director appointed prior to the commencement of the Law may, if so provided by the constitution of the company, be unlimited.

Provision of benefits to and transactions with directors, officers and other related parties

184. Provision of retirement benefits

- (a) Subject to this section, a company must not give a person a benefit in connection with a person's retirement as an officer of the company or a related body corporate unless there is member approval under section 186 for the giving of the benefit.
- (b) Sub-section (a) does not restrict the payment of any benefits required to be paid by law or paid in good faith under or in connection with the officer's contract of employment or similar engagement with the company.

185. Provision of benefits on transfer of undertaking or property

A company must not give an officer or former officer of the company or any related body corporate, or any spouse, relative or associate of the officer or former officer, a benefit in connection with the transfer of the whole or any part of the undertaking or property of the company or any related body corporate unless there is member approval under section 186 for the giving of the benefit.

186. Approval of benefits by members

- (a) A benefit of the kind referred to in section 184 or 185 may be given if it is approved at a general meeting of members of the company, its ultimate holding company (if any) and any other relevant related body corporate.
- (b) A notice of meeting prepared for any meeting held under sub-section (a) must provide details of the relevant benefit and all other material information relevant to the decision on how to vote on it.

- (c) The officer or former officer referred to in section 184 or 185 or any person who would receive the benefit may not vote on any resolution concerning the giving of the benefit (unless pursuant to a proxy from another person which directs them how to vote).

187. **Remuneration of directors and other benefits to directors and related parties**

- (a) The board of a company may, subject to any restrictions contained in the constitution of the company, applicable provisions of this Law and any other applicable law, authorise:
 - (i) the payment of remuneration or the provision of other benefits by the company to a director or a director's related party for services as a director or in any other capacity;
 - (ii) the payment by the company to a director or former director of compensation for loss of office;
 - (iii) the making of loans by the company to a director or a related party;
 - (iv) the giving of guarantees by the company for debts incurred by a director or a related party;
 - (v) the entering into of a contract to do any of the things set out in paragraphs (i), (ii), (iii), and (iv) or to the provision of any other kind of financial benefit to a director or a related party not otherwise regulated under this Law; and
 - (vi) if the board is satisfied that:
 - (A) to do so is in the best interest of the company;
 - (B) to do so is reasonable in the circumstances; and
 - (C) the payment or benefit or loan or guarantee or contract is on made on terms that are no worse than arm's length from the perspective of the company.
- (b) The board must ensure that forthwith after authorising the making of the payment or the provision of the benefit or the making of the loan or the giving of the guarantee or the entering into of the contract, as the case may be, particulars of the payment or benefit or loan or guarantee or contract are entered in the register of interests maintained by the company under section 189.
- (c) The payment of remuneration or the giving of any other benefit to a director or related party in accordance with a contract authorised under sub-section (a) need not be separately authorised under that sub-section.
- (d) Directors who vote in favour of authorising a payment, benefit, loan, guarantee, or contract under sub-section (a) must sign a certificate stating that, in their opinion, the making of the payment or the provision of the benefit, or the making of the loan, or the giving of the guarantee, or the entering into of the contract is in the best interest of the company, is reasonable in the circumstances, and is on terms that are no worse than arm's length from the perspective of the company, and the grounds for that opinion.
- (e) Where a payment is made or other benefit provided or a guarantee is given to which sub-section (a) applies and either:

- (i) the provisions of sub-sections (a) and (d) have not been complied with; or
- (ii) reasonable grounds did not exist for the opinion set out in the certificate given under sub-section (d),

the director or former director or related party to whom the payment is made or the benefit is provided, or in respect of whom the guarantee is given, as the case may be, is personally liable to the company for the amount of the payment, or the monetary value of the benefit, or any amount paid by the company under the guarantee, except to the extent to which he or she proves that the payment or benefit or guarantee was fair to the company at the time it was made, provided, or given.

- (f) Where a loan is made to which sub-section (a) applies and either:

- (i) the provisions of sub-sections (a) and (d) have not been complied with; or
- (ii) reasonable grounds did not exist for the opinion set out in the certificate given under sub-section (d),

the loan becomes immediately repayable to the company by the director or related party, notwithstanding the terms of any agreement relating to the giving of the loan, except to the extent to which he or she proves that the loan was fair to the company at the time it was given.

- (g) The directors must ensure that particulars of the payment or benefit or loan or guarantee or contract are disclosed to members at the next annual general meeting of the company.

188. Member approval of remuneration of directors and other benefits to directors and related parties

- (a) The board of a company may, subject to any restrictions contained in the constitution of the company, applicable provisions of this Law and any other applicable law, authorise a payment or benefit or loan or guarantee or contract of the kind referred to in sub-section 187(a) to a director or other related party of the company if it is approved by members under this section.
- (b) Before the notice convening the relevant meeting is given, the company must lodge:
 - (i) a proposed notice of meeting setting out the proposed resolution;
 - (ii) a proposed explanatory statement setting out all information known to the company that is material to the decision on how to vote on the resolution, including details of the director or related party receiving the payment or benefit or loan or guarantee or contract and details of such the payment or benefit or loan or guarantee or contract; and
 - (iii) any other document that is proposed to accompany the notice convening the meeting and that relates to the proposed resolution.
- (c) The Registrar will have 28 days to determine whether the company may release of the notice of meeting to members. If the Registrar determines that the notice may be sent, or a determination is not issued within this period, then the company may send the notice of meeting.

- (d) In making a determination under sub-section (c) the Registrar may require the company to clarify or vary any document submitted under sub-section (b) where this is considered reasonably necessary for the protection of members.
- (e) The Registrar may determine that the release of the notice of meeting must not occur if satisfied on reasonable grounds that the requirements of sub-section 188(b)(ii) have not been met or for similarly significant cause.
- (f) The director or relevant related party must not vote on the resolution at the general meeting (unless pursuant to a proxy from another person which directs them how to vote).
- (g) The company must lodge with the Registrar a copy of any resolution under sub-section (a) within 14 days after it is passed.

Information about directors and others

189. Register of directors and secretaries

- (a) Every company shall keep at its registered office or such other place where its register is kept a register of its of directors, any alternate directors and secretaries, containing with respect to each of them the following particulars:
 - (i) the director, alternate director or secretary's present name in full, any former name or surname in full, the individual's date of birth, the individual's usual residential address, the individual's nationality and any other nationality held by the individual (if any) and, the individual's business occupation, if any, and if the individual's holds any other directorship or directorships the particulars of such directorship or directorships;
 - (ii) any interests declared by a director under section 172; and
 - (iii) any benefits provided to a director under section 187.
- (b) Each director, alternate director and secretary, must provide the company with the particulars required to be entered on the register maintained under sub-section (a).
- (c) The company shall as part of its obligation to file an annual return under section 97 send the Registrar a return in the prescribed form containing the particulars specified in the said register. The company shall also file with the Registrar a notification in the prescribed form of any change among its directors, alternate directors or secretaries, or in any of the particulars contained in the register within 28 days of the date of the change.
- (d) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its constitution 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 a reasonable sum determined by the company for each inspection.
- (e) If any inspection required under this section is refused, the Court, on application made by the person to whom inspection has been refused and upon notice to the company, may by order direct an immediate inspection of the register.

Breaches of this Division

190. Consequences of breach of any requirement of this Division

- (a) If default is made in complying with the provisions of any section of this Division, every director and any other person subject to the applicable provision who is a party to the default shall be liable to a fine not exceeding 200 penalty units.
- (b) Without limiting sub-section (a), every director and any other person subject to the applicable provision of this Division who is knowingly and wilfully a party to the default may also be:
 - (i) subject to such additional fine or penalty as the Court may determine if the default has involved dishonesty on the part of the director or other person subject to the applicable provision; and
 - (ii) on the application of the Registrar, disqualified from acting as a director or other officer of a company for such period as may be determined by the Court.
- (c) This section does not limit any other liabilities of the director, any other person subject to the applicable provision of this Division or the company, or any actions which might be brought against them by any person, under this Law or any other applicable law, including under sections 193 and 200 below.

191. Reliance on information or advice

- (a) If the reasonableness of a director's or officer's reliance on information or professional or expert advice arises in proceedings brought to determine whether a director has breached a duty under this Division or an equivalent general law duty, the director's or officer's reliance on the information or advice is taken to be reasonable if:
 - (i) the information or advice was given or prepared by:
 - (A) an employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
 - (B) a professional adviser or expert in relation to matters that the director believes on reasonable grounds to be within the person's professional or expert competence;
 - (C) another director or officer in relation to matters within the director's or officer's authority; or
 - (D) a committee of directors on which the director did not serve in relation to matters within the committee's authority; and
 - (ii) the reliance was made in good faith and after making an independent assessment of the information or advice, having regard to the director's knowledge of the company and the complexity of the structure and operations of the company.
- (b) The presumption in sub-section (a) is rebuttable and may be disproved by the person bringing the proceedings.

Division 19: Members rights and remedies

Actions by members and others in cases of oppression

192. Oppressive conduct of affairs

The Court may make an order under section 193 if:

- (a) the conduct of a company's affairs;
- (b) an actual or proposed act or omission by or on behalf of a company; or
- (c) a resolution, or a proposed resolution, of members or a class of members of a company;

is either:

- (d) contrary to the interests of the members as a whole; or
- (e) oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a member or members whether in that capacity or in any other capacity.

For the purposes of this Division, a person to whom a share in the company has been transmitted by will or by operation of law is taken to be a member of the company.

193. Orders the Court can make

- (a) The Court can make any order under this section that it considers appropriate in relation to the company, including an order:
 - (i) that the company be wound up;
 - (ii) that the company's existing constitution be modified or repealed;
 - (iii) regulating the conduct of the company's affairs in the future;
 - (iv) for the purchase of any shares by any member or person to whom a share in the company has been transmitted by will or by operation of law;
 - (v) for the purchase of shares with an appropriate reduction of the company's share capital;
 - (vi) for the company to institute, prosecute, defend or discontinue specified proceedings;
 - (vii) authorising a member, or a person to whom a share in the company has been transmitted by will or by operation of law, to institute, prosecute, defend or discontinue specified proceedings in the name and on behalf of the company;
 - (viii) appointing a receiver of any or all of the company's property;
 - (ix) restraining a person from engaging in specified conduct or from doing a specified act;
 - (x) requiring a person to do a specified act; or
 - (xi) for damages.

- (b) If an order that a company be wound up is made under this section, the provisions of this Law relating to the winding up of companies apply with such changes as are necessary.
- (c) If an order made under this section repeals or modifies a company's constitution the company does not have the power under section 17 to change or repeal the constitution if that change or repeal would be inconsistent with the provisions of the order, unless permitted by the order or the company first obtains the leave of the Court.

194. **Who can apply for an order**

An application for an order under this section in relation to a company may be made by:

- (a) a member of the company, even if the application relates to an act or omission that is against:
 - (i) the member in a capacity other than as a member; or
 - (ii) another member in their capacity as a member;
- (b) a person who has been removed from the register of members because of a selective reduction;
- (c) a person who has ceased to be a member of the company if the application relates to the circumstances in which they ceased to be a member;
- (d) a person to whom a share in the company has been transmitted by will or by operation of law; or
- (e) a person whom the Registrar thinks appropriate having regard to investigations it is conducting or has conducted into:
 - (i) the company's affairs; or
 - (ii) matters connected with the company's affairs.

195. **Requirement to lodge order with the Registrar**

If an order is made under section 193, the applicant must lodge a copy of the order with the Registrar within 21 days after it is made.

Derivative actions

196. **Bringing, or intervening in, proceedings on behalf of a company**

- (a) A person may bring proceedings on behalf of a company, or intervene in any proceedings to which the company is a party for the purpose of taking responsibility on behalf of the company for those proceedings, or for a particular step in those proceedings (for example, compromising or settling them), if the person is:
 - (i) a member, former member, or person entitled to be registered as a member, of the company or of a related body corporate; or
 - (ii) a director, former director, officer or former officer of the company; and
 - (iii) acting with leave granted under section 197.

- (b) Proceedings brought on behalf of a company must be brought in the company's name.
- (c) The right of a person at general law to bring, or intervene in, proceedings on behalf of a company is abolished.

197. **Applying for and granting leave**

- (a) A person referred to in section 196(a)(i) may apply to the Court for leave to bring, or to intervene in, proceedings.
- (b) The Court must grant the application if it is satisfied that:
 - (i) it is probable that the company will not itself bring the proceedings, or properly take responsibility for them, or for the steps in them;
 - (ii) the applicant is acting in good faith;
 - (iii) it is in the best interests of the company that the applicant be granted leave;
 - (iv) if the applicant is applying for leave to bring proceedings—there is a serious question to be tried; and
 - (v) either:
 - (A) at least 14 days before making the application, the applicant gave written notice to the company of the intention to apply for leave and of the reasons for applying; or
 - (B) it is appropriate to grant leave even though sub-paragraph (A) is not satisfied.
- (c) A rebuttable presumption that granting leave is not in the best interests of the company arises if it is established that:
 - (i) the proceedings are:
 - (A) by the company against a third party; or
 - (B) by a third party against the company; and
 - (ii) the company has decided:
 - (A) not to bring the proceedings;
 - (B) not to defend the proceedings; or
 - (C) to discontinue, settle or compromise the proceedings; and
 - (iii) all of the directors who participated in that decision:
 - (A) acted in good faith for a proper purpose;
 - (B) did not have a material personal interest in the decision;
 - (C) informed themselves about the subject matter of the decision to the extent they reasonably believed to be appropriate; and

- (D) rationally believed that the decision was in the best interests of the company.
- (d) The director's belief that the decision was in the best interests of the company is a rational one unless the belief is one that a reasonable person in their position would not hold.
- (e) For the purposes of sub-section (c):
 - (i) a person is a third party if the person is not a related party of the company; and
 - (ii) proceedings by or against the company include any appeal from a decision made in proceedings by or against the company.

198. Substitution of another person for the person granted leave

- (a) Any of the following persons may apply to the Court for an order that they be substituted for a person to whom leave has been granted under section 197:
 - (i) a member, former member, or a person entitled to be registered as a member, of the company or of a related body corporate;
 - (ii) a director, former director, officer, or former officer, of the company.
- (b) The Court may make the order if it is satisfied that:
 - (i) the applicant is acting in good faith; and
 - (ii) it is appropriate to make the order in all the circumstances.
- (c) An order substituting one person for another has the effect that:
 - (i) the grant of leave is taken to have been made in favour of the substituted person; and
 - (ii) if the other person has already brought the proceedings or intervened—the substituted person is taken to have brought those proceedings or to have made that intervention.

199. Effect of ratification by members

- (a) If the members of a company ratify or approve conduct, the ratification or approval:
 - (i) does not prevent a person from bringing or intervening in proceedings with leave under section 197, or from applying for leave under that section; and
 - (ii) does not have the effect that proceedings brought or intervened in with leave under section 197 must be determined in favour of the defendant, or that an application for leave under that section must be refused.
- (b) If members of a company ratify or approve conduct, the Court may take the ratification or approval into account in deciding what order or judgment (including as to damages) to make in proceedings brought or intervened in with leave under section 197 or in relation to an application for leave under that section. In doing this, it must have regard to:
 - (i) how well informed about the conduct the members were when deciding whether to ratify or approve the conduct; and

- (ii) whether the members who ratified or approved the conduct were acting for proper purposes.

200. **General powers of the Court**

- (a) The Court may make orders, and give directions, that it considers appropriate in relation to proceedings brought or intervened in with leave, or an application for leave, including:
 - (i) interim orders;
 - (ii) directions about the conduct of the proceedings, including requiring mediation;
 - (iii) an order directing the company, or an officer of the company, to do, or not to do, any act; and
 - (iv) an order appointing an independent person to investigate, and report to the Court on:
 - (A) the financial affairs of the company;
 - (B) the facts or circumstances which gave rise to the cause of action the subject of the proceedings; or
 - (C) the costs incurred in the proceedings by the parties to the proceedings and the person granted leave.
- (b) A person appointed by the Court under sub-section (a)(iv) is entitled, on giving reasonable notice to the company, to inspect any books of the company for any purpose connected with their appointment.
- (c) If the Court appoints a person under sub-section (a)(iv):
 - (i) the Court must also make an order stating who is liable for the remuneration and expenses of the person appointed;
 - (ii) the Court may vary the order at any time;
 - (iii) the persons who may be made liable under the order, or the order as varied, are:
 - (A) all or any of the parties to the proceedings or application; and
 - (B) the company; and
 - (iv) if the order, or the order as varied, makes 2 or more persons liable, the order may also determine the nature and extent of the liability of each of those persons.
- (d) Sub-section (c) does not affect the powers of the Court as to costs.

201. **Power of the Court to make costs orders**

The Court may at any time make any orders it considers appropriate about the costs of the following persons in relation to proceedings brought or intervened in with leave under section 197 or an application for leave under that section:

- (a) the person who applied for or was granted leave;

- (b) the company; and
- (c) any other party to the proceedings or application.

An order under this section may require indemnification for costs.

Division 20: Matters relating to share offers by public companies

Prospectus

202. Application of this Division

- (a) Save for sub-section (b), this Division applies in respect of public companies and any proposed offer of their shares or other securities to the public. It applies without limitation to any other provision of this Law or other applicable law, and it may apply subject to such applicable laws.
- (b) A company, other than a public company, must not offer its shares or other securities to the public or allot or agree to allot any securities of the company with a view to their being offered to the public.

203. Filing of prospectus

- (a) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.
- (b) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorized in writing, shall be filed for registration with the Registrar on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.
- (c) The Registrar shall not register any prospectus unless it is dated and the copy thereof signed, in manner required by this section.
- (d) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

204. If a prospectus is issued without a copy thereof being so filed in accordance with section 203, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding 200 penalty units.

205. Specific requirements as to particulars of prospectus

- (a) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, shall state:
 - (i) the contents of the constitution, with the names, descriptions, nationality, and addresses of the initial shareholders and the number of shares subscribed for by them respectively; and the number of founders or management or deferred shares (if any) and the nature and extent of the interest of the holders in the property and profits of the company, and the number of redeemable preference shares intended to be issued with the date or, where no date is fixed, the period of notice required and the proposed method of redemption;

- (ii) the number of shares fixed by the constitution as the qualification of a director, if any, and any provision in the constitution as to the remuneration of the directors;
- (iii) the names, descriptions, nationality and addresses of the directors or proposed directors and of the officers or proposed officers, and any provision in the constitution or in any contract as to the appointment of officers and the remuneration payable to them;
- (iv) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares the number of shares and amount offered for subscription on each previous allotment made within the two preceding years, and the number of shares actually allotted, and the amount paid on the shares so allotted;
- (v) the number and amount of shares and debentures and other securities which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up in cash or otherwise, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures or other securities have been issued or agreed to be issued;
- (vi) where any issue of shares or debentures or other securities is underwritten, the names of the underwriters, and the opinion of the directors that the resources of the underwriters are sufficient to discharge the underwriting obligations;
- (vii) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, and the amount payable in cash, shares or debentures or other securities to the vendor, and, where there is more than one separate vendor or the company is a sub-purchaser, the amount so payable to each vendor:

Provided that where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors;

- (viii) where any property referred to in clause (vii) has within the two years preceding the issue of the prospectus been transferred by sale, the amount paid by the purchaser at each such transfer and, where any such property is a business, the profits accruing from such business during each of the three years immediately preceding the issue of the prospectus, or during each year of the existence of the business if less than three years. A balance sheet of the business concerned made up to a date not more than 90 days before the date of the issue of the prospectus shall be appended to the prospectus;
- (ix) the amount (if any) paid or payable as purchase-money, in cash, shares, debentures or other securities, for any such property as aforesaid, specifying the amount (if any) payable for goodwill;
- (x) the amount (if any) paid within the two preceding years or payable as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure, subscriptions for any shares in, or debentures or other securities of, the

company, or as discount in respect of shares issued: Provided that it shall not be necessary to state the commission payable to sub-underwriters;

- (xi) the amount or estimated amount of preliminary expenses;
- (xii) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment;
- (xiii) the dates of, and parties to, every material contract including contracts relating to the acquisition of property to which clause (vii) applies, and a reasonable time and place at which any material contract or a copy thereof may be inspected:

Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two years before the date of issue of the prospectus;

- (xiv) the names and addresses of the auditors (if any) of the company;
 - (xv) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm, in cash or shares or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company;
 - (xvi) where the company has shares of more than one class, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively; and
 - (xvii) where the constitution of the company imposes any restrictions upon the members of the company in respect of the right to attend, speak or vote at meetings of the company or of the right to transfer shares, or upon the directors of the company in respect of their powers of management, the nature and extent of those restrictions.
- (b) Where the prospectus is issued by a company which has been carrying on business prior to the issue thereof, the prospectus shall set out the following reports in addition to the matters referred to in sub-section (a), namely:
- (i) a report by the auditors of the company with respect to the profits of the company including its subsidiaries, if any, in each of the three financial years immediately preceding the issue of the prospectus and with respect to the rates of the dividends, if any, paid by the company on each class of shares in the company for each of the said three years, giving particulars of each such class of shares on which such dividends have been paid and the source from which the dividends have been paid and particulars of the cases in which no dividends have been paid on any class of shares for any of those years, and if no accounts have been made up for any part of a period of three years ending on a date three months before the issue of the prospectus, containing a statement of that fact; and

- (ii) if the proceeds or any part of the proceeds of the issue of the shares or debentures or other securities are or is to be applied directly or indirectly in the purchase of any business, a report made by an accountant or accountants holding the certificate referred to in section 279, who shall be named in the prospectus, upon the profits of the business in respect of each of the three financial years immediately preceding the issue of the prospectus:

Provided that if, in the case of a company which has been carrying on business for less than three years, the accounts of the company have been made up only in respect of two years or any shorter period, this sub-section shall have effect as if references to two years or such shorter period were substituted for references to three years.

- (c) Subject to other applicable laws, the statement referred to in clause (viii) of sub-section (a) and the report referred to in sub-section (b) with respect to the profits of a company or business shall show clearly the trading results and all charges and expenses incidental thereto, excluding income or profits having no relation to the trading for the period covered and excluding also items of profit or income of a non-recurring nature, but including amounts appropriated from profits to such purposes as payment of taxation or reserves.
- (d) Where any part of the sums required for the matters set out in sub-section 215(b) is to be provided out of sources other than share capital, particulars of the amount to be so provided and the sources thereof.
- (e) Where any such prospectus mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the constitution, or the initial shareholders, and the number of shares subscribed for by them.
- (f) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for debentures or for other securities of the company, whether with or without the right to renounce in favour of other persons.
- (g) The requirements of this section as to the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business:

Provided that the requirement as to the amount or estimated amount of preliminary expenses, shall apply to a prospectus filed in respect of a company which has been converted from a private company.
- (h) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Law apart from this section.

206. Application of section 205 to the case of property taken on lease

Where any of the property to be acquired by the company is to be taken on lease, section 205 shall apply as if the expression “vendor” included the lessor, and the expression “purchase-money” included the consideration for the lease, and the expression “sub-purchaser” included a sub-lessee.

207. Invalidity of certain conditions as to waiver or notice

- (a) Any condition requiring or binding any applicant for shares or debentures or other securities to waive compliance with any requirements of section 205, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.
- (b) It shall not be lawful to issue any form of application for the shares in or debentures or other securities of a company unless the form is issued with a prospectus which complies with the requirements of section 205:

Provided that this sub-section shall not apply if it is shown that the form of application was issued either:

- (i) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or
- (ii) in relation to shares or debentures or other securities which were not offered to the public.

208. If any person acts in contravention of the provisions of sub-section 207(b), he shall be liable to a fine not exceeding 200 penalty units.

Non-compliance with section 205

209. If a prospectus is issued which does not comply with the provisions of section 205, every person who is knowingly responsible for the issue of such prospectus shall be liable to a fine not exceeding 200 penalty units.

210. In the event of non-compliance with or contravention of any of the requirements of section 205, a director or other person responsible for the prospectus shall not incur any liability by reason of the noncompliance or contravention if the director or other person proves that:

- (a) as regards any matter not disclosed, the director or other person was not cognisant thereof;
- (b) the non-compliance or contravention arose from an honest mistake of fact on the director's or other person's part; or
- (c) the non-compliance or contravention was in respect of matters which in the opinion of the Court were immaterial, or was otherwise such as ought in the opinion of the Court having regard to all the circumstances of the case, reasonably to be excused.

Provided that, in the event of non-compliance with or contravention of the requirements contained in clause (xvi) of sub-section (a) of section 205, no such director or other person shall incur any liability in respect of the non-compliance or contravention unless it be proved that the director or other person had knowledge of the matters not disclosed.

211. Obligations of companies where no prospectus is issued

- (a) A company which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures or other securities unless before the first allotment of shares or debentures or other securities there has been filed with the Registrar a statement in lieu of prospectus, signed by every person who is named therein as a director

or a proposed director of the company or by his agent authorized in writing, in the form and containing the particulars prescribed by the Union Minister for such purpose.

- (b) This section applies without limitation to any other provision of this Law.

212. **Document offering shares or debentures or other securities for sale to be deemed a prospectus**

- (a) Where a company to which this Division applies allots or agrees to allot any shares in or debentures or other securities of the company with a view to all or any of those shares or debentures or other securities being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.
- (b) For the purposes of this Law it shall, unless the contrary is proved, be evidence that an allotment of or an agreement to allot shares or debentures or other securities was made with a view to the shares or debentures or other securities being offered for sale to the public, if it is shown:
- (i) that an offer of the shares or debentures or other securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or
- (ii) that at the date when the offer was made the whole of the consideration to be received by the company in respect of the shares or debentures or other securities had not been so received.
- (c) Sections 209 and 210 shall apply to the person or persons making the offer as though they were persons named in a prospectus as directors of a company, and the provisions of section 205 shall have effect as if it required a prospectus to state, in addition to the matters required by that section to be stated in a prospectus:
- (i) the net amount of the consideration received or to be received by the company in respect of the shares or debentures or other securities to which the offer relates; and
- (ii) the place and time at which the contract under which the said shares or debentures or other securities have been or are to be allotted may be inspected.
- (d) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by all directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorized in writing.

213. **Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus**

A company shall not, at any time, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the company in general meeting.

214. **Liability for statements in prospectus**

(a) Where a prospectus invites persons to subscribe for shares in or debentures or other securities of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorized the naming of himself and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorized the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures or other securities on the faith of the prospectus for all loss or damage they may have sustained by reason of any misleading or untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved:

- (i) with respect to every misleading or untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures or other securities, as the case may be, believe that the statement fairly represented the facts or was true;
- (ii) with respect to every misleading or untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation:

Provided that the director, person named as director, promoter or person who authorized the issue of the prospectus shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report or valuation was competent to make it

- (iii) with respect to every misleading or untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document; or
- (iv) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent;
- (v) that the prospectus was issued without his knowledge or consent, and that, on becoming aware of its issue, he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
- (vi) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any misleading or untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal and of the reason therefor.

- (b) Where a company existing at the commencement of the previous law has issued shares or debentures or other securities, and for the purpose of obtaining further capital by subscriptions for shares or debentures or other securities issues a prospectus, a director shall not be liable in respect of any statement therein unless he has authorized the issue of the prospectus, or has adopted or ratified it.
- (c) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any suit or legal proceedings brought against him in respect thereof.
- (d) Every person who, by reason of his being a director or named as a director or as having agreed to become a director, or of his having authorized the issue of the prospectus, becomes liable to make any payment under this section, may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

Allotment

215. Restriction as to allotment

- (a) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which in the opinion of the directors must be raised by the issue of share capital in order to provide the sums required to be provided in respect of the matters specified in sub-section (b), or such other amount prescribed by the Union Minister, has been subscribed, and the sum of at least five per cent or such other percentage prescribed by the Union Minister, thereof has been paid to or received in cash by the company.
- (b) The matters for which provision for the raising of a minimum amount of share capital must be made by the directors are the following, namely:
 - (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
 - (ii) any preliminary expenses payable by the company and any commission so payable to any person in consideration of his agreeing to subscribe for or of his procuring or agreeing to procure subscriptions for any shares in the company;
 - (iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters; and
 - (iv) working capital.
- (c) The amount referred to in sub-section (a) as the amount stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Law referred to as the minimum subscription.

- (d) All moneys received from applicants for shares shall be deposited and kept in a scheduled bank until returned in accordance with the provisions of sub-section (f) or until the certificate to commence business is obtained under section 218.
 - (e) The amount payable on application on each share shall not be less than five per cent of the amount of the share.
 - (f) If the conditions aforesaid have not been complied with on the expiration of 180 days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within 190 days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the prescribed rate from the expiration of the 190th day: Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.
 - (g) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.
 - (h) This section, except sub-section (e) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.
216. In the event of any contravention of the provisions of sub-section 215(d) every promoter, director or other person knowingly responsible for such contravention shall be liable to a fine not exceeding 20 penalty units.
217. **Effect of irregular allotment**
- (a) An allotment made by a company to an applicant in contravention of the provisions of section 215 shall be voidable at the instance of the applicant within 28 days after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting, within 28 days after the date of the allotment and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.
 - (b) If any director of a company knowingly contravenes or permits or authorizes the contravention of any of the provisions of section 215 with respect to allotment, the director shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.
218. **Restrictions on commencement of business**
- (a) A company to which this Division applies shall not commence any business or exercise any borrowing powers unless:
 - (i) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription;
 - (ii) every director of the company has paid to the company on each of the shares taken or contracted to be taken by them, and for which the director is liable to pay in cash, a proportion equal to the proportion payable on application and allotment

on the shares offered for public subscription or, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash;

- (iii) there has been filed with the Registrar a duly verified declaration by the secretary or one of the directors in the prescribed form that the aforesaid conditions have been complied with; and
- (iv) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the Registrar a statement in lieu of prospectus.

- (b) The Registrar shall, on the filing of a duly verified declaration in accordance with the provisions of this section, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled:

Provided that, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, the Registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

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

219. If any company commences business or exercises borrowing powers in contravention of section 218, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding 20 penalty units.

Commissions and Discounts

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

- (a) It shall be lawful for a company to which this Division applies to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission is authorized by the constitution of the company and the commission paid or agreed to be paid does not exceed the amount or rate so authorized, and if the amount or rate per cent. of the commission paid or agreed to be paid is:
 - (i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or
 - (ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus in the prescribed form signed and filed with the Registrar, and where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice.
- (b) Except as provided in sub-section (a) and section 221, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or

procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase-money of any property acquired by the company or to the contracted price of any work to be executed for the company, or the money be paid out of the nominal purchase-money or contracted price, or otherwise.

221. No restriction on lawful payments

Nothing in section 220 shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under section 220.

222. Statement in balance sheet as to commissions and discounts

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

Division 21: Share offers by corporations incorporated outside the Union

223. Restriction on sale and offer for sale of shares

- (a) It shall not be lawful for any person:
- (i) to make any public offer of shares, debentures or other securities, or issue, circulate or distribute in the Union any prospectus offering for subscription or sale of shares in or debentures or other securities, of a corporation incorporated or to be incorporated outside the Union, whether the corporation has or has not established, or when formed will or will not establish, a place of business in the Union and register as an overseas corporation under this Law, unless:
 - (A) before the making of the offer or issue, circulation or distribution of the prospectus in the Union a copy thereof, certified by at least two directors of the corporation as having been approved by resolution of the managing body, has been delivered for registration to the Registrar;
 - (B) the prospectus states on the face of it that the copy has been so delivered;
 - (C) the prospectus is dated; and
 - (D) the prospectus otherwise complies with this Division; or
 - (ii) to issue to any person in the Union a form of application for shares in or debentures or other securities of such a corporation or intended corporation as aforesaid, unless the form is issued with a prospectus which complies with this Division:

Provided that this provision shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures or other securities.

- (b) This section shall not apply to the issue to existing members or debenture holders of a corporation of a prospectus or form of application relating to shares in or debentures or other securities of the corporation, whether an applicant for shares or debentures or other securities will or will not have the right to renounce in favour of other persons, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a corporation or subsequently.
 - (c) Where any document by which any shares in or debentures or other securities of a corporation incorporated outside the Union are offered for sale to the public would, if the corporation concerned had been a company within the meaning of this Law, have been deemed by virtue of section 212 to be a prospectus issued by the corporation, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the corporation.
 - (d) An offer of shares or debentures or other securities for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures or other securities, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.
 - (e) In sections 223 to 227 (inclusive), the expressions “prospectus”, “shares” and “debentures” and “securities” have the same meanings as when used in relation to a company incorporated under this Law.
224. Any person who is knowingly responsible for the public offer or issue, circulation or distribution of any prospectus, or for the issue of a form of application for shares or debentures or other securities, in contravention of the provisions of section 223 shall be liable to a fine not exceeding 200 penalty units.
225. **Requirements as to prospectus**
- (a) In order to comply with this Division a prospectus, in addition to complying with the provisions of sub-sections 223(a)(i)(B) and (C), must –
 - (i) contain particulars with respect to the following matters:
 - (A) the objects of the corporation;
 - (B) the instrument constituting or defining the constitution of the corporation;
 - (C) the enactments or provisions having the force of an enactment, by or under which the incorporation of the corporation was effected;
 - (D) an address in the Union where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof in the English language certified in the prescribed manner, can be inspected;
 - (E) the date on which and the country in which the corporation was incorporated; and
 - (F) whether the corporation has established a place of business in the Union and registered as an overseas corporation under this Law and, if so, the address of its principal office in the Union:

- (ii) subject to the provisions of this section, state the matters specified in sub-section 205(b) and set out the reports specified in that section:

Provided that:

- (A) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the corporation if the advertisement specifies the primary object with which the corporation was formed, and
 - (B) in section 205 of this Law a reference to the constitution of the company shall be deemed to be a reference to the constitution of the corporation.
- (b) Any condition requiring or binding any applicant for shares or debentures or other securities to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.
 - (c) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if:
 - (i) as regards any matter not disclosed, the director or other person proves that they were not cognizant thereof;
 - (ii) director or other person proves that the non-compliance or contravention arose from an honest mistake of fact on their part; or
 - (iii) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that in the event of failure to include in a prospectus a statement with respect to the matters specified in clause (xvi) of sub-section 205(a), no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.
 - (d) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Law, apart from this section.

226. Restriction on canvassing for sale of shares

- (a) It shall not be lawful for any person to go from house to house offering shares, debentures or other securities of a corporation incorporated outside the Union for subscription or purchase to the public or any member of the public.
- (b) In this section the expression “house” shall not include an office used for business purposes.

227. Any person acting in contravention of section 226 shall be liable to a fine not exceeding 200 penalty units.

Division 22: Mortgages and charges granted by a company

228. Power to grant Mortgages and Charges

- (a) Subject to its constitution and other applicable laws, and without limiting any other powers it may have under this Law or other applicable law, a company shall have the power to create and grant mortgages and charges of the kind specified in section 229, and the Registrar must register such mortgages and charges on submission of them by the company or mortgagee or chargee (or person acting on their behalf) in accordance with section 234.
- (b) Neither:
- (i) the grant of a mortgage or charge referred to in section 229; or
 - (ii) the exercise of rights by or on behalf of the mortgagee or chargee under such a mortgage or charge to realise the value of any property secured by the mortgage or charge,

shall be taken to breach, nor be restricted by the Transfer of Immovable Property Restrictions Law 1987, or the provisions of any other applicable law having a similar effect.

Information as to Mortgages, Charges, etc.

229. Certain mortgages and charges to be void if not registered

- (a) Every mortgage or charge created after the commencement of the previous law by a company and being either:
- (i) a mortgage or charge for the purpose of securing any issue of debentures;
 - (ii) a mortgage or charge on uncalled share capital of the company;
 - (iii) a mortgage or charge on any immovable property wherever situate, or any interest therein;
 - (iv) a mortgage or charge on any book debts of the company;
 - (v) a mortgage or a charge, not being a pledge on any moveable property of the company except stock-in-trade; or
 - (vi) a floating charge on the undertaking or property of the company;

shall, subject to sub-section (b), so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, or a copy thereof verified in the prescribed manner, are filed with the Registrar for registration in manner required by this Law within 28 days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section, the money secured thereby shall immediately become payable.

- (b) Sub-section (a) shall apply subject to the following:

- (i) in the case of a mortgage or charge created out of the Union, comprising solely property situate outside the Union, 28 days after the date on which the instrument or copy could, in due course of post and if despatched with due diligence, have been received in the Union shall be substituted for 28 days after the date of the creation of the mortgage or charge as the time within which the particulars and instrument or copy are to be filed with the Registrar;
 - (ii) where the mortgage or charge is created in the Union but comprises property outside the Union, the instrument creating or purporting to create the mortgage or charge or a copy thereof verified in the prescribed manner may be filed for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate;
 - (iii) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts; and
 - (iv) the holding of debentures entitling the holder to a charge on immoveable property shall not be deemed to be an interest in immoveable property.
- (c) Where any mortgage or charge on any property of a company required to be registered under this section has been so registered, any person acquiring such property or any part thereof, or any share or interest therein, shall be deemed to have notice of the said mortgage or charge as from the date of such registration.

230. Registration of charges on properties acquired subject to charge

A company registered in the Union acquires any property which is subject to a charge or mortgage of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Division, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the Registrar for registration in manner required by this Law within 28 days after the date on which the acquisition is completed:

Provided that, if the property is situate and the charge was created outside the Union, 28 days after the date on which the copy of the instrument could, if despatched with due diligence, have been received in the Union shall be substituted for 28 days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the Registrar.

231. If default is made in complying with section 230, the company and every director or other officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding 2 penalty units.

232. Particulars in case of series of debentures entitling holders *pari passu*

Where a series of debentures containing or giving by reference to any other instrument any charge to the benefit of which the debenture-holders of that series are entitled *pari passu* is created by a company, it shall be sufficient for the purposes of section 229 if there are filed with

the Registrar within 28 days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars:

- (a) the total amount secured by the whole series;
- (b) the dates of the resolution authorizing the issue of the series and the date of the covering deed (if any) by which the security is created or defined;
- (c) a general description of the property charged; and
- (d) the names of the trustees (if any) for the debenture-holders; together with the deed or a copy thereof verified in the prescribed manner containing the charge, or if there is no such deed, one of the debentures of the series, and the Registrar shall, on payment of the prescribed fee, enter those particulars in the register:

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

233. Particulars in case of commission, etc., on debentures

Where any commission, allowance or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be filed for registration under sections 229 and 232 shall include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued:

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

234. Register of mortgages and charges

- (a) The Registrar shall keep, with respect to each company, a register of all mortgages and charges created by the company after the commencement of this Law and requiring registration under section 229, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.
- (b) After making the entry required by sub-section (a), the Registrar shall return the instrument (if any) or the verified copy thereof, as the case may be, filed in accordance with the provisions of section 229 or section 232, to the person filing the same.
- (c) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee.

235. Index to register of mortgages and charges

The Registrar shall keep a chronological index, with the prescribed particulars, of the mortgages or charges registered under this Law.

236. **Certificate of registration**

The Registrar shall give a certificate of the registration of any mortgage or charge registered in pursuance of section 229, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of sections 229 to 234 (inclusive) as to registration have been complied with.

237. **Endorsement of certificate of registration on debenture or certificate of debenture stock**

The company shall cause a copy of every certificate of registration, given under section 236, to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered:

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

238. **Duty of company and right of interested party as regards registration**

- (a) It shall be the duty of the company to file with the Registrar for registration the prescribed particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under section 229, but registration of any such mortgage or charge may be effected on the application of any person interested therein.
- (b) Whenever the terms or conditions or extent or operation of any mortgage or charge registered under this section are modified, it shall be the duty of the company to send to the Registrar the particulars of such modification, and the provisions of this section as to registration of a mortgage or a charge shall apply to such modification of the mortgage or charge as aforesaid.

239. **Copy of instrument creating mortgage or charge to be kept at registered office**

Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under section 229 to be kept at the registered office of the company: Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

240. **Registration of appointment of receiver**

If any person obtains an order for the appointment of a receiver of the property of a company, or appoints such a receiver under any powers contained in any instrument, he shall, within 28 days from the date of the order or of the appointment under the powers contained in the instrument, file notice of the fact with the Registrar, and the Registrar shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges.

241. If any person makes default in complying with the requirements of section 240, he shall be liable to a fine not exceeding 2 penalty units.

242. **Filing of accounts of receivers**

- (a) Every receiver of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall once in every half-year while he remains in possession, and also on ceasing to act as receiver, file with the Registrar an abstract in the prescribed form of his receipts and payments during the period

to which the abstract relates, and shall also, on ceasing to act as receiver, file with the Registrar notice to that effect, and the Registrar shall enter the notice in the register of mortgages and charges.

- (b) Where a receiver of the property of a company has been appointed, every invoice, order for goods, or business letter issued by or on behalf of the company, or the receiver of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.

243. If default is made in complying with the requirements of section 242, the company, and every director or other officer of the company, and every receiver, who knowingly and wilfully authorizes or permits the default, shall be liable to a fine not exceeding 5 penalty units.

244. **Rectification of register of mortgages**

- (a) The Court, on being satisfied that the omission to register a mortgage or charge within the time required by section 229, or that the omission or misstatement of any particular with respect to any such mortgage or charge, or the omission to give intimation to the Registrar of the payment or satisfaction of a debt for which a charge or mortgage was created, was accidental or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or share-holders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified, and may make such order as to the costs of the application as it thinks fit.
- (b) Where the Court extends the time for the registration of a mortgage or charge, the order shall not prejudice any rights acquired in respect of the property concerned prior to the time when the mortgage or charge is actually registered

245. **Registration of satisfaction of mortgages and charges**

- (a) It shall be the duty of the company to give notice to the Registrar of the payment or satisfaction of any charge or mortgage created by the company and requiring registration under section 229 within 28 days from the date of the payment or satisfaction thereof, together with written notice by the mortgagee or chargee that payment or satisfaction of the charge or mortgage may be recorded.
- (b) Upon receipt of a notice in accordance with sub-section (a), the Registrar shall, if no cause is shown, enter a notice of satisfaction on the register and shall if required furnish the company with a copy thereof.

246. **Penalties**

- (a) If any company defaults in filing with the Registrar for registration the particulars:
 - (i) of any mortgage or charge created by the company; or
 - (ii) of the payment or satisfaction of a debt in respect of which a mortgage or charge has been registered under section 229 or section 230; or

- (iii) of the issues of debentures of a series, requiring registration with the Registrar under the foregoing provisions of this Law,

then, unless the registration has been effected on the application of some other person, the company, and every director and other officer of the company or other person who is knowingly a party to the default, shall be liable to a fine not exceeding 2 penalty unit.

- (b) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Law as to the registration with the Registrar of any mortgage or charge created by the company, the company, and every director and other officer of the company who knowingly and wilfully authorizes or permits the default, shall, without prejudice to any other liability, be liable to a fine not exceeding 2 penalty unit.
- (c) If any person knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock requiring registration with the Registrar under the foregoing provisions of this Law without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable to a fine not exceeding 2 penalty unit.

247. Company's register of mortgages and charges

Every company shall keep a register of mortgages and charges and enter therein all mortgages and charges specifically affecting property of the company and all floating charges on the undertaking or on any property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge and the names of the mortgagees or persons entitled thereto.

248. If any director or other officer of the company knowingly and wilfully authorizes or permits the omission of any entry required to be made in pursuance of section 247, he shall be liable to a fine not exceeding 2 penalty units.

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

The copies kept at the registered office of the company in pursuance of section 239 of instruments creating any mortgage or charge requiring registration under this Law with the Registrar, and the register of mortgages and charges kept in pursuance of section 247, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages and charges shall also be open to the inspection of any other person on payment of such reasonable fee as the company may prescribe.

250. If an inspection of the copies or register under section 249 is refused, the company shall be liable to a fine not exceeding 3 penalty units, and every director or other officer of the company who knowingly authorizes or permits the refusal shall incur the same penalty, and in addition to the above penalty, the Court may by order compel an immediate inspection of the copies or register.

251. Right to inspect the register of debenture-holders and to have copies of trust-deed

- (a) Every register of holders of debentures of a company shall, except when closed in accordance with the constitution during such period or periods (not exceeding in the whole 30 days in any year) as may be specified in the constitution, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in

the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of such reasonable fee as the company may prescribe.

- (b) A copy of any trust-deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment of the reasonable sum as may be prescribed by the company.

252. If inspection is refused, or a copy is refused or not forwarded as required under section 251, the company shall be liable to a fine not exceeding 3 penalty units, and every director and other officer of the company who knowingly authorizes or permits the refusal shall incur the same penalty, and the Court may by order compel an immediate inspection of the register.

Floating Charges

253. **Payments of certain debts out of assets subject to floating charge in priority to claim under the charge**

- (a) Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture-holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.
- (b) The periods of time mentioned in the said provisions of Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.
- (c) Any payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

Division 23: Appointment of receivers, keeping of book and registration of charges granted by corporations incorporated outside the Union

254. **Registration of charges**

The provisions of sections 228 to 239 (inclusive), and 244 to 251 (inclusive), shall extend to charges on properties in the Union which are created and to charges on property in the Union, by a corporation incorporated outside the Union which has an established place of business in the Union and which is registered as an overseas corporation under this Law.

255. **Notice of appointment of receiver**

The provisions of sections 240 and 242 (inclusive) shall *mutatis mutandis* apply to the case of all corporations incorporated outside the Union but having an established place of business in the Union and which is registered as an overseas corporation under this Law.

256. Keeping of books and records

The provisions of section 258 shall *mutatis mutandis* apply to the case of all corporations incorporated outside the Union but having an established place of business in the Union and which is registered as an overseas corporation under this Law to the extent of requiring them to keep at their principal place of business in the Union the financial records required by that section with respect to money received and expended, sales and purchases made, and assets and liabilities in relation to its business in the Union.

Division 24: Financial Reports and Audit

257. Application of this Division

- (a) The:
- (i) books of account to be maintained;
 - (ii) the financial statements and reports to be provided to members;
 - (iii) the accounting standards to be followed in maintaining such books of account and reports; and
 - (iv) the auditing standards to be followed in the audit of such accounts,
- under this Division will apply subject to the requirements of or made under the Myanmar Accountancy Council Law and any other applicable law.
- (b) In the case of any conflict between the requirements of or made under this Division and those of or made under the Myanmar Accountancy Council Law, the requirements of or made under the Myanmar Accountancy Council Law will prevail.
- (c) Sections 260 to 268 (inclusive) and 279(e)279(b) do not apply to a small company unless:
- (i) the constitution of the company applies those sections or includes any similar requirements;
 - (ii) the members determine to apply those sections by passing an ordinary resolution; or
 - (iii) the Registrar determines that they should apply.

Statements, Books and Accounts

258. Records to be kept by company for preparation of financial statements

- (a) Every company shall cause to be maintained written financial records to enable the preparation of financial statements in Myanmar language or English language in accordance with applicable accounting standards with respect to:
- (i) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
 - (ii) all sales and purchases of goods by the company;
 - (iii) the assets and liabilities of the company; and

- (iv) any other financial matters prescribed in or under this Law or other applicable law.
 - (b) The records shall be kept at the registered office of the company or at such other place as the directors think fit, and shall be open to inspection by the directors during business hours.
259. Any director or other officers who have knowingly by their act or omission been the cause of any default by the company in complying with the requirements of section 258 shall in respect of such offence be liable to a fine not exceeding 15 penalty units.

260. **Annual balance-sheet**

- (a) The directors of every company to which this section applies 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 financial statements required by this Law or other applicable law, including a balance-sheet and 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 outside the Union by more than twelve months:

Provided that the Registrar may for any special reason extend the period by a period not exceeding three months.

- (b) The financial statements shall be audited by the auditor of the company as hereinafter provided, and the auditor's report shall be attached thereto, or there shall be inserted at the foot thereof a reference to the report, and the report shall be laid before the company in general meeting and shall be open to inspection by any member of the company.
- (c) Every company to which this section applies shall send a copy of such financial statements, so audited, together with a copy of the auditors' report, to the registered address of every member of the company with the notice calling the meeting at which it is to be laid before the members of the company, and shall deposit a copy at the registered office of the company for the inspection of the members of the company during a period of at least 21 days before that meeting. Without limiting this Law or any other applicable law, the company's constitution may provide for the electronic delivery of the financial statements to members under this section.

261. **Directors' report**

- (a) The directors of any company to which this section applies shall make out and include with the financial statements a report 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 any Reserve Fund, General Reserve or Reserve Account shown specifically on the balance-sheet, or to a Reserve Fund, General Reserve or Reserve Account to be shown specifically in any subsequent balance-sheet provided with any subsequent financial statements.
- (b) The report referred to in sub-section (a) must include a fair review of the company's business, including a description of the company's primary business, an analysis of the company's performance during the year, a description of risks and uncertainties facing the

company and any other matters which may be prescribed. The report may be signed by the chairman of the directors on behalf of the directors if authorized in that behalf by the directors.

- (c) The provisions of section 259 shall apply to any person being a director or other officer who is knowingly and wilfully guilty of a default in complying with this section.

262. **Contents of balance-sheet**

- (a) The balance-sheet included with the financial statements of any company to which this section applies shall contain a summary of the property and assets and of the capital and liabilities of the company, giving such particulars as will disclose the general nature of those liabilities and assets and how the value of the fixed assets has been arrived at.
- (b) The balance-sheet shall be in the form required by the applicable accounting standards or in such other form as required to comply with any applicable law.
- (c) The profit and loss account included with the financial statements of any company to which this section applies shall include particulars showing the total of the amount paid, whether as fees, percentages or otherwise, to the directors, respectively, as remuneration for their services, and, where a special resolution passed by the members of the company so requires, to any officer, and the total of the amount written off for depreciation. If any director of the company is by virtue of the nomination, whether direct or indirect, of the company, a director of any other company, any remuneration or other emoluments received by him for his own use, whether as a director of, or otherwise in connection with the management of, that other company, shall be shown in a note at the foot of the account or in a statement attached thereto.

263. **Balance-sheet to include particulars as to subsidiaries**

- (a) Where a company to which this section applies is a holding company there shall be annexed to the balance-sheet of the holding company the last audited balance-sheet, profit and loss account and auditors' report of the subsidiary or subsidiaries required to be prepared under this Law or other applicable law, and a statement signed by the persons by whom, in pursuance of section 264, the balance-sheet of the holding company is signed, stating how the profits and losses of the subsidiary, or, where there are two or more subsidiaries, the aggregate profits and losses of those companies, have been dealt with in or for the purposes of the accounts of the holding company, and in particular how and to what extent:
 - (i) provision has been made for the losses of a subsidiary either in the accounts of that company or of the holding company or of both, and
 - (ii) losses of a subsidiary have been taken into account by the directors of the holding company in arriving at the profits and losses of the company as disclosed in its accounts:

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner:

Provided further that for the purposes of this section an investment company, that is to say, a company whose principal business is the acquisition and holding of

shares, stocks, debentures or other securities, shall not be deemed to be a holding company by reason only that part of its assets consists in 51 per cent. or more of the shares of another company.

- (b) If, in the case of a subsidiary required to prepare financial statements under this Law or other applicable law, the auditors' report on the balance-sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance-sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company, the statement, which is to be annexed as aforesaid to the balance-sheet of the holding company, shall contain particulars of the manner in which the report is qualified.
- (c) For the purposes of this section the profits or losses of a subsidiary mean the profits or losses shown in any accounts of the subsidiary made up to a date within the period to which the accounts of the holding company relate, or, if there are no such accounts of the subsidiary available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary which became available within that period.
- (d) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement in sub-section (a), the directors who sign the balance-sheet shall so report in writing and their report shall be annexed to the balance-sheet in lieu of the statement.
- (e) The holding company may by a resolution authorize representatives named in the resolution to inspect the financial records kept in accordance with section 258 by any subsidiary, and on such resolution being passed those financial records shall be open to inspection by those representatives at any time during business hours.
- (f) The rights conferred by section 268 upon members of a company may be exercised in respect of any subsidiary by members of the holding company as if they were members of that subsidiary.

264. Authentication of balance-sheet

The financial statements required to be maintained by a company to which this Division applies, shall be signed by two directors or, when there are less than two directors, by the sole director of the company.

265. If any default is made in laying before the company or in issuing a financial statement required by this Division, or if any balance-sheet and profit and loss account, or income and expenditure account or other financial statement, is issued, circulated or published which does not comply with the requirements laid down by and under section 260, section 262, section 263 and section 264, the company and every director and other officer of the company who is knowingly and wilfully a party to the default shall be punishable with fine not exceeding 100 penalty units.

266. Copy of financial statements to be forwarded to the Registrar

- (a) After the financial statements have been laid before the company at the general meeting, a copy of the financial statements, signed by a director or secretary of the company, shall be filed with the Registrar at the same time as the copy of the annual list of members and summary prepared in accordance with the requirements of section 97.

- (b) If the general meeting before which the financial statements are laid does not adopt the financial statements, a statement of that fact and of the reasons therefor shall be annexed to the financial statements and to the copy thereof required to be filed with the Registrar.
- (c) This section shall not apply to a private company.

267. If a company makes default in complying with the requirements of section 266, the company and every director or other officer of the company who knowingly and wilfully authorizes or permits the default shall be liable to a fine not exceeding 5 penalty units.

268. **Right of member of company to copies of the financial statements and the auditor's report**

Save as otherwise provided in this Law, any member of a company to which this section applies shall be entitled to be furnished with copies of the financial statements that the company is required to prepare under this Division.

Investigation by the Registrar

269. **Power of Registrar to call for information or explanation**

- (a) Where the Registrar, on perusal of any document which a company is required to submit to the Registrar under the provisions of this Law, is of opinion that any information or explanation is necessary in order that such document may afford full particulars of the matter to which it purports to relate, the Registrar may, by a written order, call on the company submitting the document to furnish in writing such information or explanation within such time as the Registrar may specify in his order.
- (b) On the receipt of an order under sub-section (a), it shall be the duty of all persons who are or have been directors or officers of the company to furnish such information or explanation to the best of their ability.
- (c) On receipt of such information or explanation the Registrar may annex the same to the original document submitted to the Registrar and any additional document so annexed by the Registrar shall be subject to the same provisions as to inspection and the taking of copies as the original document is subject.
- (d) If such information or explanation is not furnished within the specified time, or if after perusal of such information or explanation the Registrar is of opinion that the document in question discloses an unsatisfactory state of affairs, or that it does not disclose a full and fair statement of the matters to which it purports to relate, the Registrar shall report in writing the circumstances of the case to the Union Minister.
- (e) If it is represented to the Registrar in materials placed before the Registrar by any contributory or creditor that the business of a company is carried on in fraud of its creditors or in fraud of persons dealing with the company or for a fraudulent purpose, the Registrar may, after giving the company an opportunity of being heard by written order, call on the company for information or explanation on matters specified in the order within such time as the Registrar may specify in the order, and the provisions of sub-sections (b) and (d) of this section and section 270 shall apply to such order. If upon investigation the Registrar is satisfied that any representation on which the Registrar has taken action under this sub-section is frivolous or vexatious, the Registrar shall disclose the identity of the informant to the company.

- (f) The provisions of this section shall apply *mutatis mutandis* to documents which a liquidator is required to file under this Law.

270. If any person refuses or neglects to furnish any such information or explanation as required under section 269, such person shall be liable to a fine not exceeding 100 penalty units in respect of each offence, and the Court may on the application of the Registrar and upon notice to the company make an order on the company for production of such documents as may be required by the Registrar for the Registrar's investigation and allow the Registrar inspection thereof on such terms and conditions as it thinks fit.

Inspections

271. Investigation of affairs of company by inspectors

- (a) Subject to sub-section (b), the Union Minister may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Union Minister may direct:
- (i) in the case of any company having a share capital, on the application of members holding not less than one-tenth of the shares issued;
 - (ii) 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;
 - (iii) in the case of any company, on a report by the Registrar under sub-section 269(d); or
 - (iv) in the case of any company, on a request by the Registrar if the Registrar reasonably believes that such an investigation is necessary in the public interest.
- (b) Before appointing an inspector under sub-section (a) the Union Minister must believe on reasonable grounds that:
- (i) the company or one of its directors or officers may have committed an offence under this Law or other applicable law; and
 - (ii) where applicable, the application referred to in sub-section (a)(i) or (ii) was made in good faith.

272. Union Minister's right to direct investigation

The Union Minister may, at any time, in the interest of the public, direct the investigation of the affairs of a company by one or more competent inspectors appointed in this behalf.

273. Application for inspection to be supported by evidence

An application by members of a company under section 271 shall be supported by such evidence as the Union Minister may require for the purpose of showing that the company or one of its directors or officers may have committed an offence under this Law or other applicable law and that the applicants have good reason for, and are not actuated by malicious motives in requiring, the investigation and the Union Minister may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

274. Inspection of books and examination of officers

- (a) It shall be the duty of all persons who are or have been directors or officers of the company to produce to the inspectors all books and documents in their custody or power relating to the company.
- (b) An inspector may examine any such person in relation to its business.

275. If any person refuses to produce any book or document which under section 274 it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding 100 penalty units in respect of each offence.

276. Results of examination and submission of report

- (a) On the conclusion of the investigation the inspectors shall report their opinion to the Union Minister, and a copy of the report shall be forwarded by the Union Minister to the Registrar and another copy to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.
- (b) All expenses of, and incidental to, the investigation shall be defrayed by the applicants unless the Union Minister directs the same to be paid by the company, which the Union Minister is hereby authorized to do:

Provided that the expenses of and incidental to an investigation held in pursuance of sub-section 271(a)(iii) or (iv) shall be paid out of the assets of the company and shall be recoverable as an arrear of revenue.

- (c) The Registrar shall keep the copy of the report sent to the Registrar with the records of the company held by the Registrar.

277. Institution of prosecutions

- (a) If from any report made under section 271 or 272 it appears to the Union Minister on reasonable grounds that any person has been guilty of any offence in relation to the company under this Law or another applicable law, the Ministry shall refer the matter to the Union Attorney-General or the Public Prosecutor.
- (b) If the responsible officer to whom the matter is referred considers that the case is one in which a prosecution ought to be instituted, the responsible officer shall cause proceedings to be instituted, and it shall be the duty of all directors, officers and agents of the company, past and present (other than the accused in the proceedings), to give to the responsible officer all assistance in connection with the prosecution which they are reasonably able to give.
- (c) For the purposes of sub-section (b), the expression “agents” in relation to a company shall be deemed to include the bankers and legal advisers of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.
- (d) Any director or officer of the company convicted as the result of a prosecution initiated under this section shall not without the leave of the Court be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for a period of five years from the date of such conviction,

278. Report of inspectors to be evidence

A copy of the report of any inspectors appointed under this Law, authenticated by the seal of the company whose affairs they have investigated or by the Union Minister, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Auditors

279. Qualifications and appointment of auditors

- (a) No person shall be appointed or act as an auditor of a public company or a private company being a subsidiary of a public company unless he holds a certificate from such other person or body authorised under an applicable law entitling him to act as an auditor of companies:

Provided that a firm whereof all the partners practising in the Union hold such certificates may be appointed by its firm-name to be auditor of a company, and may act in its firm-name.

- (b) Every company to which this section applies shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.
- (c) If an appointment of an auditor is required and is not made at an annual general meeting, the Union Minister may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to the auditor by the company for his services.
- (d) The following persons shall not be appointed auditors of the company:
- (i) a director or officer of the company; and
 - (ii) a partner of such director or officer; and
 - (iii) in the case of a public company or a private company being a subsidiary of a public company any person in the employment of such director or officer; and
 - (iv) any person indebted to the company,

and if any person after being appointed auditor becomes indebted to the company his appointment shall thereupon be terminated.

- (e) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member of the company to the company not less than 14 days before the date on which notices for such annual general meeting must be sent to members, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to its members, with the notice of meeting and if desired by advertisement or in any other mode allowed by the constitution of the company:

Provided that, if after notice of the intention to nominate an auditor has been given to the company, notice of an annual general meeting is sent 14 days or less after the notice has been given, the requirements of this section as to time in respect of such a notice of the

intention to nominate an auditor shall be deemed to have been satisfied, and the notice must be sent or given at the same time as the notice of the annual general meeting.

- (f) The first auditors of a company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting unless previously removed by a resolution of the members of the company in general meeting, in which case such members at that meeting may appoint auditors.
- (g) 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.
- (h) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.
- (i) This section applies without limitation to the requirements of any other applicable law.

280. Powers and duties of auditors

- (a) Every auditor of a company shall have a right of access at all times to the financial records, books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.
- (b) The auditors shall make a report to the members of the company on the accounts examined by them, and on every financial statement laid before the company in general meeting during their tenure of office, and the report shall state:
 - (i) whether or not they have obtained all the information and explanations they have required;
 - (ii) whether or not in their opinion the financial statements referred to in the report are drawn up in conformity with the law;
 - (iii) whether or not the financial statements exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company; and
 - (iv) whether in their opinion financial records have been kept by the company as required by this Division.
- (c) Where any of the matters referred to in clauses (i), (ii), (iii) and (iv) of sub-section (b) is answered in the negative or with a qualification, the report shall state the reason for such answer.
- (d) The auditors of a company shall be entitled to receive notice of and to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company and may make any statement or explanation they desire with respect to the accounts.
- (e) Where an auditor resigns or is replaced in accordance with this Division, the auditor who has resigned or been replaced may make such statement or report of reasonable length to the company concerning the financial affairs of the company as the auditor, acting reasonably, in good faith and consistent with the auditor's duties and professional

obligations, considers necessary, and the directors shall ensure that the report is provided to members and submitted to the Registrar within 28 days of receipt. The directors may include any commentary on the report provided by the auditor that they consider necessary.

- (f) This section applies without limitation to any other provision of this Law or any other applicable law.

281. If any auditors' report is made which does not comply with the requirements of section 280, every auditor who is knowingly and wilfully a party to the default shall be punishable with a fine not exceeding 100 penalty units.

282. **Application of sections 260, 279 and 280 to company in which Government holds shares**

- (a) In the case of a company in which Government holds any share the following provisions shall apply notwithstanding anything contained in sections 260, 279 and 280.
- (b) The auditor of a company in which Government holds any share shall be appointed or re-appointed by the Union Auditor-General on the advice of the President of the Union .
- (c) The Union Auditor-General shall have power:
- (i) to direct the manner in which the company's accounts be audited by the auditor appointed in pursuance of sub-section (b) and to give such auditor instructions in regard to any matter relating to the performance of his functions as such;
 - (ii) to conduct a supplementary or test audit of the company's accounts by such person or persons as he may authorise in this behalf; and for the purposes of such audit, to require information or additional information to be furnished to any person or persons so authorised, on such matters, by such person or persons, and in such form, as the Union Auditor-General may, by general or special order, direct; and
 - (iii) to require the company to produce before him such records or documents in its possession or under its control for the purposes of audit or supplementary or test audit of the company's account and at such time as may be specified by him.
- (d) Any order requiring any information, records or documents to be furnished or produced by a company may also be addressed to any person who is, or has at any time been, an officer or employee of the company, and all the provisions of this section, so far as may be, shall apply in relation to such person as they apply in relation to the company.
- (e) The auditor aforesaid shall submit a copy of his audit report to the Union Auditor-General who shall have the right to comment upon, or supplement, the audit report in such manner as he may think fit.

283. **Delegation**

Anything which under section 282 is required to be done by the Union Auditor-General may be done by any person authorised by him, either generally or specially.

284. **Penalty**

If a company in which Government holds any share fails to comply with an order made under section 282, the company and every director or other officer or employee thereof who is in default shall be punishable with imprisonment which may extend to two years or with a fine not exceeding 100 penalty units.

285. **Rights of preference shareholders, etc., as to receipt and inspection of reports, etc.**

Holders of preference shares and debentures of a company shall have the same right to receive and inspect the financial statements of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

Division 25: Arbitration, compromise with creditors and members and buy-out rights

286. **Power for companies to refer matters to arbitration**

Without limiting any other means by which a company may seek to resolve a dispute, a company may by written agreement refer to arbitration, in accordance with the Arbitration Law or other applicable law, an existing or future difference between itself and any other company or person.

287. **Power to compromise with creditors and members**

- (a) 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 called, held and conducted in such manner as the Court directs.
- (b) 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 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 all 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.
- (c) An order made under sub-section (b) shall have no effect until a certified copy of the order has been filed with the Registrar, and a copy of every such order shall be annexed to every copy of the constitution of the company issued after the order has been made.
- (d) The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against a company on such terms as it thinks fit and proper until the application is finally disposed of.
- (e) In this section the expression “company” means any company liable to be wound up under this Law, and for the purposes of this section unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.

- (f) An appeal shall lie from any order made by the Court exercising original jurisdiction under this section to the authority authorized to hear appeals from the decisions of the Court.
288. If a company makes default in complying with sub-section 287(c), the company and every director or other officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding 1 penalty unit.
289. **Provisions for facilitating arrangements and compromises**
- (a) Where an application is made to the Court under section 287 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:
- (i) 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;
 - (ii) the allotting or appropriation by the transferee company of any shares, debentures, securities, 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;
 - (iii) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
 - (iv) the dissolution, without winding up, of any transferor company;
 - (v) 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;
 - (vi) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.
- (b) 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.
- (c) Where an order is made under this section, every company in relation to which the order is made shall cause a certified copy thereof to be delivered to the Registrar for registration within 14 days after the completion of the order.

- (d) In this section the expression “property” includes property, rights and powers of every description, and the expression “liabilities” includes duties.
 - (e) Notwithstanding the provisions of sub-section 287(e), the expression “company” in this section does not include any company other than a company within the meaning of this Law.
290. If default is made in complying with sub-section 289(c), the company and every director or other officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding 2 penalty units.
291. **Power to acquire shares in a public company of shareholders dissenting from a contract approved by majority**
- (a) Without limitation to any other applicable law, where a contract involving the transfer of shares or any class of shares in a public company (in this section referred to as “the transferor company”) to another company, whether a company within the meaning of this Law 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 three-fourths in value of the shares affected, 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 where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within 28 days 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.
 - (b) Where a notice has been given by the transferee company under this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of 28 days 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, subject to compliance with any other applicable law, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.
 - (c) 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.
 - (d) In this section the expression “dissenting shareholder” includes a shareholder who has not assented to the contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

PART V

WINDING UP

Division 26: Winding up a company

Preliminary

292. **Mode of winding up**

- (a) The winding up of a company may be either:
 - (i) by the Court;
 - (ii) voluntary; or
 - (iii) subject to the supervision of the Court.
- (b) The provisions of this Law with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of these modes.

Contributories

293. **Liability as contributories of present and past members**

- (a) In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following (that is to say):
 - (i) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;
 - (ii) a past member shall not be liable to contribute in respect of any debt, or liability of the company contracted after he ceased to be a member;
 - (iii) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Law;
 - (iv) in the case of a company limited by shares, no contribution shall be, required from any member exceeding the amount (if any) unpaid on the shares in respect to which he is liable as a present or past member;
 - (v) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
 - (vi) nothing in this Law shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;
 - (vii) a sum due to any member of a company in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company

payable to that member in a case of competition between himself and any other creditor not a member of the company; but any such sum maybe taken into account for the purpose of the final adjustments of the rights of the contributories among themselves.

- (b) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

294. Liability of directors whose liability is unlimited

In the winding up of a limited company any director, whether past or present, whose liability is, in pursuance of this Law or under the constitution of the company, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company:

Provided that:

- (a) a past director shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;
- (b) a past director shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;
- (c) subject to the constitution of the company a director shall not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

295. Nature of liability of contributory

The liability of a contributory shall create a debt payable at the time specified in the calls made on him by the liquidator.

296. Contributories in case of death of member

- (a) If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives and his heirs shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.
- (b) If the legal representatives or heirs make default in paying any money ordered to be paid by them, proceedings may be taken for administering the property of the deceased contributory, whether moveable or immovable, or both and of compelling payment thereout of the money due.

297. Contributories in case of insolvency of member

If a contributory is adjudged insolvent either before or after he has been placed on the list of contributories, then:

- (a) his assignees shall represent him for all the purposes of the winding up, and shall be contributories accordingly, and may be called on to admit to proof against the estate of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any

money due from the insolvent in respect of his liability to contribute to the assets of the company; and

- (b) there may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as calls already made.

Winding up by Court

298. Circumstances in which company may be wound up by Court

A company may be wound up by the Court:

- (a) if the company has by special resolution resolved that the company be wound up by the Court;
- (b) if default is made in filing the statutory report or in holding the statutory meeting;
- (c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- (d) if the number of members is reduced below one;
- (e) if the company is unable to pay its debts; or
- (f) if the Court is of opinion that it is just and equitable that the company should be wound up.

299. Company when deemed unable to pay its debts

- (a) For the purpose of this Division, a company shall be deemed to be unable to pay its debts:
 - (i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding 5 penalty units, has served on the company, by causing the same to be delivered by registered post or otherwise at its registered office, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;
 - (ii) if execution or other process issued on a decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
 - (iii) if it is proved to the satisfaction of the Court that the company is unable to pay its debts and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.
- (b) The demand referred to in clause (i) of sub-section (a) shall be deemed to have been duly given under the hand of the creditor if it is signed by an agent or legal adviser duly authorized on his behalf, or in the case of a firm if it is signed by such agent or by a legal adviser or any one member of the firm on behalf of the firm.

300. Winding up maybe referred to Lower Courts

Where a Court makes an order for winding up a company under this Law, it may, if it thinks fit, direct all subsequent proceedings to be had in a lower Court; and thereupon such Court shall, for the purpose of winding up the company, be deemed to be “the Court” within the meaning of this

Law, and shall have, for the purposes of such winding up, all the jurisdiction and powers of the fore mentioned Court.

301. Transfer of winding up from one Court to another

If during the progress of a winding up in a Court it is made to appear to the Court that the same could be more conveniently prosecuted in any other Court having jurisdiction to wind up companies, the Court may transfer the same to such other Court, and thereupon the winding up shall proceed in such other Court.

302. Provisions as to applications for winding up

An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately, or by the Registrar:

Provided that:

- (a) a contributory shall not be entitled to present a petition for winding up a company unless the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder;
- (b) the Registrar shall not be entitled to present a petition for winding up a company:
 - (i) except on the ground that from the financial condition of the company as disclosed in its balance-sheet or from the report of an inspector appointed under section 271 it appears that the company is unable to pay its debts, and
 - (ii) unless the previous sanction of the Union Minister has been obtained to the presentation of the petition:

Provided that no such sanction shall be given unless the company has first been afforded an opportunity of being heard;
- (c) a petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of 14 days after the last day on which the meeting ought to have been held;
- (d) the Court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the Court.

303. Effect of winding up order

An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

304. Commencement of winding up by Court

A winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

305. Court may grant injunction

The Court may, at any time after the presentation of the petition for winding up a company under this Law, and before making an order for winding up the company, upon the application of the company or of any creditor or contributory of the company, restrain further proceedings in any suit or proceeding against the company, upon such terms as the Court thinks fit.

306. Powers of Court on hearing petition

- (a) On hearing the petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order or any other order that it deems just, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.
- (b) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.
- (c) Where the Court makes an order for the winding up of a company it shall, except where a liquidator is appointed simultaneously, forthwith cause intimation thereof to be sent to the official receiver.

307. Suits stayed on winding up order

When a winding up order has been made or a provisional liquidator has been appointed no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose.

308. Vacancy in the office of liquidator

- (a) For the purposes of this Law, so far as it relates to the winding up of companies by the Court, the term “official receiver” means the official receiver attached to the Court, or, if there is no such official receiver, then such person as the Union Minister may, by notification in the Gazette, appoint for the purpose.
- (b) On the making of a winding up order, the official receiver shall become the official liquidator of the company and shall continue to act as such until his further continuance is terminated by an order of the Court.
- (c) The official receiver shall as such official liquidator forthwith take into his custody and control all the books, documents and the assets of the company.
- (d) The official receiver shall be entitled to such remuneration as the Court shall fix.

309. Copy of winding up order to be filed with Registrar

- (a) On the making of a winding up order it shall be the duty of the petitioner in the winding up proceedings and of the company to file with the Registrar a copy of the order within a month from the date of the making of the order.
- (b) On the filing of a copy of a winding up order, the Registrar shall make a minute thereof in his books relating to the company, and shall notify in the Gazette that such an order has been made.

- (c) Such order shall be deemed to be notice of discharge to the servants of the company, except when the business of the company is continued.

310. **Power of Court to stay winding up**

The Court may at any time after an order for winding up, on the application of any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

311. **Court may have regard to wishes of creditors or contributories**

The Court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Official Liquidators

312. **Appointment of official liquidator**

- (a) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a person or persons other than the official receiver to be called an official liquidator or official liquidators.
- (b) The Court may make such an appointment provisionally at any time after the presentation of a petition and before the making of an order for winding up, but shall before making any such appointment give notice to the company, unless for reasons to be recorded it thinks fit to dispense with notice.
- (c) If more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act by this Law required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons.
- (d) The Court may determine whether any, and what, security is to be given by any official liquidator on his appointment.
- (e) The acts of an official liquidator shall be valid notwithstanding any defect that may afterwards be discovered in his appointment: Provided that nothing in this sub-section shall be deemed to give validity to acts done by an official liquidator after his appointment has been shown to be invalid.
- (f) A receiver shall not be appointed of assets in the hands of an official liquidator.

313. **Resignations, removals, filling up vacancies and compensation**

- (a) Any official liquidator may resign or be removed by the Court on due cause shown.
- (b) Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court and until the vacancy is so filled up the official receiver shall be and act as the official liquidator.
- (c) There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and, if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

314. **Official liquidator**

The official liquidator shall be described by the style of the official liquidator of the particular company in respect of which he is appointed, and not by his individual name.

315. **Statement of affairs to be made to the liquidator**

- (a) Where the Court has made a winding up order or appointed an official liquidator provisionally, there shall, unless the Court thinks fit to order otherwise and so orders, be made out and submitted to the official liquidator a statement as to the affairs of the company verified by an affidavit and containing the following particulars, namely:
- (i) the assets of the company, stating separately the cash balance in hand and at the bank, if any;
 - (ii) the debts and liabilities;
 - (iii) the names, residences and occupations of the creditors, stating separately the amount of secured debts and unsecured debts, and in the case of secured debts particulars of the securities, their value and the dates when they were given; and
 - (iv) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised therefrom.
- (b) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by any person who is at that date the secretary of the company, or by such of the persons hereinafter in this sub-section mentioned as the official liquidator, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons:
- (i) who are or have been directors or officers of the company;
 - (ii) who have taken part in the formation of the company at any time within one year before the relevant date; or
 - (iii) who are in the employment of the company or have been in the employment of the company within the said year, and are in the opinion of the official liquidator capable of giving the information required.
- (c) The statement shall be submitted within 21 days from the relevant date, or within such extended time as the official liquidator or the Court may for special reasons appoint.
- (d) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official liquidator or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official liquidator may consider reasonable, subject to an appeal to the Court.
- (e) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

316. If any person, without reasonable excuse, knowingly and wilfully makes default in complying with the requirements of section 315, he shall be liable to a fine not exceeding 20 penalty units.
317. Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence under section 182 of the Penal Code and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.
318. **Statement by liquidator**
- (a) In a case where a winding up order is made, the official liquidator shall, as soon as practicable after receipt of the statement to be submitted under section 315, and not later than four, or with the leave of the Court, six months from the date of the order, or in a case where the Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court:
 - (i) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities, giving separately under the heading of assets particulars of:
 - (A) cash and negotiable securities;
 - (B) debts due from contributories;
 - (C) debts due to and securities, if any, available to the company;
 - (D) moveable and immoveable properties belonging to the company; and
 - (E) unpaid calls;
 - (ii) if the company has failed, as to the causes of the failure; and
 - (iii) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.
 - (b) The official liquidator may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matter which in his opinion it is desirable to bring to the notice of the Court.
319. **Custody of company's property**
- (a) The official liquidator, whether appointed provisionally or not, shall take into his custody, or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.
 - (b) All the property and effects of the company shall be deemed to be in the custody of the Court as from the date of the order for the winding up of the company.
320. **Committee of inspection in compulsory winding up**
- (a) The official liquidator shall within a month from the date of the order for the winding up of a company convene a meeting of the creditors of the company (as ascertained from the

books and documents of the company) for the purpose of determining whether or not a committee of inspection shall be appointed to act with the liquidator, and who are to be members of the committee, if appointed.

- (b) The official liquidator shall within 7 days from the date of the creditors' meeting convene a meeting of the contributories to consider the decision of the creditors and to accept the same with or without modifications.
- (c) If the contributories do not accept the decision of the creditors in its entirety, it shall be the duty of the official liquidator to apply to the Court for directions as to whether there shall be a committee of inspection and, if so, what shall be the composition of the committee, and who shall be members thereof.
- (d) A committee of inspection appointed under this section shall consist of not more than twelve members being creditors and contributories of the company, or persons holding general or special powers-of-attorney from creditors or contributories, in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the Court.
- (e) The committee of inspection shall have the right to inspect the accounts of the official liquidator at all reasonable times.
- (f) The committee shall meet at such times as they may from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.
- (g) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee is present.
- (h) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.
- (i) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.
- (j) A member of the committee may be removed by an ordinary resolution at a meeting of creditors if he represents creditors, or of contributories if he represents contributories, of which at least 7 days' notice has been given, stating the object of the meeting.
- (k) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.
- (l) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

321. **Powers of official liquidator**

The official liquidator shall have power, with the sanction of the Court, to do the following things: –

- (a) to institute or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company;
- (b) to carry on the business of the company so far as may be necessary for the beneficial winding up of the same;
- (c) to sell the immovable and moveable property of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
- (d) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;
- (e) to prove, frank and claim in the insolvency of any contributory for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;
- (f) to draw, accept, make and indorse any bill of exchange, cheque or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, cheque, or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;
- (g) to raise, on the security of the assets of the company, any money requisite;
- (h) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself: Provided that nothing herein empowered shall be deemed to affect the rights, duties and privileges of the Union Auditor-General;
- (i) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

322. Discretion of official liquidator and provision for legal assistance to official liquidator

- (a) The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.
- (b) The official liquidator may, with the sanction of the Court, appoint a legal practitioner entitled to appear before the Court to assist him in the performance of his duties: Provided that, where the official liquidator is a legal practitioner, he shall not appoint his partner unless the latter consents to act without remuneration

323. Liquidator to keep books containing proceedings of meetings and to submit account of his receipts to Court

- (a) The official liquidator of a company which is being wound up by the Court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of

proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by an agent inspect any such books.

- (b) Every official liquidator shall, at such times as may be prescribed but not less than twice in each year during the liquidator's tenure of office, present to the Court an account of his receipts and payments as such liquidator.
- (c) The account shall be in the prescribed form, shall be made in duplicate, and shall be verified by a declaration in the prescribed form.
- (d) The Court shall cause the account to be audited in such manner as it thinks fit, and for the purpose of the audit the liquidator shall furnish the Court with such vouchers and information as the Court may require, and the Court may at any time require the production of and inspect any books or accounts kept by the liquidator.
- (e) When the account has been audited, one copy thereof shall be filed and kept by the Court, and the other copy shall be delivered to the Registrar for filing, and each copy shall be open to the inspection of any creditor, or of any person interested.

324. Exercise and control of liquidator's powers

- (a) Subject to the provisions of this Law, the official liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.
- (b) The official liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be the liquidator's duty to summon meetings at such times as the creditors or contributories, by resolution, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.
- (c) The official liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising in the winding up.
- (d) Subject to the provisions of this Law, the official liquidator shall use the liquidator's own discretion in the administration of the assets of the company and in the distribution thereof among the creditors.
- (e) If any person is aggrieved by any act or decision of the official liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just in the circumstances.

Ordinary Powers of Court

325. Settlement of list of contributories and application of assets

- (a) As soon as may be practicable after making a winding up order, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where

rectification is required in pursuance of this Law, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

- (b) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

326. Power to require delivery of property

The Court may, at any time after making a winding up order, require any contributory for the time being settled on the list of contributories and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, surrender or transfer forthwith, or within such time as the Court directs, to the official liquidator any money, property or documents in his hands to which the company is *prima facie* entitled.

327. Power to order payment of debts by contributory

- (a) The Court may, at any time after making a winding up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from the contributory or from the estate of the person whom the contributory represents to the company exclusive of any money payable by the contributory or the estate by virtue of any call in pursuance of this Law.
- (b) The Court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to the contributory or to the estate which the contributory represents from the company on any independent dealing or contract with the company, but not any money due to the contributory as a member of the company in respect of any dividend or profit; and may, in the case of a limited company, make to any director whose liability is unlimited or to the director's estate the like allowance:

Provided that, in the case of any company whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to the contributory by way of set-off against any subsequent call.

328. Power of Court to make calls

- (a) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.
- (b) In making the call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

329. Power to order payment into bank

The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the account of the official liquidator in any scheduled bank instead

of to the official liquidator, and any such order may be enforced in the same manner as if it had directed payment to the official liquidator.

330. Regulation of account with Court

All moneys, bills, cheques, notes and other securities paid and delivered into the bank where the liquidator of the company may have his account, in the event of a company being wound up by the Court, shall be subject in all respects to the orders of the Court.

331. Order on contributory conclusive evidence

(a) An order made by the Court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(b) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings whatsoever.

332. Power to exclude creditors not proving in time

The Court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

333. Adjustment of rights of contributories

The Court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

334. Power to order costs

The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just.

335. Dissolution of company

(a) When the affairs of a company have been completely wound up, the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(b) The order shall be reported within 15 days of the making thereof by the official liquidator to the Registrar, who shall make in his books a minute of the dissolution of the company.

336. If the official liquidator makes default in complying with the requirements of section 335, he shall be liable to a fine not exceeding 8 penalty units.

Extraordinary Powers of Court

337. Power to summon persons suspected of having property of company

(a) The Court may, after it has made a winding up order, summon before it any officer of the company or person known or suspected to have in their possession any property of the company, or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs or property of the company.

- (b) The Court may examine such person on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce such person's answers to writing and require them to sign them.
- (c) The Court may require such person to produce any documents in their custody or power relating to the company; but, where the person claims any lien on documents produced by them, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien.
- (d) If an person so summoned, after being tendered a reasonable sum for their expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause the person to be apprehended and brought before the Court for examination.

338. **Power to order public examination of promoters, directors, etc,**

- (a) When an order has been made for winding up a company by the Court, and the official liquidator has applied to the Court stating that in the liquidator's opinion a fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company, in relation to the company since its formation, the Court may, after consideration of the application, direct that any person who has taken any part in the promotion or formation of the company, or has been a director or other officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to the person's conduct and dealings as director or other officer thereof.
- (b) The official liquidator shall take part in the examination, and for that purpose may, if specially authorized by the Court in that behalf, employ such legal assistance as may be sanctioned by the Court.
- (c) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the Court.
- (d) The Court may put such questions to the person examined as the Court thinks fit.
- (e) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to them.
- (f) A person ordered to be examined under this section may at their own cost employ any person entitled to appear before the Court, who shall be at liberty to put to the person being examined such questions as the Court may deem just for the purpose of enabling the person to explain or qualify any answers given by the person: Provided that if the person is, in the opinion of the Court, exculpated from any charges made or suggested against them, the Court may allow the person such costs as in its discretion it may think fit.
- (g) 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 the person in civil proceedings, and shall be open to the inspection of any creditor or contributory at all reasonable times.
- (h) The Court may, if it thinks fit, adjourn the examination from time to time.

- (i) An examination under this section may, if the Court so directs, and subject to any rules in this behalf, be held before any Judge or officer of the Court, being an official referee, master, registrar or deputy registrar, and the powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

339. Power to arrest absconding contributory

The Court, at any time either before or after making a winding up order, on proof of probable cause for believing that a contributory is about to quit the Union or otherwise to abscond, or to remove or conceal any of their property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and their books and papers and moveable property to be seized, and the contributory and them to be safely kept until such time as the Court may order.

340. Saving of other proceedings

Any powers by this Law conferred on the Court shall be in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Enforcement of and Appeal from Order

341. Power to enforce orders

All orders made by a Court under this Law may be enforced in the manner in which decrees of such Court made in any suit pending therein may be enforced.

342. Order made in any Court to be enforced by other Courts

Any order made by a Court for or in the course of the winding up of a company shall be enforced in any place in the Union, other than that in which such Court is situate, by the Court that would have had jurisdiction in respect of such company if the registered office of the company had been situate at such other place, and in the same manner in all respects as if such order had been made by the Court that is hereby required to enforce the same.

343. Mode of dealing with orders to be enforced by other Courts

Where any order made by one Court is to be enforced by another Court, a certified copy of the order so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order having been made; and thereupon the last-mentioned Court shall take the requisite steps in the matter for enforcing the order, in the same manner as if it were the order of the Court enforcing the same.

344. Appeals from orders

Re-hearings of and appeals from any order or decision made or given in the matter of the winding up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction.

Voluntary Winding up

345. Circumstances in which company may be wound up voluntarily

A company may be wound up voluntarily:

- (a) when the period (if any) fixed for the duration of the company by the constitution of the company expires, or the event (if any) occurs on the occurrence of which the constitution provides that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;
- (b) if the company resolves by special resolution that the company be wound up voluntarily;
or
- (c) if the company resolves by special resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up;

and the expression “resolution for voluntarily winding up” when used hereafter in this Part means a resolution passed under sub-section (a), sub-section (b) or sub-section (c) of this section.

346. Commencement of voluntary winding up

A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntarily winding up.

347. Effect of voluntary winding up on status of company

When a company is wound up voluntarily, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its constitution, continue until it is dissolved.

348. Notice of resolution to wind up voluntarily

Notice of any special resolution for winding up a company voluntarily shall be given by the company within 10 days of the passing of the same by advertisement in the Gazette and also in a daily newspaper circulating generally in the Union.

349. If a company makes default in complying with the requirements of section 348, it shall be liable to a fine not exceeding 5 penalty units; and every director or other officer of the company who knowingly and wilfully authorizes or permits the default shall be liable to the same penalty.

350. Declaration of solvency

- (a) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, or in the case of a company with only one director, that sole director, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a declaration verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding three years, from the commencement of the winding up.
- (b) Such declaration shall be supported by a report of the company’s auditors on the company’s affairs, and shall have no effect for the purposes of this Law unless it is delivered to the Registrar for registration before the date mentioned in sub-section (a).

- (c) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Law referred to as a “members’ voluntary winding up”, and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Law referred to as a “creditors’ voluntary winding up”.

Members’ Voluntary Winding up

351. Provisions applicable to a members’ voluntary winding up

The provisions contained in sections 352 to 357 (inclusive), shall apply in relation to a members’ voluntary winding up.

352. Power of company to appoint and fix remuneration of liquidators

- (a) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.
- (b) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.

353. Power to fill vacancy in office of liquidator

- (a) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.
- (b) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.
- (c) The meeting shall be held in manner provided by this Law or by the constitution, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

354. Power of liquidator to accept shares, etc., as consideration for sale of property of company

- (a) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Law or not (in this section called “the transferee company”), the liquidator of the first-mentioned company (in this section called “the transferor company”) may, with the sanction of a special resolution of that company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.
- (b) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

- (c) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the company within 7 days after the passing of the special resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner hereafter provided.
- (d) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.
- (e) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court.
- (f) The provisions of the Arbitration Law, other than those restricting the application of the Arbitration Law in respect of the subject-matter of the arbitration, shall apply to all arbitrations in pursuance of this section.

355. Duty of liquidator to call general meeting at end of each year

In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up and of each succeeding year, or as soon thereafter as may be convenient within 90 days of the close of the year, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year and a statement in the prescribed form containing the prescribed particulars with respect to the position of the liquidation.

356. If the liquidator fails to comply with section 355, he shall be liable to a fine not exceeding 10 penalty units.

357. Final meeting and dissolution

- (a) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account and giving any explanation thereof.
- (b) The meeting shall be called by advertisement specifying the time, place and object thereof, and published 28 days at least before the meeting in the manner specified in section 348 for publication of a notice under that section.
- (c) Within 7 days after the meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date:

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the said return, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to the making of the return shall be deemed to have been complied with.

- (d) The Registrar on receiving the account and either of the returns mentioned in sub-section (c) shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

358. If a copy of the account is not sent or a return is not made in accordance with sub-section 357(c) the liquidator shall be liable to a fine not exceeding 3 penalty units.
359. It shall be the duty of the person on whose application an order of the Court under sub-section 357(d) is made, within 21 days after the making of the order, to deliver to the Registrar a certified copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding 3 penalty units.

Creditors' Voluntary Winding up

360. Provisions applicable to a creditors' voluntary winding up

The provisions contained in sections 361 to 370 (inclusive) shall apply in relation to a creditors' voluntary winding up.

361. Meeting of creditors

- (a) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent to the creditors simultaneously with the sending of the notices of the said meeting of the company.
- (b) The company shall cause notice of the meeting of the creditors to be advertised in the manner specified in section 348 for the publication of a notice under that section.
- (c) The directors of the company shall:
- (i) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid; and
 - (ii) appoint one of their number to preside at the said meeting.
- (d) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.
- (e) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors, held in pursuance of sub-section (a), shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

362. If default is made:

- (a) by the company in complying with sub-sections 361(a) and 361(b);

- (b) by the directors of the company in complying with sub-section 361(c); or
- (c) by any director of the company in complying with sub-section 361(d);

the company, directors or director, as the case may be, shall be liable to a fine not exceeding 5 penalty units, and, in the case of default by the company, every officer of the company who is in default shall be liable to the same penalty.

363. Appointment of liquidator

The creditors and the company at their respective meetings mentioned in section 361 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator:

Provided that, in the case of different persons being nominated, any director, member or creditor of the company may, within 7 days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

364. Appointment of committee of inspection

- (a) The creditors at the meeting to be held in pursuance of section 361 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

365. Fixing of liquidators' remuneration and cesser of directors' powers

- (a) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators, and where the remuneration is not so fixed, it shall be determined by the Court.
- (b) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

366. Power to fill vacancy in office of liquidator

If a vacancy occurs by death, resignation or otherwise in the office of a liquidator, other than a liquidator appointed by or by the direction of the Court, the creditors may fill the vacancy.

367. **Application of section 354 to a creditors' voluntary winding up**

The provisions of section 354 shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the Court or of the committee of inspection.

368. **Duty of liquidator to call meetings of company and of creditors at end of each year**

In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year and a statement in the prescribed form containing the prescribed particulars with respect to the position of the winding up.

369. If the liquidator fails to comply with section 368, he shall be liable to a fine not exceeding 10 penalty units.

370. **Final meeting and dissolution**

(a) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(b) Each such meeting shall be called by advertisement specifying the time, place and object thereof, and published 28 days at least before the meeting in the manner specified in section 348 for the publication of a notice under that section.

(c) Within 7 days after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates:

Provided that, if a quorum (which for the purposes of this section shall be two persons) is not present at either such meeting, the liquidator shall, in lieu of such return, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(d) The Registrar on receiving the account and in respect of each such meeting either of the returns mentioned in sub-section (c) shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved:

Provided that, the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

371. If a copy of the account is not sent or the return is not made in accordance with sub-section 370(c) the liquidator shall be liable to a fine not exceeding 3 penalty units.
372. It shall be the duty of the person on whose application an order of the Court under sub-section 370(d) is made, within 10 days after the making of the order, to deliver to the Registrar a certified copy of the order for registration, and if that person fails to do so he shall be liable to a fine not exceeding 3 penalty units.

Members' or Creditors' Voluntary Winding up

373. Provisions applicable to every voluntary winding up

The provisions contained in sections 374 to 382 (inclusive) shall apply to every voluntary winding up, whether a members' or a creditors' winding up.

374. Distribution of property of company

Subject to the provisions of this Law as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application, shall, unless the constitution otherwise provide, be distributed among the members according to their rights and interests in the company.

375. Powers and duties of liquidator in voluntary winding up

- (a) The liquidator may -
- (i) in the case of a members' voluntary winding up, with the sanction of a special resolution of the company, and in the case of a creditors' voluntary winding up, with the sanction of either the Court or the committee of inspection, exercise any of the powers given by sub-sections (d), (e), (f) and (h) of section 321 to a liquidator in a winding up. The exercise by the liquidator of the powers given by this sub-section shall be subject to the control of the Court and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers;
 - (ii) without the sanction referred to in sub-section (a)(i), exercise any of the other powers by this Law given to the liquidator in a winding up by the Court;
 - (iii) exercise the power of the Court under this Law of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;
 - (iv) exercise the power of the Court of making calls; and
 - (v) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or for any other purpose he may think fit.
- (b) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.
- (c) When several liquidators are appointed, any power given by this Law may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

376. Power of Court to appoint and remove liquidator in voluntary winding up and notice by liquidator of his appointment

- (a) If from any cause whatever there is no liquidator acting, the Court may appoint a liquidator.
- (b) The Court may, on cause shown, remove a liquidator and appoint another liquidator.
- (c) The liquidator shall, within 21 days after their appointment, deliver to the Registrar for registration a notice of appointment in the form prescribed.

377. If the liquidator fails to comply with the requirements of section 376, they shall be liable to a fine not exceeding 3 penalty units.

378. Arrangement when binding on creditors

- (a) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.
- (b) Any creditor or contributory may, within 21 days from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

379. Power to apply to Court to have questions determined or powers exercised

- (a) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, staying of proceedings or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.
- (b) The liquidator or any creditor or contributory may apply for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.
- (c) Such application shall be made to the Court having jurisdiction to wind up the company.
- (d) The Court, if satisfied that the determination of the question or the required exercise of power or the order applied for will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

380. Cost of voluntary winding up

All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall, subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.

381. Saving for rights of creditors and contributories

The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, but in the case of an application by a contributory the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

382. Power of Court to adopt proceedings of voluntary winding up

Where a company is being wound up voluntarily, and an order is made for winding up by the Court, the Court may, if it thinks fit, by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding up.

Winding up subject to Supervision of Court

383. Power to order winding up subject to supervision

When a company has by special resolution resolved to wind up voluntarily, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

384. Effect of petition for winding up subject to supervision

A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding up by the Court.

385. Court may have regard to wishes of creditors and contributories

The Court may, in deciding between a winding up by the Court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

386. Power for Court to appoint or remove liquidators

- (a) Where an order is made for a winding up subject to supervision, the Court may by the same or any subsequent order appoint any additional liquidator.
- (b) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company.
- (c) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order, and fill any vacancy occasioned by the removal or by death or resignation.

387. Effect of supervision order

- (a) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily.
- (b) Except as provided in sub-section (a), and save for the purposes of section 338, any order made by the Court for a winding up subject to the supervision of the Court shall for all purposes, including the staying of suit and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court.

- (c) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidator, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding up subject to the supervision of the Court.

388. Appointment in certain cases of voluntary liquidators to office of official liquidator

Where an order has been made for the winding up of a company subject to supervision, and an order is afterwards made for winding up by the Court, the Court may, by the last-mentioned order or by any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other person, to be official liquidator in the winding up by the Court.

Supplemental Provisions

389. Avoidance of transfers, etc., after commencement of winding up and debts of all descriptions to be proved

- (a) In the case of voluntary winding up every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.
- (b) In the case of a winding up by or subject to the supervision of the Court, every disposition of the property (including actionable claims) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.
- (c) In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Law of the law of insolvency) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or for some other reason do not bear a certain value.

390. Application of insolvency rules in winding up of insolvent companies

In the winding up of an insolvent company the same rules shall apply and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

391. Preferential payments

- (a) In a winding up there shall be paid in priority to all other debts:
 - (i) all revenue, taxes, cesses and rates, whether payable to the Government or to a local authority, due from the company at the date hereinafter mentioned in sub-section 391(e) and having become due and payable within the twelve months next before that date;

- (ii) all wages or salary of any clerk or servant in respect of service rendered to the company within the two months next before the said date;
 - (iii) all wages of any labourer or workman whether payable for time or piecework, in respect of services rendered to the company within the two months next before the said date;
 - (iv) compensation payable under the Workmen's Compensation Act or other applicable law in respect of the death or disablement of any officer or employee of the company;
 - (v) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees maintained by the company; and
 - (vi) the expenses of any investigation held in pursuance of sub-section 271(a)(iii) of this Law.
- (b) The foregoing debts shall:
- (i) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportion; and
 - (ii) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.
- (c) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.
- (d) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:
- Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.
- (e) The date hereinbefore in this section referred to is:
- (i) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order; and
 - (ii) in any other case, the date of the commencement of the winding up.

392. **Disclaimer of property**

- (a) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to

the payment of any sum of money, the liquidator of the company, notwithstanding that he had endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the Court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the Court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within 28 days after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Court.

- (b) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.
- (c) The Court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court thinks just.
- (d) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of 28 days after the receipt of the application or such further period as may be allowed by the Court, given notice to the applicant that he intends to apply to the Court for leave to disclaim, and in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.
- (e) The Court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the nonperformance of the contract, or otherwise as the Court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.
- (f) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Law in respect of any disclaimed property, and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the company whether as under-lessee or as mortgagee except upon the terms of making that person:

- (i) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or
 - (ii) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date; and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Court shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.
- (g) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

393. Fraudulent preference

- (a) Any transfer, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his insolvency a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.
- (b) For the purposes of this section the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the Court, and a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond with the act of insolvency in the case of an individual.
- (c) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

394. Avoidance of certain attachments, executions, etc.

- (a) Where any company is being wound up by or subject to the supervision of the Court, any attachment, distress or execution put in force without leave of the Court against the estate or effects, or any sale held without leave of the Court of any of the properties, of the company after the commencement of the winding up shall be void.
- (b) Nothing in this section applies to proceedings by the Government.

395. Effect of floating charge

Where a company is being wound up, a floating charge on the undertaking or property of the company created within three months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

396. **General scheme of liquidation may be sanctioned**

- (a) The liquidator may, with the sanction of the Court when the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of a special resolution of the company in the case of a voluntary winding up, do the following things or any of them:
 - (i) pay any classes of creditors in full;
 - (ii) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, whereby the company may be rendered liable;
 - (iii) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, subsisting or supposed to subsist, between the company and a contributory, or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.
- (b) The exercise by the liquidator of the powers of this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers.

397. **Power of Court to assess damages against delinquent directors, etc.**

- (a) Where, in the course of winding up a company, it appears that any person who has taken part in the formation or promotion of the company, or any past or present director or liquidator, or any officer of the company has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the liquidator or of any creditor or contributory, made within three years from the date of the first appointment of a liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer, examine into the conduct of the promoter, director, liquidator or officer, and compel such person to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.
- (b) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

398. **Penalty for falsification of books**

If any director officer or contributory of any company being wound up destroys, mutilates, alters or falsifies or fraudulently secretes any books, papers or securities, or makes, or is privy to the making of, any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, such director officer or contributory shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

399. **Prosecution of delinquent directors**

- (a) If it appears to the Court in the course of a winding up by, or subject to the supervision of, the Court that any past or present director or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the Registrar.
- (b) If it appears to the liquidator in the course of a voluntary winding up that any past or present director or other officer, or any member, of the company has been guilty of any offence in relation to the company for which the director, officer or member is criminally liable, the liquidator shall forthwith report the matter to the Registrar and shall furnish to the Registrar such information and give to the Registrar such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator relating to the matter in question, as the Registrar may require.
- (c) Where any report is made under sub-section (b) to the Registrar, the Registrar may, if the Registrar thinks fit, refer the matter to the Union Minister for further inquiry, and the Union Minister shall thereupon investigate the matter and may, if the Union Minister thinks it expedient, apply to the Court for an order conferring on any person designated by the Union Minister for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Law in the case of a winding up by the Court.
- (d) If on any report to the Registrar under sub-section (b) it appears to the Registrar that the case is not one in which proceedings ought to be taken by the registrar, the Registrar shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the Court, the liquidator may take proceedings against the offender.
- (e) If it appears to the Court in the course of a voluntary winding up that any past or present director or other officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Registrar, the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report has been made in pursuance of the provisions of sub-section (b).
- (f) If, where any matter is reported or referred to the Registrar under this section, the Registrar considers that the case is one in which a prosecution ought to be instituted, the Registrar shall place the papers before the Attorney-General or the Public Prosecutor and if advised to do so institute proceedings, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give the Registrar, Attorney-General and/or the Public Prosecutor all assistance in connection with the prosecution which the person is reasonably able to give:

Provided that no prosecution shall be undertaken without first giving the accused person an opportunity of making a statement in writing to the Registrar and of being heard thereon.

For the purposes of this sub-section, the expression "agent" in relation to a company shall be deemed to include any banker or legal adviser of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

- (g) If any person fails or neglects to give assistance in manner required by sub-section (f), the Court may, on the application of the Registrar, direct that person to comply with the requirements of the said sub-section, and where any such application is made with respect to a liquidator, the Court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in the liquidator's hands sufficient assets of the company to enable the liquidator so to do, direct that the costs of the application shall be borne by the liquidator personally.

400. Penalty for false evidence

If any person, upon any examination upon oath authorized under this Law, or in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Law, or otherwise in or about any matter arising under this Law, intentionally gives false evidence, such person shall be liable to imprisonment for a term which may extend to seven years, and also be liable to fine.

401. Penal provisions

- (a) If any person, being a past or present director or other officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the Court or voluntarily, or is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up:
 - (i) does not to the best of their knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;
 - (ii) does not deliver up to the liquidator, or as the liquidator directs, all such part of the real and personal property of the company as is in the person's custody or under their control, and which the person is required by law to deliver up;
 - (iii) does not deliver up to the liquidator, or as the liquidator directs, all books and papers in the person's custody or under their control belonging to the company and which the person is required by law to deliver up;
 - (iv) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company or conceals any debt due to or from the company;
 - (v) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company; or
 - (vi) makes any material omission in any statement relating to the affairs of the company;
 - (vii) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof;

- (viii) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or
- (ix) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of, any book or paper affecting or relating to the property or affairs of the company;
- (x) within twelve months next before the commencement of the winding up or at any time thereafter, makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;
- (xi) within twelve months next before the commencement of the winding up or at any time thereafter, fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;
- (xii) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses;
- (xiii) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for;
- (xiv) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for;
- (xv) within twelve months next before the commencement of the winding up or at any time thereafter, pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of the business of the company; or
- (xvi) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up;

such person shall be punishable, in the case of the offences mentioned respectively in paragraphs (xiii), (xiv) and (xv) of this sub-section, with imprisonment for a term not exceeding five years, and, in the case of any other offence, with imprisonment for a term not exceeding two years:

Provided that it shall be a good defence to a charge under any of paragraphs (ii), (iii), (iv), (vi), (xiv) and (xv) of this sub-section if the accused proves that they had no intent to defraud, and to a charge under any of clauses (i), (viii), (ix) and (x) of this sub-section if the accused proves that they had no intent to conceal the state of affairs of the company or to defeat the law.

- (b) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under clause (xv) of sub-section (a), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be punishable with imprisonment for a term not exceeding three years.

402. Meetings to ascertain wishes of creditors or contributories

- (a) Where by this Law the Court is authorized in relation to winding up to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the Court may, if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.
- (b) In the case of creditors, regard shall be had to the value of each creditor's debt.
- (c) In the case of contributories regard shall be had to the number of votes conferred on each contributory by this Law, the constitution or the terms of their shares.

403. Documents of company to be evidence

Where any company is being wound up, all documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

404. Inspection of documents

After an order for a winding up by or subject to the supervision of the Court, the Court may make such order for inspection by creditors and contributories of the company of its documents as the Court thinks just, and any documents in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

405. Disposal of documents of company

- (a) When a company has been wound up and is about to be dissolved, the documents of the company and of the liquidators may be disposed of as follows (that is to say):
 - (i) in the case of a winding up by or subject to the supervision of the Court, in such way as the Court directs; or
 - (ii) in the case of a voluntary winding up, in such way as the company by special resolution directs.
- (b) After three years from the dissolution of the company, no responsibility shall rest on the company or the liquidators, or any person to whom the custody of the documents has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

406. Power of Court to declare dissolution of company void

Where a company has been dissolved, the Court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as

the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

407. It shall be the duty of the person on whose application an order under section 406 was made, within 21 days after the making of the order, to file with the Registrar a certified copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding 5 penalty units.

408. **Information as to pending liquidations**

(a) Where a company is being wound up, if the winding up is not concluded within one year after its commencement, the liquidator shall, once in each year and at intervals of not more than twelve months, until the winding up is concluded, file in Court or with the Registrar, as the case may be, a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(b) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, themselves or by their agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating themselves to be a creditor or contributory shall be deemed to be guilty of an offence under section 182 of the Penal Code, and shall be punishable accordingly on the application of the liquidator.

(c) When the statement is filed in Court a copy shall simultaneously be filed with the Registrar and shall be kept by the Registrar along with the other records of the company.

409. If a liquidator fails to comply with the requirements of section 408, they shall be liable to a fine not exceeding 5 penalty units.

410. **Payments of liquidator into bank**

(a) Every liquidator of a company which is being wound up by the Court shall, in such manner and at such times as may be prescribed, pay the money received by the liquidator into a scheduled bank:

Provided that if the Court is satisfied that for the purpose of carrying on the business of the company or of obtaining advances or for any other reason it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Court may authorize the liquidator to make his payments into or out of such other bank as the Court may select and thereupon those payments shall be made in the prescribed manner.

(b) If any such liquidator at any time retains for more than 10 days a sum exceeding an amount equal to 5 penalty units, or such other amount as the Court may in any particular case authorize the liquidator to retain, then, unless the liquidator explains the retention to the satisfaction of the Court, the liquidator shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum and shall be liable to disallowance of all or such part of the liquidator's remuneration as the Court may think just and to be removed from their office by the Court, and shall be liable to pay any expenses occasioned by reason of their default.

(c) A liquidator of a company which is being wound up shall open a special banking account and pay all sums received by them as liquidator into such account.

411. Court or person before whom affidavit may be sworn

- (a) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in the Union, or elsewhere, before any Court, Judge or person lawfully authorized to take and receive affidavits, or in any place outside the Union before any Consul, Vice-Consul or Ambassador of the Union.
- (b) All Courts, Judges, Justices, Commissioners, and persons acting judicially in the Union shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, Consul or Vice-Consul or Ambassador attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Part.

Removal of defunct Companies from Register

412. Registrar may strike defunct company off register

- (a) Where the Registrar has reasonable cause to believe that a company is not carrying on business, the Registrar shall send to the company by post, or by electronic or other means, a notice inquiring whether the company is carrying on business.
- (b) If the Registrar does not within 28 days of sending the notice receive any answer thereto, the Registrar shall within 60 days after the expiration of the initial period send to the company by any means referred to in sub-section (a), a further notice referring to the first notice, and stating that no answer thereto has been received and that, if an answer is not received to the further notice within 28 days from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.
- (c) If the Registrar either receives an answer from the company to the effect that it is not carrying on business, or does not within 28 days after sending the second notice receive any answer, he may publish in the Gazette, and send to the company by any means referred to in sub-section (a) a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.
- (d) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the Registrar demanding the returns has been sent by any means referred to in sub-section (a) , to the company, or to the liquidator at his last known place of business, the Registrar may publish in the Gazette and send to the company a like notice as is provided in sub-section(c).
- (e) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and, on the publication in the Gazette of this notice, the company shall be dissolved:

Provided that the liability (if any) of every director and member of the company shall continue and may be enforced as if the company had not been dissolved.
- (f) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court, on the application of the company or member or

creditor, may, if satisfied that the company was at the time of the striking off carrying on business, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the name of the company had not been struck off.

- (g) A notice under this section may be sent to the company at its registered office, or by electronic means as notified by the company to the Registrar, or by advertisement in a daily newspaper circulating generally in the Union, or by any other means or to the care of some director, or other officer of the company, or, if there is no director, or other officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who are named as members of the company in the application for incorporation of the company, addressed to them at the address mentioned in the constitution.
- (h) This section applies without limitation to the Registrar's powers under section 430(d) or any other relevant power conferred by this Law.

Division 27: Winding up of unregistered companies

413. Winding up of unregistered companies

- (a) Subject to the provisions of this Part, and subject to any other applicable law, any unregistered company may be wound up under this Law, and all the provisions of this Law with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:
 - (i) the principal place of business of the company in the Union shall be deemed to be the registered office of the company;
 - (ii) no unregistered company shall be wound up under this Law voluntarily or subject to supervision;
 - (iii) the circumstances in which an unregistered company may be wound up are as follows (that is to say):
 - (A) if the unregistered company is dissolved, or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs;
 - (B) if the unregistered company is unable to pay its debts; or
 - (C) if the Court is of opinion that it is just and equitable that the unregistered company should be wound up; and
 - (iv) an unregistered company shall, for the purposes of this Law, be deemed to be unable to pay its debts:
 - (A) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding an amount equivalent to 5 penalty units then due, has served on the unregistered company, by leaving at its principal place of business, or by delivering to a director or officer of the company,

or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the unregistered company to pay the sum so due, and the unregistered company has for 21 days after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;

- (B) if any suit or other legal proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the unregistered company or from him in his character of member, and notice in writing of the institution of the suit or other legal proceeding having been served on the unregistered company by leaving the same at its principal place of business or by delivering it to a director, or officer of the unregistered company, or by otherwise serving the same in such manner as the Court may approve or direct, the unregistered company has not within 10 days after service of the notice paid, secured or compounded for the debt or demand, or procured the suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;
 - (C) if execution or other process issued on a decree or order obtained in any Court in favour of a creditor against the unregistered company, or any member thereof as such, or any person authorized to be sued as nominal defendant on behalf of the unregistered company, is returned unsatisfied; and
 - (D) if it is otherwise proved to the satisfaction of the Court that the unregistered company is unable to pay its debts.
- (b) Nothing in this Part shall affect the operation of any law which provides for any corporation, partnership, association or unregistered company being wound up, or being wound up as a company or as an unregistered company under any law repealed by this Law, except that references in any such first-mentioned law to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Law.

414. **Contributories in winding up of unregistered companies**

- (a) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the unregistered company, and every contributory shall be liable to contribute to the assets of the unregistered company all sums due from them in respect of any such liability as aforesaid.
- (b) In the event of any contributory dying or being adjudged insolvent, the provisions of this Law with respect to the legal representatives and heirs of deceased contributories, and to the assignees of insolvent contributories, shall apply.

415. **Power to stay or restrain proceedings**

The provisions of this Law with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the unregistered company.

416. **Suits stayed on winding up order**

Where an order has been made for winding up an unregistered company, no suit or other legal proceedings shall be proceeded with or commenced against any contributory of the unregistered company in respect of any debt of the unregistered company, except by leave of the Court, and subject to such terms as the Court may impose.

417. **Directions as to property in certain cases**

If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the winding up order or by any subsequent order, direct that all or any part of the property, moveable or immovable, including all interests and rights in, to and out of property, moveable and immovable, and including obligations and actionable claims as may belong to the unregistered company or to trustees on its behalf, is to vest in the official liquidator by his official name, and thereupon the property or the part thereof specified in the order shall vest accordingly; and the official liquidator may, after giving such indemnity (if any) as the Court may direct, bring or defend in his official name any suit or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the unregistered company and recovering its property.

418. **Provisions of this Part cumulative**

The provisions of this Part with respect to unregistered companies shall be in addition to, and not in restriction of, any provisions hereinbefore in this Law contained with respect to winding up companies by the Court, and the Court or official liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and/ or registered under this Law; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Law, and then only to the extent provided by this Part.

PART VI

THE REGISTRAR, REGISTRATION OFFICE, REGISTRATION OF DOCUMENTS, POWERS OF INSPECTION AND FEES; REMOVAL OF COMPANIES FROM THE REGISTER

Division 28: The Registrar, registration office, registration of documents, powers of inspection and fees and removal of companies from the register

419. **The Registrar**

- (a) On the commencement of this Law, the Directorate of Investment and Company Administration (and any successor agency) shall have the powers, and perform the functions and duties, of the Registrar.
- (b) The Registrar shall have such other powers, functions and duties as may be prescribed from time to time in or under this Law and any other applicable law, and have power to do whatever is necessary for or in connection with, or incidental to, the exercise or performance of its powers, functions and duties.
- (c) The Union Minister may direct the Registrar in relation to the exercise or performance of its powers, functions and duties.
- (d) Without limiting any of sub-sections (a) to (c) the Registrar will have the power to issue guidance as to the operation of the Law, of either a general or specific nature.
- (e) For so long as the Directorate of Investment and Company Administration (or any successor agency) is assigned the role of Registrar, the person holding the office of Director General of the Directorate for Investments and Company Administration (or equivalent office howsoever named) may exercise the powers, and perform the duties and functions of the Registrar, including the power to delegate any of those powers, duties and functions to any other officer or employee of the Directorate of Investments and Company Administration (or any successor agency), with any such delegation being subject to the control of the Director General.
- (f) This section does not limit any other way in which the Registrar may be appointed, or in which the Registrar's powers may be delegated, under an applicable law.

420. **Registration offices**

- (a) For the purposes of the registration of companies under this Law, there shall be offices at such places as the Union Minister thinks fit, and no company shall be registered except at such an office.
- (b) The Union Minister may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

421. **Maintenance and inspection of registers and records**

- (a) The Registrar must establish, keep and maintain all registers required to be maintained by it under this Law and all records filed with it under this Law.

- (b) The Registrar must perform the duties referred to in sub-section (a) in the manner it thinks fit, including by establishing systems and processes for the electronic authentication, submission, filing, storage and maintenance of records and registers and for communicating with all body corporates which may be registered under this Law. This sub-section applies without limitation to the power to regulate such matters under this or any other applicable law.
- (c) Without prejudice to sub-section (g), neither registration, nor refusal of registration, of a document by the Registrar affects, or creates a presumption as to, the validity or invalidity of the document or the correctness or otherwise of the information contained in it.
- (d) Without limitation to any other relevant powers, the Union Minister may prescribe any regulation, rule, order or notification necessary or convenient to give effect to the matters contemplated by sub-sections (a) and (b), particularly regarding the development of systems for the electronic registration of documents and electronic communications between the Registrar and bodies corporate registered under this Law. This may include prescriptions requiring the re-registration of any bodies corporate registered under this Law or for fees payable in connection with the operation of an electronic register, which may be different to the fees prescribed for equivalent registration actions by non-electronic means.
- (e) Any person may inspect the registers and records kept by the Registrar on payment of such fees as may be prescribed by the Union Minister (if any).
- (f) Any person may require a copy of the certificate of the incorporation of any company, or extract of any other document or any part of any other document required by this Law to be filed with the Registrar and kept with the records of a company, to be certified by the Registrar on payment for the certificate, certified copy or extract, of such fees as the Union Minister may prescribe.
- (g) Except in the case of manifest error and subject to the rectification procedures in sections 422 and 423 a document certified and issued by the Registrar under sub-section (f) shall in any proceedings be admissible in evidence as of equal validity with the original document.

422. **Rectification or correction of register**

- (a) The Registrar may:
 - (i) on the application of any person, rectify a register maintained by it under this Law if the Registrar is satisfied that any information has been wrongly entered in, or omitted from, the register;
 - (ii) if it appears to the Registrar that any particulars have been incorrectly entered in the register due to a clerical error by the Registrar, correct those particulars; or
 - (iii) on the application of any person, if it appears to the Registrar, following consultation with a company, that any particulars have been incorrectly entered in a register maintained by a company due to a clerical error by the company, and the correction of such error would not be likely to prejudice any person, direct the company to correct those particulars on the register maintained by it.
- (b) Before the Registrar rectifies a register under sub-section (a)(i), the Registrar must:

- (i) give written notice to the company that an application has been made to rectify the register in relation to that company (including details of that application);
- (ii) where the application has been made in relation to the registration of mortgages or charges, give written notice to the mortgagee or chargee that an application has been made to rectify the register in relation to that company (including details of that application); and
- (iii) give public notice setting out:
 - (A) the name of the applicant;
 - (B) the name of the company;
 - (C) the reasons for and details of the changes sought to be made to the register; and
 - (D) the date by which a written objection to the proposed rectification must be delivered to the Registrar, being a date not less than 28 days after the date of the notice.
- (c) Any person may deliver to the Registrar, not later than the date specified in accordance with sub-section (b)(iii)(D), a written objection to a proposed rectification of the register, and the Registrar must give a copy of the objection to the applicant for the rectification of the register.
- (d) The Registrar must not rectify the register pursuant to sub-section (a)(i) if the Registrar receives a written objection to the proposed rectification by the date specified unless the Registrar is satisfied that the objection has been withdrawn.

423. Powers of Court

- (a) If an objection to a proposed rectification is received by the Registrar under sub-section 422(c), the applicant for the rectification of the register may apply to the Court for an order for rectification.
- (b) If an application for an order is made under sub-section (a):
 - (i) the applicant must, as soon as practicable, serve notice of the application on the Registrar; and
 - (ii) the Registrar may appear and be heard in relation to the application.
- (c) On an application for an order under sub-section (a), the Court may, if it is satisfied that any information has been wrongly entered in, or omitted from, the register, make an order that the register be rectified.

424. Form for documents to be lodged with Registrar

- (a) A document that this Law requires to be lodged with the Registrar in a prescribed form must:
 - (i) if a form for the document is prescribed in a regulation, rule or notification made under this Law:

- (A) be in the prescribed form;
 - (B) include the information, statements, explanations or other matters required by the form; and
 - (C) be accompanied by any other material required by the form; or
- (ii) if a form for the document is not prescribed in a regulation, rule or notification but the Registrar has approved a form for the document:
- (A) be in the approved form;
 - (B) include the information, statements, explanations or other matters required by the form; and
 - (C) be accompanied by any other material required by the form.
- (b) A reference in this Law to a document that has been filed (being a document to which sub-section (a) applies), includes, unless a contrary intention appears, a reference to any other material filed with the document as required by the relevant form.
- (c) If:
- (i) this Law requires a document to be filed with the Registrar in a prescribed form; and
 - (ii) a provision of this Law either specifies, or provides for regulations, rules or notifications to specify, information, statements, explanations or other matters that must be included in the document, or other material that must accompany the document;

that other provision is not taken to exclude or limit the operation of sub-section (a) in relation to the prescribed form (and so the prescribed form may also require information etc. to be included in the form or material to accompany the form).

425. Registration of documents

- (a) On receipt of a document for inclusion on a register maintained under this Law, the Registrar must:
 - (i) subject to sub-section (b), register the document in the applicable register; and
 - (ii) in the case of a document that is not an annual return, give written advice of the registration to the person from whom the document was received.
- (b) If a document received by the Registrar for registration under this Law:
 - (i) is not in the prescribed form, if any;
 - (ii) does not comply with this Law or regulations, rules or notifications made under this Law;
 - (iii) is not printed or typewritten;
 - (iv) where the register is kept wholly or partly electronically, is not in a form that enables particulars to be entered directly by electronic means;

- (v) has not been properly completed; or
- (vi) contains material that is not clearly legible:

the Registrar may refuse to register the document, and in that event, must request either:

- (A) that the document be appropriately amended or completed and submitted for registration again; or
- (B) that a fresh document be submitted in its place.

426. **Registrar's powers of inspection**

- (a) Without limiting powers available to any Union Minister, agency or authority or like person or body under an applicable law, the Registrar may:
 - (i) for the purpose of:
 - (A) ascertaining whether a company or a director of a company is complying, or has complied, with this Law;
 - (B) ascertaining whether the Registrar should exercise any of the Registrars rights or powers under this Law; or
 - (C) detecting offences against this Law; and
 - (ii) if, in the Registrar's opinion, it is in the public interest to do so, do any of the following:
 - (A) require a person to produce for inspection relevant documents within that person's possession or control;
 - (B) inspect and take copies of relevant documents;
 - (C) take possession of relevant documents and remove them from the place where they are kept, and retain them for a reasonable time, for the purpose of taking copies; or
 - (D) retain relevant documents for a period which is, in all the circumstances reasonable, if there are reasonable grounds for believing that they are evidence of the commission of an offence.
- (b) The Registrar must consult with the Central Bank of Myanmar before exercising any of the powers conferred by sub-section (a) if the purpose of exercising the power relates to a company that is a scheduled bank or other bank or financial institution which is under the supervision of the Central Bank of Myanmar under an applicable law.
- (c) A person must not obstruct or hinder the Registrar or a person authorised by the Registrar while exercising a power conferred by sub-section (a).
- (d) If, following the taking of any action under sub-section (a), the Registrar considers that a prosecution ought to be instituted, the Registrar shall place the document obtained before the Attorney-General or the Public Prosecutor to, if considered appropriate, institute

proceedings. This sub-section applies without limiting any other powers the Registrar may have under this Law in relation to the matter.

427. Any person who knowingly and wilfully:

- (a) fails to comply with a requirement under sub-section 426(a)(ii)(A); or
- (b) acts in contravention of sub-section 426(c):

shall be liable in respect of each offence to a fine not exceeding 200 penalty units.

428. **Appeals from Registrar's decisions**

- (a) A person who is aggrieved by a decision of the Registrar under this Law may appeal to the Union Minister within 28 days after the date of notification of the decision.
- (b) The aggrieved person may, if not satisfied with a decision of the Union Minister on an appeal under sub-section (a), further appeal to the Court within 28 days after the date of notification of the decision or within such further time as the Court may allow.
- (c) On hearing the appeal, the court may approve the Registrar's decision or may give such directions or make such determination in the matter as the Court thinks fit.

429. **Fees**

- (a) There shall be paid to the Registrar in respect of the matters for which fees are payable to the Registrar under this Law such fees as the Union Minister may prescribe.
- (b) All fees paid to the Registrar in pursuance of this Law shall be accounted for to the budget of the Union.

430. **Submission of returns and documents to Registrar**

- (a) Subject to sub-section (d), if a company, having made default in complying with any provision of this Law which requires it to file with, deliver or send to the Registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within 21 days after the service of a notice on the company requiring it to do so, the Court may, on an application made to the Court by any member or creditor of the company or by the Registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.
- (b) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.
- (c) Nothing in this section shall be taken to prejudice the operation of any provision of this Law or other enactment imposing penalties on a company or its officers in respect of any such default as aforesaid, or limiting any other actions which the Registrar may take in relation to the failure of any company or other person to comply with this Law.
- (d) Where the default in sub-section (a) relates to the filing of the annual return required under section 97, or where the Registrar reasonably believes that any document submitted to it is fraudulent or contains a false declaration or information and such matter could cause material damage to the interests of the company, its creditors or the public, the Registrar may give notice to the company that it intends to suspend the company's registration, and such suspension will take effect within 28 days unless the company

makes good the default, including by the payment of any outstanding fees and prescribed penalties.

- (e) Following any such suspension under sub-section (d) the Registrar must, on the application of a company that:
 - (i) has been suspended for the failure to file an annual return, revoke the suspension and restore the company to the register, if the application is accompanied by all outstanding annual returns and associated filing fees, and any prescribed late filing fee or penalty for each outstanding annual return; or
 - (ii) has been suspended for submitting a document which is fraudulent or contains a false declaration or information which could cause material damage to the interests of the company, revoke the suspension and restore the company to the register, if the application is accompanied by documents which have been corrected and contain accurate information to the reasonable satisfaction of the Registrar, together with associated filing fees, and any prescribed late filing fee or penalty for each outstanding document.
- (f) If the suspension has not been revoked within six months from the date that the suspension of registration took effect under sub-section (d), the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and, on the publication in the Gazette of this notice, the company shall be dissolved: Provided that the liability (if any) of every director and member of the company shall continue and may be enforced as if the company had not been dissolved.
- (g) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court, on the application of the company or member or creditor, may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the name of the company had not been struck off.
- (h) Sub-section (d) applies without limitation to any other provisions of this Law, including the Registrar's powers to inspect documents, make investigations, seek the striking off of a defunct company, issue a penalty notice or intervene or seek to initiate proceedings or have orders given against a company (including for its winding up and deregistration) or any relevant person as provided by the Law.

PART VII

PROCEEDINGS; OFFENCES; REGULATIONS AND TRANSITIONAL PROVISIONS

Division 29: Jurisdiction of the Courts and legal proceedings

431. **Jurisdiction of the Courts**

- (a) Subject to other applicable laws, the Court having jurisdiction under this Law shall be the Supreme Court of the Union:

Provided that any High Court, District Court or Township Court may, in accordance with applicable law, exercise all or any of the jurisdiction by this Law conferred upon the Court.

- (b) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court.

Proceedings

432. **Offences non-cognizable**

Notwithstanding anything in the Code of Criminal Procedure, every offence against this Law shall, for the purposes of the said Code, be deemed to be non-cognizable.

433. **Application of fines**

The Court imposing any fine under this Law may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information the fine is recovered.

434. **Power to require limited company to give security for costs**

Where a limited company is plaintiff or petitioner in any suit or other legal proceeding, the Court may, if it appears that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

435. **Power of Court to grant relief in certain cases**

- (a) If, in any proceeding for negligence, default, contravention (including in respect of an obligation under this Law), breach of duty or breach of trust against a person to whom this section applies, it appears to the Court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think fit.
- (b) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, contravention (including in respect of an obligation under this Law), breach of duty or breach of trust,

he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a Court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

- (c) The persons to whom this section applies are the following:
 - (i) directors of a company;
 - (ii) secretaries of a company (if any);
 - (iii) any other officers of a company; and
 - (iv) persons employed by a company as auditors, whether they are or are not officers of the company.

436. Proceedings: how taken

Subject to this Law, in any proceedings for an offence against this Law, any information, charge, complaint or application may be laid or made by:

- (a) the Registrar (whether on the Registrar's own motion or in response to any application or request);
- (b) any person referred to in section 435 (who has reason to apprehend that action may be taken against them for a breach of this Law and) who may be entitled to apply for relief under this Law; or
- (c) another person authorised in writing by the Union Minister to institute the proceedings.

437. Registrar's power to intervene in proceedings

- (a) The Registrar may intervene in any proceeding relating to a matter arising under this Law.
- (b) Where the Registrar intervenes in a proceeding referred to in sub-section (a), the Registrar is taken to be a party to the proceeding and, subject to this Law, has all the rights, duties and liabilities of such a party.

438. Time for instituting proceedings

Despite anything in any other applicable law, proceedings for an offence against this Law may be instituted within the period of six years after the act or omission alleged to constitute the offence.

439. Penalty notices

- (a) Where the Registrar has reason to believe that a person has committed an offence under this law where the penalty (or maximum penalty) is expressly prescribed (in this section called a "*prescribed offence*"), the Registrar may, subject to sub-section (b), give the person a notice in the prescribed form:
 - (i) alleging that the person has committed the prescribed offence and giving the prescribed particulars in relation to the prescribed offence;
 - (ii) setting out the prescribed penalty (or penalty determined by the Registrar up to the maximum prescribed penalty) in respect of the prescribed offence; and

- (iii) stating:
 - (A) in the case of a prescribed offence constituted by a failure to do an act or thing:
 - (I) that the obligation to do the act or thing continues despite the service of the notice or the payment of the prescribed penalty (or penalty determined by the Registrar up to the maximum prescribed penalty);
 - (II) that if, within the period specified in the notice (being a period of at least 21 days), the person pays the prescribed penalty (or penalty determined by the Registrar up to the maximum prescribed penalty) to the authority specified in the notice and does the act or thing, no further action will be taken against the person in relation to the prescribed offence; and
 - (III) that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty (or penalty determined by the Registrar up to the maximum prescribed penalty) to the authority specified in the notice or has not done the act or thing, proceedings may be instituted against the person; or
 - (B) in the case of a prescribed offence, not being an offence constituted by a failure to do an act or thing:
 - (I) that if, within the period specified in the notice (being a period of at least 21 days), the person pays the prescribed penalty (or penalty determined by the Registrar up to the maximum prescribed penalty) to the authority specified in the notice, no further action will be taken against the person in relation to the prescribed offence; and
 - (II) that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty (or penalty determined by the Registrar up to the maximum prescribed penalty) to the authority specified in the notice, proceedings may be instituted against the person.
- (b) Sub-section (a) does not empower the Registrar:
 - (i) to give a person more than one notice under that sub-section in relation to an alleged commission by that person of a particular prescribed offence; or
 - (ii) to give a person a notice under that sub-section in relation to a prescribed offence unless proceedings could be instituted against that person for that offence in accordance with section 438.
- (c) A notice under sub-section (a) may be given to a natural person either personally, by post or by electronic means.
- (d) Where a notice under sub-section (a) is given to a person in relation to a prescribed offence constituted by a failure to do a particular act or thing:

- (i) if, within the period specified in the notice, the person pays the prescribed penalty (or penalty determined by the Registrar up to the maximum prescribed penalty) to the authority specified in the notice, and does the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence;
 - (ii) if, at the end of the period specified in the notice, the person has paid the prescribed penalty (or penalty determined by the Registrar up to the maximum prescribed penalty) to the authority specified in the notice but has not done the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence, but the obligation to do that act or thing continues, and section 449 applies in relation to the continued failure to do that act or thing as if, on the day on which the person so paid the prescribed penalty (or penalty determined by the Registrar up to the maximum prescribed penalty), the person had been convicted of an offence constituted by a failure to do that act or thing;
 - (iii) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty (or penalty determined by the Registrar up to the maximum prescribed penalty) to the authority specified in the notice but had done the act or thing—proceedings may be instituted against the person in respect of the prescribed offence; or
 - (iv) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty (or penalty determined by the Registrar up to the maximum prescribed penalty) to the authority specified in the notice and has not done the act or thing—the obligation to do that act or thing continues, and proceedings may be instituted against the person in respect of the prescribed offence.
- (e) Where a notice under sub-section (a) is given to a person in relation to a prescribed offence, not being an offence constituted by a failure to do a particular act or thing:
- (i) if, within the period specified in the notice, the person pays the prescribed penalty (or penalty determined by the Registrar up to the maximum prescribed penalty) to the authority specified in the notice—no proceedings may be instituted against the person in respect of the prescribed offence; or
 - (ii) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty (or penalty determined by the Registrar up to the maximum prescribed penalty) to the authority specified in the notice—proceedings may be instituted against the person in respect of the prescribed offence.
- (f) The payment of an amount by a person pursuant to a notice served on the person under this section in relation to a prescribed offence is not taken for any purpose to be an admission by that person of any liability in connection with the alleged commission of the prescribed offence.
- (g) Except as provided by sub-sections (d)(i) and (ii) and (e)(i), this section does not affect the operation of any provision of this Law or any other applicable law in relation to the institution of proceedings in respect of offences that are prescribed offences for the purposes of this section.

440. **Certain persons to assist in prosecutions**

- (a) Where a prosecution in respect of an offence against this Law has been instituted, or the Registrar is of the opinion that a prosecution in respect of an offence against this Law ought to be instituted, against a person (in this section referred to as the *defendant*), the Registrar may:
- (i) if the defendant is a natural person—require any person who is or was a partner, employee or agent of the defendant; or
 - (ii) if the defendant is a body corporate—require any person who is or was an officer, employee or agent of the defendant;
- to assist in the prosecution, and the person who is so required must give all assistance in connection with the prosecution that that person is reasonably able to give.
- (b) The Registrar must not make such a requirement as is mentioned in sub-section (a) of a person who, in the opinion of the Registrar, is or is likely to be a defendant in the proceedings or is or has been such a person's lawyer.
- (c) If a person to whom sub-section (a)(i) or (ii) relates fails to give assistance as required by sub-section (a), the person contravenes this section and, without affecting any penalty to which the person may be liable for the contravention, the Court may, on the application of the Registrar, order the person to comply with the requirement within such time, and in such manner, as the Court orders.
- (d) In this section, *agent*, in relation to the defendant, includes a banker of the defendant and a person engaged as an auditor by the defendant, whether that person is an employee or an officer of the defendant or not.

Declarations, Orders and Injunctions

441. **Declarations of contravention in respect of duties**

- (a) Subject to this section, if the Court is satisfied on the basis of probabilities that a person has contravened a provision of this Law, it may, as an alternative to any penalty which may be imposed under section 190:
- (i) make a declaration of contravention under this section; and
 - (ii) make a penalty order under section 442; or
 - (iii) make a compensation order under section 443.
- (b) The Registrar may apply for a declaration of contravention, penalty order or a compensation order.
- (c) If a declaration of contravention is made under sub-section (a), the company may apply for a compensation order if the Registrar has not done so under sub-section (b).
- (d) Proceedings for a declaration of contravention, penalty order or a compensation order may be started no later than six years after the contravention.

- (e) The Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a declaration of contravention, penalty order or a compensation order, as provided by, and subject to, the applicable law.
- (f) The Court must not make a for a declaration of contravention, penalty order or a compensation order against a person if the person has been convicted of an offence constituted by the conduct that is substantially the same as the conduct constituting the contravention.

442. Penalty orders

- (a) A Court may order a person to pay to the budget of the Union a pecuniary penalty of up to 200 penalty units if:
 - (i) a declaration of contravention by the person has been made under section 441;
and
 - (ii) the contravention:
 - (A) materially prejudices the interests of the company or its members; or
 - (B) materially prejudices the company's ability to pay its creditors.
- (b) The penalty is a civil debt payable to the Registrar on the Union's behalf. The Registrar may enforce the order as if it were an order made in civil proceedings against the person to recover a debt due by the person.

443. Compensation orders

- (a) If a penalty order has not been applied for or made under section 442, the Court may order a person to compensate a company for damage suffered by the company if:
 - (i) a declaration of contravention by the person has been made under section 441;
and
 - (ii) the damage resulted from the contravention.
- (b) The order must specify the amount of the compensation.
- (c) In determining the damage suffered by the company for the purposes of making a compensation order, the Court may have regard to profits made by any person resulting from the contravention or the offence.
- (d) A compensation order may be enforced as if it were a judgment of the Court.

444. Prohibition orders

- (a) Where:
 - (i) an investigation is being carried out under this Law in relation to an act or omission by a person that constitutes or may constitute a contravention of this Law;
 - (ii) a prosecution has been begun against a person for a contravention of this Law; or
 - (iii) a civil proceeding has been begun against a person under this Law;

and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of a person (in this section called an *aggrieved person*) to whom the person referred to in sub-section (i), (ii) or (iii), as the case may be, (in this section called the *relevant person*), is liable, or may be or become liable, to pay money, whether in respect of a debt, by way of damages or compensation or otherwise, or to account for property, the Court may, on application by the Registrar or by an aggrieved person, make one or more of the orders set out in sub-section (b) below.

- (b) The Court may make one or more of the following orders pursuant to sub-section (a):
- (i) an order prohibiting a person who is indebted to the relevant person or to an associate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;
 - (ii) an order prohibiting a person holding money or other property, on behalf of the relevant person, or on behalf of an associate of the relevant person, from paying all or any of the money, or transferring, or otherwise parting with possession of, the other property, to, or to another person at the direction or request of, the person on whose behalf the money or other property, is or are held;
 - (iii) an order prohibiting the taking or sending out of the Union by a person of money of the relevant person or of an associate of the relevant person;
 - (iv) an order prohibiting the taking, sending or transfer by a person of property of the relevant person, or of an associate of the relevant person from a place in the Union to a place outside the Union;
 - (v) an order appointing:
 - (A) if the relevant person is a natural person—a receiver or trustee, having such powers as the Court orders, of the property or of part of the property of that person; or
 - (B) if the relevant person is a body corporate—a receiver or official liquidator, having such powers as the Court orders, of the property or of part of the property of that person;
 - (vi) if the relevant person is a natural person—an order requiring that person to deliver up to the Court his or her passport and such other documents as the Court thinks fit; or
 - (vii) if the relevant person is a natural person—an order prohibiting that person from leaving the Union without the consent of the Court.
- (c) An order under sub-section (b) prohibiting conduct may prohibit the conduct either absolutely or subject to conditions.
- (d) Where an application is made to the Court for an order under sub-section (a), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

- (e) On an application under sub-section (a), the Court must not require the applicant or any other person, as a condition of granting an interim order under sub-section (d), to give an undertaking as to damages.
- (f) Where the Court has made an order under this section on a person's application, the Court may, on application by that person or by any person affected by the order, make a further order discharging or varying the first mentioned order.
- (g) An order made under sub-section (a) or (c) may be expressed to operate for a specified period or until the order is discharged by a further order under this section.

445. **Powers to grant injunctions**

- (a) Where a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute:
 - (i) a contravention of this Law;
 - (ii) attempting to contravene this Law;
 - (iii) aiding, abetting, counselling or procuring a person to contravene this Law;
 - (iv) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Law;
 - (v) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Law; or
 - (vi) conspiring with others to contravene this Law;

the Court may, on the application of the Registrar, or of a person whose interests have been, are or would be affected by the conduct, grant an injunction, of such kind and on such terms as the Court thinks appropriate, restraining the first mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

- (b) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Law to do, the Court may, on the application of:
 - (i) the Registrar; or
 - (ii) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing;

grant an injunction, on such terms as the Court thinks appropriate, requiring the first mentioned person to do that act or thing.

- (c) Where an application for an injunction under sub-section (a) or (b) has been made, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that that sub-section applies.
- (d) The Court may discharge or vary an injunction granted under sub-section (a) or (b).

- (e) Where the Registrar applies to the Court for the grant of an injunction under this section, the Court must not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (f) In proceedings under this section against a person the Court may make an order under section 444 in respect of the person.
- (g) Where the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

446. No limitation on Court's other powers

Nothing in this Division affects the powers that the Court has apart from this Division.

Use of books in proceedings and form of books

447. Admissibility of books in evidence

- (a) An original book kept by a company under a requirement of this Law is admissible in evidence in any proceeding and is prima facie evidence of any matter stated or recorded in the book.
- (b) A document purporting to be an original book kept by a company is, unless the contrary is proved, taken to be a book kept as mentioned in sub-section (a).

448. Form and evidentiary value of books

- (a) A book that is required by this Law to be kept or prepared may be kept or prepared:
 - (i) by making entries in a bound or looseleaf book; or
 - (ii) by recording or storing the matters concerned by means of a mechanical, electronic or other device; or
 - (iii) in any other manner approved by the Registrar.
- (b) Sub-section (a) does not authorise a book to be kept or prepared by a mechanical, electronic or other device unless:
 - (i) the matters recorded or stored will be capable, at any time, of being reproduced in a written form; or
 - (ii) a reproduction of those matters is kept in a written form approved by the Registrar.
- (c) A company must take all reasonable precautions, including such precautions (if any) as are prescribed, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any book or part of a book required by this Law to be kept or prepared by the company.
- (d) Where a company records or stores any matters by means of a mechanical, electronic or other device, any duty imposed by this Law to make a book containing those matters available for inspection or to provide copies of the whole or a part of a book containing

those matters is to be construed as a duty to make the matters available for inspection in written form or to provide a document containing a clear reproduction in writing of the whole or part of them, as the case may be.

- (e) The Registrar may issue directives to provide for how up to date the information contained in an instrument prepared for the purposes of sub-section (d) must be.
- (f) If:
 - (i) because of this Law, a book that this Law requires to be kept or prepared is prima facie evidence of a matter; and
 - (ii) the book, or a part of the book, is kept or prepared by recording or storing matters (including that matter) by means of a mechanical, electronic or other device;a written reproduction of that matter as so recorded or stored is prima facie evidence of that matter.
- (g) A writing that purports to reproduce a matter recorded or stored by means of a mechanical, electronic or other device is, unless the contrary is established, taken to be a reproduction of that matter.

Service and authentication of documents

449. Service of documents on company

Without limiting any other way in which a document may be served, a document may be served on a company by:

- (a) leaving it at, or sending it by post to, the registered office of the company;
- (b) by delivery to a person named as a director of the company on the register maintained by the Registrar under section 421;
- (c) by delivery to an employee of the company at the company's principal place of business;
- (d) by serving it in accordance with any directions as to service given by the Court in any proceedings; or
- (e) in accordance with an agreement made with the company.

450. Service of documents on Registrar

A document may be served on the Registrar by sending it to the Registrar by post, or delivering it to the Registrar, or by leaving it at the Registrar's office.

451. Authentication of documents

Without limiting any other way in which a document or proceeding may be authenticated by a company, or the assumptions that a person dealing with a company is entitled to make under section 31, a document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorized officer of the company, and need not be under its common seal.

Division 30: Offences and defences

Specific Offences

452. Penalty for false statement

Whoever in any return, report, certificate, financial statement or other document, required by or for the purposes of any of the provisions of this Law, wilfully makes, or authorizes the making of, a statement false or misleading in any material particular, knowing it to be false, or who omits, or authorizes the omission, from such document any matter knowing that the omission makes the document false or misleading, shall be liable to fine to be determined under section 457(d).

453. Penalty for wrongful withholding or destruction of property

Any director or other officer or employee of a company who wrongfully obtains possession of any property of a company, or having any such property in his possession wrongfully withholds it or wilfully applies it to purposes other than those expressed or directed in the articles and authorized by this Law, shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine to be determined under section 457(d), and may be ordered by the Court trying the offence to deliver up or refund, within a time to be fixed by the Court, any such property improperly obtained or wrongfully withheld or wilfully misapplied.

454. Penalty for misapplication of securities by employers

- (a) All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company in a special account to be opened by the company for the purpose in a scheduled bank, and no portion thereof shall be utilized by the company except for the purposes agreed to in the contract of service.
- (b) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund (whether by the company or by the employees) or accruing by way of interest or otherwise to such fund, shall be either deposited in a bank account with a financial institution duly licensed by the Central Bank of Myanmar or invested in securities mentioned or referred to in clauses (a) to (e) of section 20 of the Trusts Act and in accordance with all applicable laws.
- (c) Notwithstanding anything to the contrary in the rules of any fund to which sub-section (b) applies or in any contract between a company and its employees, no employee shall be entitled to receive, in respect of such portion of the amount to his credit in such fund as is invested in accordance with the provisions of sub-section (b), interest at a rate exceeding the rate of interest yielded by such investment.
- (d) An employee shall be entitled, on request made in this behalf to the company, to see the bank's receipt for any money or security such as is referred to in sub-section (a) and sub-section (b).
- (e) Any director or other officer of the company who knowingly contravenes or permits or authorizes the contravention of the provisions of this section shall be liable to a fine to be determined under section 457(d).

455. **Penalty for improper use of word “Limited”**

If any person or persons trade or carry on business under any name or title of which “Limited” is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine to be determined under section 457(d).

456. **Offence for falsification of books**

- (a) An officer, former officer, employee, former employee, member or former member of a company who engages in conduct that results in the concealment, destruction, mutilation or falsification of any securities of or belonging to the company or any books affecting or relating to affairs of the company is guilty of an offence under this Law.
- (b) Where matter that is used or intended to be used in connection with the keeping of any books affecting or relating to affairs of a company is recorded or stored in an illegible form by means of a mechanical device, an electronic device or any other device, a person who:
 - (i) records or stores by means of that device matter that the person knows to be false or misleading in a material particular;
 - (ii) engages in conduct that results in the destruction, removal or falsification of matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling or recovering other matter to be recorded or stored by means of that device; or
 - (iii) having a duty to record or store matter by means of that device, fails to record or store the matter by means of that device:
 - (A) with intent to falsify any entry made or intended to be compiled, wholly or in part, from matter so recorded or stored; or
 - (B) knowing that the failure so to record or store the matter will render false or misleading in a material particular other matter so recorded or stored;contravenes this sub-section.
- (c) It is a defence to a charge arising under sub-section (a) or (b) if the defendant proves that he, she or it acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.
- (d) This section operates without limitation to section 452.

Offences generally

457. **General penalty provisions**

- (a) A person, including a company, who:
 - (i) does an act or thing that the person is forbidden to do by or under a provision of this Law;
 - (ii) does not do an act or thing that the person is required or directed to do by or under a provision of this Law; or

- (iii) otherwise contravenes a provision of this Law;
is guilty of an offence by virtue of this sub-section, unless that or another provision of this Law provides that the person:
 - (A) is guilty of an offence; or
 - (B) is not guilty of an offence.
- (b) A person who is guilty of an offence against this Law, whether by virtue of sub-section (a) or otherwise, is punishable by a penalty not exceeding the penalty applicable to the offence.
- (c) Where a provision of this Law (other than this section) provides that the penalty applicable to a contravention of a particular provision of this Law is a specified penalty, pecuniary or otherwise, the penalty applicable to an offence constituted by a contravention of the particular provision is the specified penalty.
- (d) Where the penalty is not expressly set out in this Law the Court shall determine the penalty based on what it believes to be just and equitable in the circumstances and having regard to the penalties imposed under this Law for any similar offence and in all events in accordance with applicable law.

458. **Offences committed partly in and partly out of the jurisdiction**

Where:

- (a) a person does or omits to do an act outside the Union; and
- (b) if that person had done or omitted to do that act in the Union, the person would, by reason of also having done or omitted to do an act in the Union, have been guilty of an offence against this Law;

the person is guilty of that offence.

459. **Continuing offences**

- (a) Where by or under a provision of this Law, an act is or was required to be done within a particular period or before a particular time, and failure to do the act within that period or before that time constitutes an offence; and the act is not done within that period or before that time, then:
 - (i) the obligation to do the act continues, after that period has ended or that time has passed, and whether or not a person is or has been convicted of the offence in relation to failure to do the act, until the act is done; and
 - (ii) sub-section (c) applies.
- (b) Where by or under a provision of this Law, an act is or was required to be done but neither a period nor a time for the doing of the act is or was specified, and the failure to do the act constitutes an offence and a person is or has been convicted of the offence in relation to failure to do the act, then:
 - (i) the obligation to do the act continues, despite the conviction, until the act is done; and

- (ii) sub-section (c) applies.
- (c) Where at a particular time, a person is or was first convicted of the offence in relation to failure to do the act, and the failure to do the act continued after that time, then:
 - (i) the person is, in relation to failure to do the act, guilty of a further offence in respect of so much of the period throughout which the failure to do the act continued or elapsed after that time and before the relevant day in relation to the further offence; and
 - (ii) for the purposes of this Law and any other applicable law the further offence is taken to be constituted by failure to do the act during so much of that period as so elapsed.
- (d) Where a person is guilty, by virtue of sub-section (c), of an offence in respect of the whole or a part of a particular period, the penalty applicable to the offence is a fine of the amount obtained by multiplying half a penalty unit by the number of days in that period, or in that part of that period, as the case may be.

Defences and relief

460. **Defence by director or officer**

- (a) Without limiting section 435, it is a defence to a director or officer charged with an offence in relation to a duty imposed on the board of a company or a duty imposed on a director or officer if the director or officer proves that:
 - (i) the board (in the case of an offence in relation to a duty imposed on the board) took all reasonable and proper steps to ensure that the requirements of this Law would be complied with;
 - (ii) the director or officer took all reasonable and proper steps to ensure that the board complied with the requirements of this Law (in the case of an offence in relation to a duty imposed on the board);
 - (iii) the director or officer (in the case of an offence in relation to a duty imposed on the director or officer) took all reasonable and proper steps to ensure that the requirements of this Law would be complied with; or
 - (iv) in the circumstances the director or officer could not reasonably have been expected to take steps to ensure that either the board or they complied with the requirements of this Law imposed on the board or them (as applicable).
- (b) Without limiting section 435, it is a defence to a director or officer charged with an offence in relation to a duty imposed on the company if the director or officer proves that:
 - (i) the company took all reasonable and proper steps to ensure that the requirements of this Law would be complied with;
 - (ii) the director or officer took all reasonable steps to ensure that the company complied with the requirements of this Law; or

- (iii) in the circumstances the director or officer could not reasonably have been expected to take steps to ensure that the company complied with the requirements of this Law.

461. Relief from liability following declaration of contravention

- (a) Without limiting section 435, if proceedings are brought against a person under this Part; and in the proceedings it appears to the Court that the person has, or may have, contravened a provision of this Law but that:
 - (i) the person has acted honestly; and
 - (ii) having regard to all the circumstances of the case including, where applicable, those connected with the person's appointment as an officer, or employment as an employee, of a company), the person ought fairly to be excused for the contravention;

the Court may relieve the person either wholly or partly from a liability to which the person would otherwise be subject, or that might otherwise be imposed on the person, because of the contravention.

- (b) If a person thinks that proceedings will or may be begun against them under this Part in respect of a possible contravention of a provision of this Law, they may apply to the Court for relief.
- (c) On an application under sub-section (b), the Court may grant relief under sub-section (a) as if the proceedings had been begun in the Court.
- (d) This section does not limit any other powers the Court may have to grant relief.

Division 31: Savings and transitional provisions

462. Saving of pending proceedings for winding up

The provisions of this Law with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Law, but every such company shall be wound up in the same manner and with the same incidents as if this Law had not been passed.

463. Saving of documents

Every instrument of transfer or other document made before the commencement of this Law, in pursuance of any enactment hereby repealed, shall be of the same force as if this Law had not been passed, and for the purposes of that instrument or document the repealed enactment shall be deemed to remain in full force.

464. Former registration offices, registers, and Registrars continued

- (a) The offices existing at the commencement of this Law for registration of companies shall be continued as if they had been established under this Law.
- (b) Registers of companies kept in any such existing offices shall respectively be deemed part of the registers of companies to be kept under this Law.

- (c) The existing Registrar, and officers in those offices shall, hold the offices and receive the salaries hitherto held and received by them, but subject to any regulations of the Union Minister with regard to the execution of their duties.

465. Existing registered companies to be registered

- (a) If a company or other entity was registered under the previous law and that registration was still in force immediately before the commencement of this Law, the registration of the company or other entity has effect (and may be dealt with) after the commencement as if it were a registration of the company or other entity of the corresponding type under Part II of this Law.
- (b) An overseas corporation to which sub-section (a) applies will have until the end of the transition period to appoint an authorised officer.

466. Applications in process

- (a) An application for the registration of a company or other entity made under the previous law but not completed by the commencement of this Law will be, unless withdrawn by the applicant, taken to be an application made under this Law.
- (b) The applicant may request, or the Registrar may require, changes to the application referred to in sub-section (a) where necessary or desirable to meet the application requirements under this Law.

467. Repeal of certain existing Regulations and continued effect of others

- (a) Regulations 8 to 30 (inclusive) of the Myanmar Companies Rules 1940 and Forms 1 to 9 (inclusive) in the Schedule of Forms of the Myanmar Companies Rules 1940 are repealed upon the commencement of this Law.
- (b) The Myanmar Companies Regulations 1957 are repealed upon the commencement of this Law.
- (c) Except as provided in sub-sections (a) and (b), the regulations that were made for the purposes of provisions of the previous law that substantially correspond to provisions of this Law and that were in force and applied immediately before the commencement of this Law continue to have effect (and may be dealt with), with all the necessary changes, after the commencement as if:
 - (i) they were regulations in force under section 471 of this Law; and
 - (ii) they were made for the purposes of the corresponding provisions of this Law.

468. Things done under corresponding provisions continue to have effect

Without limiting any other provisions of this Division, anything that:

- (a) was done before the commencement of this Law by, under, or for the purposes of, a provision of the previous law that substantially corresponds to a provision of this Law; and
- (b) had an ongoing relevance immediately before the commencement of this Law for the purposes of the previous law,

has effect (and may be dealt with) after the commencement of this Law as if it were done by, under, or for the purposes of, the corresponding provision of this Law.

469. Preservation of accrued rights

Without limiting any other provisions of this Division, if prior to the commencement of this Law a person had acquired, accrued or incurred a right or liability under a provision of the previous law (other than pursuant to a court order) that substantially corresponds to a provision of this Law, that right or liability is deemed to continue under the substantially corresponding provision of this Law as if that provision applied to the conduct or circumstances that gave rise to the right or liability.

470. References to previous law in instruments

- (a) Subject to sub-section (b), a reference to the previous law, or a provision or term of the previous law that substantially corresponds to a provision or term of this Law, in any applicable law shall be taken following the commencement of this Law to be or include a reference to this Law (or the substantially corresponding provision or term of this Law).
- (b) Regulations made under this Law may provide that sub-section (a) does not apply in relation to prescribed references in prescribed applicable laws.

471. Making of transitional regulations

- (a) The regulations made under this Law may deal with matters of a savings or transitional nature relating to the transition from the application of provisions of the previous law to the application of provisions of this law. The regulations have effect despite anything else in this Division.
- (b) Without limiting sub-section (a), the regulations may provide for a matter to be dealt with, wholly or partly, in any of the following ways:
 - (i) by applying (with or without modifications) to the matter:
 - (A) provisions of the previous law, as in force immediately before the commencement of this Law or at some earlier time;
 - (B) provisions of this Law; or
 - (C) a combination of provisions referred to in sub-sections (A) and (B);
 - (ii) by otherwise specifying rules for dealing with the matter; or
 - (iii) by specifying a particular consequence of the matter, or of an outcome of the matter, for the purposes of this Law.
- (c) The regulations may provide that certain provisions of this Division are taken to be modified as set out in the regulations. Those provisions then have effect as if they were so modified.

472. Repeal of the Special Company Act 1950

- (a) The Special Company Act 1950 is, and all notifications, rules, orders and subordinate instruments made under it are, repealed upon the commencement of this Law.

- (b) Sub-section (a) does not affect the status of any corporation formed as a “Special Company” under the Special Company Act 1950.
- (c) Sub-section (a) is without prejudice to Division 9 of this Law which provides that corporations formed under the Special Company Act 1950 shall be registered under this Law.

473. **Termination of Managing Agent arrangements**

- (a) Following the commencement of this Law a company may no longer appoint a managing agent and, subject to sub-section (b), any arrangements in effect whereby a managing agent has been appointed are deemed to be terminated upon the commencement of this Law and any such managing agent will thereafter be deemed to be a director of the company.
- (b) Any company which has a managing agent at the time of commencement of this Law, and any such managing agent, may apply to the Union Minister for temporary relief from the operation of sub-section (a) to enable the managing agent arrangement to continue until a time no longer than the end of the transition period. The application must be made within 28 days of commencement of the Law.
- (c) On an application under sub-section (b) the Union Minister may make such determination as the Union Minister thinks is in the best interests of the company.
- (d) No compensation will be payable to any managing agent in connection with the operation of this section, provided that any accrued sums which may be payable to the managing agent upon the commencement of this Law will remain payable.

PART VIII
MISCELLANEOUS

Division 32: Regulations, notifications and guidelines

474. Power of Supreme Court to make rules

- (a) The Supreme Court may, from time to time, make rules consistent with this Law and with the Code of Civil Procedure concerning the mode of proceedings to be had for winding up a company in such Court and in the Courts subordinate thereto, and for voluntary winding up (both members' and creditors'), for the holding of meetings of creditors and members in connection with proceedings under section 287 of this Law, and generally for all applications to be made to the Court under the provisions of this Law, and shall make rules providing for all matters relating to the winding up of companies which, by this Law, are to be prescribed.
- (b) Without prejudice to the generality of the foregoing power, the Supreme Court may by such rules enable or require all or any of the powers and duties conferred and imposed on the Court by this Law, in respect of the matters following, to be exercised or performed by the official liquidator and subject to the control of the Court, that is to say, the powers and duties of the Court in respect of:
 - (i) holding and conducting meetings to ascertain the wishes of creditors and contributories;
 - (ii) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets;
 - (iii) requiring delivery of property or documents to the liquidator;
 - (iv) making calls;
 - (v) fixing a time within which debts and claims must be proved:

Provided that the official liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without the special leave of the Court.

475. Power to issue regulations, notifications and guidelines

- (a) Without limiting any provision of or power held by any person under this Law or other applicable Law:
 - (i) the Ministry may, with the approval of the Union Government, issue regulations, rules, or by-laws for the proper and efficient implementation, administration and enforcement of this Law; and
 - (ii) the Registrar may issue notifications, orders, directives and procedures, guidelines, tables and forms for the proper and efficient implementation, administration and enforcement of this Law.

- (b) Every regulation, rule, by-law, notification, order, directive, or procedure made under sub-section (a) shall be published in the Gazette, and on such publication shall have effect as if enacted in this Law.

476. Power to form specialist courts, tribunals and commissions

- (a) Without limiting section 474, the Ministry may, with the approval of the Union Government, issue any necessary regulations, rules, orders, notifications and directives for the establishment of tribunals or commissions to assist with the administration and operation of this Law. Such necessary regulations, rules, orders, notifications and directives must not be inconsistent with this Law but may include, without limitation, provisions regarding:
 - (i) the powers, duties, functions and procedures of the tribunal or commission, including the orders which may be made by the tribunal or commission (which may not exceed any powers, duties and functions conferred on the Court pursuant to this or other applicable law);
 - (ii) any general or specific elements of this Law which are to be within the scope of the tribunal or commission to consider or determine and processes for the review or appeal of tribunal or commission decisions;
 - (iii) the number of members or commissioners and qualifications of the tribunal or commission members;
 - (iv) procedures for the appointment, removal or suspension of members or commissioners and the filling of any vacancies;
 - (v) the terms of engagement or employment of any members, commissioners or employees of the tribunal or commission;
 - (vi) the term of the tribunal or commission, including temporary, permanent or ad-hoc nature of the tribunal or commission; and
 - (vii) the funding of the tribunal or commission and the capacity of the tribunal or commission to levy fees and impose charges, fines or penalties.
- (b) Subject to other applicable laws, the Ministry may also, with the consent of the Union Government, and in coordination with the Supreme Court and, propose the establishment of a specialist court to assist with the administration and operation of this Law.

Provisions regarding the previous law

- 477. The previous law, including the schedules, is repealed upon commencement of this Law.
- 478. Following its repeal, anything done or in process under the previous law shall be taken to be done or in process under this Law, subject to, and as further provided by, Division 31.