

## SEYCHELLES

### THE COMPANIES ORDINANCE, 1972.

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## **PART I.- PRELIMINARY**

### **Short title and commencement.**

- 1.(1)** This Ordinance may be cited as the Companies Ordinance, 1972.
- (2)** Subject to any express provision to the contrary, this Ordinance shall come into operation on such day as the Minister may, by notice in the *Gazette*, appoint, and different days may be appointed for different provisions of this Ordinance or for the same provision in relation to different cases or classes of case.

### **Interpretation.**

- 2.(1)** In this Ordinance -

“accounts” includes the group accounts of a company or corporation;

“annual accounts” and “annual accounts and reports” have the meanings assigned to them respectively by section 141(5);

“annual general meeting” means the general meeting held for any year under section 119;

“annual return” means the return required to be made under section 114;

“articles” means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained in Part II or, in the case of a proprietary company, Part IV of the First Schedule to this Ordinance, and in the case of an existing company, means the regulations contained in the notarial deed, contract, statutes, articles of association or other instrument under which the company was constituted insofar as such regulations would not, in the case of a company formed under this Ordinance, be required to be set out in its memorandum of association;

“assets” means any property in which a company has any interest or over which it has any rights;

“associated company” has the meaning assigned to it by section 111(3);

“bearer debenture” means a debenture the principal or interest of which is by its terms payable to the bearer of the debenture for the time being, and includes a renounceable or transferable letter of allotment or acceptance in respect of debentures;

“bearer share certificate” means a certificate by the terms of which the bearer of the certificate for the time being is entitled to the shares specified in it, and includes a renounceable or transferable letter of allotment or acceptance in respect of shares;

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

“capital reserve” means the total of the amounts referred to in section 55(5);

“chairman” means the person who presides at a meeting or during part of a meeting;

“company” means a company formed and registered under this Ordinance or an existing company;

“contributory” has the meaning assigned to it by section 204;

“convertible debenture” has the meaning assigned to it by section 173(5);

“court” means the Supreme Court of Seychelles, except in connection with criminal proceedings for contraventions of this Ordinance, when it means the court before which such proceedings may be brought;

“creditors’ voluntary winding up” has the meaning assigned to it by section 253(4);

“debenture” means a written acknowledgment of indebtedness issued by a company in respect of a loan made to it or to any other person (whether before, or at the time of, or subsequently to the issue of the debenture) or in respect of existing indebtedness of the company or any other person, and includes debenture stock, a bond, an obligation (whether under seal or authenticated by a notarial deed or not), loan stock, an unsecured note or any other instrument executed, authenticated, issued or created in consideration of such a loan or existing indebtedness, whether constituting a charge on any of the assets of the company or not, but does not include a bill of exchange, cheque, promissory note, banker’s draft, banker’s cheque or letter of credit, nor an acknowledgment of indebtedness issued in the ordinary course of business for goods or services supplied, nor a deposit certificate, pass book or similar document issued in connection with a deposit or current account at a bank, nor a policy of insurance;

“debenture stock” means a debenture by which a company or trustees of a debenture trust deed acknowledge that the holder of the stock is entitled to participate in the debt owing by the company to the trustees under the debenture trust deed, and includes loan stock;

“debenture trust deed” means a deed executed by a company and trustees appointed by the deed in connection with the issue of debentures, together with any supplemental deed, resolution or scheme of arrangement modifying the terms thereof, and any deed substituted therefor;

“derivative interest” has the meaning assigned to it by section 26(2);

“director” includes any person occupying the position of director by whatever name called, and any person in accordance with whose directions or instructions the directors of a company are accustomed to act, but does not include a holding company or a substantial shareholder merely by virtue of its or his position as such;

“directors’ annual report” has the meaning assigned to it by section 153(1);

“document” includes a summons, notice, order, or other legal process, and a register;

“employee share subscription scheme” has the meaning assigned to it by section 173(6);

“equity capital” means the issued share capital of a company or corporation, except non-participating preference shares and preference shares which do not entitle their holders to unrestricted voting rights as defined by section 118(7);

“existing company” means a limited company (*societe anonyme*) formed and proclaimed under the provisions of the Commercial Code;

“extraordinary general meeting” has the meaning assigned to it by section 120(1);

“financial year” means in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate is made up, whether that period is a year or not;

“firm” means a partnership (*societe en nom collectif*), limited partnership (*societe en commandite*) or civil company (*societe civile*);

“floating charge” means a security created over a class or classes of assets of a company when the instrument creating the security does not identify the constituent items comprised in the said class or classes, and does not restrict the security to assets of the company at the date the charge is created;

“general floating charge” means a floating charge created over the whole or substantially the whole of the property or assets of a company, and a security expressed to be created over the undertaking, or

business, or the assets generally, of a company is a general floating charge;

“goods” means tangible moveables and property which, by virtue of articles 520 to 525 inclusive of the Civil Code is deemed to be immoveable, but which under a contract; of sale or any other contract is to be severed and converted into tangible moveables either immediately or after an interval;

“group accounts” means the consolidated balance sheet and consolidated profit and loss account of a body corporate which is a holding company at the end of the financial year to which they relate, or if the body corporate prepares a consolidated balance sheet and consolidated profit and loss account in respect of itself and less than all its subsidiaries, such consolidated balance sheet and consolidated profit and loss account together with the balance sheets and profit and loss accounts of its subsidiaries not included in the consolidated balance sheet and profit and loss accounts for financial years of the subsidiaries ending on dates within the financial year to which the consolidated profit and loss account relates;

“group of companies” means two or more companies or bodies corporate one of which is the holding company of the other or others;

“holding company” means a company or body corporate which either -

- (i) holds more than half of the equity capital of another company or body corporate; or
- (ii) by contract, or by the memorandum or articles of another company or body corporate or otherwise is entitled to appoint, or to prevent the appointment of, a managing director or more than half of the directors (other than the managing director) of the other company or body corporate; or
- (iii) is the holding company of another company or body corporate which is itself the holding company of the company or body corporate in question;

“interim dividends” has the meaning assigned to it by section 160(5);

“issue price” means the amount agreed to be paid to a company for a share or debenture, and if the consideration for a share does not consist entirely of cash, means the amount agreed to be paid to the company in cash (if any) plus the agreed value of the consideration other than cash;

“loan stock” means debenture stock the holder of which is not entitled to the benefit of any security over the assets of the company or of any other person;

“member” has the meaning assigned to it by section 23(1) and (2);

“members’ voluntary winding up” has the meaning assigned to it by section 253(4);

“memorandum” means the memorandum of association of a company, as originally framed or as altered in pursuance of this Ordinance, or in the case of an existing company the provisions of the notarial deed, statutes, articles of association or other instrument under which the company was constituted which, in the case of a company formed under this Ordinance, would be required to be contained in its memorandum association;

“nominal capital” has the meaning assigned to it by section 4(4);

“non-participating preference share” means a preference share which confers on its holder the right to a dividend of a fixed amount, or not exceeding a fixed amount, whether cumulative or not, and the right to repayment of capital in a winding up in priority to another class or other classes of shares, but which confers no other rights in respect of dividend or capital whatsoever;

“officer”, in relation to a body corporate, includes a governor, president, vice-president, director, manager (except a manager appointed by or for the benefit of debenture holders), secretary or treasurer, and in relation to an overseas company includes its managing agent and a local director, manager or

executive having the superintendence of its affairs in Seychelles;

“Official Receiver” has the meaning assigned to it by section 214;

“ordinary resolution” has the meaning assigned to it by section 122(1);

“ordinary share” means a share which is not a preference share;

“overseas company” means an incorporated or unincorporated body formed under the laws of a country other than Seychelles which has as its object the acquisition of gain by it or its members, but does not include a partnership or limited partnership some or all of whose members are liable for its debts without limit and shares in which are not transferable free from any restrictions;

“preference share” means a share which carries the right to payment of a dividend of a fixed amount, or not exceeding a fixed amount, in priority to payment of a dividend on another class or other classes of shares, whether with or without other rights;

“prescribed” means prescribed by regulations made under this Ordinance;

“printed” means produced by ordinary letterpress or lithography or by such other process as the Registrar in his discretion may accept;

“procedural resolution” has the meaning assigned to it by section 125(4);

“promoter” means any person engaged in the formation of a company, or in raising money to enable a company to be formed or to acquire any assets or an existing business, or in negotiating the acquisition of any assets or an existing business by or for a company, and includes any person engaged in doing any of those acts for the benefit of an overseas company, but does not include a person who acts only in a professional capacity on behalf of a promoter;

“property” means land, movables (whether tangible or not), debts, claims, rights of action, licences, concessions, patents, copyright, trademarks, designs, knowledge and information which has been confidentially communicated or which is protected by law similarly to intangible movables, all other choses in action of any kind whatsoever, and the capital of a company which has not been called or paid up or credited as paid up;

“proprietary company” has the meaning assigned to it by section 24;

“prospectus” means any invitation, whether written, visual or oral, and by whatever means conveyed, to subscribe for shares or debentures, or to purchase shares or debentures which have been allotted to any person with a view to them being offered for sale, and without prejudice to the generality of the foregoing, includes an advertisement published in connection with the placing of shares or debentures on a stock exchange, a letter of rights and a provisional letter of allotment, but does not include a letter of rights, or a letter of allotment or a letter of acceptance, or a provisional or renounceable share certificate or similar document in respect of debentures issued in connection with a capitalisation of profits or reserves;

“prospectus issued to the public” has the meaning assigned to it by section 40(16);

“qualification shares” has the meaning assigned to it by section 166(6);

“registered” means registered in the register of members or debenture holders;

“Registrar” means the Registrar of Companies;

“revenue reserves” has the meaning assigned to it by section 160(5);

“rights issue” has the meaning assigned to it by section 54(5);

“share” means a share in the capital of a company and includes stock;

“shares carrying unrestricted voting rights” has the meaning assigned to it by section 118(8);

“shareholder” has the meaning assigned to it by section 23(3);

“special resolution” has the meaning assigned to it by section 122(2);

“stock” means the interest of a holder of a share in a company which has been converted into stock;

“stock exchange” means any exchange or association of dealers in securities which provides facilities for the sale and purchase of shares or debentures, and publishes at intervals of not more than one week the prices at which shares or debentures are currently being sold and purchased; “a stock exchange in Seychelles” means a stock exchange carrying on such activities in Seychelles, whether or not also carrying on such activities elsewhere; and “a recognised overseas stock exchange” means any other stock exchange declared by the Governor to be such a stock exchange;

“subsidiary” means a company or body corporate of which another company or body corporate is the holding company;

“substantial shareholder” has the meaning assigned to it by section 112(6);

“transfer” means an instrument of transfer of registered shares or debentures and “to transfer” means to execute and deliver such an instrument, or in the case of a bearer share certificate or a bearer debenture, to deliver it with the intention of passing the title to the shares or debentures represented by it;

“trustee in bankruptcy” means a trustee or assignee in the bankruptcy or insolvency of a person or partnership and includes the official assignee in bankruptcy;

“underwriting contract” has the meaning assigned to it by section 40(16);

“wholly owned subsidiary” has the meaning assigned to it by section 143(4);

“winding up resolution” has the meaning assigned to it by section 247(6).

**(2)** A person shall not be deemed to be within the meaning of any provision in this Ordinance a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

**(3)** References in this Ordinance to a body corporate or to a corporation shall be construed as not including a corporation sole, but as including a body corporate or corporation incorporated outside Seychelles; and references to the memorandum or articles shall in the case of a corporation which is not a company be construed to mean the legislation constituting it, its charter, certificate or articles of incorporation, statutes, or other instrument having the same function as the memorandum and articles of a company, and references to its directors shall be construed to mean members of its governing body, by whatever name called.

**(4)** Notwithstanding anything contained in this section, a body corporate shall not (except for the purposes of Part VII of this Ordinance) be deemed to be the holding company or subsidiary of another body corporate if neither body corporate is a company within the meaning of this section, and a body corporate shall not (except as aforesaid) be deemed to belong to the same group of companies as another body corporate if neither body corporate is a company within the meaning of this section.

**(5)** Any provision of this Ordinance which overrides a company’s articles shall, except as provided by this Ordinance, apply to articles of existing companies at the coming into operation of this Ordinance, as well as to articles of companies formed under this Ordinance, and shall apply also in relation to a company’s memorandum as it applies in relation to its articles.

**(6)** Unless the context otherwise requires, references (howsoever expressed) in any provision of this Ordinance to the commencement of this Ordinance shall be read as references to the commencement of that



provision.

## **PART II – INCORPORATION OF COMPANIES, MEMORANDA AND ARTICLES OF ASSOCIATION AND MATTERS INCIDENTAL THERETO**

### *Memorandum of Association*

#### **Mode of forming incorporated company.**

**3.(1)** Any two or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Ordinance in respect of registration, form an incorporated company with limited liability.

**(2)** The liability of a member of a company to contribute towards its assets or, in the winding up of the company, toward payment of the debts and liabilities of the company and the costs of the winding up, shall be limited to the amount for the time being not paid up, or credited as paid up, of the nominal value of the shares registered in his name and of the excess (if any) of the issue price of the shares over their nominal value.

**(3)** No member of a company shall be personally liable to any person claiming any debt, damages, compensation or other sum whatsoever from it by reason only of being a member of the company.

**(4)** For the purpose of the Commercial Code and all other laws a company shall be deemed to be commercial in character whether its objects or activities are commercial or not.

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

**4.(1)** The memorandum of every company shall be in the English language and must state -

- (a)* the name of the company, with “Limited” as the last word of the name and the word “Proprietary” as the penultimate word of the name in the case of a proprietary company;
- (b)* that the registered office of the company is to be situate in Seychelles;
- (c)* the objects of the company; and
- (d)* that the liability of the members of the company is limited.

**(2)** The objects of the company to be stated shall be the business or businesses which it is formed to carry on, or the purpose or purposes which it is formed to achieve, and it shall not be necessary or permissible to set out in the memorandum or the articles the powers or means by which the company is to attain its objects.

**(3)** The memorandum may not contain -

- (a)* a provision that the company may pursue such objects or do such things as its directors or members shall think fit, or shall think conducive or incidental to the achievement of its objects; or
- (b)* a provision that the contents of different parts of the clause or clauses of the memorandum setting out the objects of the company shall be construed independently of one other as though each such part stated the sole objects of the company; or

- (c) any objects which are not stated with reasonable certainty.
- (4) The memorandum must state -
- (a) the number of shares which the company may issue and the nominal value of those shares, and whether each of those shares has the same nominal value or different nominal values are attributed to shares of different classes;
  - (b) the total of the nominal values of all the shares which the company may issue (“the nominal capital of the company”); and
  - (c) the total of the nominal values of all the shares of each class of shares which the company may issue (“the nominal capital of the company in respect of a class of shares”).
- (5) If a company has different classes of shares, the memorandum shall state the rights and obligations of each class (except so far as such rights and obligations are prescribed by this Ordinance or are uniform for all classes of shares), and no rights or obligations attached to shares by the articles, the terms of issue of shares, resolutions of the directors or members of the company or otherwise shall be valid if not set out in the memorandum.
- (6) For the purpose of this Ordinance, shares belong to different classes if different rights or obligations attach to them in respect of dividend, repayment of capital, voting at general meetings of the company, or the times at which, or the amounts by which, the issue price of the shares payable in cash is to be paid to the company; but shares do not belong to different classes merely because the holders of some of them are members of the company and the holders of others of them are not, nor because some of them are issued for a consideration other than cash.
- (7) The form of the memorandum of a company shall be in accordance with the form set out in Part I of the First Schedule to this Ordinance, or in the case of a proprietary company, in Part III of the said Schedule, or as near thereto as circumstances permit.

#### **Subscription of the memorandum.**

- 5.(1) The subscribers of the memorandum of a company which is not a proprietary company shall write opposite their signature to the memorandum the number of shares in the company which they agree to take, being not less in total than one-tenth of all the shares the company may issue (except shares to be allotted for a consideration other than cash).
- (2) The subscribers of the memorandum of a proprietary company shall by subscribing be deemed to agree jointly and severally to take all the shares which the company may issue, but unless the memorandum otherwise provides, they shall as between themselves take such shares in equal proportions.
- (3) The memorandum must be signed by each subscriber in the presence of at least one witness who must attest the signature.

#### **Payment for shares by a consideration other than cash.**

- 6.(1) If by an arrangement made before its incorporation any shares of a company are to be paid for by a consideration other than cash, the memorandum shall state the nature of such consideration, its value and the amount by which the shares to be issued in respect of it will be credited as paid up, not exceeding the stated value of such consideration.
- (2) If within five years after the incorporation of a company any consideration for which shares have been issued under subsection (1) is sold by the company for less than the amount by which the shares are credited as

paid up in respect of it, or if within the said five years the company is wound up or any of its debenture holders become entitled to realise a security comprising the consideration, and the consideration is sold by the liquidator or by the receiver or any other person acting for the benefit of debenture holders for less than the amount by which the shares are so credited as paid up, the first directors of the company and the person who furnished such consideration shall be jointly and severally liable to pay the difference to the company or the liquidator or the receiver, as the case may be, unless they satisfy the court:-

- (a) that if the consideration had been sold immediately after the incorporation of the company, it would have realised not less than the amount by which the shares are credited as paid up; or
- (b) that since the acquisition of the consideration by the company, the company has so used, altered or dealt with it, or its nature or condition has so changed, that the amount for which it has been sold does not bear any reasonable relationship to its value at the date of the incorporation of the company.

(3) If within a year after its incorporation a company issues shares to be paid for by a consideration other than cash, or accepts a consideration other than cash in complete or partial payment for shares which were issued for a consideration in cash, it shall be presumed, unless the contrary is proved, that an arrangement was made before the company was incorporated that the shares were to be paid for by a consideration other than cash, and the directors of the company and the person furnishing the consideration other than cash shall incur the liabilities imposed by the last foregoing subsection.

(4) If judgment is given against two or more persons under subsection (2) or (3) of this section, the court may order that they shall make such contribution between themselves, or that one or more of them shall indemnify the other or others of them, as to the court shall seem just.

(5) No shares shall be issued to be paid for by the performance of services after the date of their issue, or by the person to whom they are issued or any other person contracting to perform such services.

(6) For the purpose of this Ordinance shares are issued for a consideration other than cash unless they are to be paid for wholly by legal tender or by a cheque, banker's draft or banker's cheque, or by setting off a debt which is owned by the company and is immediately payable; in such excepted cases the shares are issued for a consideration in cash.

(7) For the purpose of this section debenture holders shall be deemed to become entitled to enforce their security in the circumstances set out in section 8(1) and (2) of the Companies (Debentures and Floating Charges) Ordinance, 1970.

(8) If a memorandum is delivered to the Registrar without subsection (1) of this section being complied with, the first directors of the company who are in default shall be guilty of an offence.

(9) If a person accepts an issue of shares for a consideration other than cash knowing that subsection (1) of this section applies but has not been complied with, he shall be guilty of an offence.

(10) If within a year after the incorporation of a company an issue of shares is made for a consideration other than cash, or a payment for shares is made otherwise than in cash, the directors of the company and the person to whom the issue is made, or who holds the shares at the time the payment is made (as the case may be), shall be guilty of an offence if they know that the issue or payment is made pursuant to an arrangement made before the company was incorporated and that subsection (1) of this section has not been complied with.

(11) If shares are issued in contravention of subsection (5) of this section, the directors of the company who are in default and the person to whom the issue is made shall be guilty of an offence.

(12) An offence under this section shall be punishable by a fine not exceeding ten thousand rupees or imprisonment for not more than two years, or by both such fine and such imprisonment.

(13) Subsections (1) to (4) and (7) to (10) inclusive shall not apply to a proprietary company.

(14) This section shall not apply to an existing company.

## *Articles of Association*

### **Subscription of articles of association.**

7. There may in the case of any company be registered, with the memorandum, articles of association signed by the subscribers of the memorandum and prescribing regulations for the company.

### **Statutory regulations.**

8. If a company is incorporated without articles being registered, or if articles are registered but do not exclude the regulations set out in Part II of the First Schedule to this Ordinance, or in the case of a proprietary company, in Part IV of the said Schedule, those regulations shall, insofar as the registered articles do not exclude or modify them or make express provision for the same matter, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

### **Printing and signature of articles.**

9. Articles shall be in the English language and must -

- (a) be printed;
- (b) be divided into paragraphs numbered consecutively; and
- (c) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature.

## *Registration*

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

10.(1) The memorandum and the articles, if any, shall be delivered to the Registrar, and he shall retain and register them.

- (2)
  - (a) Before registering the memorandum and articles the Registrar shall satisfy himself that they comply with the foregoing provisions of this Ordinance and that the objects of the company are lawful.
  - (b) No company shall be registered by a name which in the opinion of the Registrar is undesirable.

(3) If the Registrar is not satisfied as to any of the matters mentioned in the foregoing subsection, he shall in writing and within one month so inform the person who presented the memorandum and articles for registration, stating his reasons.

(4) Any person aggrieved by the failure of the Registrar to register the memorandum and articles may appeal to the court within one month after the Registrar has informed the person who presented the memorandum and articles for registration under the foregoing subsection, and upon the hearing of such an appeal the Court shall either direct the Registrar to register the memorandum and articles or dismiss the appeal, and the decision of the Court shall be final.

(5) The Mortgage and Registration Ordinance shall not apply to the memorandum and articles of a company.

#### **Effect of registration.**

11.(1) On the registration of the memorandum of a company the Register shall certify under his hand that the company is incorporated and the date of the registration. The certificate issued by the Registrar shall be in the form set out in the Second Schedule to this Ordinance.

(2) On and from the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession, but with such liability on the part of the members to contribute to the assets of the company as is mentioned in this Ordinance.

(3) The Mortgage and Registration Ordinance shall not apply to a certificate of incorporation issued under this section.

#### **Power of company to hold lands.**

12.(1) A company incorporated under this Ordinance shall have power to hold lands in any part of Seychelles.

(2) This section shall take effect subject to the provisions of the Immovable Property (Transfer Restriction) Ordinance, 1963.

#### **Conclusiveness of certificate of incorporation.**

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

(2) A signed declaration by a barrister, attorney or notary that all of the said requirements have been complied with shall be produced to the Registrar, and the Registrar may accept such a declaration as sufficient evidence of compliance.

(3) In the case of a proprietary company the said declaration shall state that the company will on its incorporation fulfil the conditions set out in section 24(1) of this Ordinance.

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

14.(1) Where it is proved to the satisfaction of the Minister that an association about to be formed as a company is to be formed for promoting commerce, art, science, religion, charity, or any other useful object, and intends to apply its profits or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Minister may by licence direct that the association may be registered as a company without the addition of the word “Limited” to its name, and the association may be registered accordingly.

(2) A licence by the Minister under this section may be granted on such conditions and subject to such limitations as the Minister thinks fit, and those conditions and limitations shall be binding on the association, and shall, if the Minister so directs, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of a company and be subject to all the obligations of a company, except that of using the word “Limited” as part of its name.

(4) A licence under this section may at any time be revoked by the Minister, and upon revocation the Registrar shall enter the word “Limited” at the end of the name of the association upon the register, and the association shall cease to enjoy the exemption granted by this section:

Provided that, before a licence is so revoked, the Minister shall give to the association notice in writing of his intention, and shall afford the association an opportunity of stating its opposition to the revocation.

(5) This section shall not apply to a proprietary company.

#### *General provisions with respect to memorandum and articles*

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

15.(1) Subject to the provisions of this Ordinance, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by each member and on behalf of the company, and contained contractual undertakings on the part of each member and the company to observe all the provisions of the memorandum and of the articles.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

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

16.(1) A company shall, on being so required by any member, shareholder or debenture holder of the company send to him a copy of the memorandum and of the articles, if any, subject to payment of a fee of five rupees or such less sum as the company may specify.

(2) If a company makes default in complying with this section, the company and every officer of the company who is in default shall be liable for each offence to a fine of one hundred rupees.

##### **Issued copies of memorandum to embody alterations.**

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

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

#### *Alteration of the memorandum and articles*

##### **Alteration of memorandum.**

**18.(1)** Subject to the following provisions of this Ordinance, a company may by special resolution alter or add to any of the provisions of its memorandum. Notice of the meeting called to pass the special resolution shall be given to all shareholders and debenture holders of the company and to the trustees of all debenture trust deeds covering debentures issued by the company in like manner as it is given to members of the company.

**(2)** No company may alter the provisions of its memorandum that its registered office is to be situate in Seychelles.

**(3)** The share capital of a company may be altered only in the ways specified in sections 59 and 63.

**(4)** Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum 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 subsection shall not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby.

**(5)** A company may change its name only if the Registrar has previously approved the proposed new name, and the new name conforms to the requirements of section 4(1) of this Ordinance.

**(6)** If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name is registered by a name which, in the opinion of the Registrar, is too like the name by which a company in existence has previously been registered, the first-mentioned company may change its name with the consent of the Registrar, and, if he so directs within, six months of its being registered by that name, it shall change it within a period of six weeks from the date of the direction or such longer period as the Registrar may think fit to allow.

If a company makes default in complying with a direction under this subsection, it shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues.

**(7)** Where a company changes its name under this section, the Registrar shall 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.

**(8)** A change of name by a company under this section 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.

**(9)** Any alteration of or addition to the objects of a company shall be subject to the rules contained in section 4(2) and (3) of this Ordinance.

**(10)** No provision of the memorandum required to be contained in it by section 6(1) of this Ordinance shall be altered so, however, that nothing in this subsection shall be construed as prohibiting the deletion of any such provision as aforesaid after the expiration of the period of five years mentioned in section 6(2).

**(11)** Alterations and additions made to the memorandum may themselves be altered or added to in like manner as though they had originally been contained in the memorandum.

**(12)** The Mortgage and Registration Ordinance shall not apply to a certificate of incorporation issued under this section.

#### **Alteration of rights and obligations attached to classes of shares.**

**19.(1)** No alteration of or addition to the memorandum shall be made in respect of the rights or obligations

attached to shares of any class, if the company's share capital is divided into different classes of shares, unless, not earlier than one month before the alteration or addition is made, a meeting of the holders of shares of the class in question is held and a resolution consenting to the alteration is passed at the meeting by a majority comprising at least three-quarters of the votes cast.

(2) The provisions of this Ordinance and the articles of the company relating to meetings of a class of shareholders shall apply to a meeting held under the last foregoing subsection, except that the quorum for such a meeting shall be one or more persons present in person or by proxy holding at least one-third of the issued shares of the class in question.

(3) If the company's articles provide for postal voting at general meetings, postal votes may be given at a meeting held under this section.

(4) The memorandum shall be considered as being altered in respect of the rights or obligations attached to a class of shares if -

- (a) the words setting them out are altered; or
- (b) the rights are made substantially less advantageous, or the obligations are made substantially more onerous, even though the words stating them are not altered; or
- (c) shares carrying voting rights at general meetings are issued on a capitalisation of profits or reserves to the holders of another class of shares, but not to the holders of the class of shares in question; or
- (d) shares of the class in question are issued to the holders of shares of another class on a capitalisation of profits or reserves; or
- (e) the rights or obligations attached to another class of shares are altered or added to in a manner which will or may result in the rights attached to the class of shares in question being substantially less advantageous or the obligations attached to them being substantially more onerous.

(5) This section shall not apply to -

- (a) a class of shares none of which has been issued; or
- (b) a class of shares all of which have either been transferred to or redeemed by the company, or are held by the company or by a nominee for it, and none of which have been re-issued.

#### **Alteration of articles.**

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

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

(3) Section 18(4) shall apply to the alteration of the articles of a company as it applies to an alteration of its memorandum.

#### **Applications to the court to cancel alteration of memorandum or articles.**

**21.(1)** Within one month after an alteration of the memorandum or articles has been made, the holders of



not less than ten per cent of company's issued shares, or if it has issued shares of different classes, the holders of not less than ten per cent of the issued shares of any class, may apply to the court to cancel the alteration.

(2) Within one month after such an alteration has been made the holders of not less than twenty per cent of the company's issued debentures secured by a general floating charge, or if it has issued more than one class of such debentures, the holders of not less than twenty per cent of the issued debentures of any such class, may apply to the court to cancel the alteration.

(3) An application may be made either of the two foregoing subsections on behalf of persons who together are entitled to make the application by such one or more of their number as they may appoint in writing for the purpose before the application is made, and such a written appointment may consist of several documents each signed by one or more such persons.

(4) In determining the number of shares or debentures whose holders may make an application under subsection (1) or (2), no account shall be taken of shares or debentures issued after the alteration of the memorandum or articles is made, and no holder of any such shares or debentures may make or concur in making such an application, or be authorised to make, or authorise any other person to make, such an application by virtue of his holding of any such share or debentures.

(5) No shareholder who voted in person or by proxy in favour of an alteration of the company's memorandum or articles, or in favour of the approval of the class of shareholders to which he belongs being given to the alteration, may make an application under subsection (1), or concur in making such an application or be authorised to make, or authorise any other person to make, such an application.

(6) In determining the number of debentures whose holders may make an application under subsection (2), regard shall be had to the respective principal amounts of the debentures, or if they are redeemable at a premium, to their respective principal amounts plus the highest premium which may be payable on their redemption at any time after the alteration of the memorandum or articles is made; debentures shall be deemed to belong to different classes if any of the conditions specified in section 69(3) apply.

(7) An alteration of a company's memorandum or articles shall not take effect until the expiration of one month after it is made, and if an application is made to the court under subsection (1) or (2) during that time, it shall not take effect until the court has confirmed it on each such application.

(8) On the hearing of an application under subsection (1) or (2) the court shall cancel the alteration if the applicants satisfy it that the alteration was not authorised by this Ordinance, or did not satisfy the conditions or requirements imposed by this Ordinance at the time the alteration was made.

(9) On the hearing of an application under subsection (1), the court may cancel the alteration if the applicants satisfy it either -

- (a) that the alteration will operate unfairly or unreasonably to the detriment of the applicants without an adequate compensating advantage being conferred on them; or
- (b) that the alteration is in respect of the objects of the company, and that the nature, extent or mode of conducting the business which the company has hitherto carried on, or the nature or mode of achieving the purposes which the company has hitherto pursued, will in consequence be so substantially changed that it is not reasonable that the applicants should be constrained to remain shareholders of the company.

(10) On the hearing of an application under subsection (2) of this section the court may cancel an alteration if the applicants satisfy it either -

- (a) that the alteration will or may result in a breach of the company's obligations under the debentures held by the applicants or under the debenture trust deed (if any) covering such debentures; or
- (b) that the alteration is in respect of the objects of the company, and that the nature, extent or mode of conducting the business which the company has hitherto carried on, or the nature or mode of achieving the purposes which the company has hitherto

pursued, will in consequence be so substantially changed that the security for the debentures held by the applicants will be substantially and detrimentally affected.

(11) If the court is satisfied that the alteration is objectionable for any of the reasons set out in subsections (9) or (10), it may, instead of cancelling the alteration, confirm it subject to the condition that the company shall acquire the shares or debentures of the applicants in right of which the application is made on payment of the fair market value of such shares or debentures as ascertained by the court, or, if the application is made by the holders of redeemable shares or debentures which the company has the right or is under an obligation to redeem not later than five years after the date of the alteration, on payment of the fair market value of such shares or debentures as ascertained by the court, or the nominal value or principal amount of such shares or debentures plus the highest premium which may be payable on their redemption at any time after the alteration to the memorandum or articles is made, whichever is the greater.

(12) If the court confirms the alteration subject to the condition mentioned in subsection (11), the alteration shall not be effective until the sum fixed by the court has been paid to the applicants, and if the said sum is not paid within six months after the date of the court's decision, the alteration shall be deemed to have been cancelled by the court.

(13) If no application to cancel an alteration of the memorandum or articles is made within one month after it is made, or if all such applications are rejected by the court, the validity of the alteration shall not thereafter be questioned in any legal proceedings whatsoever.

(14) This section shall not apply to any alteration made to a company's memorandum under section 59 or 63.

(15) Nothing in this section shall affect the right of any person to make an application to the court under section 136.

#### **Registration of alteration of memorandum or articles.**

**22.(1)** A company which has altered its memorandum articles shall give notice of the date, form and effect of the alteration to the Registrar:-

- (a) if no application is made to the court under section 21, within fifteen days after the expiration of the period for making an application thereunder; or
- (b) if such an application is made, or if two or more such applications are made, within fifteen days after the drawing up of the order embodying the decision of the court on the last of such applications to be heard, and in that case the notice given to the Registrar shall be accompanied by office copies of the orders made by the court on all such applications.

(2) If a company makes default in delivering to the Registrar any document required by this section to be delivered to him, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred rupees for every day during the first month that the default continues, two hundred and fifty rupees for every day during the next two months that default continues, and five hundred rupees for every day that default continues thereafter.

(3) This section shall not apply to any alteration of a company's memorandum made under section 59 or 63.

#### *Members and shareholders of companies*

### **Definition of members and shareholders.**

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

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

**(3)** The following persons shall be shareholders of the company:-

- (a)* a person who is a member of the company under subsection (2);
- (b)* a subscriber of the memorandum to whom shares have been issued;
- (c)* the heir or other persons entitled to the shares of a deceased shareholder under his will or on his intestacy, and the trustee in bankruptcy of a bankrupt shareholder;
- (d)* a person who is on his own behalf in possession of a bearer share certificate, whether by himself or by an agent acting for him.

**(4)** In this Ordinance references to holders of shares mean the persons who are shareholders in respect of them, and references to holding shares shall be construed accordingly.

**(5)** In this Ordinance shares shall be considered as having been issued if any person is a shareholder in respect of them.

### *Proprietary Companies*

### **Definition of a proprietary company.**

**24.(1)** A company is a proprietary company if -

- (a)* the penultimate word of its name is "Proprietary";
- (b)* it has not more than fifty members, excluding persons who are in the employment of the company (other than directors) and persons who were in the employment of the company (otherwise than as directors) when they became members of the company and have continued to be members of it without interruption since they ceased to be employed by it;
- (c)* all its shareholders are members of the company, so however that the heir or other person entitled to the shares of a deceased member under his will or on his intestacy, the trustee in bankruptcy of a bankrupt member and a person in whose favour a transfer of shares has been executed shall not be taken into account for this purpose;
- (d)* the company has no preference shares issued and outstanding;
- (e)* at least three-quarters of the issued shares of the company are held by its directors, or if less than three quarters of its issued shares are so held, the company has not more than twenty members;
- (f)* all directors of the company are members of it;
- (g)* none of the members or directors of the company is a corporation, and the company has no holding company.

(2) If a company is formed as a proprietary company but fails at any time to satisfy all the conditions set out in the foregoing subsection, it shall immediately cease to be a proprietary company, and shall cease to have or use the word “Proprietary” as part of its name.

(3) If a proprietary company which has ceased to be such a company, or a company which was not formed as a proprietary company, at any time satisfies all the conditions set out in subsection (1) (with the exception of the condition in paragraph (a) of that subsection), it may apply to the Registrar to be treated as a proprietary company, and if the Registrar considers that the company satisfies the said conditions at the date of the application, he shall issue a certificate of incorporation to it in the name it had immediately before the application with the addition of the word “Proprietary” as the penultimate word thereof, and thereupon the company shall become a proprietary company:

Provided that an application may not be made under this subsection if there is subsisting any derivative interest created out of the company’s shares or debentures, other than a derivative interest excepted by section 26(1) or (3).

(4) Subsection (2) of this section shall apply to a company which has become a proprietary company under the last foregoing subsection as from the date of its application to be treated as a proprietary company, but without prejudice to the company again becoming a proprietary company under the last foregoing subsection.

(5) A proprietary company shall cease to be such a company -

- (a) if the heir or other person entitled to the shares of a deceased member under his will or on his intestacy, or the trustee in bankruptcy of a bankrupt member, or persons deriving title under them respectively, do not become members of the company within nine months after the death of the deceased member or the adjudication in bankruptcy of the bankrupt member, as the case may be; or
- (b) if the person in whose favour a transfer of shares has been executed, or if two or more such transfers have been executed in respect of the same shares, the person in whose favour the latest transfer has been made, has not become a member of the company within two months after the execution of the transfer or the first of such transfers (as the case may be), unless the transfer or all the transfers (as the case may be) have been cancelled.

(6) If a company ceases to be a proprietary company under the last foregoing subsection, subsections (3) and (4) shall apply to it, but the Registrar shall not be bound to issue a certificate of incorporation under subsection (3) if he considers that transfers of shares in the company have been made on numerous occasions and have not been registered within the said period of two months in order to conceal from the public the identity of the persons who are or have been substantial shareholders of the company.

(7) An application under subsection (3) shall be supported by a signed declaration by all the directors of the company that the company satisfies the requirements of that subsection at the date of the declaration, and the Registrar may accept such a declaration as sufficient evidence of the facts stated.

(8) The cessation of the right to have the word “Proprietary” as part of the name of a company, or the acquisition of that word as part of its name, by virtue of this section shall not be deemed to be a change in the name of the company for the purposes of sections 18 and 22(1) of this Ordinance, but section 18(8) of this Ordinance shall nevertheless apply, and the company shall within fifteen days of such cessation give notice to the Registrar of that fact, the date when the cessation occurred, and the reason for its occurrence.

(9) A company and any director of the company who is in default shall be guilty of an offence if the company:-

- (a) uses the word “Proprietary” as part of its name when it is not entitled to do so; or
- (b) applies to the Registrar to be treated as a proprietary company when the conditions mentioned in subsection (1) are not satisfied; or
- (c) fails to give notice to the Registrar that the word “Proprietary” has ceased to be part

of its name in compliance with subsection (8).

**(10)** An offence under this section shall be punishable on conviction by a fine not exceeding ten thousand rupees.

**(11)** The Mortgage and Registration Ordinance shall not apply to a certificate of incorporation issued under this section.

#### **Proprietary companies may not issue prospectuses etc. to the public.**

**25.(1)** A proprietary company shall not issue to the public a prospectus or invitation to make deposits with it.

**(2)** If a proprietary company contravenes the foregoing subsection, it shall immediately cease to be a proprietary company and shall cease to have or use the word “Proprietary” as part of its name, and section 24(3), (4), (7), (8) and (9) of this Ordinance shall apply as though the company had ceased to be a proprietary company under that section.

**(3)** If a company which has contravened subsection (1) of this section applies to the Registrar to be treated as a proprietary company at any time after the contravention, the Registrar shall not accede to the application unless he is satisfied that the contravention was inadvertent or in consequence of a mistake of fact made in good faith.

**(4)** A proprietary company which contravenes subsection (1) of this section and its directors who are in default shall be guilty of an offence punishable on conviction by a fine not exceeding ten thousand rupees.

#### **Prohibition on derivative interests.**

**26.(1)** No derivative interest shall be created in shares or debentures of a proprietary company, except -

- (a)* the interest of a purchaser under a contract of sale which is completed by the vendor executing an instrument of transfer within six months after the date of the contract;
- (b)* the interests of the heir or other person entitled to the shares or debentures of a deceased holder under his will or on his intestacy; and
- (c)* the title or interest of the trustee in bankruptcy of a bankrupt member or debenture holder and the interests of his creditors upon his bankruptcy.

**(2)** For the purpose of this Ordinance “derivative interest” means an unregistered transfer, trust, usufruct, mortgage, charge or other security, contract (or option) to purchase or exchange, right of pre-emption, the interest of a person in shares or debentures which are registered in the name of a nominee on his behalf, and the interest of a person to whom the holder of the shares or debentures has agreed or arranged to pay or transfer the whole or part of the dividends, interest, repayments of capital, principal or premiums, or to transfer or make available distributions of shares, debentures or assets received by him in respect of the shares or debentures in question.

**(3)** If a derivative interest other than an interest excepted from subsection (1) is created or arises in respect of shares or debentures issued by a proprietary company, the company shall immediately cease to be a proprietary company and shall cease to have or use the word “Proprietary” as part of its name, and section 24(3), (4), (7), (8) and (9) shall apply as though the company had ceased to be a proprietary company under that section.

#### **Right of pre-emption.**

**27.(1)** The continuing members of a proprietary company shall be entitled to purchase the shares of an outgoing member.

**(2)** An outgoing member is a member who -

- (a)* has died or been adjudged bankrupt;
- (b)* has resigned a directorship of the company;
- (c)* has contracted to sell any of his shares; or
- (d)* has created a derivative interest in his shares;

and the continuing members are all other members of the company.

**(3)** Upon the occurrence of any of the events specified in subsection (2) of this section, the outgoing member or the heir or other person entitled to his shares on his death under his will or on his intestacy shall notify the secretary of the company of the date and nature of the event, and within seven days after such notification, or if the secretary has not been notified within that time, within seven days after he discovers that the event has occurred, the secretary shall notify the continuing members of the number of shares held by the outgoing member, by the continuing members and by the continuing members who are directors respectively.

**(4)** Within three months after the secretary notifies the continuing members of the matters specified in the foregoing subsection, or if he fails to notify any continuing member of those matters within the time limited by that subsection, within four months of the occurrence of the relevant event under subsection (2), any continuing member may by writing addressed to the secretary offer to purchase all or any of the shares of the outgoing member at a price specified therein, but if he fails to make such an offer within the time aforesaid his rights under subsection (1) of this section shall lapse.

**(5)** The continuing members who have offered the highest price or the highest sequence of prices for shares equal in the aggregate to the number of shares held by the outgoing member (in this section called “the highest bidders”) shall, subject to the next following subsection, be bound and entitled to acquire those shares at the price or prices offered by them respectively, and on paying such price to the secretary, each of them may execute a transfer of the shares which he is entitled to acquire in the name and on behalf of the outgoing member or the heir or other person entitled to the shares on his death or his trustee in bankruptcy (as the case may be).

**(6)** Within seven days after the expiration of the period of three months or four months limited by subsection (4) of this section, the secretary shall notify the outgoing member, or his heir or the other person entitled to his shares on his death, or his trustee in bankruptcy (as the case may be) of the offers received by him from the highest bidders (specifying the number of shares which they have respectively offered to purchase and the prices which they have respectively offered for those shares). The outgoing member, or his heir or the other person entitled to his shares on his death, or his trustee in bankruptcy (as the case may be) may within fifteen days thereafter notify the secretary and auditor of the company of his or their unwillingness to transfer the shares of the outgoing member to the highest bidders. In that event the auditor of the company shall within one month after receiving such notification make an estimate of the fair value of the said shares, and if his estimate of their value exceeds the price or prices offered by any one or more of the highest bidders, subsection (5) shall take effect with the substitution of the value estimated by the auditor for any price bid by a highest bidder which it exceeds. If the auditor’s estimate of the value of the said shares does not exceed the price offered by any of the highest bidders, subsection (5) shall take effect as though the outgoing member, or his heir or the other person entitled to his shares on his death, or his trustee in bankruptcy, had not notified the secretary and the auditor of their unwillingness to transfer the said shares to the highest bidders.

**(7)** An estimate under the last foregoing subsection shall be made in writing and copies of it shall be sent by the auditor simultaneously to the secretary, the highest bidders and the outgoing member, or his heir or the other person entitled to his shares on his death, or his trustee in bankruptcy (as the case may be). In making his estimate the auditor shall take into account the net value of the company’s assets (after deducting its liabilities and contingent and prospective liabilities), its earnings in each of its most recent five complete financial years and its current financial year, the expansion or contraction of the company’s undertaking during those five years and the prospect that such expansion or contraction will continue in the future, but the auditor shall not take into account the facts that a purchaser of the shares would acquire them subject to the rights of other members of the

company under this section, or that the shares do or do not enable the outgoing member to control the voting at general meetings of the company, or that the shares are not readily saleable.

(8) If the continuing members offer to acquire less than all the shares of the outgoing member, this section shall apply in respect of the number of shares they offer to acquire, and references in this section to all the continuing members who offer to acquire the shares shall be substituted for references to the highest bidders.

(9) If two or more highest bidders have offered to acquire shares at the same price, and the number of shares available for them under subsection (5) of this section is less than the total number of shares they have offered to acquire, this section shall apply as if they had offered to acquire the number of shares available for them, and those shares shall be distributed among them in proportion to the number of shares they have respectively offered to acquire.

(10) The secretary shall hold any money received under subsection (5) of this section as agent on behalf of the outgoing member or the persons entitled to his shares on his death or his trustee in bankruptcy (as the case may be).

(11) An offence is committed by -

- (a) an outgoing member who does not notify the secretary in accordance with subsection (3);
- (b) a secretary who does not notify the continuing members in accordance with subsection (3), or the outgoing member, or his heir or the other person entitled to his shares on his death, or his trustee in bankruptcy in accordance with subsection (6);
- (c) an auditor who does not send written copies of his estimate to the secretary, the highest bidders and the outgoing member or his heir or the other person entitled to his shares on his death, or his trustee in bankruptcy, within the period limited by subsection (6).

(12) An offence under this section shall be punishable on conviction by a fine not exceeding one thousand rupees.

(13) If the secretary of a company to which this section applies on the death of an ongoing member is unaware of the identity of his heir or of all or some of the persons entitled to his shares on his death under his will or on his intestacy, the secretary may instead of giving notification required by this section to those persons give notifications instead to the Curator of Vacant Estates, and such notifications given to the Curator shall be deemed to be the notifications required by this section.

#### **Expulsion of a member of a proprietary company.**

**28.(1)** Any member of a proprietary company may apply to the court for an order that another member shall be expelled from membership of the company.

(2) An application may be made under this section on any of the following grounds, namely:-

- (a) that the member whose expulsion is sought:-
  - (i) has been guilty of serious or persistent breaches of the provisions of the memorandum or articles of the company; or
  - (ii) has been guilty of conduct seriously detrimental to the interests of the company or its members as a whole; or
  - (iii) has an interest or holds a position in another company, corporation, firm or undertaking which is likely to cause him to act to the detriment of the

company and to result in substantial harm to it; or

- (b) that the member whose expulsion is sought is a director of the company and:-
  - (i) has been guilty of serious breaches of duty as such a director; or
  - (ii) has been guilty of serious breaches of duty as a director of another company or corporation, or as a partner in a firm; or
  - (iii) has been convicted of a criminal offence involving dishonesty.

(3) If the court in its discretion accedes to the application, the member whose expulsion is sought shall forthwith cease to be a member, and section 27 of this Ordinance shall thereupon apply as though he had become an outgoing member.

(4) If offers to acquire all the shares of an expelled member are not made within the time limited by section 27(4), the continuing members of the company shall be deemed to have offered to take the shares not bid for at a price equal to their fair value as estimated by the company's auditor under section 27(6) and (7), and the auditor shall make an estimate in like manner as if the outgoing member had notified the secretary under section 27(6) that he was unwilling to transfer the said shares.

#### **Preservation of proportion of issued shares held by directors.**

**29.(1)** If as the result of either section 27 or 28 of this Ordinance, continuing members become entitled to acquire so many shares that if transfers of those shares were registered the directors who are continuing members would cease to hold three-quarters of the issued shares of the company, section 27(5) shall operate so that those directors shall be substituted for the highest bidders who are not directors in respect of such number of shares of the outgoing member as are required to ensure that the directors who are continuing members will hold three-quarters of the issued shares.

(2) The shares to be acquired by directors under subsection (1) of this section shall, as between themselves, be distributed between them in proportion to their existing holdings, and the shares shall be taken from those which the highest bidders who have offered the lowest price or the lowest sequence of prices would otherwise have acquired.

(3) The price to be paid by the directors for shares acquired under subsection (1) shall be the price which they respectively have offered as highest bidders under section 27(5), or if any of them has not offered such a price, the higher of the price which they have offered and the fair value of the shares as estimated by the company's auditor under section 27(6) and (7), and the auditor shall in that case make an estimate in like manner as if the outgoing member had notified the secretary under section 27(6) that he was unwilling to transfer the said shares.

(4) This section shall not apply if the number of the continuing members of the company does not exceed twenty.

#### **Voting agreements.**

**30.** No agreement by a member of a proprietary company with another person, whether a member or not, whereby the other person may require the member to vote, or not to vote, or to vote in a particular manner at any meeting of the company, or whereby the member agrees to vote in a particular manner, or not to vote, at any such meeting, shall be valid.

#### **Bearer shares certificates etc., may not be issued.**



**31.** No proprietary company may issue bearer share certificates, bearer debentures, or convertible debentures, and any purported issue of such securities shall be void.

**Permitted agreements in respect of proprietary companies.**

**32.(1)** Notwithstanding anything contained in sections 27 and 30, two or more members of a proprietary company may lawfully agree that:-

- (a) any one or more of them shall be entitled to require the other or others of them to cast the votes in respect of his or their shares for the re-election of each of the first-mentioned members as a director of the company, or for the payment to each of the first-mentioned members as such directors of agreed remuneration; or
- (b) on the death or resignation of one or more of them, he or they may nominate one or more other persons (whether members of the company or not) to succeed him or them as a director or directors of the company, and the other parties to the agreement will (if necessary) cast the votes in respect of their shares in the company for the election of each of those persons as a director; or
- (c) any right of pre-emption which may become exercisable over the shares of any one or more members shall be exercised so that an agreed price, or not less than an agreed price, is paid in respect of those shares; or
- (d) on the death or resignation of a directorship of one or more of them, the other or others will not exercise any right of pre-emption over his or their shares, or will not exercise a right of pre-emption if certain agreed conditions are fulfilled, or unless certain agreed conditions are not fulfilled.

**(2)** For the purposes of this section price shall be deemed to be an agreed price, and remuneration shall be deemed to be agreed remuneration, if it is either fixed by the agreement or is ascertainable by applying a method of calculation prescribed by it.

**(3)** If the performance or fulfilment of a contract which is valid under this section would, in the circumstances existing at the time of performance or fulfilment, cause the company of which the parties are members to cease to be a proprietary company, the agreement shall be enforceable only if:-

- (a) the articles of the company do not require its members to abstain from any act whereby the company may cease to be a proprietary company; or
- (b) the agreement is authorised or approved by an ordinary resolution passed by a general meeting of the company.

*Capacity, contracts, authorisation etc.*

**Capacity to contract etc.**

**33.(1)** A company shall, subject to the provisions of section 12, have the same capacity to enter into contracts, incur liabilities, and acquire, hold and dispose of property as an individual of full age who is not under any disability or interdicted, and may sue and be sued in its corporate name.

**(2)** The capacity of a company shall not be limited by any provision of its memorandum or articles as to its objects or powers, or as to the powers of its directors or of meetings of its members to act in its name or on its behalf.

(3) Nothing in this section shall relieve a director or officer of a company from liability to the company for a breach of the provisions of its memorandum or articles, or for entering into transactions unconnected with the promotion or carrying on of the company's business as stated in the memorandum, or the achievement of the purposes there stated, and nothing in this section shall restrict the right of a shareholder to apply to the court under section 136, or to present a petition under section 201, or to present a petition for the winding up of the company.

#### **Power of directors to act on company's behalf**

34.(1) The directors of a company shall have power to do all acts on its behalf which are necessary for or incidental to the promotion and carrying on of its business as stated in its memorandum, or the achievement of the purposes there stated, and all persons dealing with the company, whether shareholders or not, may act accordingly.

(2) Each director of a proprietary company and each managing director of any other company shall have power to do the acts mentioned in subsection (1) without the concurrence of any other director.

(3) Without prejudice to the generality of the foregoing, the directors of a company, each director of a proprietary company and each managing director of any other company shall, subject to any contrary provisions of the memorandum or articles, have power to do the acts specified in the Third Schedule to this Ordinance on behalf of the company.

(4) Nothing in this section shall relieve a director or officer of a company from liability to the company for a breach of the provisions of memorandum or articles, or for entering into transactions unconnected with the promotion or carrying on of the company's business as stated in the memorandum, or the achievement of the purposes there stated; and nothing in this section shall restrict the right of a shareholder to apply to the court under section 136, or to present a petition under section 201, or to present a petition for the winding up of the company.

#### **Form of contracts.**

35.(1) Contracts on behalf of a company may be made as follows -

- (a) a contract which, if made between private persons, would be by law required to be in writing, or to be evidenced by writing, or to be signed by the parties to be charged therewith, or by the parties or any party thereto, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied;
- (b) a contract which if made between private persons would by law be valid although not reduced into writing, may be made orally on behalf of the company by any persons acting under its authority, express or implied.

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

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

#### **Bills of exchange etc.**

36.(1) A bill of exchange, cheque or promissory note shall be deemed to have been drawn, made, accepted or endorsed on behalf of a company if drawn, made, accepted or endorsed in the name of, or by or on behalf or on

account of, the company by any person acting under its authority.

- (2) Nothing in this section shall affect section 26(2) of the Bills of Exchange Ordinance, 1959.

#### **Authentication of documents.**

37. A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company on its behalf.

#### **Notice of matters by the company.**

38. A company shall be considered as having notice of any matter if notice of it is given to, or received or obtained by, any director, except a director who obtains such notice for the purpose, or in the course, of committing a breach of duty as a director, or a fraud or wrong upon the company.

#### **Protection of persons dealing with directors and agents.**

39.(1) A person who deals with the directors of a company, or a director of a proprietary company, or a managing director of any other company, shall not be affected by any irregularity of procedure in connection with the authorisation of the transaction by a general meeting or other meeting of shareholders, or by the directors or any committee of directors, or the non-fulfilment of any condition imposed by the memorandum or articles in connection with the transaction.

(2) A person who deals with another person who is represented by the directors, or by a director of a proprietary company, or by a managing director of any other company, as having authority to act on the company's behalf in connection with any transaction, may treat the company as bound by the acts of that person done within his apparent authority, even though he has not been authorised by the company to do those acts on its behalf.

(3) This section shall not entitle anyone to recover a debt from a company, or to enforce any liability against it, or to treat a transaction as binding on it, if in connection with the same matter he has been guilty of a fraud upon the company, or has participated or acquiesced in a fraud committed upon it.

### **PART III - SHARE CAPITAL AND DEBENTURES**

#### *Prospectuses and allotments*

#### **Registration of prospectuses and prohibition orders.**

40.(1) No prospectus shall be issued in the name or on account of a company before it is incorporated.

(2) A prospectus issued by or on behalf of a company shall be reduced to writing and shall be dated, and, subject to subsection (16)(b), that date shall, unless the contrary is proved, be taken as the date of the first issue of the prospectus.

(3) A copy of every prospectus, signed by every director of the company and every person who is named in the prospectus as a proposed director of the company, or by his agent authorised in writing, shall be delivered to the Registrar for registration not less than twenty-eight days before the date when it is first issued.

(4) Any person to whom a prospectus has been issued, a copy of which has not been delivered for registration under the last foregoing subsection, may deliver to the Registrar a copy of it authenticated by his signature or the signature of his agent, or if it was not communicated to him in writing, a document so authenticated, setting out the information in respect of the company and the shares or debentures in question which was communicated to him in connection with the prospectus.

(5) If the Registrar is satisfied that any statement, promise or forecast contained in a prospectus is false, deceptive or misleading, or that any prospectus does not contain any statement, report or account required to be contained in it by this Ordinance, he shall by an order (in this Ordinance called a “prohibition order”) served on the company prohibit it from issuing the prospectus, or if the prospectus has already been issued, from issuing further copies of it and from allotting any of the shares offered for subscription by it:

Provided that if a copy of the prospectus has been delivered to the Registrar under subsection (3), he may not serve a prohibition order on the company later than twenty-six days after the copy was delivered to him.

(6) A prohibition order shall identify the part or parts of the prospectus to which the Registrar objects, and shall state the Registrar’s reasons for making the order.

(7) If the Registrar is satisfied that a prospectus, a copy of which has been delivered to him under subsection (3), is not objectionable on any of the grounds mentioned in subsection (5), he may by a written notice authorise the company to issue the prospectus before the expiration of the period of twenty-eight days mentioned in subsection (3), and this section shall then apply as though the said period of twenty-eight days had expired.

(8) The Registrar may accept any amendment offered by the company to a prospectus, and in particular may accept an amendment stating the price at which the shares or debentures are offered for subscription, or the price below which bids or tenders for the shares or debentures will not be accepted. The Registrar may revoke a prohibition order on accepting an amendment, but if the prospectus has already been issued, he shall do so only if he has satisfied himself that all persons to whom the prospectus has been issued have been adequately notified by individual notice, newspaper advertisements or otherwise, of the contents of, and reason for, the amendment.

(9) A company which is aggrieved by a prohibition order, or by the refusal of the Registrar to revoke a prohibition order, may appeal to the court within one month after the order is served on it, or the refusal is notified to it (as the case may be), and the court shall on the hearing of the appeal have the same powers as the Registrar, and its decision shall be final.

(10) The Registrar may require any director or officer of the company to make and deliver to him a signed declaration deposing to any facts which the Registrar considers relevant to the exercise of his powers under this section, or as a condition of giving an authorisation under subsection (7), or accepting an amendment to a prospectus, or revoking a prohibition order.

(11) Every prospectus issued to the public shall contain the following statement in clearly legible print at the head or commencement of it-

“A copy of this prospectus signed by every director and proposed director of the company has been delivered to the Registrar of Companies pursuant to the Companies Ordinance, 1971, but the registration of the copy of this prospectus by the Registrar does not imply any representation by the Government that the securities offered by this prospectus are a desirable investment, or that the contents of this prospectus are true or complete”.

If two or more documents are issued to the same person in respect of the same offer of shares or debentures for subscription, and both or all of the documents are prospectuses, it suffices that the first one of them to be issued to that person contains the statement required by this subsection.

(12) An offence is committed if a company -

(a) issues a prospectus without delivering a copy thereof to the Registrar; or

- (b) issues a prospectus before the period specified in subsection (3) has expired, unless the Registrar has given an authorisation under subsection (7); or
- (c) issues a prospectus, or allots shares or debentures thereunder, after a prohibition order in relation to the prospectus has been served on it, unless the order has been revoked; or
- (d) issues a prospectus to the public which does not contain the statement required by subsection (11) in clearly legible print at the head or commencement thereof; or
- (e) issues a prospectus to which amendments have been offered and have been accepted by the Registrar, but does not incorporate all those amendments therein.

**(13)** If an offence is committed under the last foregoing subsection, every director of the company and every person who is named in the prospectus as a proposed director of the company shall be guilty of an offence, unless he satisfies the court that he did not participate or acquiesce in the commission of the offence, or that he made a mistake of fact in good faith and that if the facts had been as he believed them to be, no offence would have been committed.

**(14)** An offence under this section shall be punishable by a fine not exceeding ten thousand rupees or imprisonment for not more than two years, or by both such fine and imprisonment.

**(15)** A prosecution for an offence under this section may not be brought against a company which issues a prospectus offering its own shares or debentures for subscription.

**(16)** For the purpose of this Ordinance -

- (a) a prospectus is issued to the public if it is issued to more than twenty-five persons;
- (b) a prospectus is first issued when it is first published as a newspaper advertisement, or when a copy of it is first delivered or shown to any person (other than a person invited to enter into an underwriting contract) with a view to inducing him to subscribe for the shares or debentures offered by it for subscription, whichever is the earlier;
- (c) shares or debentures are offered by a company for subscription if they are offered for allotment in consideration of cash, or in consideration of the transfer or surrender of other shares or debentures, whether issued by the same company or not, and whether any supplemental payment of cash is to be made by or to the company or not; and
- (d) an underwriting contract is a contract by which a person agrees to subscribe for shares or debentures with a view to offering all or any of them for sale, or to subscribe for such of the shares or debentures offered for subscription by a prospectus as are not subscribed for by the persons to whom the prospectus is addressed; and the expressions “underwriter” and “to underwrite” shall be construed accordingly.

### **Contents of prospectuses.**

**41.(1)** Every prospectus issued by or on behalf of a company shall contain the statements specified in Part I of the Fourth Schedule to this Ordinance, and every prospectus issued to the public by or on behalf of a company shall additionally contain the statements and the reports and accounts specified in Part II of the Fourth Schedule.

**(2)** Part III of the Fourth Schedule shall govern the interpretation of Parts I and II thereof.

**(3)** The Registrar may propose that amendments be made to any prospectus, whether a copy of it has been delivered to him or not, in order that it shall state clearly, accurately and concisely any of the matters required to

be stated in it, or in any report or account, or abstract of a report or account, required to be contained in it, or in order that it shall present such statements, reports and accounts in a fair manner, giving proper weight to favourable and unfavourable aspects, and in a sequence which will make them most easily understood by the persons to whom the prospectus is addressed.

(4) If a company refuses to make any amendment proposed by the Registrar under the last foregoing subsection within seven days after the proposal is communicated to it, the Registrar may make a prohibition order under section 40(5) as though the prospectus did not comply with subsection (1) of this section, and subsections (6), (8), (9), (10) and (12) of section 40 shall apply accordingly:

Provided that if the company has delivered a copy of a prospectus to the Registrar under section 40(3), the Registrar shall not make a prohibition order under this subsection unless he has communicated a proposal under the last foregoing subsection to the company not later than fourteen days after the copy of the prospectus was delivered to him.

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

(6) It shall not be lawful to issue any form of application for shares in or debentures of a company to any person other than a person invited to enter into an under writing contract, unless the form is issued with a prospectus which complies with the requirements of this section.

(7) If an application is made to a stock exchange in Seychelles or to a recognised overseas stock exchange for the shares or debentures offered for subscription by a prospectus to be quoted or dealt in thereon, and the making of the application is notified to the Registrar by the company or its broker (being a member of that stock exchange) not later than seven days after a copy of the prospectus was delivered to the Registrar under section 40(2), the contents of the prospectus shall be deemed to satisfy the requirements of subsection (1) of this section if they comply with the rules and requirements of that stock exchange.

(8) A notification under the last foregoing subsection shall be accompanied by a certificate by the directors of the company and the company's broker (being a member of the stock exchange in question) that to the best of their knowledge, information and belief the prospectus, a copy of which has been delivered to the Registrar, does comply with the rules and requirements of the stock exchange, and the last foregoing section shall not apply to the prospectus unless such a certificate is delivered to the Registrar.

(9) An offence is committed if a company:-

- (a) issues a prospectus which does not satisfy, or is not deemed to satisfy, the requirements of subsection (1) of this section; or
- (b) issues a form of application for shares or debentures in contravention of subsection (6); or
- (c) notifies the Registrar itself or through its broker that an application has been made to a stock exchange in Seychelles or a recognised overseas stock exchange for shares or debentures to be quoted or dealt in thereon when no such application has been made; or
- (d) delivers a certificate to the Registrar under subsection (8) which the person giving the certificate knows or has reason to believe to be false.

(10) If an offence is committed under the last foregoing subsection, every director of the company and every person who is named in the prospectus as a proposed director of the company shall be guilty of that offence, unless he satisfies the court that he did not participate or acquiesce in the commission of the offence, or that he made a mistake of fact in good faith and that if the facts had been as he believed them to be, no offence would have been committed.

(11) A prosecution may not be brought under this section against a company which issues a prospectus offering its own shares or debentures for subscription.

- (12) A person acting, or purporting to act, as broker to a company shall be guilty of an offence if -
- (a) he notifies the Registrar that an application has been made to a stock exchange in Seychelles or to a recognised overseas stock exchange for shares and debentures to be quoted or dealt in thereon, and either -
    - (i) he is not a member of that stock exchange; or
    - (ii) no such application has been made; or
  - (b) he makes or delivers to the Registrar a certificate under subsection (8), and either:-
    - (i) he is not a member of the stock exchange to which the certificate relates; or
    - (ii) he knows or has reason to believe that the certificate is false.
- (13) An offence under this section shall be punishable by a fine not exceeding ten thousand rupees or imprisonment for not more than two years, or by both such fine and imprisonment.
- (14) The Governor in Council may by regulations supplement, amend or rescind any of the provisions of the Fourth Schedule to this Ordinance, and it shall then take effect subject to the modifications made by such regulations.

#### **Opening of subscription lists.**

- 42.(1)** No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus, and no proceedings shall be taken on applications made in pursuance of a prospectus, until the beginning of the third day after that on which the prospectus is first issued, or the third day after the earliest date on which the prospectus may first be issued lawfully under section 40 (whichever is the later), or such later time (if any) as may be specified in the prospectus. The beginning of the said third day or such later time as aforesaid is hereinafter in this Ordinance referred to as “the time of the opening of the subscription lists”.
- (2) Any allotment made in contravention of this subsection shall be void, but without prejudice to the validity of any allotment of the same shares or debentures later made to the same applicant.
- (3) An application for shares in or debentures of a company which is made in pursuance of a prospectus shall not be revocable until after the expiration of the third day after the time of the opening of the subscription lists, or the giving before the expiration of the said third day, by some person responsible under section 46 for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.
- (4) If a company contravenes subsection (1) its directors who are in default shall be guilty of an offence punishable by a fine not exceeding one thousand rupees.

#### **Minimum subscription.**

- 43.(1)** Unless all the shares or debentures offered for subscription by a prospectus issued to the public are under written, the prospectus shall state the minimum amount of money required to be raised by the company by issuing the said shares or debentures before it will make any allotments of such shares or debentures (in this Ordinance called “the minimum subscription”).
- (2) If the minimum subscription is not subscribed within fourteen days after the prospectus is first issued, all allotments of shares or debentures already made thereunder shall be void, and no further allotments shall be made.

(3) Until the minimum subscription has been subscribed, all money received by or on behalf of the company from applicants for any of the shares or debentures shall upon receipt be deposited with a bank, which shall hold it as an agent on behalf of the applicants.

(4) Unless the minimum subscription is subscribed within fourteen days after the prospectus is first issued, the bank with whom money has been deposited under subsection (3), or if money has not been deposited under the said subsection, the company or the person who received it on the company's behalf, shall forthwith return the money to the applicants from whom it was received, and if the money is not returned within seven days after the expiration of the said fourteen days, the bank with whom the money has been deposited, the company, its directors and any person who received money which has not been deposited with a bank shall be jointly and severally liable to repay it to the said applicants with interest thereon calculated from the expiration of the said fourteen days at the rate of ten per centum per annum.

(5) If within fourteen days after a prospectus is first issued, a person responsible for the prospectus under section 46 gives a public notice having the effect under that section of limiting or excluding the responsibility of the person giving it, this section shall take effect as if the said fourteen days expired on the day when the said public notice is given.

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

(7) An offence is committed if:-

- (a) a company issues a prospectus which should state a minimum subscription but does not do so; or
- (b) a company or person acting on its behalf does not deposit money received from applicants in accordance with subsection (3) forthwith upon it being received; or
- (c) a company allots shares or debentures before or after the expiration of fourteen days from the first issue of the prospectus under which they are allotted, if the minimum subscription is not subscribed within the said fourteen days; or
- (d) a bank, or a company, or a person acting on the company's behalf does not return money received from applicants in compliance with subsection (4).

(8) If an offence is committed under the last foregoing subsection, every director of the company and every person who is named in the prospectus as a proposed director of the company shall be guilty of that offence, unless he satisfies the court that he did not participate or acquiesce in the commission of the offence, or that he made a mistake of fact in good faith and that if the facts had been as he believed them to be, no offence would have been committed.

(9) If an offence is committed under paragraph (d) of subsection (7), the bank or person acting on the company's behalf shall also be guilty of that offence.

(10) A prosecution may not be brought under this section against a company which issues a prospectus offering its own shares or debentures for subscription.

(11) An offence under this section shall be punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or by both such fine and imprisonment.

(12) For the purpose of this section:-

- (a) shares or debentures are underwritten if before the prospectus is first issued binding contracts to subscribe for them, or to subscribe for such of them as are not subscribed for by the persons to whom the prospectus is addressed, have been entered into with the company by a member of a stock exchange in Seychelles or of a recognised overseas stock exchange, or by such other persons as the Minister shall approve in the case of the particular prospectus by which the shares or debentures are offered for subscription, and a copy of each such contract has been delivered to the Registrar;



and

- (b) the minimum subscription is subscribed if applications are received by the company, or by a person acting on its behalf, for shares or debentures whose issue price in the aggregate equals or exceeds the minimum subscription, and the amount payable on application for such shares or debentures is received in legal tender, or in the form of cheques or banker's drafts or banker's cheques which the company or that person has no reason to believe will be dishonoured on presentation.

(13) This section does not apply to a prospectus issued by a company which offers shares or debentures for subscription solely in consideration of the transfer or surrender of other shares or debentures, whether issued by the company or not.

#### **Application for quotation on a stock exchange.**

44.(1) If a prospectus states that an application has been or will be made to a stock exchange for the shares or debentures offered by it for subscription to be quoted or dealt in thereon, and the application is not granted within fourteen days after the prospectus is first issued, or such further period, not exceeding fourteen days, as the stock exchange notifies the company it requires in order to consider the application, all allotments of shares or debentures made under the prospectus shall be void, and no further allotments shall be made.

(2) Until the application made to the stock exchange is granted, all money received by or on behalf of the company from applicants for any of the shares or debentures shall upon receipt be deposited with a bank which shall hold it as an agent on behalf of the applicants.

(3) Unless the application made to the stock exchange is granted within fourteen days or twenty-eight days (as the case may be) after the prospectus is first issued, the bank with whom the money has been deposited under subsection (2), or if money has not been deposited under the said subsection, the company or the person who received it on the company's behalf, shall forthwith return the money to the applicants from whom it was received, and if the money is not returned within seven days after the expiration of the said fourteen days or twenty-eight days (as the case may be), the bank with whom the money has been deposited, the company, its directors and any person who received money which has not been deposited with a bank, shall be jointly and severally liable to repay it to the said applicants with interest thereon calculated from the expiration of the said fourteen days or twenty-eight days (as the case may be) at the rate of ten per centum per annum.

(4) If within fourteen days or twenty-eight days (as the case may be) after a prospectus is first issued, a person responsible for the prospectus under section 46 of this Ordinance gives a public notice having the effect under that section of limiting or excluding the responsibility of the person giving it, this section shall take effect as if the said fourteen days or twenty-eight days (as the case may be) expired on the day when the said public notice is given.

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

(6) This section shall apply to shares or debentures for which an underwriter agrees to subscribe as if he had applied for them under the prospectus.

(7) An offence is committed if:-

- (a) a company issues a prospectus which states that an application has been made, or is proposed or intended to be made, for the shares or debentures offered for subscription to be quoted or dealt in a stock exchange, unless the application is made before or within three days after the prospectus is first issued; or
- (b) a company or person acting on its behalf does not deposit money received from applicants in accordance with subsection (2) forthwith upon it being received; or
- (c) a company allots shares or debentures after the expiration of fourteen days or twenty-

eight days (as the case may be) from the first issue of the prospectus under which they are allotted, if the application to the stock exchange for the shares or debentures to be quoted or dealt in on it which was mentioned in the prospectus has not been granted within the said fourteen or twenty-eight days (as the case may be); or

- (d) a company allots shares or debentures under a prospectus after the refusal of a stock exchange to grant the quotation or permission to deal in the shares or debentures which was mentioned in the prospectus under which the shares or debentures were allotted; or
- (e) a bank, or a company, or a person acting on the company's behalf does not return money received from applicants in compliance with subsection (3).

(8) If an offence is committed under the last foregoing subsection, every director of the company and every person named in the prospectus as a proposed director of the company shall be guilty of that offence, unless he satisfies the court that he did not participate or acquiesce in the commission of the offence, or that he made a mistake of fact in good faith and that if the facts had been as he believed them to be, no offence would have been committed.

(9) If an offence is committed under paragraph (d) of subsection (7), the bank or person acting on the company's behalf shall also be guilty of that offence.

(10) A prosecution under this section shall not be brought against a company which issues a prospectus offering its own shares or debentures for subscription.

(11) An offence under this section shall be punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or by both such fine and imprisonment.

#### **Action for rescission**

**45.(1)** A shareholder or debenture holder may bring an action against a company which has allotted shares or debentures under a prospectus, for the rescission of all allotments made under the prospectus and the repayment to the holders of the shares or debentures of the whole or part of the issue price which has been paid in respect of them, if either:-

- (a) the prospectus contained a material statement, promise or forecast which was false, deceptive or misleading; or
- (b) the prospectus did not contain a statement, report or account required to be contained in it by section 41 and the Fourth Schedule to this Ordinance.

(2) In this section "shareholder" means a holder of any of the shares allotted under the prospectus, whether the original allottee or a person deriving title under him; and "debenture holder" means a holder of any of the debentures allotted under the prospectus, whether the original allottee or a person deriving title under him.

(3) For the purpose of this section a prospectus shall be considered as containing a material statement, promise or forecast if the statement, promise or forecast was made in such a manner, or context, or in such circumstances, as to be likely to influence a reasonable man in deciding whether to invest in the shares or debentures offered for subscription; and a statement, report or account shall be considered as omitted from a prospectus if it was omitted entirely, or if it did not contain all the information required by this Ordinance. In an action brought under this section it shall not be necessary for the plaintiff to prove that he, or the person to whom the shares or debentures he holds were allotted, was in fact influenced by the statement, promise or forecast which he alleges to be false, deceptive or misleading, or by the omission of any report, statement, or account required to be contained in the prospectus.

(4) No action shall be brought under this section more than six months after the first issue of the prospectus under which shares or debentures were allotted to the plaintiff or the person from whom he derives title.

(5) If judgment is given in favour of a plaintiff under this section, the allotment of all shares or debentures under the same prospectus, whether allotted to the plaintiff or the person from whom he derives title or to other persons, shall be void, and judgment shall be entered in favour of all such persons (described by the collective title of “holders of shares *or* preference shares *or* ordinary shares *or* debentures issued under a prospectus dated .....”) for the payment by the company to them severally of the amount of the issue price paid up in respect of the shares or debentures which they respectively hold:

Provided that if any holder of shares or debentures at the date judgment is entered as aforesaid signifies to the company in writing (whether before or after the entry of judgment) that he waives his right to rescind the allotment of shares or debentures which he holds, he shall be deemed not to be included among the persons in whose favour judgment is entered.

(6) The operation of this section shall not be affected by the company being wound up or ceasing to pay its debts as they fall due, and in the winding up of the company a repayment due under the last foregoing subsection shall be treated as a debt of the company payable immediately before the repayment of the shares or debentures of the class in question, that is to say -

(a) in the case of a repayment in respect of shares, immediately before repayment of the capital paid up on shares of the same class, and the payment of any accumulated or unpaid dividends or any premiums in respect of such shares, but after the payment of all debts of the company and the satisfaction of all claims in respect of prior ranking classes of shares; and

(b) in the case of a repayment in respect of debentures, immediately before the repayment of the principal of debentures of the same class and the payment of any unpaid interest or any premiums in respect of such debentures, but after the payment of all debts or liabilities of the company which this Ordinance or section 20 of the Companies (Debentures and Floating Charges) Ordinance, 1970 requires to be paid before such debentures, and after the satisfaction of all rights in respect of prior ranking classes of debentures.

(7) It shall be a defence to an action under this section for the company to prove that the plaintiff was the allottee of the shares or debentures in respect of which the action was brought, and that at the time they were allotted to him he knew that the statement, promise or forecast of which he complains was false, deceptive or misleading, or that he knew of the omission of the matter from the prospectus of which he complains; and it shall also be a defence for the company to prove that such a plaintiff has received a dividend or payment of interest, or has voted at a meeting of members, shareholders or debenture holders (as the case may be) since he discovered that the statement, promise or forecast of which he complains was false, deceptive or misleading, or since he discovered the omission of the matter from the prospectus of which he complains:

Provided that an action shall not be dismissed if there are several plaintiffs, unless the company proves that it has a defence under this subsection against each of them, and in any case in which the company proves that it has a defence against the plaintiff or all the plaintiffs, the court may, instead of dismissing the action, substitute some other shareholder or debenture holder of the same class as a plaintiff, upon his application.

(8) If a company would have a defence under the last foregoing subsection but for the fact that the allottee of the shares or debentures in respect of which the action is brought has transferred them, the company may bring an action against the allottee for an indemnity against any sum which the court orders it to pay to the plaintiff in the action.

(9) The two last foregoing subsections (except the proviso to subsection (7)) shall apply also in the case of shares and debentures of the same class as those in respect of which a plaintiff obtains and enters judgment against the company under subsection (5), with the substitution in subsection (7) of references to the holder of the shares or debentures for references to the plaintiff, and with the substitution in subsections (7) and (8) of references to a right for the company to have the judgment set aside in respect of the shares or debentures for references to a defence to the action.

(10) This section shall apply to shares and debentures allotted pursuant to an underwriting contract as if they had been allotted under the prospectus.

**(11)** This section shall apply to shares or debentures issued under a prospectus which offers them for subscription in consideration of the transfer or surrender of other shares or debentures (whether with or without the payment of cash by or to the company), as though the issue price of the shares or debentures offered for subscription were the fair value (as ascertained by the court) of the shares or debentures to be transferred or surrendered, plus the amount of cash (if any) to be paid to the company or less the amount of cash (if any) to be paid by the company.

**(12)** The rights conferred on shareholders and debenture holders by this section shall be in substitution for all rights to rescission and restitution and to sue the company for damages or compensation under Articles 1109, 1116, 1117, 1131, 1304, 1382, 1383 and 1384 of the Civil Code, and such rights are hereby abolished in connection with prospectuses, but without prejudice to claims for damages or compensation against persons other than the company.

#### **Claims for compensation.**

**46.(1)** The following persons shall be liable to pay compensation to holders of shares or debentures issued under a prospectus for the loss they have sustained by reason of any material statement, promise or forecast therein which is false, deceptive or misleading, or by reason of the omission therefrom of any statement, report or account required to be contained in the prospectus by section 41 and the Fourth Schedule of this Ordinance, that is to say -

- (a) every person who was a director of the company at the time the prospectus was first issued;
- (b) every person who authorised himself to be named and was named in the prospectus as a director, or as having agreed to become a director either immediately or after an interval of time; and
- (c) every person who authorised the issue of the prospectus:

Provided that if a person has given a consent under section 47 of this Ordinance to the inclusion of an opinion or report by him in the prospectus, he shall not by reason of having given such a consent be liable as a person who authorised the issue of the prospectus, except in respect of the contents of or omissions from the opinion or report as it appeared in the prospectus.

**(2)** A person shall not be liable under subsection (1) of this section if he proves -

- (a) that having consented to become a director, he notified the company in writing that he withdrew his consent before the prospectus was first issued, and it was issued without his authority or consent; or
- (b) that the prospectus was issued without his authority or consent, and that on becoming aware of its issue and before the allotment of the shares or debentures in respect of which the action is brought, he notified the Registrar in writing that the prospectus was issued without his knowledge or consent and gave reasonable public notice to that effect; or
- (c) that after the issue of the prospectus and before the allotment of the shares or debentures in respect of which the action is brought, he first became aware that a statement, promise or forecast therein was false, deceptive or misleading, or that a statement, report or account required to be contained therein had been omitted therefrom, and he forthwith notified the company and the Registrar in writing that he withdrew his consent to the allotment of shares or debentures under the prospectus and of his reasons for doing so, and gave reasonable public notice of the withdrawal of his consent and of his said reasons; or
- (d) that -

- (i) as regards all parts of the prospectus, other than an opinion or report in respect of which another person has given his consent under section 47, he had reasonable ground to believe, and did believe up to the time of the allotment of the shares or debentures in respect of which the action is brought, that it contained no statement, promise or forecast which was false, deceptive or misleading, and omitted no statement, report or account required to be contained therein; and
- (ii) as regards all parts of the prospectus in respect of which another person or other persons have given a consent or consents under section 47, that those parts set out the opinions and reports in the form in which the other persons had consented to their inclusion in the prospectus, and that he had reasonable grounds to believe, and did believe up to the time of the allotment of the shares or debentures in respect of which the action is brought, that the persons giving or making the opinions or reports were competent to make them and that none of them had withdrawn the consent given by him as aforesaid:

Provided that this subsection shall not apply in the case of a person liable, by reason of having given a consent under section 47, as a person who authorised the issue of the prospectus in respect of the contents of or omissions from the opinion or report made by him as it appeared in the prospectus.

(3) A person who, apart from this subsection, would be liable, by reason of having given a consent under section 47, as a person who authorised the issue of the prospectus in respect of a material statement, promise or forecast which was false, deceptive or misleading and was contained in an opinion or report made by him as it appeared in the prospectus, or in respect of the omission from such an opinion or report as it appeared in the prospectus of any matter required to be contained therein, shall not be liable if he proves -

- (a) that having given his consent under section 47 as aforesaid, he notified the company and the Registrar in writing that he withdrew his consent before a copy of the prospectus was delivered to the Registrar by the company; or
- (b) that after delivery of a copy of the prospectus as aforesaid, and before the allotment of the shares or debentures in respect of which the action is brought, he first became aware that it contained a statement, promise or forecast which was false, deceptive or misleading, or that any matter required to be contained therein had been omitted therefrom, and he forthwith notified the company and the Registrar in writing that he withdrew his consent to the allotment of shares or debentures under the prospectus and of his reasons for doing so, and gave reasonable public notice of the withdrawal of his consent and of his said reasons; or
- (c) that he was competent to give or make the opinion or report, and that he had reasonable ground to believe, and did believe up to the time of the allotment of the shares or debentures in respect of which he is sued, that the said opinion or report contained no statement, promise or forecast which was false, deceptive or misleading, and no matter required to be contained therein was omitted therefrom.

(4) Where -

- (a) 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 to become a director before the first issue of the prospectus, and has not authorised or consented to the issue thereof; or
- (b) the consent of a person is required under section 47 to the issue of the prospectus and he has not given that consent, or has withdrawn it before the first issue of the prospectus;

the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof shall be liable to indemnify the person named as aforesaid or

whose consent was required as aforesaid, as the case may be, against all damages, compensation, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or of the inclusion therein of an opinion or report purporting to be made by him (as the case may be), or in defending himself against any action or legal proceedings brought against him in respect thereof:

Provided that a person shall not be deemed for the purposes of this subsection to have authorised the issue of a prospectus by reason only of his having given the consent required by section 47 to the inclusion therein of an opinion or report purporting to be made by him.

(5) A company which has repaid the whole or part of the issue price of shares or debentures under section 45 shall thereafter be deemed to be the holder of the shares or debentures for the purpose of this section, and may within two years after the date of such repayment bring actions under this section against the persons mentioned in subsection (1), who may avail themselves of the defences mentioned in subsections (2) and (3).

(6) The compensation recoverable under this section shall be the amount of the issue price paid up in respect of the shares or debentures in respect of which an action is brought, together with interest thereon from the dates on which the issue price or instalments of the issue price were paid at such rate as the court shall allow, not exceeding ten per centum per annum.

(7) In this section the expression “holder of shares or debentures” has the same meaning as the expressions “shareholder” or “debenture holder” (as the case may be) in section 45, and subsections (3), (10) and (11) of section 45 shall apply to this section.

(8) An action under this section may not be brought more than two years after the time when the shares or debentures to which it relates were allotted, but an action brought by a company under subsection (5) may be brought within the time limited by that subsection.

(9) If judgment is given under this section against two or more persons, the court may order that one or more of them shall indemnify the other or others of them against the compensation ordered to be paid and the costs of the action, or that they shall make such contribution between themselves in respect of such compensation and costs as the court shall think just.

(10) Nothing in this section shall impose any vicarious or other liability on the company which issued the prospectus.

(11) If the shares or debentures in respect of which an action is brought under this section have been transferred since they were issued, no defence which would be available if the action were brought by the allottee or any intermediate holder shall be available against the shareholder or debenture holder who brings the action.

(12) In this section “reasonable public notice” means such individual communication or such advertisement, whether in a newspaper or otherwise, as is reasonably calculated to bring notice of the matter in question to the attention of the persons who have applied or may apply for shares or debentures under the prospectus.

(13) The rights to sue for compensation conferred by this section shall be in substitution for all rights to sue persons liable under this section for damages or compensation under Articles 1382 and 1383 of the Civil Code, and such rights are hereby abolished in respect of the liability of those persons for misstatements in or omissions from prospectuses, but without prejudice to the rights of a company entitled to sue under subsection (5) of this section to enforce its rights under any contract of employment, or for services, or any other contract whatsoever.

#### **Documents to be delivered to Registrar with copy of prospectus.**

**47.(1)** When a copy of a prospectus is delivered to the Registrar under section 40, there shall be delivered with it -

- (a) the written consent of every person who has given an opinion or made a report which is set out, summarised, abstracted or quoted in the prospectus, to the inclusion in the prospectus of the opinion or report in the form in which it appears therein;

- (b) a certificate signed by the directors of the company and proposed directors named in the prospectus that all the consents required by the foregoing paragraph have been delivered to the Registrar and have not been withdrawn, and that the opinions and reports in respect of which consents have been delivered appear in the prospectus in the form in which the persons giving the consents agreed to their inclusion; and
  - (c) a copy of the whole of every contract, report, account or opinion which is summarised, abstracted, quoted or referred to in the prospectus.
- (2) References in this Ordinance to reports, accounts or opinions shall include references to summaries and abstracts thereof and quotations therefrom.
- (3) The prospectus shall identify the parts thereof in respect of which consents have been delivered to the Registrar under this section, and the parts thereof which are summaries or abstracts of, or quotations from, contracts, reports, accounts and opinions, and shall state in clearly legible print that such consents and full copies of such contracts, reports, accounts and opinions may be inspected at the Companies Registry and at the company's registered office or at some other address in Seychelles given for the purpose, and copies thereof may be made by the person inspecting those documents.
- (4) An offence is committed if a company-
- (a) does not deliver the consents, certificate and copies of contracts, reports and accounts required to be delivered to the Registrar by this section at the same time as the copy of the prospectus to which they relate;
  - (b) delivers a certificate to the Registrar under this section which is false; or
  - (c) issues a prospectus which omits any statement required by subsection (3); or
  - (d) fails to permit any person who has made a request for the purpose to inspect any of the documents mentioned in subsection (3) at its registered office or at the other address (if any) given in the prospectus as the address for inspection, or fails to permit such a person to take copies of the whole or any part of any such document.
- (5) If an offence is committed under the last foregoing subsection, every director of the company and every proposed director who has signed the copy of the prospectus delivered to the Registrar, shall be guilty of that offence, unless he satisfies the court that he did not participate or acquiesce in the commission of the offence, or that he made a mistake of fact in good faith and that if the facts had been as he believed them to be, no offence would have been committed.
- (6) A prosecution shall not be brought under this section against a company which issues a prospectus offering its own shares or debentures for subscription.
- (7) An offence under this section shall be punishable by a fine not exceeding ten thousand rupees.

#### **Offers for sale of shares and debentures.**

**48.(1)** If a company allots or agrees to allot shares or debentures with a view to all or any of them being offered for sale (whether directly or through another person or persons), any document by which the offer for sale is made shall for all purposes be deemed to be a prospectus issued by the company, and the provisions of this Ordinance as to the statements, reports and accounts required to be contained in prospectus, or in respect of omissions from a prospectus, or otherwise relating to prospectuses, shall apply accordingly as if the shares or debentures had been offered for subscription, and as if persons accepting the offer in respect of any shares or debentures had subscribed for them, but without prejudice to the liability of the persons by whom the offer for sale is made in respect of statements, promises or forecasts contained in the document and in respect of omissions therefrom.

- (2) For the purposes of this Ordinance, it shall, unless the contrary is proved, be evidence that an issue or

allotment, or an agreement to issue or allot shares or debentures was made with a view to the shares or debentures being offered for sale if it is shown:-

- (a) that an offer of the shares or debentures or of any of them for sale was made within one year after the issue or allotment or agreement to issue or allot; or
- (b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section 41 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus:-

- (a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and
- (b) the place and time at which the contract under which the said shares or debentures have been, or are to be, allotted may be inspected;

and section 40 as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorised in writing.

(5) Without prejudice to the generality of subsection (1), this section shall apply if a company allots or agrees to allot shares or debentures with a view to them being sold on a stock exchange by any member or members of the exchange, whether the shares or debentures are allotted or agreed to be allotted to him or them or to other persons.

#### **Registration statements.**

**49.(1)** If a company issues shares or debentures without issuing a prospectus, it shall deliver a statement (in this Ordinance called “a registration statement”) to the Registrar at least twenty-eight days before the issue is made. The registration statement shall contain the statements and copies of the reports and accounts specified in Parts I and II of the Fourth Schedule to this Ordinance, and shall be signed by every director of the company and by every person who is named in it as a proposed director of the company.

(2) If a company issues a prospectus which contains the statements required by Part I of the Fourth Schedule to this Ordinance, but not the statements and copies of the reports and accounts required by Part II of the Fourth Schedule, it shall, at least twenty-eight days before the prospectus is first issued, deliver to the Registrar a registration statement containing the statements and copies of the reports and accounts required by Part II of the Fourth Schedule, and the registration statement shall be signed by every director of the company and by every person who is named in it, or in the prospectus to which it relates, as a proposed director of the company.

(3) Section 40(5) to (10) inclusive, section. 41(3) to (5) inclusive and section 45, 46 and 47 of this Ordinance shall apply to a registration statement as they apply to a prospectus, and references in section 46 to a person who authorised the issue of a prospectus shall be construed as references to a person who authorised the delivery of a registration statement to the Registrar. Section 48 of this Ordinance shall apply to a registration statement as it applies to a document by which an offer for sale of shares or debentures is made.

(4) An offence is committed if a company -

- (a) issues shares or debentures without delivering a registration statement to the Registrar in compliance with this section; or



- (b) issues shares or debentures before the period specified in subsections (1) or (2) has expired, unless the Registrar has given an authorisation under section 40(7); or
- (c) issues shares or debentures after a prohibition order made by the Registrar under section 40(5) in relation to the registration statement has been served on it, unless the prohibition order has been revoked; or
- (d) issues shares or debentures under a registration statement delivered to the Registrar which does not satisfy the requirements of subsection (1) or (2) of this section, as the case may be.

(5) If an offence is committed under subsection (4), every director of the company and every proposed director who has signed the copy of any prospectus delivered to the Registrar shall be guilty of that offence, unless he satisfies the court that he did not participate or acquiesce in the commission of the offence, or that he made a mistake of fact in good faith and that if the facts had been as he believed them to be, no offence would have been committed.

(6) A prosecution shall not be brought under this section against a company which issues shares or debentures in respect of which a registration statement has been, or should have been, delivered to the Registrar.

(7) An offence under this section shall be punishable by a fine not exceeding ten thousand rupees.

(8) This section shall not apply to a proprietary company, nor to an invitation to subscribe for shares or debentures issued to not more than twenty-five persons, all of whom are either shareholders or debenture holders of the company.

#### **Fraudulent inducements to invest in shares or debentures.**

**50.(1)** Any person who by any statement, promise or forecast which he knows to be false, deceptive or misleading, or by recklessly making any statement, promise or forecast which is false, deceptive or misleading, induces or attempts to induce another person to enter into, or to offer to enter into, an agreement to subscribe for, underwrite, sell, purchase, exchange or surrender shares or debentures, or to create any derivative interest out of shares or debentures, shall be guilty of an offence.

(2) For the purpose of this section a statement, promise or forecast is made recklessly if -

- (a) it is made without belief that it is true, or in the case of a promise or forecast, that it is likely to be fulfilled; or
- (b) if a reasonable man who had the same knowledge of the surrounding circumstances as the accused, would not have believed that the statement was true, or that the promise or forecast was likely to be fulfilled.

(3) This section shall apply whether the inducement or attempted inducement is contained in a prospectus, a document within section 48 of this Ordinance, or a registration statement, or in any other communication whether written or oral.

(4) An offence under this section shall be punishable by a fine not exceeding one hundred thousand rupees, or three times the value of the consideration obtained, or sought to be obtained, by the accused, whether for himself or another person (whichever is the greater), or by imprisonment for not more than seven years, or by both such fine or imprisonment.

(5) Any person guilty of conspiracy to commit an offence under this section shall be punishable as if he had committed such an offence.

### **Return of allotments.**

**51.(1)** A company shall within one month after allotting any of its shares or debentures deliver to the Registrar:-

- (a) a return of allotments, stating the number of the shares or debentures comprised in the allotments, the names, addresses and descriptions of the allottees, the issue price of the shares or debentures and the amount paid up or credited as paid up on each share or debenture; and
- (b) in the case of shares or debentures allotted as fully or partly paid up otherwise than in cash, a copy of the contract in writing constituting the title of the allottee to the allotment together with a copy of the contract of sale, exchange or for the other consideration in respect of which that allotment was made, and a return stating the number of shares or debentures so allotted, the extent to which they are credited as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment deliver to the Registrar for registration the prescribed particulars of the contract.

(3) If shares or debentures are allotted or agreed to be allotted with a view to all or any of them being offered for sale (whether by the allottee or through another person or persons), this section shall apply as if the shares or debentures had been allotted by the company to the first holders of them who do not take them with a view to offering them for sale.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred rupees for every day during the first month that default continues, two hundred and fifty rupees for every day during the next two months that default continues, and five hundred rupees for every day that default continues thereafter.

(5) Copies of contracts and the prescribed particulars of contracts delivered to the Registrar shall be deemed not to be writings for the purposes of the Mortgage and Registration Ordinance.

*Commissions, financial assistance for the acquisition of shares and debentures, and acquisitions of shares of a company by itself*

### **Power to pay commission.**

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

- (a) the payment of the commission is authorised by the articles; and
- (b) the commission paid or agreed to be paid does not exceed ten per centum of the price at which the shares or debentures are issued or the amount or rate authorised by the articles, whichever is the less; and
- (c) the amount or rate per centum of the commission paid or agreed to be paid is disclosed in the prospectus, or if there is no prospectus, in the registration statement in respect of the shares or debentures; and
- (d) the number of shares or debentures which persons have for a commission agreed to underwrite firmly is disclosed in manner aforesaid.

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

(3) Nothing in this section shall affect the difference or margin between the issue or other price paid or to be paid by a person who takes an allotment or transfer, or agrees to take an allotment or transfer, of shares or debentures with a view to offering all or any of them for sale, and the price at which that person sells or agrees to sell the shares or debentures. For the purpose of this subsection the word “price” shall include any valuable consideration, and the words “sale” and “sell” shall include any disposition for valuable consideration.

(4) It shall be unlawful for a company to pay or to agree to pay a commission falling within subsection (1) of this section by the company allotting or agreeing to allot any of its shares or debentures, or by the company conferring a right to subscribe for other shares or debentures to be issued or re-issued by it; and any such allotment, agreement for allotment, or conferment of a right to subscribe for such shares or debentures shall be void.

(5) For the purposes of this Ordinance a person shall be considered as underwriting shares or debentures firmly if he enters into an underwriting contract, and also applies to the company for the shares or debentures to which the contract relates to be allotted to him, whether or not they are also applied for by other persons.

(6) Any contravention of this section by a director or any other officer of the company or by any other person shall be punishable by a fine not exceeding ten thousand rupees.

**Prohibition of financial assistance by company for acquisition of shares or debentures of the company and its holding company etc.**

**53.(1)** It shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made, or to be made, by any person of or for any shares or debentures of the company, or of a company which belongs to the same group of companies as the company:

Provided that nothing in this section shall be taken to prohibit:-

- (a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business, without any obligation or condition being imposed on the borrower that he shall expend the whole or any part of the money lent in subscribing for or purchasing shares or debentures of the company, or of such other company as aforesaid;
- (b) the gratuitous provision by the company, in accordance with any scheme authorised by an ordinary resolution passed at a general meeting of the company, of money for the subscription or purchase of fully paid shares of the company or of any other company or body, corporate, being a subscription or purchase by trustees of shares or debentures to be held by or for the benefit of employees (including directors holding a salaried employment or office) of the company or of a company which belongs to the same group of companies as the company;
- (c) the making by a company of loans to employees (including any director holding a salaried employment or office) of the company or of a company which belongs to the same group of companies as the company with a view to enabling those persons to subscribe for or purchase shares or debentures of any such company;
- (d) the provision of money, guarantees, or securities by a company under an employee share subscription scheme to which it is a party.

(2) A contravention of this section by a director, or any other officer of a company, or by any other person shall be an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more

than two years, or by both such fine and such imprisonment.

**Acquisition by a company of shares of itself or its holding company.**

**34.(1)** A company may not acquire or contract to acquire any shares issued or re-issued by itself or its holding company, or any derivative interest in such shares, whether directly or by means of an agent, nominee or trustee or otherwise.

**(2)** This section shall not prevent the transfer or surrender of shares to a company:-

- (a)* if the shares are fully paid and no consideration is given or paid for them by the company; or
- (b)* if the shares are held in the company to which the transfer or surrender is made, and are replaced immediately by other shares (whether carrying the same rights or not) allotted to the persons making the transfer or surrender, being shares having unpaid upon them not less than the amount unpaid on the shares which are transferred or surrendered; or
- (c)* if the shares are fully paid and are transferred in consideration of a payment made out of the profits or revenue reserves of the company; or
- (d)* if the shares are fully paid and are transferred, to the company as an agent, nominee or trustee under an arrangement in which it has no beneficial interest other than its right to remuneration and to an indemnity for its expenses.

**(3)** This section shall not apply:-

- (a)* to the issue to a company of shares in its holding company on a capitalisation of the profits or reserves of the holding company, or on a rights issue being made by the holding company; or
- (b)* to a mortgage or charge in favour of a company on shares issued or re-issued by it or its holding company for any part of the issue price or for any debt owed to the company; or
- (c)* to a company's right to remuneration or to an indemnity against its expenses under an arrangement falling within paragraph (d) of subsection (2); or
- (d)* to the issue of shares on a rights issue being made by the company or its holding company in respect of shares held by the company under an arrangement falling within paragraph (d) of subsection (2).

**(4)** All shares of a company transferred or surrendered to the company itself under paragraphs (a), (b) or (c) of subsection (2) shall be cancelled and shall become void as from the time of the transfer or surrender, and shall thenceforth be deemed not to be issued shares for the purposes of this Ordinance, but without prejudice to the company's power to re-issue such shares under sections 55(4) and 61.

**(5)** In this Ordinance a "rights issue" means an issue of shares under an offer made by a company to its existing shareholders in proportion to the number of shares, or the number of shares of a particular class, which they already hold.

**(6)** Any contravention of this section by a director or any other officer of this company or by any other person shall be punishable by a fine not exceeding ten thousand rupees.

## *Payment for shares*

### **Payment of the issue price of shares; capital reserve.**

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

**(2)** If a company issues a share at an issue price which exceeds its nominal value the excess, when paid to the company, shall be carried to the credit of the company's capital reserve. If shares are issued for a consideration other than cash, the excess of the value of the consideration (as determined under section 6 or 57) over the total of the nominal values of the shares so issued, shall be carried to the credit of capital reserve.

**(3)** Subject to the following provisions of this section, a share may not be issued at a discount, that is to say, on terms that the share shall be credited as paid up to a greater extent than the amount actually paid to the company for it. In the case of shares issued for a consideration other than cash, the shares shall be considered as issued at a discount if the value of the consideration (as determined under section 6 or 57) is less than the total of the nominal values of the shares so issued.

**(4)** For the purpose of this Part of this Ordinance, the amount for the time being standing to the credit of a company's capital reserve shall be treated as though it were paid up share capital, but it shall be permissible for a company by an ordinary resolution passed in general meeting to provide for the use of its capital reserve:-

- (a)* in paying up the nominal value or the issue price of unissued, surrendered or redeemed shares which are issued to the existing shareholders as fully paid bonus shares in the same proportions as a dividend might be paid to them in cash out of the company's profits or revenue reserves; or
- (b)* in paying up the amount of any discount on shares issued at a discount; and shares issued on terms that their nominal value shall be paid in part by the holders thereof and in part under this paragraph shall not be considered as shares issued at a discount within the prohibition contained in subsection (3).

**(5)** The capital reserve of a company shall consist of the amounts credited to capital reserve under subsection (2), the amounts transferred to it under sections 56(5), 60 and 61 on the re-issue or redemption of any shares, and the amounts transferred to it from the company's profits and revenue reserves under section 160(3), less the amounts applied out of capital reserve under the foregoing subsection and the amounts by which it has been reduced under sections 62 and 63.

**(6)** Nothing in this section shall affect the provisions of section 19(4) of this Ordinance.

**(7)** This section applies to shares issued before or after the coming into force of this Ordinance.

### **Enforcement of payment for shares.**

**56.(1)** The issue price of shares issued to be paid for in cash shall be paid to the company within five years after they are issued.

**(2)** The prospectus or registration statement under which shares are issued may state the amounts of the instalments by which the issue price is to be paid and the dates when such instalments will respectively become due, and the issue price of the shares shall then become due and payable accordingly.

**(3)** If subsection (2) does not apply to an issue of shares, the company may make calls on the holders of the shares in accordance with its memorandum and articles, and any part of the issue price which has not been called up at the expiration of five years after the issue of the shares shall then become immediately due and payable.

(4) If a shareholder fails to pay an instalment of the issue price or a call in respect of shares held by him within one month after the instalment or call becomes due, the company may serve a written notice on him stating the amount due in respect of his shares and the date on which it became due, and further stating that unless the amount is paid within one month after the notice is served, the shares will be forfeited, but without prejudice to the company's right to recover any unpaid instalment from the shareholder after forfeiture. If the instalment or call is not paid within the period limited by the notice, the allotment of the shares shall become void, and the shares shall be forfeited without any resolution of the directors or a general meeting being passed.

(5) A company may re-issue shares whose allotment has become void under the foregoing provisions of this section. The re-issued shares shall be credited as paid up to the same extent as they were paid up immediately before the avoidance of the last preceding allotment of them. If the company receives any consideration on such a re-issue (other than payment of any instalments of the issue price or calls which are due and unpaid), the value of the consideration shall be credited to capital reserve. A re-issue of shares shall be treated for all purposes in the same way as an allotment of the shares, and if any instalment of the issue price of the shares or call which becomes due after the avoidance of the previous allotment is not paid, the provisions of this section as to forfeiture and re-issue of the shares and recovery of unpaid instalments or calls shall apply. Re-issued shares shall for all purposes be treated as though they formed part of the issue of shares of the same class, and accordingly they shall carry the same rights, obligations and priorities as shares of that class originally issued, and shall be taken into account in the same way as such shares in determining the percentage of shareholders, or of shareholders of any class, who may apply or appeal to the court or may present a petition to the court under any of the provisions of this Ordinance.

(6) A company shall not be accountable to a shareholder for instalments of the issue price of his shares or calls which have been paid if the company avoids the allotment of the shares under this section, and the company may recover from the shareholder any instalments of the issue price or calls which are due but unpaid at the date the allotment is avoided.

(7) This section (except subsections (1) to (3) inclusive) shall apply to shares issued before the commencement of this Ordinance.

#### **Payment for shares issued for a consideration other than cash.**

**57.(1)** If shares are issued for a consideration other than cash, the shares shall not be allotted until the assets constituting consideration have been transferred to the company.

(2) Except in cases to which section 6 applies, no allotment of shares for a consideration other than cash shall be made, unless:-

- (a) the directors of the company have passed a resolution that the allotment shall be made;
- (b) the resolution states the nature of the consideration, its value and the extent to which the shares to be issued in respect of it will be credited as paid up by virtue of it; and
- (c) the resolution has been approved by an ordinary resolution passed by a general meeting of the company.

(3) For the purposes of this section, assets shall be considered as transferred to the company:-

- (i) in the case of goods, when the ownership passes to the company or when they are delivered to it;
- (ii) in the case of negotiable instruments, when the company becomes entitled to enforce all the rights embodied in them in its own name without the concurrence of any other person; and
- (iii) in any other case, when the ownership or lesser rights agreed to be vested in the company are legally vested in it.

- (4) Section 6(5) shall apply to issues of shares under this section as it applies to issues under that section.
- (5) If upon an allotment of shares for a consideration other than cash in circumstances in which this section applies -

- (a) subsection (1) or (2) of this section is not complied with; or
- (b) the shares are issued in contravention of subsection (4);

the directors of the company who are in default shall be guilty of an offence.

- (6) If a person accepts an allotment of shares knowing that subsection (1) or (2) of this section has not been complied with, or accepts an allotment of shares in contravention of subsection (4), he shall be guilty of an offence.

- (7) An offence under this section shall be punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or by both such fine and such imprisonment.

#### **Subscribers of the memorandum.**

- 58.(1)** Sections 56 and 57 of this Ordinance shall not apply to the subscribers of the memorandum of a company.

- (2) The shares for which the subscribers have subscribed the memorandum shall be allotted to them immediately after the incorporation of the company, and they shall pay the nominal value of such shares in cash to the company within one year after the company is incorporated:

Provided that if within one month after its incorporation the company issues a prospectus or prospectuses inviting the public to subscribe for the whole of its nominal capital and in consequence the whole of such capital is subscribed by the public or by the underwriters named in the prospectus, the obligation of the subscribers of the memorandum to take and pay for the shares for which they subscribed the memorandum shall be discharged; and if less than the whole of the nominal capital is subscribed by the public or by such underwriters as aforesaid, the obligation of the subscribers of the memorandum shall extend only to the shares not subscribed by the public or by such underwriters, but so that the subscribers of the memorandum shall not be required to take and pay for more shares than the number for which they subscribed the memorandum.

#### *Alteration and redemption of share capital*

#### **Alteration of share capital.**

- 59.(1)** A company may by an ordinary resolution alter the contents of its memorandum as follows, that is to say, it may -

- (a) increase its share capital by new shares of such nominal value as it thinks expedient; or
- (b) consolidate and divide all or any of its shares into shares of larger nominal value; or
- (c) convert all or any of its fully paid shares into stock, and reconvert that stock into fully paid shares; or
- (d) subdivide its shares, or any of them, into shares of a smaller nominal value than is fixed by the memorandum, so, however, that in the subdivision the proportion

between the part of the nominal value paid and the part 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; or

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

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

#### **Redeemable shares.**

**60.(1)** Subject to the provisions of this section, a company may issue shares which by the terms of issue will be redeemed, or at the option of the company may be redeemed:

Provided that -

- (a) no such shares shall be redeemed except out of profits or revenue reserves of the company which would otherwise be available for the payment of dividends, or out of the proceeds of a fresh issue of shares made for the purpose of the redemption;
- (b) no such shares shall be redeemed unless they are fully paid;
- (c) the premium (if any) payable on redemption, must be provided out of the profits or the revenue reserves of the company which would otherwise be available for the payment of dividends before the shares are redeemed;
- (d) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue of shares, there shall out of the profits or the revenue reserves of the company which would otherwise have been available for dividends, be transferred to capital reserve a sum equal to the nominal value of the shares which are redeemed.

(2) If shares are issued which may be redeemed at the option of the company, the memorandum shall state the terms of the option, and in particular, the earliest date on which the company may redeem the shares and the latest date by which it must redeem them (if any such latest date is provided for), and the manner by which the company will exercise its option, whether by itself selecting shares for redemption, or by drawings or ballot or otherwise.

(3) The redemption of shares under this section by a company shall not be deemed to be a reduction of capital within the meaning of this Ordinance, but shares which have been redeemed shall be deemed not to be issued shares for the purpose of this Ordinance.

(4) If a company has redeemed or is about to redeem any shares out of the proceeds of a fresh issue of shares, it shall have power to issue shares whose total nominal values do not exceed the total nominal value of the shares redeemed or to be redeemed as though those shares had never been issued.

(5) This section shall not apply to a proprietary company.

#### **Re-issue of shares.**

**61.(1)** A company which has taken a transfer or surrender of shares in itself under paragraphs (a), (b) or (c) of section 54(2) of this Ordinance, may re-issue such shares on the same terms (other than as to the issue price) and with the same rights, obligations and priorities as attached to them when they were redeemed by or transferred or surrendered to the company, and with the same amounts credited as paid up thereon as were paid up at the



date of the redemption, transfer or surrender.

(2) Section 56(5) of this Ordinance (except the first two sentences thereof) shall apply to the re-issue of shares under this section.

(3) This section shall not apply if the terms of issue of the shares provide that they shall not be re-issued.

**Registration of alterations of share capital and of the surrender, redemption and re-issue of shares.**

**62.(1)** If a company has -

- (a) increased its share capital; or
- (b) consolidated and divided its share capital into shares of larger amount than its existing shares; or
- (c) converted any shares into stock; or
- (d) re-converted stock into shares; or
- (e) subdivided its shares or any of them; or
- (f) redeemed any shares; or
- (g) cancelled any shares, otherwise than in connection with a reduction of share capital under section 63 and 65; or
- (h) taken a transfer or surrender of shares under paragraphs (a), (b) or (c) of section 54(2); or
- (i) re-issued shares under sections 56(5) or 61;

it shall within fifteen days after so doing give notice thereof to the Registrar.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred rupees for every day during the first month that default continues, two hundred and fifty rupees for every day during the next two months that default continues, and five hundred rupees for every day that default continues thereafter.

*Reduction of share capital*

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

**63.(1)** Subject to confirmation by the court, a company may by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may -

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off

any paid-up share capital which is in excess of the wants of the company;

and may, in connection with the reduction, alter its memorandum by reducing the amount of its nominal capital and the nominal value of its shares.

- (2) On a reduction of share capital a company may, but shall not be required to, reduce its nominal capital.
- (3) This section shall apply to the capital reserve of a company as though it were paid up share capital.
- (4) A special resolution under this section is in this Ordinance referred to as “a resolution for reducing share capital.”

#### **Application to the court for confirmation of reduction of share capital.**

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

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

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- (a) every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;
- (b) the court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a period within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;
- (c) where a creditor entered on the list whose debt or claim is not discharged or has not been determined, does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount –
  - (i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
  - (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital, or the payment to any shareholder of any paid-up share capital, the court may, if having regard to any special circumstances of the case it thinks proper so to do, direct that subsection (2) of this section shall not apply as regards any class or any classes of creditors.

(4) The court shall direct that the provisions of subsection (2) shall apply if the proposed reduction of share capital is because the company has lost paid up share capital, or because paid up share capital is unrepresented by assets, and a creditor or shareholder of the company establishes a *prima facie* case that there has been no loss or diminution in the value of the company's assets, or that the loss or diminution is less than the reduction of capital specified in the resolution for reducing share capital.

### **Order confirming reduction of share capital**

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

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

- (a)* if the liability to pay unpaid capital in respect of a class of shares is cancelled or reduced, or if the capital in respect of a class of shares is to be repaid wholly or in part, the sufficiency of the assets of the company to provide for the repayment of the capital in respect of all classes of the company's shares which rank for repayment of capital before that class of shares;
- (b)* if liability to pay unpaid capital is cancelled or reduced as aforesaid, or if capital is to be repaid as aforesaid, in respect of a class of shares, the sufficiency of the profits which the company is likely to earn in the future to provide for the fixed dividends on all classes of the company's preference shares which rank for payment of a fixed dividend before that class of shares; and
- (c)* the desirability of not cancelling the whole of the nominal value of shares, except on a repayment of paid-up share capital.

**(3)** If the resolution for the reduction of share capital provides for the repayment of the whole or part of the amounts paid up on a class of preference shares, or on certain shares of a class, the court shall not confirm the reduction unless it is satisfied either:-

- (a)* that the amount to be paid to the shareholders will, if re-invested, yield to them not less than the average annual income they have received in respect of the shares, or in respect of that part of the amount paid up on the shares which is to be repaid (as the case may be), during the five complete financial years of the company immediately preceding the date when the resolution for reducing share capital was passed; or
- (b)* that the amount to be paid to the shareholders is reasonable having regard to the circumstances in which the shares were issued, the situation of the company, the yield on the issued shares of the company which are not to be repaid (in whole or part) by the terms of the resolution for reducing share capital, and the amount which the shareholders whose shares are to be repaid (in whole or part) would receive if the company were wound up forthwith;

but in no case shall the court confirm the resolution for reduction of capital in respect of preference shares if the amount to be paid to the holders of those shares is less than the amount by which the capital paid up on the shares held by them is to be reduced.

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

### **Registration of order confirming reduction of share capital.**

**66.(1)** The Registrar shall register a resolution for reducing share capital which has been confirmed by the court, on delivery to him of a copy of an order of the court confirming the reduction of capital together with a minute approved by the court showing with respect to the share capital of the company as altered by the order:-

- (a) the nominal capital of the company;
  - (b) the issued share capital of the company; and
  - (c) the number and nominal values of shares issued or re-issued by the company and remaining outstanding, and the number and nominal values of such shares comprised in each different class of shares of the company;
  - (d) the amount (if any) deemed to be paid up on each such share and the amount remaining to be paid thereon;
  - (e) the number of unissued, forfeited, transferred and surrendered shares which the company may issue or re-issue and the nominal values of such shares.
- (2) On the registration of the order of the court and minute, and not before, the resolution for reducing share capital as confirmed by the order shall take effect.
- (3) Notice of the registration shall be published in such manner as the court may direct.
- (4) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Ordinance with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.
- (5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum, and shall be valid and alterable as if it had been originally contained therein.
- (6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section 17 of this Ordinance.
- (7) The Mortgage and Registration Ordinance shall not apply to a certificate issued under subsection (4).

#### **Liability of shareholders after a reduction of share capital.**

67. When the share capital of a company has been reduced, no share holder of the company, past or present, shall be liable to pay or contribute in respect of any shares held or formerly held by him more than the difference (if any) between the nominal values of the shares shown in the minute registered under the last foregoing section, and the amount paid up on the shares, or the reduced amount (if any) which in consequence of the reduction is deemed to have been paid up on the shares:

Provided that this section shall not affect the liability of any person to pay or contribute any part remaining unpaid of the premium at which the shares were issued.

#### **Penalty for concealment of name of creditors etc.**

68.(1) If any director or other officer of a company in connection with any proceedings under sections 64 and 65:-

- (a) wilfully conceals the name of any creditor of the company; or
- (b) knowingly misrepresents the nature or amount of the debt or claim of any such creditor; or
- (c) knowingly misrepresents the extent or value of the company's assets, or the nature or amount of its liabilities or contingent liabilities, or the profits it has earned in the past or is likely to earn in the future, or the circumstances in which any shares of the

company were issued, or the present financial situation of the company;

he shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or imprisonment for not more than two years, or by both such fine and such imprisonment.

### *Debentures*

#### **Cases in which a debenture trust deed must be executed.**

**69.(1)** If a company issues or agrees to issue debentures of the same class to more than twenty-five persons in Seychelles, or to any one or more persons with a view to the debentures or any of them being offered for sale to more than twenty-five persons in Seychelles, the company shall before issuing any of the debentures execute a debenture trust deed in respect of them and procure the execution of the deed by the trustees appointed thereby.

**(2)** For the purpose of this section, debentures shall be deemed to be issued to more than twenty-five persons if the debentures or the trust deed covering them permits the company to issue further debentures which will form part of the same class as the debentures originally issued, and does not restrict the total number of persons to whom the original and any further debentures may be issued to not more than twenty-five.

**(3)** For the purpose of this Ordinance, debentures belong to different classes if different rights attach to them in respect of -

- (a)* the rate of, or dates for, payment of interest; or
- (b)* the dates when, or the instalments by which, the principal of the debentures will be repaid, unless the difference is solely that the class of debentures will be repaid during a stated period of time and particular debentures will be repaid at different dates during that period according to selections made by the company, or by drawings, ballot or otherwise; or
- (c)* any right to subscribe for or convert the debentures into shares or other debentures of the company or any other company or corporation;
- (d)* the powers of the debenture holders to realise any security;

and debentures further belong to different classes if they do not rank equally for payment when any security vested in the debenture holders or the trustees of the covering trust deed (if any) is realised or when the company is wound up, that is to say, if in those circumstances the subject matter of any such security or the proceeds thereof, or any assets available to satisfy the debentures, are not to be applied in satisfying the debentures strictly in proportion to the amount of principal, premiums and arrears of interest to which the holders of them are respectively entitled.

**(4)** No debenture trust deed shall cover more than one class of debentures, whether the trust deed is required to be executed by this section or not.

**(5)** The directors of a company who are in default shall be guilty of an offence if the company issues debentures in circumstances in which this section requires a debenture trust deed to be executed without such a deed having been executed in compliance with this section, or if the company issues debentures under a trust deed which covers two or more classes of debentures.

**(6)** An offence under this section shall be punishable by a fine not exceeding ten thousand rupees.

**(7)** If a trust deed should have been executed by a company in accordance with this section but has not been executed, the court may on an application made by a debenture holder of the class in question order the company to execute such a trust deed and direct that persons nominated by the court shall be appointed to be the

trustees thereof, and the court may give such consequential directions as it thinks fit as to the contents of the trust deed and the execution of the trust deed by the trustees thereof.

(8) For the purposes of this Ordinance a debenture is covered by a debenture trust deed if the holder of the debenture is entitled to participate in any money payable by the company under the deed, or is entitled to the benefit of any mortgage, charge or security created by the deed, whether alone or together with other persons.

(9) This section shall not apply to debentures issued, or forming part of a class of debentures some of which were issued, before the coming into force of this Ordinance.

#### **Contents of debenture trust deeds.**

**70.(1)** Every debenture trust deed, whether required by section 69 or not, shall state:-

- (a) the maximum sum which the company may raise by issuing debentures of the same class;
- (b) the maximum discount which may be allowed on the issue or re-issue of the debentures, and the maximum premium at which the debentures may be made redeemable;
- (c) if debenture stock is to be issued under the deed, that the company is indebted to the trustees for the amounts from time to time payable in respect of the debentures (whether for principal, interest, premiums, costs or otherwise) and that (except for their own remuneration and indemnity against expenses incurred by them) the trustees hold those amounts on behalf of the holders of debenture stock from time to time issued under the trust deed and remaining outstanding in accordance with their respective rights;
- (d) the nature of any assets over which a hypothecation, mortgage, charge or security is created by the trust deed in favour of the trustees for the benefit of the debenture holders equally, and except where such a charge is a floating charge or a general floating charge, the identity of the assets subject to it;
- (e) the nature of any assets over which a hypothecation mortgage, charge or security has been or will be created in favour of any person other than the trustees for the benefit of the debenture holders equally, and except where such a charge is a floating charge or a general floating charge, the identity of the assets subject to it;
- (f) whether the company has created or will have power to create any hypothecation, mortgage, charge or security for the benefit of some, but not all, of the holders of debentures issued under the trust deed;
- (g) any prohibition or restriction on the power of the company to issue debentures or to create hypothecations, mortgages, charges or any security on any of its assets ranking in priority to, or equally with, the debentures issued under the trust deed;
- (h) whether the company will have power to acquire debentures issued under the trust deed before the date for their redemption and to re-issue such debentures;
- (i) the dates on which interest on the debentures issued under the trust deed will be paid and the manner in which payment will be made;
- (j) the date or dates on which the principal of the debentures issued under the trust deed will be repaid, and unless the whole principal is to be repaid to all the debenture holders at the same time, the manner in which redemption will be effected (whether by the payment of equal instalments of principal in respect of each debenture, or by the selection of debentures for redemption by the company, or by drawing, ballot or

otherwise);

- (k) in the case of convertible debentures, the dates and terms on which the debentures may be converted into shares and the amounts which will be credited as paid up on such shares, and the dates and terms which the debenture holders may exercise any right to subscribe for shares in right of the debentures held by them;
- (l) the circumstances in which the debenture holders will be entitled to realise any hypothecation, mortgage, charge or security vested in the trustees or any other person for their benefit (other than the circumstances in which they are entitled to do so by this Ordinance);
- (m) the powers of the company and the trustees to call meetings of the debenture holders, and the rights of debenture holders to require the company or the trustees to call such meetings;
- (n) whether the rights of debenture holders may be altered or abrogated, and if so, the conditions which must be fulfilled, and the procedure which must be followed to effect such an alteration or abrogation;
- (o) the amount or rate of remuneration to be paid to the trustees and the period for which it will be paid, and whether it will be paid in priority to the principal, interest and costs in respect of debentures issued under the trust deed.

(2) If the debentures are issued without a covering debenture trust deed being executed, the statements required by subsection (1) (except paragraph (c) thereof) shall be included in each debenture or in a note forming part of the same document or indorsed thereon, and in applying that subsection references therein to the debenture trust deed shall be construed as references to all or any of the debentures of the same class.

(3) The last foregoing subsection shall not apply if the debenture is the only debenture of the class to which it belongs which has been or may be issued, and the rights of the debenture holder cannot be altered or abrogated without his consent.

(4) The directors of a company who are in default shall be guilty of an offence if they issue debentures under a trust deed which does not comply with subsection (1), or if they issue a debenture which should comply with subsection (2) but does not do so.

(5) An offence under this section shall be punishable by a fine not exceeding ten thousand rupees.

(6) The matters specified in subsections (1) and (2) may be altered or added to by regulations made by the Governor in Council.

(7) This section shall not apply to a debenture trust deed executed or to debentures issued before the coming into force of this Ordinance.

#### **Contents of debentures.**

**71.(1)** Every debenture which is covered by a debenture trust deed shall state either in the body thereof, or in a note forming part of the same document or endorsed thereon:-

- (a) the matters required to be stated in a debenture trust deed by paragraphs (a), (b), (g), (i), (j), (k), (m) and (n) of section 70(1) of this Ordinance;
- (b) whether the trustees of the covering debenture hold the hypothecations, mortgages, charges and securities vested in them by the trust deed in trust for the debenture holders equally, or in trust for some only of the debenture holders, and if so, which debenture holders; and

- (c) whether the debenture is secured by a general floating charge vested in the trustees of the covering debenture trust deed or in the debenture holders.
- (2) A debenture issued by a company shall state on its face in clearly legible print that it is unsecured if no hypothecation, mortgage, charge or security is vested in the holder of the debenture or in any other person for his benefit as security for payment of principal or interest, but in the case of loan stock, this requirement shall be satisfied by the designation of the loan stock certificate as such on its face in clearly legible print.
- (3) The directors of a company who are in default shall be guilty of an offence if the company issues a debenture which should comply with subsection (1) or (2) of this section but does not do so.
- (4) An offence under this section shall be punishable by a fine not exceeding ten thousand rupees.
- (5) The matters specified in subsection (1) may be altered or added to by regulations made by the Governor in Council.
- (6) This section shall not apply to debentures issued before the coming into force of this Ordinance.

#### **Disqualification for appointment as trustee of debenture trust deed.**

- 72.(1)** A person shall not be qualified for appointment as a trustee of a debenture trust deed if he is a director, officer, or employee of the company which issues debentures covered by the deed, or if he is a substantial shareholder of the company.
- (2) If a trustee becomes subject to any of the disqualifications mentioned in subsection (1) after he has been appointed, he shall immediately cease to be qualified to act as a trustee of the debenture trust deed.
  - (3) Any person who acts as a trustee of a debenture trust deed shall be guilty of an offence if his appointment is invalid under subsection (1), or if he is disqualified so to act under subsection (2).
  - (4) An offence under this section shall be punishable by a fine not exceeding ten thousand rupees.

#### **Realisation of debenture holders' security.**

**73.(1)** Debenture holders shall be entitled to realise any security vested in them or in any other person for their benefit if:-

- (a) the company fails to pay any instalment of interest, or the whole or part of the principal or any premium, owing under the debenture or the debenture trust deed covering the debentures within one month after it becomes due; or
  - (b) the company fails to fulfil any of the obligations imposed on it by the debentures or the debenture trust deed; or
  - (c) any circumstances occur which by the terms of the debentures or debenture trust deed entitle the holders of the debentures to realise their security; or
  - (d) the company is wound up.
- (2) Debenture holders whose debentures are secured by a general floating charge vested in themselves or the trustees of the covering debenture trust deed or any other person shall additionally be entitled to realise their security if:-
- (a) any creditor of the company issues a process of execution against any of its assets, or commences proceedings for the winding up of the company by order of any court of



competent jurisdiction;

- (b) the company ceases to pay its debts as they fall due; or
- (c) the company ceases to carry on business; or
- (d) the company suffers, after the issue of debentures of the class concerned, losses or diminutions in the value of its assets which in the aggregate amount to more than one half of the total amount owing in respect of debentures of the class held by the debenture holders who seek to enforce their security and debentures whose holders rank before them for payment of principal or interest; or
- (f) any circumstances occur which entitle debenture holders who rank for payment of principal or interest in priority to the debentures secured by the general floating charge to realise their security.

(3) At any time after a class of debenture holders become entitled to realise their security, a receiver of any assets subject to a hypothecation, mortgage, charge or security in favour of the class of debenture holders or the trustees of the covering trust deed or any other person may be appointed -

- (a) by such trustees; or
- (b) by the holders of debentures in respect of which there is owing more than half of the total amount owing in respect of all the debentures of the same class;
- (c) by the court on the application of any trustee or debenture holder of the class concerned.

(4) A receiver appointed under this section shall, subject to any order made by the court, have power to take possession of the assets subject to the hypothecation, mortgage, charge or security, and to sell such assets and, if the hypothecation, mortgage, charge or security extends to such property, to collect debts owed to the company, to enforce claims vested in the company, to compromise, settle and enter into arrangements in respect of claims by or against the company, to carry on the company's business with a view to selling it on the most favourable terms, to grant or accept leases of land and licences in respect of patents, designs, copyright or trademarks, and to call up and recover capital unpaid on the company's issued shares.

(5) The remedies given by this section shall be in addition to, and not in substitution for, any other powers and remedies conferred on the trustees of the debenture trust deed or on the debenture holders by the debentures or the debenture trust deed, and any power or remedy which is expressed in any instrument to be exercisable if the debenture holders become entitled to realise their security shall be exercisable on the occurrence of any of the events specified in subsection (1), or in the case of a general floating charge, in subsections (1) and (2):

Provided that a manager of the business or of any of the assets of a company may not be appointed for the benefit of debenture holders unless a receiver has also been appointed and has not ceased to act.

(6) This section shall apply to debentures issued before or after the commencement of this Ordinance.

(7) No provision in any instrument which purports to exclude or restrict the remedies given by this section shall be valid and effectual.

#### **Disqualification for appointment as a receiver or manager.**

**74.(1)** A person may not be appointed to be a receiver or manager of any assets of a company, and may not act as such a receiver or manager, if -

- (a) it is a company or corporation; or

- (b) he is an undischarged bankrupt;
- (c) he is disqualified from being a trustee of a debenture trust deed executed by the company, or would be so disqualified if a debenture trust deed had been executed by it.

(2) If a person who was appointed to be a receiver or manager becomes disqualified from continuing to act under the foregoing subsection or under any provision contained in a debenture or a debenture trust deed, another person may be appointed in his place by the persons who are entitled to make the appointment or by the court, but a receivership shall not terminate or be interrupted by the occurrence of the disqualification.

(3) Any person who acts as a receiver or manager of any assets of a company while disqualified by subsection (1) shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees.

(4) This section applies to a person appointed to be a receiver or manager before or after the coming into force of this Ordinance.

#### **Applications to the court.**

75. A receiver of assets of a company appointed under section 73(3) or under the powers contained in any instrument may apply to the court for directions in relation to any particular matter arising in connection with the performance of his functions, and on any such application the court may give such directions, or may make such order declaring the rights of persons before the court or otherwise, or may order any person to do or abstain from doing any thing, as the court thinks just or necessary in the circumstances.

#### **Liability of receivers.**

76.(1) A receiver of assets of a company appointed under section 73(3) or under the powers contained in any instrument shall be personally liable on any contract entered into by him in the performance of his functions, except in so far as the contract otherwise provides, and shall be entitled in respect of that liability to an indemnity out of the assets of which he was appointed to be receiver:

Provided that nothing in this subsection shall be taken as limiting any right to an indemnity which he would have apart from this subsection, or as limiting his liability on contracts entered into without authority, or as conferring any right to indemnity in respect of that liability.

(2) This section shall apply whether the receiver was appointed before or after the commencement of this Ordinance, but shall not apply to contracts entered into before the commencement of this Ordinance.

#### **Notification of appointment of receiver or manager.**

77.(1) Where a receiver or manager of any assets of a company has been appointed for the benefit of debenture holders, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with the requirements of this section, any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver, shall be liable to a fine of one thousand rupees.

#### **Power of court to fix remuneration of receiver or manager.**

**78.(1)** The court may, on an application made by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under section 73(3) or under the powers contained in any instrument, has been appointed as receiver or manager of any assets of the company for the benefit of debenture holders.

**(2)** The power of the court under the foregoing subsection shall, where no previous order has been made with respect thereto under that subsection -

- (a)* extend to fixing the remuneration for any period before the making of the order or the application therefor; and
- (b)* be exercisable notwithstanding that the receiver or manager has ceased to act before the making of the order; and
- (c)* where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extend to requiring him to account for the excess or such part thereof as may be specified in the order:

Provided that the power conferred by paragraph (c) of this subsection shall not be exercised as respects any period before the making of the application for the order unless in the opinion of the court there are special circumstances making it proper for the power to be so exercised.

**(3)** The court may from time to time on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under subsection (1) of this section.

**(4)** This section shall apply whether the receiver was appointed before or after the commencement of this Ordinance, and to periods before, as well as to periods after, the commencement of this Ordinance.

**(5)** This section shall not apply if the receiver is appointed by the court, and the court fixes his remuneration by the order appointing him or by a subsequent order made on his application.

#### **Statement of the company's affairs.**

**79.(1)** Where a receiver of the whole or substantially the whole of the assets of a company (hereafter in this section and in the next following section referred to as "the receiver") is appointed under section 73(3), or under the powers contained in any instrument, for the benefit of the holders of any debentures of the company secured by a general floating charge, then subject to the provisions of this and the next following section -

- (a)* the receiver shall forthwith send notice to the company of his appointment; and
- (b)* there shall, within fourteen days after receipt of the notice, or such longer period as may be allowed by the receiver, be made out and submitted to the receiver in accordance with the next following section a statement in the prescribed form as to the affairs of the company; and
- (c)* the receiver shall within two months after receipt of the said statement send –
  - (i)** to the Registrar and (if he was appointed by the court) to the court, a copy of the statement and of any comments he sees fit to make thereon, and in the case of the Registrar also a summary of the statement and of his comments (if any) thereon; and
  - (ii)** to the company, a copy of any such comments as aforesaid or, if he does not see fit to make any comments, a notice to that effect; and
  - (iii)** to the trustees of the debenture trust deed covering the debentures in respect

of which he was appointed, a copy of the statement and such comments; and

- (iv) to the holders of all debentures belonging to the same class as the debentures in respect of which he was appointed, a copy of the said summary.

(2) The receiver shall within two months, or such longer period as the court may allow after the expiration of the period of twelve months from the date of his appointment and of every subsequent period of twelve months, and within two months or such longer period as the court may allow after he ceases to act as receiver of the assets of the company, send to the Registrar, to the trustees of the trust deed covering the debentures in respect of which he was appointed, and to the holders of all debentures belonging to the same class as the debentures in respect of which he was appointed, an abstract in the prescribed form showing his receipts and payments during that period of twelve months or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.

(3) Subsection (1) of this section shall not apply in relation to the appointment of a receiver to act with an existing receiver, or in place of a receiver dying or ceasing to act, except that, where that subsection applies to a receiver who dies or ceases to act before it has been fully complied with, the references in paragraphs (b) and (c) thereof to the receiver shall (subject to the next following subsection) include references to his successor and to any continuing receiver.

(4) If the company is being wound up, this and the next following section shall apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(5) Nothing in subsection (2) of this section shall be taken to prejudice the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times which, he may be required to do so apart from that subsection.

(6) If the receiver makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues.

#### **Contents of statement of affairs etc.**

**80.(1)** The statement as to the affairs of a company required by the last foregoing section to be submitted to the receiver (or his successor) shall show as at the date of the receiver's appointment the particulars of the company's assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.

(2) The statement of affairs shall be submitted by, and be verified by the signed declaration of, one or more persons who are at the date of the receiver's appointment the directors and by the person who is at that date the secretary of the company, or by such of the persons hereafter in this subsection mentioned as the receiver (or his successor), subject to the direction of the Registrar, may require to submit and verify the statement, that is to say, persons -

- (a) who are or have been officers of the company;
- (b) who have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;
- (c) 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 receiver capable of giving the information required;
- (d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, the holding company or a subsidiary of the company to which the statement relates.

(3) Any person making or verifying the statement of affairs or any part of it shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the making or verifying of the statement as the receiver (or his successor) may consider reasonable, subject to an appeal to the court.

(4) If any person without reasonable excuse makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues.

#### **Enforcement of receivers' duty to make returns.**

**81.(1)** If any receiver of any assets of a company -

- (a) having made default in filing, delivering or making any return, account or other document, or in giving any notice which a receiver is by law or by order of the court required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so; or
- (b) having been appointed under section 73(3) or under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to vouch the same and to pay over to the liquidator any amount shown by the accounts as payable to him,

the court may, on an application made for the purpose, make an order directing the receiver to make good the default within such time as may be specified in the order.

(2) In the case of any such default as is mentioned in paragraph (c) of subsection (1), an application for the purposes of this section may be made by any shareholder, member, creditor or debenture holder of the company or by the Registrar, and in the case of any such default as is mentioned in paragraph (b) of that subsection, the application shall be made by the liquidator, and in either case the order of the court made on the application may provide that all costs of and incidental to the application shall be borne by the receiver.

#### **Rights of debenture holders.**

**82.(1)** The trustees of a debenture trust deed shall hold all contracts, stipulations and undertakings given to them and all hypothecations, mortgages, charges and securities vested in them in connection with the debentures covered by the deed, or some of those debentures, exclusively for the benefit of the debenture holders concerned (except insofar as the deed otherwise provides), and the trustees shall owe the duties of a salaried commercial agent to those debenture holders in respect of the enforcement of those contracts, stipulations, undertakings, hypothecations, mortgages, charges and securities and the fulfilment of their functions generally.

(2) A debenture holder may sue:-

- (a) the company which issued the debentures he holds for payment of any amount payable to him in respect of the debentures; or
- (b) the trustees of the debenture trust deed covering the debentures he holds for compensation for any breach of the duties which they owe him;

and in such an action it shall not be necessary for any other debenture holders of the same class, or if the action is brought against the company, the trustees of the covering trust deed, to be joined as parties.

(3) This section shall apply notwithstanding anything contained in a debenture, debenture trust deed or other instrument:

Provided nevertheless that a provision in a debenture or debenture trust deed shall be valid and binding on all the debenture holders of the class concerned insofar as it enables a meeting of the debenture holders by a resolution supported by the votes of the holders of at least three-quarters in value of the debentures of that class in respect of which votes are cast on the resolution:-

- (a) to release any trustee from liability for any breach of his duties to the debenture holders which he has already committed, or generally from liability for all such breaches (without necessarily specifying them) upon him ceasing to be a trustee; or
- (b) to consent to the alteration or abrogation of any of the rights, powers or remedies of the debenture holders and the trustees of the debenture trust deed covering their debentures (except the powers and remedies conferred by section 73); or
- (c) to consent to the substitution for the debentures of debentures of a different class issued by the company or any other company or corporation, or the cancellation of the debentures in consideration of the issue to the debenture holders of shares credited as fully paid in the company or any other company or corporation.

#### *Transactions affecting shares and debentures*

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

**83.(1)** Shares in a company and derivative interests therein shall be deemed for all purposes to be intangible moveables, and shares may be transferred and derivative interests therein may be created accordingly subject to the following provisions of this Ordinance.

- (2) Each share in a company shall be distinguished by a distinguishing number:

Provided that, if at any time all the issued shares in a company, or all the issued shares therein of a particular class, are fully paid up and rank equally for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up.

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

**84.(1)** Shares and debentures which are not represented by bearer share certificates or bearer debentures may be transferred by a written instrument of transfer signed by the transferor and naming the transferee.

(2) It shall not be necessary to set out the distinguishing numbers (if any) of the shares or debentures in the transfer, but the number or nominal value or principal amount of the shares or debentures transferred must be stated. The principal amount of debentures may be stated inclusive or exclusive of any premium payable on the redemption thereof.

(3) No particular form of words shall be necessary to transfer shares or debentures, provided that words are used which show with reasonable certainty that the person signing the transfer intends to vest the title to the shares or debentures in the transferee.

(4) The beneficial ownership of the shares or debentures shall pass to the transferee on the delivery to him of the transfer signed by the transferor and the transferor's share certificate or debenture, or on the delivery to him of a transfer signed by the transferor which has been certificated by or on behalf of the company or by or on behalf of a stock exchange in Seychelles or a recognised overseas stock exchange:

Provided that if the transferor is not the member of the company in respect of the shares, or is not the

registered holder of the debentures (as the case may be), this subsection shall take effect as if references to the transfer signed by the transferor included transfers signed by that member or registered holder (as the case may be) and all holders of the shares or debentures intermediate between that member or registered holder and the transferor.

(5) Notwithstanding subsection (4) a company and, in the case of debentures, the trustees of the covering trust deed shall not be bound or entitled to treat the transferee of shares or debentures as the owner of them until the transfer to him has been registered by the company or until the court orders the company to register the transfer to him, and until the transfer is presented to the company for registration, the company shall not be treated as having notice of the transferee's interest thereunder or of the fact that the transfer has been made.

(6) This section applies notwithstanding anything contained in the memorandum or articles of the company, and notwithstanding anything contained in any debenture trust deed or debentures or any contract or instrument.

#### **Restrictions on transfers.**

**85.(1)** No restriction or condition in a debenture trust deed or in a debenture shall limit the right of any person to transfer a debenture held by him.

(2) A restriction on the right of a shareholder to transfer his shares contained in the memorandum or articles of a company shall be invalid if its effect in any particular case is to limit the persons to whom, or the times or prices at which, the shareholder may transfer his shares so that there is no reasonable likelihood of the shareholder being able to sell them within a reasonable time at a fair price.

(3) A transfer of the shares or debentures of a shareholder or debenture holder of a company made by his trustee in bankruptcy, or by a receiver appointed by or for the benefit of debenture holders, or by the liquidator of a corporate holder, or by the tutor of a minor or of a person who has been interdicted, or by a person appointed by the court to execute the transfer shall, although the person executing the transfer is not himself a member of the company or a registered holder of the debentures, be as valid as if he had been such a member or registered holder at the time of the execution of the instrument of transfer.

(4) This section shall apply notwithstanding anything contained in the memorandum or articles of the company, and notwithstanding anything contained in any trust deed or debenture or any contract or instrument.

(5) Subsection (1) and (2) of this section shall not apply to a proprietary company.

#### **Certifications of transfers.**

**86.(1)** A company shall be under a duty to certify a transfer of shares or debentures on the presentation to it of a transfer signed by the holder thereof accompanied by delivery to it of the share certificate or debenture in respect of the shares or debentures. A certification shall consist of a statement signed on behalf of the company and written or indorsed on the transfer to the effect that the share certificate or debenture (as the case may be) has been delivered to or lodged with the company.

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

(3) Where any person acts on the faith of a false certification by a company made fraudulently or negligently, the company shall be liable to compensate him for any loss he suffers in consequence thereof.

(4) A company which has certificated a transfer shall be liable to compensate any person for loss which he suffers in consequence of the company subsequently releasing possession of the share certificate or debenture in

respect of which the certification was given, otherwise than on the surrender of the certificated transfer.

(5) For the purposes of this section -

- (a) the certification of an instrument of transfer shall be deemed to be made by a company if -
  - (i) the person issuing the certification is a person authorised to issue certificated transfers on the company's behalf; and
  - (ii) the certification is signed by a person authorised to certificate transfers on the company's behalf, or by any officer or servant either of the company or of a body corporate so authorised;
- (b) a certification shall be deemed to be signed by any person if -
  - (i) it purports to be authenticated by his signature or initials (whether handwritten or not); and
  - (ii) it is not shown that the signature or initials was or were placed there neither by himself nor by any person authorised to use the signature or initials for the purpose of certificating transfers on the company's behalf.

(6) If a company fails to certificate a transfer and to return it to the person requesting certification within seven days after receiving a transfer signed by the holder of the shares or debentures to which the transfer relates and the share certificate or debentures relating to such shares or debentures, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred rupees for each day that the default continues.

#### **Issue of share certificates and debentures.**

**87.(1)** Every company shall, within two months after the allotment of any of its shares or debentures, and within two months after the date on which a transfer of any such shares or debentures is presented to the company for registration, complete and have ready for delivery to the allottee or transferee a proper certificate or debenture for the shares or the debentures allotted or transferred to him.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred rupees for each day that the default continues.

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

(4) The expression "transfer" for the purpose of this section means a transfer in proper form duly signed by the transferor and transferee and otherwise valid, and does not include a transfer which the company is for any reason entitled to refuse to register and does not register or a transfer which the company is forbidden to register by section 76E of the Mortgage and Registration Ordinance.

#### **Registration of transfers.**



**88.(1)** Notwithstanding anything in the memorandum or articles of a company or in any debenture, debenture trust deed or other contract or instrument, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a transfer in proper form and duly signed by the transferor and transferee has been delivered to the company:

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

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

**(3)** If a company refuses to register a transfer of any shares or debentures, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferor and the transferee notice of the refusal and of its reasons therefor.

**(4)** Notwithstanding anything in the memorandum or articles of a company or in any debenture, debenture trust deed or other contract or instrument a company (other than a proprietary company) shall register the trustee in bankruptcy of a member or debenture holder as a member in respect of the shares or as holder of the debentures of the bankrupt in its register of members or debenture holders (as the case may be) within seven days after he produces to the company satisfactory evidence of his title and requests it to register him as a member or debenture holder.

**(5)** If default is made in complying with this section the company and its directors who are in default shall be guilty of an offence punishable by a fine not exceeding one thousand rupees.

**(6)** Nothing in this Ordinance shall be taken as affecting the provisions of the Mortgage and Registration Ordinance relating to the transfer of shares.

#### **Effect of registration and share certificates etc.**

**89.(1)** A certificate issued by a company and signed on its behalf stating that any shares or debentures of the company held by any person shall be *prima facie* evidence of the title of that person to the shares or debentures.

**(2)** The registration of a person as a member or debenture holder of a company, or the issue of a share certificate or debenture shall constitute a representation by the company that the person so registered, or the person named in the share certificate or debenture as entitled to the shares or debentures mentioned therein, is entitled to the shares or debentures mentioned in the register or in the share certificate or debenture, and the company shall not be entitled to deny the truth of that representation as against a person who believes it to be true and contracts to acquire the shares or debentures or any interest therein in good faith and for money or moneys worth, and it shall be no defence for the company to show that the registration or the issue of the share certificate or other document was procured by fraud or by the presentation to it of a forged document.

#### **Bearer share certificates etc.**

**90.(1)** A company may issue bearer share certificates or bearer debentures only if the Financial Secretary grants it permission to do so and no such permission shall be granted to a proprietary company.

**(2)** Bearer share certificates and bearer debentures are negotiable instruments, and accordingly the title to the shares or debentures represented by them may be transferred by delivery, and a purchaser for money or money's worth of shares or debentures so represented who has no knowledge of any defect in the title of the person from whom he acquires them, obtains the ownership of the shares or debentures free from the title of and any claim by any former holder.

**(3)** A company which issues a bearer share certificate or a bearer debenture shall provide for the payment

of dividends or interest by the issue of coupons to bearer. Such coupons shall also be negotiable instruments and shall be governed by subsection (2).

(4) Subsections (2) and (3) shall not apply in favour of any person who takes delivery of a bearer share certificate or a bearer debenture in respect of which coupons have been issued for payment of dividends or interest, unless the coupons for dividends or interest not already due at the date of delivery are delivered to him at the same time as the certificate or debenture, but this subsection shall not apply in respect of coupons which have previously been delivered by the holder of the shares or debentures to another person so that he may obtain payment of such dividends or interest for his own benefit or as security for any debt owed to him.

(5) This section shall apply to renounceable or transferable letters of allotment or acceptance in respect of shares or debentures with the modifications -

- (a) that subsection (2) shall apply only if the letter or instrument of renunciation or transfer forming part of or accompanying the letter of allotment or acceptance has been signed in blank by the allottee; and
- (b) that the company or person who issues the letter of allotment or acceptance need not provide for the payment of dividends or interest in the manner mentioned in subsection (3);

and for the purpose of this subsection a letter or instrument of renunciation or transfer is signed in blank if it names no person to whom, or in favour of whom, the renunciation or transfer is made.

(6) The preceding provisions of this section shall not come into operation until a date appointed by the Governor in Council by notice in the *Gazette*, and accordingly, during the period before sub-sections (1) to (5) come into operation no company may issue bearer share certificates or bearer debentures, and any purported issue of any bearer share certificate or bearer debenture shall be void:

Provided that during such period as aforesaid a company (not being a proprietary company) may, with the permission of the Financial Secretary, issue renounceable or transferable letters of allotment or acceptance which by their express terms cease to be renounceable or transferable not later than six months after the allotment of the shares or debentures in respect of which they are issued, and if any such letters are so issued the provisions of sub-sections (2) to (4) (as modified by sub-section (5)) shall have effect in relation thereto.

#### **Personation of shareholder or debenture holder.**

91.(1) If any person falsely and deceitfully personates the holder of any share or debenture in any company, or falsely and deceitfully personates the owner of any bearer share certificate or bearer debenture or coupon for dividend or interest, issued in pursuance of this Ordinance, and thereby obtains or endeavours to obtain any such share or debenture, or such bearer share certificate, bearer debenture, or coupon, or receives or endeavours to receive any money due to any such holder or owner, as if the offender were the true and lawful owner thereof, he shall be guilty of an offence punishable by imprisonment for not more than ten years.

### **PART IV – REGISTRATION OF CHARGES**

#### **Registration of mortgages.**

92.(1) Every hypothecation, mortgage or charge to which this Part of this Ordinance applies shall be registered by the Registrar in a register of charges kept by him separately for each company upon presentation to him of the instrument by which the hypothecation, mortgage or charge is created together with such copies thereof as the Registrar may require and a written application in a form prescribed by section 93(1) for the registration of the hypothecation, mortgage or charge.

(2) This Part of this Ordinance shall apply to -

- (a) hypothecations, mortgages and charges upon or affecting any assets of a company, wherever situate, except rents, rent-charges and annuities granted or reserved out of land; and
- (b) floating charges and general floating charges created by a company.

(3) It shall be the duty of the trustees of the debenture trust deed by which a hypothecation, mortgage or charge is created to apply to the Registrar to register it, but if the trustees have not made such an application within seven days after the debenture trust deed is executed by the company, or if there is no debenture trust deed, or if the debenture trust deed was executed before the commencement of this Ordinance, the company or any person interested in the hypothecation, mortgage or charge may make the application.

(4) If a company acquires assets which are already subject to a hypothecation, mortgage or charge which is binding on the company and which would be registrable under this section if it had been created by the company, it shall be the duty of the person who transfers the assets to the company and of the company to notify all persons interested in the hypothecation, mortgage or charge (including the trustees of any debenture trust deed) at least twenty-one days before the acquisition by the company, and the last foregoing subsection shall thereupon apply as if the company had created the hypothecation, mortgage or charge itself on the date of the acquisition.

(5) If within the times limited by this section a company fails to give any notice required by this section, or if trustees of a debenture trust deed fail to make an application for the registration of a hypothecation, mortgage or charge which they are under a duty to make, the company or the trustees (as the case may be), and the directors of the company or the trustee (if it is a body corporate) who are in default, shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees.

(6) A floating charge or general floating charge which has been duly registered under section 14 of the Companies (Debentures and Floating Charges) Ordinance, 1970, shall be deemed to have been duly registered under this section.

(7) Nothing in this section shall affect the operation of sections 14 and 16 of the Companies (Debentures and Floating Charges) Ordinance in respect of a floating charge or a general floating charge created before this Ordinance comes into force.

#### **Procedure on registration.**

**93.(1)** An application to the Registrar to register a hypothecation, mortgage or charge shall be accompanied by the prescribed fee and shall contain -

- (a) if the hypothecation, mortgage or charge was created by a debenture trust deed, or by debentures forming a class, the particulars required to be included in a debenture trust deed by paragraphs (a), (d), (e), (f), (g) and (l) of section 70(1) of this Ordinance, together with the name of the company and the date of and the names and addresses of the trustees appointed by the debenture trust deed (if any); or
- (b) in any other case -
  - (i) the date on which the hypothecation, mortgage or charge was created or imposed or on which it arose;
  - (ii) the names and addresses of the parties to the instrument by which the hypothecation, mortgage or charge was created;
  - (iii) the amount secured by the mortgage or charge or the nature of the contract or liability secured by it;

- (iv) short particulars of the assets affected by the hypothecation, mortgage or charge, or in the case of a floating charge, the class or part of the class of assets which is subject to the charge, or, in the case of a general floating charge, a statement that the charge is a general floating charge; and
- (v) any prohibition or restriction contained in the instrument creating the hypothecation, mortgage or charge on the power of the company to issue debentures or to create other hypothecations, mortgages or charges ranking in priority to, or equally with, the hypothecation, mortgage or charge in respect of which the application is made.

(2) A priority notice in the prescribed form may be given to the Registrar on payment of the prescribed fee not earlier than fourteen days before an application is made to the Registrar to register a hypothecation, mortgage or charge.

(3) The register to be kept by the Registrar under this Part of this Ordinance shall consist of the applications delivered to him under subsection (1) of this section, a copy of each instrument which has been delivered to him with such applications, and the priority notices given to the Registrar under the last foregoing subsection. The Registrar shall also keep a chronological index of the hypothecations, mortgages or charges entered in the register.

(4) An application for the registration of a hypothecation, mortgage or charge shall be accompanied by a signed declaration by a notary, barrister or attorney that the requirements of this Ordinance in respect of the debenture trust deed or debenture in respect of which the application is made have been complied with, and that the application contains all the information required by this Ordinance, and to the best of his knowledge, information and belief that information is true.

(5) The Registrar shall give a certificate under his hand of the registration of any hypothecation, mortgage or charge registered in pursuance of this Part of this Ordinance, and the certificate shall be conclusive evidence that the hypothecation, mortgage or charge has been registered.

(6) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee.

(7) If an application for the registration does not disclose any such prohibition or restriction as is mentioned in paragraph (b)(v) of subsection (1) or in paragraph (g) of section 70(1), the prohibition or restriction may not be relied on by any person entitled to the benefit of the registered hypothecation, mortgage or charge to which the application relates, notwithstanding that the prohibition or restriction is imposed by or mentioned in any covering debenture trust deed, or in a debenture, or in the instrument creating the hypothecation, mortgage or charge and notwithstanding that the person against whom it is relied upon had notice of it.

(8) If the particulars of a hypothecation, mortgage or charge registered under this section are incorrect or incomplete, any interested person may apply to the Registrar at any time to correct or complete the same, and upon being satisfied that the application is a proper one, the Registrar shall amend the particulars accordingly, but any person who before the amendment is made acquires for money or money's worth any interest in the assets of the company which created the hypothecation, mortgage or charge or acquired the assets subject to it, shall not be affected by any matter not contained in the registered particulars when his interest arose.

(9) The Mortgage and Registration Ordinance shall not apply to a certificate issued under this section.

#### **Priority of mortgages and charges.**

**94.(1)** Each hypothecation, mortgage or charge required to be registered by this Part of this Ordinance shall rank as a security on the assets over which it is created or to which it applies as from the time when an application for its registration is made to the Registrar, or if it is registered pursuant to a priority notice, as from the time it was created or arose, not being earlier than the time when the priority notice was given to the Registrar.

(2) If a hypothecation, mortgage or charge is registered pursuant to a priority notice, the person entitled thereto shall not be affected by any other hypothecation, mortgage or charge which at the time he gave the priority notice was not entered in the register and was not protected by a priority notice previously given.

(3) Nothing in subsections (1) and (2) of this section shall confer on a person entitled to a floating charge or a general floating charge any priority which he would not have apart from this Ordinance, and references in the Companies (Debentures and Floating Charges) Ordinance, 1970, to registration of such a charge shall be construed as references to registration under section 14 of that Ordinance or under this Part of this Ordinance.

(4) For the purpose of this Ordinance, the creditors of a company at the time when it is wound up shall be deemed to have a charge for payment of the company's liabilities on all its assets at the time the winding up commences, being a charge which is registrable and has been duly registered under this Part of this Ordinance.

#### **Registration of appointment of receiver, or crystallisation of a floating charge.**

**95.(1)** If a receiver of any assets of a company subject to a hypothecation, mortgage or charge is appointed by the court, or by the trustees of a debenture trust deed, or by or for the benefit of debenture holders, or if a floating charge or general floating charge over the assets of a company crystallises, the trustees of the debenture trust deed or any debenture holder or other person entitled to the benefit of the hypothecation, mortgage or charge may apply to the Registrar to register the appointment of the receiver, or the crystallisation of the floating charge or general floating charge, in the register of charges kept by him in respect of the company, and on payment of the prescribed fee the Registrar shall enter the matter notified to him in the register.

(2) Until the Registrar has made an entry in the Register under the last foregoing subsection, any person who acquires an interest in any assets of the company for money or moneys' worth shall not be affected by the appointment of the receiver or the crystallisation of the floating charge or general floating charge (as the case may be).

(3) For the purposes of this Ordinance a floating charge or a general floating charge crystallises on the occurrence of any of the events specified in section 13(2) of the Companies (Debentures and Floating Charges) Ordinance, 1970.

#### **Registration of discharge of registered mortgage, etc.**

**96.(1)** If a hypothecation, mortgage or charge registered under this Part of this Ordinance has been discharged in whole or part, the Registrar on payment of the prescribed fee shall cancel the registration thereof, or if the hypothecation, mortgage or charge has been discharged only in part, shall make an appropriate amendment to the entry in the register of charges.

(2) An application to cancel or amend the registration of a hypothecation, mortgage or charge under this section may be made by the person entitled to the hypothecation, mortgage or charge, or by the company, or by any creditor or shareholder of the company, or in the case of a hypothecation, mortgage or charge created by a debenture trust deed, by the trustees of that deed or by the holder of a debenture covered by it, but unless the application is made by the person entitled to the hypothecation, mortgage or charge, the Registrar shall not cancel the registration unless he has given the persons appearing to be entitled thereto according to the register, or to the trustees of the debenture trust deed which created the hypothecation, mortgage or charge and whose names appear in the register, fifteen days' notice of his intention to do so, and no such person has before the expiration of that time notified the Registrar in writing that he opposes the cancellation being made.

(3) If the entry of a hypothecation, mortgage or charge in the register has been cancelled or amended under this section, the mortgage or charge shall, in favour of any person who subsequently acquires any interest in assets of the company for money or money's worth, be deemed conclusively to have been discharged unless he knew, or should have realised in the circumstances, that the cancellation or amendment was incorrect.

(4) If the person entitled to a hypothecation, mortgage or charge which has been registered under this Part (including each of the trustees of a debenture trust deed which created such a hypothecation, mortgage or

charge) fails to notify the Registrar that it has been discharged in whole or part within seven days after the discharge takes effect, he shall be guilty of an offence punishable by a fine not exceeding one thousand rupees.

#### **Applications to the court.**

**97.** An application may be made to the court by any interested person -

- (a) to determine whether a hypothecation, mortgage or charge is registrable under this Part;
- (b) to determine the order of priority between two or more hypothecations, mortgages or charges which are registrable under this Part, whether any one or more of them has been registered or not;
- (c) to determine whether a hypothecation, mortgage or charge is binding on the creditors of a company; or
- (d) for an order that an entry in the register kept under this Part shall be cancelled or amended or that a cancellation or amendment of an entry shall be set aside.

#### **Registration of mortgages on assets of overseas companies and existing companies.**

**98.(1)** The provisions of this Part shall apply to hypothecations, mortgages and charges:-

- (a) created by an overseas company upon assets in Seychelles, or
- (b) affecting assets in Seychelles of an overseas company, or
- (c) created over or affecting assets in Seychelles which are subsequently acquired by an overseas company;

in the same way and with the same consequences as if the overseas company were a company registered under this Ordinance.

**(2)** This Part shall not apply to a hypothecation, mortgage or charge created or arising before this Ordinance comes into force:

Provided that:-

- (a) if after this Ordinance comes into force a company acquires assets which are subject to a hypothecation, mortgage or charge created or arising before that time, this Part shall apply as though the hypothecation, mortgage or charge had been created or arose on the day when this Ordinance comes into force; and
- (b) nothing in this section shall affect the operation of sections 14 and 16 of the Companies (Debentures and Floating Charges) Ordinance 1970.

#### **False information to the Registrar.**

**99.** It shall be an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than one year, or by both such fine and imprisonment, for any person to make a statement which he knows to be false or which he does not believe to be true for the purpose of inducing the Registrar to make, amend or cancel, or not to make, amend or cancel, an entry in the register kept under this Part.

## **PART V – MANAGEMENT AND ADMINISTRATION**

### *Registered Office and Name*

#### **Registered office.**

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

**(2)** Notice of the situation of the registered office and of any change therein shall be given within fourteen days after the date of the incorporation of the company or of the change, as the case may be, to the Registrar, who shall record the same.

The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection.

**(3)** A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

**(4)** The service on a company of a document at the address shown as its registered office in the most recent notice given by it to the Registrar under this section shall be effective, even though that address is not its registered office, or the address of its registered office has been changed.

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

#### **Publication of company's name.**

**101.(1)** Every company -

- (a)* shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible; and
- (b)* shall have its name mentioned in legible characters in all letters, communications, notices, advertisements, and other official publications of the company, and in all bills of exchange, cheques, promissory notes, endorsements, and orders for money or goods purporting to be signed by or on behalf of the company, and in all invoices, receipts, and letters of credit of the company.

**(2)** If a company does not paint or affix its name in manner directed by this Ordinance, the company and every officer of the company who is in default shall be liable to a fine of one thousand rupees, and if a company does not keep its name painted or affixed in manner so directed, the company and every officer of the company who is in default shall be liable to a default fine.

**(3)** If a company fails to comply with paragraph (b) of subsection (1) of this section, the company shall be liable to a fine of one thousand rupees.

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

- (a)* issues or authorises the issue of any letter, communication, notice, advertisement, or other official publication of the company, or signs or authorises to be signed on

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

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

he shall be liable to a fine of one thousand rupees.

#### *Registers of members and debenture holders*

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

**102.(1)** Every company shall keep a register of its members and enter therein the following particulars -

- (a) the names and addresses of the members and a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member;
- (b) the date at which each person was entered in the register as a member;
- (c) the date at which any person ceased to be a member.

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

Provided that -

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

so, however, that it shall not be kept outside Seychelles.

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

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

**(4)** Where a company makes default in complying with subsection (1) of this section, or makes default for fourteen days in complying with subsections (3), the company and every officer of the company who is in default shall be liable to a default fine.

#### **Index of names of members.**

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



alteration in the index.

- (2) The index shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.
- (3) The index shall be at all times kept at the same place as the register of members.
- (4) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

#### **Entries in respect of bearer share certificates.**

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

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

- (2) The bearer of a bearer share certificate shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.
- (3) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a bearer share certificate in respect of the shares therein specified without the bearer share certificate being surrendered and cancelled.
- (4) Until the bearer share certificate is surrendered, the particulars specified in subsection (1) shall be deemed to be the particulars required by this Ordinance to be entered in the register of members, and, on the surrender, the date of the surrender must be entered.

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

**105.(1)** Except when the register of members is closed under the provisions of this Ordinance, the register, and index of the names, of the members of a company shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any shareholder or debenture holder without charge and of any other person on payment of a fee of one rupee, or such less sum as the company may specify, for each inspection.

- (2) Any person may require the company to supply him with a copy of the register, or of any part thereof, on payment of one rupee, or such less sum as the company may specify, for every hundred words or fractional part thereof required to be copied. The company shall cause any copy so required by any person to be sent to that person within a period of ten days commencing on the day next after the day on which the requirement is received by the company.
- (3) If any inspection required under this section is refused, or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding one hundred rupees and further to a default fine of one hundred rupees.
- (4) In the case of any such refusal or default, the court may by order compel an immediate inspection of

the register and index or direct that the copies required shall be sent to the persons requiring them.

(5) Where, by virtue of proviso (b) to subsection (2) of section 102, the register of members is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with subsection (3) of that section, or with subsection (3) of section 103, or this section, or with any requirements of this Ordinance as to the production of the register, that other person shall be liable to the same penalties as if he were an officer of the company who was in default, and the power of the court under subsection (4) of this section shall extend to the making of orders against that other person and his officers and servants.

#### **Power to close register.**

**106.** A company may, on giving notice by advertisement in some newspaper circulating in Seychelles, close the register of members for any time or times not exceeding in the whole thirty days in each year.

#### **Rectification of register.**

**107.(1)** If -

- (a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or
- (b) an entry has not been made in the register of the fact that a person has ceased to be a member of the company; or
- (c) an entry in the register is otherwise incorrect, or there is an omission of some matter required to be entered therein by this Ordinance; or
- (d) any person is, as between himself and the company, entitled to have an alteration made in an entry in the register;

the person aggrieved, or in a case falling under paragraph (a), (b) or (c) of this subsection, that person or the company, or any member or shareholder of the company, may apply to the court for the rectification of the register.

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

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

(4) The court, when making an order for rectification of the register shall by its order direct notice of the rectification to be given to the Registrar by the company.

#### **Register to be evidence.**

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

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

**109.(1)** Every company shall keep a register of its debenture holders, and shall enter therein the following particulars -

- (a) the names and addresses of the debenture holders, the principal of the debentures held by them respectively, the amount or the highest amount of any premium payable on redemption of the debentures, the issue price of the debentures and the amount of the issue price paid up thereon;
- (b) the date at which each person was entered in the register as a debenture holder; and
- (c) the date on which each person ceased to be a debenture holder.

**(2)** Subsections (2) to (4) of section 102 and sections 103 to 108 inclusive shall apply to the register of debenture holders as they apply to the register of members, with the substitution of references to debentures and bearer debentures for references to shares and bearer share certificates respectively and (except in section 105(1)) with the substitution of references to debenture holders for references to members and shareholders.

**(3)** Section 105 shall also apply to all debenture trust deeds executed by the company covering debentures any of which remain outstanding, and section 105(2) shall apply in respect of such deeds as if the fee therein mentioned were five rupees for a copy of the whole or any part of any such debenture trust deed.

**(4)** A debenture holder whose name is entered in the register kept under this section is referred to in this Ordinance as a registered debenture holder.

**(5)** Section 23(3) (except paragraph (b) thereof) shall apply to debenture holders as it applies to shareholders, but with the substitution of references to debentures and debenture holders therein for references to shares and shareholders, and with the substitution of registered debenture holders for the persons mentioned in paragraph (a) thereof.

**(6)** This section shall apply to debentures issued before or after the coming into force of this Ordinance.

### *Notice of derivative interests in shares and debentures*

### **Derivative interests.**

**110.(1)** A company shall not be affected by notice of any derivative interest in any shares or debentures issued by it, and shall not enter particulars, or a note of the existence or alleged existence, of such a derivative interest in its register of members or its register of debenture holders, except as required by this section.

**(2)** Any person who claims to be entitled to a derivative interest in any shares or debentures (except shares or debentures represented by bearer share certificates or bearer debentures) may serve a written notice thereof on the company (in this section called "a notice of interest") accompanied by a signed declaration made by him setting out the nature of the interest he claims, and affirming that he honestly and truly believes that he is entitled to that interest and that it is valid and subsisting.

**(3)** Any person in whose favour the court has made an order declaring that he is entitled to a derivative interest in any shares or debentures (except shares or debentures represented by bearer share certificates or bearer debentures), or an order imposing a charge on any shares or debentures (except as aforesaid), may serve a copy of the order of the court on the company.

**(4)** A company which has received a notice of interest under subsection (2) or a copy of an order of the

court under subsection (3) shall:-

- (a) forthwith enter a note of the fact in its register of members or debenture holders (as the case may be) against the last entry made in respect of each of the shares or debentures to which the notice of interest or order relates;
- (b) include a statement that such a note has been entered in all certifications of transfers of any of the said shares or debentures which it subsequently issues; and
- (c) give written notice to the person who served the notice of interest or copy of the order of the court, at an address in Seychelles furnished by him in writing for the purpose, of the presentation to it for registration of any transfer of any of the said shares or debentures at least fourteen days before registering the same in its register of members or debenture holders (as the case may be).

(5) If the person who served the notice of interest or copy of the order of the court, or any person deriving title under him, applies to the court to restrain the registration of a transfer of the shares or debentures mentioned therein within fourteen days after the company gives written notice to him that the transfer has been presented for registration, and serves upon the company a copy of the plaint or other process by which the application is made before the expiration of that time, the company shall not register the transfer unless directed to do so by the court.

(6) On the hearing of an application under subsection (5) the court may decide any question relating to the title or interest of any person, may order the company to rectify the register or to register a transfer presented to it, and may order the shares or debentures to be sold, as the circumstances of the case may require.

(7) If a person acquires an interest in good faith and for money or money's worth in any shares or debentures in reliance on a certification of a transfer issued by a company which does not contain a statement that a notice of interest or an order of the court has been served on the company in respect of the shares or debentures to which the transfer relates, the company shall be liable to him in damages for any consequential loss which he suffers.

(8) If a company fails to give written notice to a person who has served a notice of interest or a copy of an order of the court on it in compliance with paragraph (c) of subsection (4), or if a company registers a transfer of shares or debentures before the expiration of the period of fourteen days mentioned in that paragraph, or before the disposal of any application made to the court under subsection (5) (otherwise than on the direction of the court), the company shall be liable to that person in damages for any consequential loss which he suffers.

(9) This section shall not apply to a proprietary company except in respect of orders made by the Registrar under section 194 and in respect of warrants of execution issued under section 245 of the Seychelles Code of Civil Procedure in relation to shares or debentures issued by the company.

(10) This section shall apply to derivative interests in shares and debentures created before or after the coming into force of this Ordinance.

(11) Article 1690 of the Civil Code shall not apply in respect of derivative interests in shares or debentures.

*Registers of directors' holdings, of substantial shareholders' holdings and of options to subscribe*

#### **Register of directors' holdings.**

**111.(1)** Every company shall keep a register (in this Ordinance called "the register of directors' holdings") in which it shall enter the particulars required by this section in respect of all interests in shares and debentures of the company, of companies belonging to the same group of companies as the company, and of associated companies of the company, which are vested in any of the directors of the company, or of companies belonging to the same group of companies as the company.

**(2)** For the purposes of this section a director has an interest in shares or debentures if:-

- (a)* the shares or debentures are registered in the directors' name, or the names of the director and other persons jointly, or in the name of a nominee for him, or for him and them; or
- (b)* the director has a derivative interest in the shares or debentures, or a right or power to acquire a derivative interest in them; or
- (c)* the director has a right to subscribe for the shares or debentures, or another person has a right to subscribe for them and the director has a right to acquire them after they have been allotted; or
- (d)* the shares or debentures are the subject of a voting arrangement in favour of a director, that is to say, an arrangement (whether legally enforceable or not) by which the director may require the holder of the shares or debentures to vote, or not to vote, or to vote in a particular manner, at any general meeting of the company or at any meeting of a class of shareholders or debenture holders, or by which the director may require the holder of the shares or debentures to appoint the director or any other person to be his proxy with power to vote in respect of the shares or debentures at any such meeting.

**(3)** For the purposes of this Ordinance a company is the associated company of another company if:-

- (a)* the company holds, by itself or its nominees, shares in that other company which entitle the holder of such shares to exercise at least one-fifth of the unrestricted voting rights exercisable at any general meeting of that other company, or if that other company holds, by itself or its nominees, shares in the company which entitle their holder to exercise the same fraction of voting rights at any of its general meetings; or
- (b)* the other company is the holding company or subsidiary of a third company which is an associated company of the company by virtue of paragraph (a) of this subsection.

**(4)** The particulars required to be entered in the register of directors' holdings are:-

- (a)* the number, classes and nominal values of the shares, and the number, classes and the amount of the principal and premiums payable to the holder of the debentures, in which a director has an interest;
- (b)* the nature of the interest of the director and its duration (if it is limited in duration);
- (c)* the date of the acquisition of the interest by the director and the consideration (if any) given by him or any other person for such acquisition; and
- (d)* the date of the disposal of the interest by the director or the date of its cessation (whichever first occurs) and the consideration (if any) received by him or any other person for such disposal or cessation.

**(5)** It shall be the duty of every director in respect of whom any entry is required to be made in the register of directors' holdings to notify the company in writing within seven days after the matter occasioning the entry occurs or arises, or if it has occurred or arisen before this section comes into operation, within seven days after that time, and to include in the notification the particulars which the company is required to enter in the register in respect of that matter.

**(6)** This section shall extend to interests in shares and debentures vested in a director at the time when he becomes a director, and subsection (5) shall apply in that case with the substitution of a period of seven days after the director becomes a director for the period of seven days after the matter occasioning an entry occurs or arises.

(7) The entries which are required to be made in the register of directors' holdings by this section shall not be removed from the register, notwithstanding the fact that the person in respect of whom they are required to be made ceases to be a director, but it shall not be necessary to make an entry in the register in respect of a matter which occurs or arises after he ceases to be a director.

(8) Subsections (2) and (3) of section 102 of this Ordinance and section 105 shall apply to the register of directors' holdings as they apply to the register of members.

(9) This section shall not apply to an interest of a director which is created by the memorandum or articles of the company if the interest is one which is conferred on all shareholders of the company or on all shareholders of the class concerned, on the same terms and conditions as on the director, that is to say, strictly in proportion to the shares, or shares of that class, held by them respectively.

(10) A company and every director of a company who is in default shall be guilty of an offence:-

- (a) if the company fails to make an entry required by this section in its register of directors' holdings within three days after written notification of the matter required to be registered is given to it under subsection (5) or (6), or within seven days after it or any of its directors (other than a person in respect of whom an entry is required to be made) acquires knowledge of the matter in relation to which an entry is required to be made (whichever is the earlier); or
- (b) if the company makes a false, misleading or incomplete entry in relation to a matter which is required to be entered in its register of directors' holdings.

(11) A director of any company shall be guilty of an offence if he fails to give a written notice of any matter in compliance with subsection (5) or (6) within the time thereby limited to every company which is required to make an entry in relation to the matter in its register of directors' holdings, or if he gives false, misleading or incomplete information to any such company with a view to it making an entry in its register of directors' holdings.

(12) An offence under subsection (10) or (11) shall be punishable by a fine not exceeding ten thousand rupees.

(13) If a company keeps its register of directors' holdings elsewhere than at its registered office, and fails to send a notice to the Registrar of the place where the register is kept, or of any change in that place, within fourteen days after the register is first so kept or the change takes place (as the case may be), the company and every officer of the company who is in default shall be liable to a default fine.

(14) This section shall not apply to a proprietary company.

(15) This section shall not come into operation until a date appointed by the Governor in Council by notice in the *Gazette*.

#### **Register of substantial shareholders' holdings.**

**112.(1)** Every company shall keep a register (in this Ordinance called "the register of substantial shareholders' holdings") in which it shall enter the same particulars in respect of the interests in shares and debentures which are vested in any person who is a substantial shareholder of the company as are required by section 111 to be entered in the register of directors, holdings in respect of the interests of a director of the company.

(2) It shall be the duty of every person in respect of whom an entry is required to be made in the register of substantial shareholders' holdings to notify the company in writing within seven days after the matter occasioning the entry occurs or arises, or if it has occurred or arisen before this section comes into operation, within seven days after that time, and to include in the notification the particulars which the company is required to enter in the register.

(3) This section shall extend to interests in shares and debentures vested in a substantial shareholder at the

time when he becomes a substantial shareholder, and subsection (2) shall apply in that case with the substitution of a period of seven days after the substantial shareholder becomes a substantial shareholder for the period of seven days after the matter occasioning an entry occurs or arises.

(4) The entries which are required to be made in the register of substantial shareholders' holdings by this section shall not be removed from the register, notwithstanding the fact that the person in respect of whom they are required to be made ceases to be a substantial shareholder, but it shall not be necessary to make an entry in the register in respect of a matter which occurs or arises after he ceases to be a substantial shareholder.

(5) Subsection (2) and (3) of section 102 of this Ordinance and section 105 shall apply to the register of substantial shareholders' holdings as they apply to the register of members.

(6) For the purposes of this Ordinance a person is a substantial shareholder of a company if he holds, by himself or by his nominees, shares which entitle their holder to exercise at least ten per cent of the unrestricted voting rights exercisable at any general meeting of the company.

(7) This section shall not apply to an interest of a substantial shareholder which is created by the memorandum or articles of the company if the interest is one which is conferred on all shareholders of the company or on all shareholders of the class concerned, on the same terms and conditions as on the substantial shareholder, that is to say, strictly in proportion to the shares, or shares of that class, held by them respectively.

(8) A company and every director of a company who is in default shall be guilty of an offence if:-

- (a) the company fails to make an entry required by this section in its register of substantial shareholders' holdings within three days after written notification of the matter required to be registered is given to it under subsection (2) or (3), or within seven days after it or any of its directors acquire knowledge of the matter in relation to which an entry is required to be made; or
- (b) the company makes a false, misleading or incomplete entry in relation to a matter which is required to be entered in its register of substantial shareholders' holdings.

(9) A substantial shareholder of any company shall be guilty of an offence if he fails to give to the company of which he is a substantial shareholder written notice of any matter in compliance with subsection (2) or (3) within the time thereby limited, or if he gives false, misleading or incomplete information to any such company with a view to it making an entry in its register of substantial shareholders' holdings.

(10) An offence under subsection (8) or (9) of this section shall be punishable by a fine not exceeding ten thousand rupees.

(11) If a company keeps its register of substantial shareholders' holdings elsewhere than at its registered office, and fails to send a notice to the Registrar of the place where the register is kept, or of any change in that place, within fourteen days after the register is first so kept or the change takes place (as the case may be), the company and every officer of the company who is in default shall be liable to a default fine.

(12) This section shall not apply to a proprietary company.

(13) This section shall not come into operation until a date appointed by the Governor in Council by notice in the Gazette.

#### **Register of subscription options.**

**113.(1)** A proprietary company shall keep a register (in this Ordinance called "the register of subscription options") in which it shall enter the particulars which, if it were not a proprietary company, would be required to be entered in its register of directors' holdings and its register of substantial shareholders' holdings under paragraph (c) of section 111 as applied by that section and section 112.

(2) Subsection (2) and (3) inclusive of section 102, subsections (5) to (7) and (9) to (13) inclusive of section 111 and subsections (2) to (4) and (6) to (11) inclusive of section 112 shall apply to the register of subscription options of a proprietary company as they apply respectively to the register of members, the register of directors' holdings and the register of substantial shareholders' holdings of any other company.

(3) The register of subscription options shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours each day be allowed for inspection) be open to the inspection of every member and debenture holder of the company without charge.

(4) Any member or debenture holder of the company may require the company to supply him with a copy of the register, or of any part thereof, on payment of one rupee, or such less sum as the company may specify, for every hundred words or fractional part thereof required to be copied. The company shall cause any copy so required by any member or debenture holder to be sent to that member or debenture holder within a period of ten days commencing on the day next after the day on which the requirement is received by the company.

(5) If any inspection required under this section is refused or any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding one hundred rupees and further to a default fine of one hundred rupees.

(6) In the case of any such refusal or default, the court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the members or debenture holders requiring them.

(7) This section shall not come into operation until a date appointed by the Governor in Council by notice in the *Gazette*, and different dates may be appointed in respect of that part of the register which, if a company were not a proprietary company, would be required to be contained in its register of directors' holdings, and in respect of the remainder of the register of subscription options.

#### *Annual Returns*

#### **Annual returns to be made by a company.**

**114.(1)** Every company shall, once at least in every year, make a return in the prescribed form containing the information specified in the Fifth Schedule to this Ordinance.

Provided that -

- (a) a company need not make a return under this subsection either in the year of its incorporation or, if it is not required by section 119 to hold an annual general meeting during the following year, in that year;
- (b) the return may, in any year, if the return for either of the two immediately preceding years has given as at the date of that return the full particulars required by paragraph 5 of the Fifth Schedule, give only such of the particulars required by that paragraph as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date.

(2) The annual return shall be completed within forty-two days after the annual general meeting for the year, whether or not that meeting is the first or only general meeting of the company in the year, and the company shall forthwith forward it to the Registrar duly signed by all the directors and by the secretary of the company.

(3) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred rupees for every day during the first month that default continues, two hundred and fifty rupees for every day during the next two months that default continues, and five hundred rupees for every day that default continues thereafter.



(4) The Governor in Council may by regulations supplement, amend or rescind any of the requirements of the Fifth Schedule to this Ordinance, and it shall then take effect subject to the modifications made by such regulations.

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

**115.(1)** Subject to the provisions of this Ordinance, there shall be delivered to the Registrar with the annual return of a company:-

- (a) a written copy, certified both by a director and by the secretary of the company to be a true copy, of all balance sheets, profit and loss accounts and group accounts laid before the company in general meeting or circulated to members and registered debenture holders during the period to which the return relates; and
- (b) a copy, certified as aforesaid, of the reports of the auditors on, and of the reports of the directors accompanying, all such accounts;

and where any such account or other document is in a foreign language there shall be annexed to that account or document a translation in English of the account or other document certified in the prescribed manner to be a correct translation.

(2) If any such account or document as aforesaid did not comply with the requirements of the law as in force at the date of the audit with respect to the form of accounts or documents aforesaid, as the case may be, there shall be made such additions to and corrections in the copy as would have been required to be made in the account or document in order to make it comply with the said requirements, and the fact that the copy has been so amended shall be stated thereon.

(3) For the purpose of section 114(3) the accounts and documents required by this section to be delivered with the annual return shall be deemed to be part thereof.

(4) This section shall not apply to a proprietary company which delivers to the Registrar with its annual return the certificates required by subsections (1) and (2) of section 116.

**Provisions as to proprietary companies.**

**116.(1)** A proprietary company shall deliver to the Registrar with its annual return a certificate signed by each of its directors and by its secretary that the conditions required to be fulfilled for a company to be a proprietary company have been fulfilled in respect of it continuously and without exception since the date of its incorporation, or the date of its last annual return, or the date on which the Registrar issued a certificate of incorporation under section 24(3) or section 324(4) (whichever is the later).

(2) A proprietary company shall also deliver to the Registrar with its annual return -

- (a) a certificate of solvency signed by its auditor containing the statements and opinion by the auditor of the company required by this section, and made with reference to the state of the company's assets and liabilities at the date on which the balance sheet of the company laid before an annual general meeting during the period to which the annual return relates was made out (in this section referred to as the company's last balance sheet); and
- (b) a certificate signed by each director and the auditor of the company that the said certificate agrees with the balance sheet and profit and loss account of the company laid as aforesaid.

(3) A certificate of solvency shall:-

- (a) state the amounts shown in the company's last balance sheet as the total values respectively of the company's fixed assets, current assets and investments;
  - (b) state the amount shown in the company's last balance sheet as the total amount of the company's debts and liabilities accrued due at, or accruing due within one year after, the date as at which the balance sheet is made out, and the amount so shown as the total amount of the company's other debts and liabilities; and
  - (c) state whether, in the opinion of the auditor of the company, the company was, at the date as at which its last balance sheet was made out, able or unable to pay its debts and liabilities as they fall due.
- (4) If the company does not hold an annual general meeting in the year to which the annual return relates, the certificates required by the last foregoing subsection shall be modified so as to refer to the balance sheet or the balance sheet and profit and loss account (as the case may be) copies of which were sent to the shareholders of the company in compliance with section 141(1) during the period to which the annual return relates.
- (5) If the auditor of the company refuses to give or sign either of the certificates mentioned in subsection (2), the certificate delivered to the Registrar under subsection (1) shall contain a statement to that effect, and the annual return with which it is delivered shall have annexed thereto the documents specified in section 115(1). A company which delivers an annual return accompanied by such a certificate under subsection (1) containing that statement and by the documents specified in section 115(1) shall then be deemed to have complied with the requirements of this section.

#### **Offences in connection with annual returns.**

**117.** If -

- (a) a director or secretary of a company signs an annual return delivered to the Registrar which contains any statement which is false, deceptive or misleading, or which omits any matter required to be included therein by this Ordinance; or
- (b) a director or secretary delivers, or concurs in the delivery of, any document to the Registrar with an annual return, and that document purports to be a copy of an account or document required to be so delivered by section 115 or section 116(5), but is not an accurate and complete copy thereof; or
- (c) a director, secretary or auditor signs, or delivers to the Registrar, or concurs in the delivery to the Registrar of, a certificate required by section 116 which contains a statement of fact which is false misleading or deceptive, or an opinion which he has no reasonable ground to believe to be accurate;

he shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or by both such fine and imprisonment.

#### *Voting Rights*

#### **Conferment of proportionate voting rights.**

**118.(1)** The holders of all shares issued by a company shall be entitled to proportionate voting rights in respect of all resolutions proposed at general meetings of the company and at meetings of holders of the class of shares to which they belong.

(2) The holders of all debentures issued by a company shall be entitled to proportionate voting rights in respect of all resolutions at meetings of holders of the class of debentures to which they belong.

(3) Notwithstanding the provisions of subsection (1) a company, if its memorandum so provides, may issue non-participating preference shares which entitle the holders of such shares to proportionate voting rights in respect of resolutions proposed at meetings of the holders of shares of the class to which they belong, but not in respect of resolutions proposed at general meetings, or not in respect of all such resolutions:

Provided that the holders of such preference shares shall in all cases be entitled to proportionate voting rights in respect of a resolution voted upon at a general meeting if:-

- (a) the fixed dividend in respect of such shares has not been paid in full for the company's financial year ending next before the date of that general meeting and for all preceding financial years; or
- (b) the resolution provides for the alteration of the memorandum or articles, or for the increase or reduction of the capital of the company, or for the issue of shares in the company, or for the winding up of the company; or
- (c) the resolution falls within section 19.

(4) In calculating the number of votes which a person entitled to proportionate voting rights may cast in respect of a resolution, there shall be ascertained the share with the smallest nominal value whose holder may vote upon the resolution, or the debenture which secures the smallest amount of principal whose holder may vote upon the resolution, and that share or debenture (as the case may be) shall entitle its holder to one vote, and shares with larger nominal values, or debentures which secure larger amounts of principal, shall entitle their respective holders to proportionate multiples of one vote.

(5) This section shall apply to stock as though each stockholder held the shares from which the stock is derived, and as though those shares had not been converted into stock.

(6) This section shall apply notwithstanding any provision in the memorandum or articles or in any debenture trust deed, debenture or other contract or instrument.

(7) This section shall apply to an existing company:

Provided that if the existing company has before the commencement of this Ordinance issued non-participating preference shares whose holders would, if the shares had been issued after the commencement of this Ordinance, have been entitled only to the voting rights mentioned in subsection (3), the holders of such shares shall be entitled only to the voting rights mentioned in subsection (3).

(8) In this Ordinance shares whose holders are entitled to proportionate voting rights in respect of all resolutions proposed at every general meeting of the company, are referred to as shares carrying unrestricted voting rights or unrestricted votes.

### *Meetings and Proceedings*

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

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

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

(2) If default is made in holding a meeting of the company in accordance with the foregoing subsection, the Registrar may, on the application of any shareholder of the company, call, or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Registrar may think expedient, including directions modifying or supplementing the operation of the company's articles in relation to the calling, holding and conducting of the meeting, and it is hereby declared that the directions that may be given under this subsection include a direction that one shareholder of the company present in person or by proxy shall be deemed to constitute a meeting.

(3) A general meeting held in pursuance of the last foregoing subsection shall, subject to any directions of the Registrar, be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting for the year occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held, unless at that meeting the company resolves that it shall be so treated.

(4) Where a company resolves that a meeting shall be so treated, a copy of the resolution shall, within fifteen days after the passing thereof, be delivered to the Registrar and registered by him.

(5) If default is made in holding a meeting of the company in accordance with subsection (1), or in complying with any directions of the Registrar under subsection (2), the company and every officer of the company who is in default shall be liable to a fine not exceeding one thousand rupees, and if default is made in complying with subsection (4) of this section, the company and every officer of the company who is in default shall be liable to a default fine of one hundred rupees.

#### **Extraordinary general meetings and requisitions of meetings.**

**120.(1)** General meetings of a company which are not annual general meetings are in this Ordinance called extraordinary general meetings.

(2) The directors of a company, notwithstanding anything in its memorandum or articles, shall, on the requisition of shareholders of the company holding at the date of the deposit of the requisition not less than one-tenth of the issued shares carrying unrestricted voting rights at general meetings of the company forthwith proceed to convene an extraordinary general meeting.

(3) The directors of a company, notwithstanding anything in its memorandum or articles, shall on the requisition of shareholders holding at the date of the deposit of the requisition not less than one-tenth of the issued shares of any class forthwith proceed to convene a meeting of that class of shareholders.

(4) The trustees of a debenture trust deed, notwithstanding anything contained therein or in any debentures or in any other contract or instrument, shall on the requisition of persons holding at the date of the deposit of the requisition debentures covered by the trust deed which carry not less than one-tenth of the total voting rights attached to all the issued and outstanding debentures of that class, forthwith proceed to convene a meeting of that class of debenture holders.

(5) A requisition deposited under this section must state the intended business of the meeting to which it relates, 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. If the requisition is addressed to trustees of a debenture trust deed, the company shall deliver it or communicate its contents to the trustees immediately after it has been deposited.

(6) If the directors or trustees of a debenture trust deed (as the case may be) do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting to be held not later than twenty-eight days after the meeting is convened, any one or more of the requisitionists may convene a meeting to transact the business specified in the requisition, but any meeting so convened shall not be held after the expiration of six months from the date on which the requisition was deposited.

(7) A meeting convened under this section by any one or more of the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(8) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors or the trustees of a debenture trust deed (as the case may be) duly to convene a meeting or by reason of the failure of the company to deliver or communicate the contents of the requisition to the trustees, shall be repaid to the requisitionists by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to the directors or the trustees who are in default (as the case may be).

(9) If the directors or trustees of a debenture trust deed (as the case may be) fail to convene a meeting in compliance with this section, each of them shall be liable to a fine not exceeding one thousand rupees.

(10) If a company fails to deliver or communicate the contents of a requisition addressed to trustees of a debenture trust deed in compliance with subsection (5), each of its directors shall be guilty of an offence punishable by a fine not exceeding one thousand rupees.

### **Ordinary and special resolutions.**

**121.(1)** Business shall be transacted at general meetings of a company by ordinary resolution, unless this Ordinance or the memorandum or articles require a special resolution.

(2) All business which cannot be transacted at a general meeting by an ordinary resolution shall, subject to the provisions of this Ordinance, be transacted by special resolution, and no provision in the memorandum or articles requiring or permitting the business to be transacted in any other way shall be valid.

(3) Nothing in this section shall affect any provision in the memorandum or articles of a proprietary company making the passing of any resolution, or the effectiveness of any resolution, or the doing of any act, conditional on one or more named persons consenting thereunto.

### **Majorities for ordinary and special resolutions; business to be transacted by ordinary and special resolutions.**

**122.(1)** A resolution is passed as an ordinary resolution if it is proposed as such, and of the votes which are cast in favour of and against the resolution more votes are cast in favour of the resolution than are cast against it.

(2) A resolution is passed as a special resolution if it is proposed as such, and not less than three-quarters of the votes which are cast in favour of and against the resolution are cast in favour of it.

(3) An ordinary resolution by a general meeting of a company shall be necessary:-

- (a) to appoint a director of the company other than a director appointed under section 163(4), (5), (7) or (8);
- (b) to authorise or approve the remuneration to be paid to a director of the company in the circumstances where such authorisation or approval is required by section 174(1), and to authorise or approve any other payments or benefits of the kinds mentioned in sections 174(2) and 175(1) in circumstances where such authorisation or approval is required by either of those sections;
- (c) to remove a director of the company under section 168;
- (d) to give any authorisation to a director which is required by sections 171 or 172;
- (e) to appoint an auditor of the company;
- (f) to authorise the sale or transfer of the whole or substantially the whole of the company's undertaking or assets (subject or not to its liabilities) to another person;

- (g) to authorise the issue of any of the unissued shares or debentures of a company (other than a proprietary company), or to authorise the re-issue of shares or debentures of such a company (except to the extent that section 173 otherwise provides);
- (h) to authorise an issue or re-issue of the company's shares for a consideration other than cash, unless the terms of the issue are set out in the company's memorandum in conformity with section 6(1);
- (i) to dispose of the profits or revenue reserves of the company, whether by payment of a dividend, by capitalisation of profits or revenue reserves and the issue of bonus shares or debentures, by transfer to capital reserve, by the acquisition of shares of the company under paragraph (c) of section 54(2), by the redemption of redeemable shares, by allocations to employee share subscription schemes to which the company is a party or otherwise;
- (j) to alter the share capital of the company under section 59;
- (k) to authorise the company to alter or abrogate the rights of debenture holders;
- (l) to wind up the company voluntarily under paragraph (b) of section 247(1); and
- (m) in connection with matters arising in the winding up of the company which by this Ordinance are required to be transacted by ordinary resolution;
- (n) in such other cases as this Ordinance provides.

**(4)** A special resolution by a general meeting of a company shall be required:-

- (a) to alter the company's memorandum or articles (except to the extent that alterations may be effected by ordinary resolution under section 59);
- (b) to allot shares or debentures of a proprietary company otherwise than in proportion to the respective nominal values of the share holding of the existing shareholders;
- (c) to wind the company up voluntarily under paragraph (a) of section 247(1); and
- (d) in connection with matters arising in the winding up of the company which by this Ordinance are required to be transacted by special resolution;
- (e) in such other cases as this Ordinance provides.

**(5)** An ordinary resolution under paragraph (5) of subsection (3) may authorise the directors to issue or re-issue not more than a specified number of shares of a specified class, or to borrow not more than a specified amount by issuing debentures, during a specified period (not exceeding one year) from the passing of the resolution, subject to such conditions as to issue price, rate of interest or dividend, redemption premiums or otherwise as the general meeting shall see fit to impose; and if such an authority is given, it shall not be necessary for a general meeting to authorise the issue of those shares or debentures to particular persons if the issue is made within the period and in conformity with the conditions aforesaid.

**(6)** This section shall apply notwithstanding anything contained in the company's memorandum or articles.

#### **Notice of meetings.**

**123.(1)** Any provision of a company's memorandum or articles or in a debenture, debenture trust deed or other document shall be void insofar as it provides for the calling of a meeting of the company (other than an adjourned meeting) by a shorter notice than -

- (a) in the case of the annual general meeting or an extraordinary general meeting called for the passing of a special resolution, twenty-one days' notice in writing; or
- (b) in the case of any other general meeting, or any meeting of a class of shareholders or debenture holders, fourteen days' notice in writing.

(2) A meeting of the company (other than an adjourned meeting) shall, unless the memorandum or articles require longer notice, be called -

- (a) in the case of the annual general meeting, or an extraordinary general meeting called to pass a special resolution (with or without other business), by twenty-one days' notice in writing;
- (b) in the case of any other general meeting, or any meeting of a class of shareholders or debenture holders, by fourteen days' notice in writing.

(3) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in the last foregoing subsection be deemed to have been duly called if it is so agreed -

- (a) in the case of a meeting called as an annual general meeting, or as a meeting of a class of shareholders or debenture holders, by all the shareholders or debenture holders (as the case may be) entitled to attend and vote thereat; and
- (b) in the case of a meeting called as an extraordinary general meeting, by a majority in number of the shareholders having a right to attend and vote at the meeting, being a majority together holding not less than ninety-five per cent of the unrestricted voting rights exercisable at the meeting.

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

**124.(1)** If for any reason it is impracticable to call a general 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 memorandum or articles or by this Ordinance, the court may, either of its own motion or on the application of any director of the company or of any shareholder of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient; and it is hereby declared that the directions that may be given under this subsection include a direction that one shareholder of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with an order under this section shall for all purposes be deemed to be a general meeting of the company duly called, held and conducted.

(3) This section shall apply to a meeting of a class of shareholders or debenture holders as it applies to a general meeting as if for references to a general meeting there were substituted references to such other meetings, and (in the case of a meeting of a class of debenture holders) for references to the memorandum or articles of the company there were substituted reference to debentures of that class and the debenture trust deed (if any) covering such debentures.

#### **Contents of notice calling a meeting.**

**125.(1)** Except in the case of a meeting called under the last foregoing section, the notice calling a meeting (whether a general meeting, or a meeting of a class of shareholders or debenture holders) shall contain in clearly legible print or type:-

- (a) a statement at its head or beginning that the meeting called by the notice is a general

meeting of the company, or a meeting of a class of shareholders (specifying the class), or a meeting of a class of debenture holders (specifying the class), as the case may be;

- (b) a statement of the date and time when, and the place where, the meeting will be held;
- (c) the exact wording of every resolution to be proposed at the meeting (other than a procedural resolution or a resolution at an annual general meeting declaring a dividend, or approving or rejecting the annual accounts of the company or the directors' or auditors' report), and a statement whether such a resolution will be proposed as an ordinary or as a special resolution;
- (d) a statement that each person entitled to attend and vote at the meeting may appoint one or more proxies to attend and vote on his behalf instead of him, and that a proxy need not be a member, shareholder or debenture holder of the company;
- (e) if the memorandum or articles (or in the case of a meeting of debenture holders, the debenture trust deed or the debentures) permit postal voting, a statement that any person entitled to attend and vote at the meeting may vote by post; and
- (f) a statement that all appointments of proxies and (if postal voting is permitted as aforesaid) that all postal votes must be delivered to the company not later than forty-eight hours before the time at which the meeting will commence, or if they are to be effective at any adjournment of the meeting, not later than forty-eight hours before the time at which the adjourned meeting is to commence.

(2) If a resolution incorporates the terms of any contract, arrangement or document as part thereof, the notice calling the meeting at which the resolution is to be proposed must be accompanied by a copy of the contract, arrangement or document, or by a statement of the terms of the contract or arrangement if it is not in writing.

(3) If a resolution mentioned in a notice calling a meeting provides for the alteration or abrogation of any rights conferred on a class of shareholders or debenture holders by the memorandum or articles or by a debenture trust deed or debentures, the notice shall be accompanied by a copy of the part or parts of any such document which will be affected by the alteration or abrogation, and a concise statement explaining the effect of the resolution and setting out all material interests of the directors and trustees for debenture holders of the company (whether as directors, shareholders, trustees for debenture holders, debenture holders, creditors or otherwise) and the effect thereon of the resolution insofar as it is different from the effect on the like interests of other persons.

(4) For the purpose of this Ordinance a procedural resolution is a resolution to elect or remove a chairman of a meeting, or to adjourn or terminate a meeting, or to terminate discussion on a resolution which has been proposed or an amendment thereto, or to take a vote on any matter without further discussion.

(5) If any officer of a company or any other person sends out, or participates or acquiesces in any person sending out, a notice calling a meeting which does not comply with this section, he shall be guilty of an offence punishable by a fine not exceeding one thousand rupees.

#### **Circulation of proposed resolutions etc.**

**126.(1)** Subject to the following provisions of this section it shall be the duty of a company, on the requisition in writing of such number of persons as is hereinafter specified and (unless the company otherwise resolves) at the expense of the requisitionists:-

- (a) to give to shareholders of the company notice of any resolution which may properly be moved and is intended to be moved at any general meeting;
- (b) to circulate to shareholders any statement of not more than three thousand words with



respect to the matter referred to in any resolution intended to be moved, or the business to be dealt with, at a general meeting;

- (c) to circulate to shareholders or debenture holders of any class a statement of not more than three thousand words with respect to the matter referred to in any resolution intended to be moved, or with respect to the business to be dealt with, at any meeting of shareholders or debenture holders of that class (as the case may be).

(2) The number of shareholders or debenture holders (as the case may be) necessary for a requisition under subsection (1) shall be -

- (a) any number of shareholders or debenture holders (as the case may be) representing not less than one-twentieth of the total voting rights of all the shareholders or debenture holders (as the case may be) having at the date of the requisition a right to vote at the meeting to which the requisition relates; or
- (b) not less than fifty shareholders or, in the case of a meeting of a class of shareholders, not less than fifty shareholders of the class concerned, (as the case may be) holding shares in the company on which there has been paid up an average sum, per shareholder, of not less than one thousand rupees; or
- (c) in the case of a meeting of a class of debenture holders, not less than fifty debenture holders of the class concerned holding debentures of the company on which there has been paid up an average sum, per debenture holder, of not less than one thousand rupees.

(3) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless -

- (a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company -
  - (i) in the case of a requisition requiring notice of a resolution, not less than four weeks before the meeting; and
  - (ii) in the case of any other requisition, not less than one week before the meeting; and
- (b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto;

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

(4) The company shall also not be bound under this section to circulate any statement if, on an application made within seven days after the deposit of the requisition, either by the company or by any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's or applicant's costs on an application under this section to be paid in whole or in part by the requisitionists.

(5) This section shall apply notwithstanding anything contained in the memorandum or articles of a company, or in a debenture trust deed or any debentures, or in any other contract or instrument.

**Persons to whom notice of meetings is to be given.**

**127.(1)** Notice of all general meetings shall be given to every shareholder of the company, whether he is entitled to attend and vote at the meeting or not.

**(2)** Notice of all meetings of a class of shareholders or debenture holders shall be given to all shareholders or debenture holders of the class concerned.

**(3)** Subject to subsection (4), a notice of a meeting and all documents required to be sent to a shareholder or debenture holder by section 125(2) and (3) and by section 126 shall either be delivered to that person, or shall be sent to him by pre-paid letter post to his most recent address in Seychelles appearing in the register of members or the register of debenture holders, or, if no such address appears in the register, to the most recent address in Seychelles supplied by him to the company for the giving of notices to him (if any). If the register of members or debenture holders contains no address of a member, shareholder or debenture holder in Seychelles and he has not supplied an address in Seychelles for the giving of notices to him, it shall not be necessary for the company to give him notice of the meeting or to send him the documents aforesaid.

**(4)** Notice of a general meeting or of a meeting of a class of shareholders or debenture holders shall be given to the holders of bearer share certificates or bearer debentures by the publication in a daily newspaper circulating in Seychelles of an advertisement containing the particulars required by section 125(1) (including the terms of resolutions in respect of which a requisition has been made under section 126(1), and giving an address in Seychelles where the documents mentioned in section 125(2) and (3) and paragraphs (b) and (c) of section 126(1) may be inspected and from which copies of such documents may be obtained on request.

**(5)** An advertisement published under subsection (4) shall be deemed to be a proper notice of a meeting given to the holders of bearer share certificates or bearer debentures for the purposes of sections 125 and 126 and this section.

**(6)** If the memorandum or articles of a company, or a debenture trust deed or debentures or any other contract or instrument provide that a meeting may be validly held, or that all proceedings at a meeting shall be valid, notwithstanding an omission to give notice of the meeting to a person entitled to receive it, the passing or defeat of any resolution proposed at the meeting shall be voidable if notice was not given to so many persons that, if they had all voted at the meeting against the resolution, if it was passed at the meeting, or for the resolution if it was not so passed, the result of the voting would have been different from the result declared by the chairman.

**(7)** If when required by this section a company fails to give notice of a meeting to a member, shareholder or debenture holder, or to send him the documents required by section 125(2) and (3) and by section 126(1) in connection with the meeting, every officer of the company who is in default shall be guilty of an offence punishable by a fine not exceeding one thousand rupees.

**(8)** If a company refuses to permit any person to inspect the documents referred to in an advertisement published under subsection (4) of this section at the address given in the advertisement, every officer of the company who is in default shall be guilty of an offence punishable by a fine not exceeding one thousand rupees.

**(9)** This section shall apply notwithstanding anything contained in the memorandum or articles of the company, or in a debenture trust deed or any debenture, or in any other contract or instrument.

#### **Proxies.**

**128.(1)** Any person entitled to attend and vote at a general meeting of a company, or a meeting of a class of shareholders or debenture holders, shall be entitled to appoint another person (whether a member, shareholder or debenture holder of the class in question, or not) as his proxy to attend and vote on his behalf instead of him, and a proxy appointed to attend and vote instead of the person appointing him shall also have the same right as that person to speak at the meeting.

**(2)** A proxy who may vote at a meeting shall be counted toward a quorum as if the person or persons whom he represents were personally present at the meeting.

**(3)** A proxy may not vote at a general meeting or an adjournment thereof unless the instrument appointing

him is delivered to the company not less than forty-eight hours before the time at which the meeting is to commence, or at which the adjournment thereof is to commence (as the case may be), and an instrument appointing a proxy which is so delivered shall be valid and effectual notwithstanding any provision in the memorandum or articles or in a debenture or debenture trust deed.

(4) There shall be sent with each notice calling a general meeting or a meeting of shareholders or debenture holders a form of proxy appointment by which a person entitled to attend and vote at the meeting may appoint any person or persons he wishes to be his proxy, and by which he may indicate in respect of each resolution set out in the notice calling the meeting whether he wishes his proxy to vote for or against the resolution, or whether he empowers his proxy to vote as the proxy thinks fit.

(5) If an advertisement of a meeting is published under section 127(4) the advertisement shall give an address in Seychelles from which forms for the appointment of proxies to attend and vote at the meeting may be obtained, and, within forty-eight hours after receiving a written request for that purpose, the company shall supply a form complying with subsection (4) to the person who makes the request and supplies an address in Seychelles to which the form is to be sent, but the company need not supply such a person with a form for the appointment of a proxy unless he provides the company with *prima facie* evidence that he is entitled to attend and vote at the meeting.

(6) It shall be an offence punishable by a fine not exceeding one thousand rupees:-

- (a) for any person who sends a notice calling a general meeting of a company, or a meeting of a class of shareholders or debenture holders not to send with the notice a form of proxy appointment complying with subsection (4); or
- (b) for any person to publish an advertisement of a meeting under section 127(4) which does not give the information required by subsection (5) of this section; or
- (c) for a director or other officer of a company to fail to send a form of proxy appointment in conformity with subsection (4) to a person who requests the supply of such a form and otherwise satisfies the conditions of that subsection; or
- (d) for any person to give or send to another person a form of appointment of a proxy to attend and vote at any general meeting or at any meeting of a class of shareholders or debenture holders in which the name of any person has already been entered as the proxy to be appointed thereby, or in which an indication has already been made as to whether any proxy appointed thereby is to vote for or against any resolution mentioned therein, with intent to induce that other person, or any other person, to vote in that manner, or to appoint a proxy thereunder to represent him at the meeting:

Provided that nothing in this paragraph shall make it unlawful for any person to give or send to another a list of persons who are willing to act as proxies, or for any person to give or send to another written material advising or exhorting him or any other person to vote in a particular manner, or not to vote, at any meeting, or to appoint any named person to act as his proxy thereat.

(7) This section shall apply notwithstanding anything contained in the memorandum or articles of the company, or in a debenture trust deed or any debenture or other contract or instrument.

#### **Rights of holders of bearer share certificates and bearer debentures.**

**129.(1)** The holder of a bearer share certificate issued by a company may, subject to the provisions of this section, attend, speak and vote at a general meeting of the company or at a meeting of the class of shareholders to which he belongs, or be represented at any such meeting by a proxy.

(2) The holder of a bearer debenture may, subject to the provisions of this section, attend, speak and vote at a meeting of the class of debenture holders to which he belongs.

(3) The rights mentioned in subsections (1) and (2) of this section may be exercised only if the holder

delivers the bearer share certificate or bearer debenture (as the case may be) to the company not less than seven days before the day on which the meeting is to commence, or if the rights mentioned as aforesaid are to be exercised at an adjourned meeting, not less than seven days before the day on which the adjourned meeting is to commence, in either case accompanied by a written request for the issue of a voting certificate and a statement of the holder's name and an address in Seychelles to which communications may be sent to him.

(4) Within two days after receiving the documents mentioned in the last foregoing subsection, the company shall send a voting certificate to the person who delivered the documents to it at the address given by him. The voting certificate shall state that person's name, the number of shares or debentures held by him and the number of votes which he is entitled to cast at the meeting or any adjournment thereof. On producing the voting certificate at the meeting or an adjournment thereof, the person named therein or his proxy may exercise the same rights in respect of the shares or debentures mentioned therein as if that person were entered in the company's register of members or register of debenture holders (as the case may be) as the registered holder of those shares or debentures.

(5) The person named in a voting certificate shall be entitled on surrendering it to the company to receive back the bearer share certificate or bearer debenture which he has delivered to the company, and the company shall not be liable to any person who has a better title to the shares or debentures represented thereby for having received the bearer share certificate or bearer debenture, or for having issued a voting certificate in respect of it, or for having allowed the holder of the voting certificate or his proxy to exercise rights in respect of the shares or debentures, or for having returned the bearer share certificate or bearer debenture to the holder of the voting certificate upon its surrender.

(6) If the holders of bearer share certificates or bearer debentures are entitled to attend a meeting, the advertisement of the meeting published under section 127(4) shall contain a statement that the holders of bearer share certificates or bearer debentures (as the case may be) who wish to attend and vote in person or by proxy at the meeting or any adjournment of the meeting must deliver them to the company not less than seven days before the date of the meeting or the adjournment, and that the company will in return issue voting certificates which must be produced at the meeting or adjournment for the purpose of voting.

(7) It shall be an offence punishable by a fine not exceeding one thousand rupees:-

- (a) for any person to publish an advertisement of a meeting under section 127(4) which does not contain the statement required by subsection (6) of this section in any case in which that subsection applies;
- (b) for a director or other officer of a company not to send a voting certificate to a person who makes a request for the purpose in conformity with subsection (3) of this section within two days after the request is received by the company;
- (c) for a director or other officer of a company not to return a bearer share certificate or a bearer debenture to the person who delivered it to the company in exchange for a voting certificate, within seven days after a written request for the purpose, accompanied by the voting certificate, is received by the company, unless the company has before the expiration of that time received notice of the claim of another person to the bearer share certificate or bearer debenture.

(8) This section shall apply notwithstanding anything contained in the memorandum or articles of the company, or in a debenture trust deed or any debenture, or other contract or instrument.

#### **Postal voting.**

**130.(1)** If the memorandum or articles of a company permit postal voting at meetings of the company, the provisions of this section shall apply with respect to general meetings and meetings of all classes of shareholders or debenture holders of the company.

(2) Any person entitled to attend and vote at such a meeting may vote at the meeting or at an adjournment thereof by delivering to the company not later than forty-eight hours before the time when the meeting or

adjourned meeting is to commence (as the case may be) a written statement of the name of the person entitled to vote and the manner in which he wishes to vote on each or any of the resolutions set out in the notice calling the meeting.

(3) A person who gives a postal vote shall be counted toward a quorum, and his postal vote shall be dealt with as if he were personally present at the meeting and personally voted in the manner expressed in his postal vote.

#### **Method of taking votes.**

**131.(1)** The chairman of a general meeting of a company, or of a meeting of a class of shareholders or debenture holders, shall take the vote on any resolution proposed at the meeting by a show of hands, unless the number of postal votes (if permitted) and the number of proxy appointments indicating how the proxy is authorised to vote which have been delivered to the company show that the resolution or amendment will necessarily be passed or defeated, in which case the chairman shall so declare and shall state the number of votes which have been so given in favour of and against the resolution.

(2) Any provision contained in a company's memorandum or articles, or in a debenture trust deed or debenture, or in any other contract or instrument, shall be invalid insofar as it would have the effect either -

- (a) of excluding the right to demand a poll at a general meeting, or at a meeting of a class of shareholders or debenture holders, on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or
- (b) of making ineffective a demand for a poll on any such question which is made either –
  - (i) by not less than five persons having the right to vote at the meeting, or by their proxy or proxies; or
  - (ii) by a person or persons representing not less than one tenth of the total voting rights of all the persons having the right to vote at the meeting, or by his or their proxy or proxies.

(3) The votes of a proxy shall be counted only if he attends the meeting at which he is authorised to vote and votes thereat. A proxy may vote on a show of hands and on a poll taken on any resolution.

(4) If a proxy appointment authorises a proxy to vote only in favour of, or only against, a resolution proposed at any meeting, his votes shall not be counted unless he votes in the manner in which he is authorised to vote.

(5) On a poll taken at any meeting, a person entitled to more than one vote, or a proxy for one or more persons entitled to more than one vote, may use some only of his votes, or may cast some of his votes in one way and some in another, and postal votes shall for this purpose be deemed to be votes given on a poll.

#### **Declaration of the result of voting.**

**132.(1)** The chairman of any meeting shall declare the result of the voting on a poll, either at the meeting, or at a continuation thereof if the meeting has been suspended for the purpose of taking a poll, and in the declaration he shall state the number of votes which have been cast for and against the resolution, and for and against any amendment proposed thereto:-

- (a) by proxies authorised to vote only for or against the resolution or amendment;
- (b) by postal votes;

(c) in any other way;

and he shall also state the number of votes cast which have not been counted because the chairman considers them not to have been validly cast.

(2) A chairman who does not comply with the foregoing subsection, or who falsifies the result of a poll, shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees.

(3) A continuation of a meeting which has been suspended for the purpose of taking a poll shall not be considered for the purposes of this Ordinance as an adjournment of that meeting, and references to such a continuation or to an adjournment in the company's memorandum or articles, or in a debenture trust deed or a debenture, shall be construed accordingly.

#### **Unanimous written declaration to have same effect as a resolution.**

133. A declaration in writing signed by all the persons entitled to attend a general meeting of a company, or by all the persons entitled to attend a meeting of a class of shareholders or debenture holders, shall have the same effect as a resolution in the same terms passed at a meeting duly called and held.

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

134. Where a resolution is passed at an adjourned meeting of -

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

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

#### **Delivery of copies of certain resolutions to the Registrar.**

135.(1) A printed or typewritten copy of every resolution or declaration to which this section applies shall within fourteen days after the passing or making thereof be delivered by the company to the Registrar.

(2) If an application is made to the court under the next following section, the company shall not be required to deliver a copy of the resolution or declaration under subsection (1) unless the court confirms the resolution or declaration in whole or part, and a copy of the resolution or declaration as so confirmed and a copy of the order of the court shall be delivered by the company to the Registrar within fourteen days after the order of the court is made.

(3) A copy of every resolution or declaration which is required to be registered under this section and is for the time being in force shall be embodied in, or annexed to, every copy of the memorandum or articles issued after the passing of the resolution or the making of the declaration, or in the case of a resolution falling under paragraph (c) of subsection (4) or a declaration having the effect of such a resolution, to every copy so issued of the debenture trust deed under which the resolution was passed.

(4) This section applies to:-

- (a) special resolutions passed at general meetings;
- (b) resolutions passed at meetings of classes of shareholders under section 19(1);
- (c) resolutions passed at meetings of classes of debenture holders consenting to the alteration or abrogation of the rights, powers or remedies of the debenture holders, or of the trustees of the debenture trust deed under which the debentures were issued;
- (d) declarations made under section 133 having the effect of resolutions passed under any of the foregoing paragraphs.

(5) If a company fails to comply with subsection (1) or subsection (2) of this section (whichever is applicable), the company and every officer of the company who is in default shall be liable to a default fine of one hundred rupees.

(6) If a company fails to comply with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred rupees for each copy in respect of which default is made.

(7) For the purposes of the two last foregoing subsections, a liquidator of the company shall be deemed to be an officer of the company.

#### **Application to court to declare that resolution is valid or invalid.**

**186.(1)** Within one month after a resolution has been declared by the chairman to have been passed or defeated at a general meeting of a company, or at a meeting of a class of shareholders, or debenture holders, any person is valid aggrieved thereby may apply to the court for a declaration that the resolution was not passed or was not defeated, as the case may be.

(2) Without prejudice to the generality of the expression, a person shall be considered to be an aggrieved person:-

- (a) if the resolution was proposed at a general meeting, and the applicant is a shareholder of the company; or
- (b) if the resolution was proposed at a meeting of a class of shareholders or of a class of debenture holders, and the applicant is a shareholder or debenture holder of that class;

but a person shall not be considered as aggrieved by the passing of a resolution in favour of which he or his proxy voted, or by the defeat of a resolution against which he or his proxy voted.

(3) An application may be made to the court under this section on the grounds that either:-

- (a) the meeting at which the resolution was passed was not properly convened; or
- (b) any consent of a class of shareholders or debenture holders to an alteration or abrogation of the rights, powers or remedies of that class is required in order that the resolution shall be effectual, and no such consent has been given, or has been given in consequence only of the votes or acts of members of the class concerned who did not act in good faith in the interest of the members of the class as a whole; or
- (c) votes tendered at the meeting were improperly accepted or rejected by the chairman, and in consequence the resolution was wrongly declared to have been passed or defeated; or
- (d) the chairman's declaration of the number of votes cast in favour of and against the

resolution was incorrect, and in consequence the resolution was wrongly declared to have been passed or defeated; or

- (e) the resolution is inconsistent with any provision of this Ordinance which is binding on the company, or does not satisfy any conditions or requirements imposed by this Ordinance which are so binding;
- (f) the resolution passed at the meeting (not being a resolution authorised by this Ordinance to alter the memorandum or articles of the company, or a resolution authorised by this Ordinance, or by a debenture trust deed, or by debentures, to alter or abrogate the rights of the holders of debentures issued under the deed or of the holders of the debentures (as the case may be)) is inconsistent with the memorandum or articles, or with the terms of the debenture trust deed or the debentures; or
- (g) the resolution will, if carried out, result in a contravention of this Ordinance or of any other law whatsoever; or
- (h) the resolution was required by this Ordinance, or by the memorandum or articles of the company, or by a debenture trust deed, or by debentures to be passed by a majority greater than that required for the passing of an ordinary resolution, and although the resolution was passed by such a greater majority it was passed only in consequence of the votes of shareholders or debenture holders who did not act in good faith in the interest of members of the company as a whole, or of the shareholders of the class to which they belonged as a whole, or of the debenture holders of the class to which they belonged as a whole (as the case may be).

(4) The right to apply to the court under this section shall be in addition to any other right conferred by this Ordinance on the holders of a fraction of the shares or debentures of a company to apply to the court to cancel any resolution.

(5) On the hearing of an application under this section the court:-

- (a) may confirm in whole or in part any resolution which has been declared to have been passed at a meeting, or may declare that such a resolution was not passed; or
- (b) may declare that a resolution which has been declared to have been defeated at a meeting was passed thereat and may confirm such a resolution in whole or in part, or may declare such a resolution to have been defeated.

(6) The order of the court shall be substituted for the declaration of the chairman at the meeting that the resolution was passed or defeated, and all persons shall act accordingly.

(7) If any application to the court is not made under this section, or under any other provision of this Ordinance which confers a right to make an application to the court on the holders of the fraction of the shares or debentures of a company, within one month after the declaration by the chairman of the meeting that the resolution in question has been passed or defeated, or if all applications made to the court under this section or any other provision of this Ordinance are dismissed, it shall thereafter be conclusively presumed that the resolution was passed or defeated as declared by the chairman, and if he declared the resolution to have been passed, that the meeting at which it was passed was duly convened and held and that the resolution is valid.

(8) This section shall not apply to procedural resolutions.

#### **Minutes.**

**137.(1)** Every company shall cause minutes of all proceedings of general meetings, meetings of classes of shareholders and debenture holders, and meetings of the directors and committees of directors of the company to be entered in books kept for that purpose.



(2) The minutes of a general meeting or of a meeting of a class of shareholders or debenture holders shall set out in full the declaration made by the chairman under section 132(1) in respect of each resolution voted on at the meeting.

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

(4) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company, at any meeting of a class of shareholders or debenture holders, or at any meetings of the directors or a committee of directors, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all resolutions declared by the chairman of the meeting to have been passed shall be deemed to be valid.

(5) If a company fails to comply with subsections (1) or (2) of this section, any officer of the company who is in default shall be guilty of an offence by a fine not exceeding one thousand rupees.

### **Inspection of minutes.**

**138.(1)** The books containing the minutes of proceedings of any general meeting of a company, and of any meeting of a class of shareholders or debenture holders, shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any shareholder or debenture holder without charge.

(2) Any shareholder or debenture holder shall be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding one rupee for every hundred words copied.

(3) If any inspection required under this section is refused, or if any copy required under this section is not sent within the proper time, every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding one hundred rupees and further to a default fine of one hundred rupees.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of which an inspection has been requested, or may direct that the copies required shall be sent to the persons requiring them.

### *Accounts*

#### **Books of account**

**139.(1)** Every company shall cause to be kept in the English language proper books of account with respect to:-

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

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

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

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

(4) If any person being a director of a company fails to secure compliance by the company with the requirements of this section, or has by his own act been the cause of any default by the company thereunder, he shall in respect of each offence, be punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or by both such fine and imprisonment:

Provided that -

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

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

**140.(1)** The directors of every company shall lay before each annual general meeting of the company a profit and loss 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 earlier than the date of the meeting by no more than nine months, or, in the case of a company carrying on business or having interests outside Seychelles, by no more than twelve months:

Provided that the Registrar, if for any special reason he thinks fit so to do, may, in the case of any company with respect to any year extend the periods of nine and twelve months aforesaid.

(2) The directors shall cause to be made out and to be laid before each annual general meeting, a balance sheet as at the date to which the profit and loss account is made up.

(3) If a company fails to comply with the provisions of this section, every director of the company shall, in respect of each offence be punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or by both such fine and imprisonment:

Provided that a director shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

(4) In this Ordinance a reference to a profit and loss account shall, in the case of a company not trading for profit, be construed as a reference to a revenue and expenditure account.

#### **Dispensation with annual general meeting.**

**141.(1)** The memorandum or articles of a company may provide that it need not hold an annual general meeting in any year if copies of its balance sheet, profit and loss account, group accounts (if any) and directors' annual report and auditors' report are sent to every shareholder and every debenture holder at least four weeks before the latest date by which the company is required by section 119(1) to hold an annual general meeting,

and no shareholder or debenture holder has at least eight weeks before that date served a written notice on the company requiring it to hold an annual general meeting.

(2) This section shall not apply if:-

- (a) the auditor's report on any of the said accounts is qualified in any respect, or contains any statements or corrections of statements required to be made in the directors' annual report; or
- (b) the directors' annual report or any of the said accounts shows that the company has suffered a loss in the period to which the accounts relate, or that the fixed dividend in respect of any of the company's preference shares will not be paid in full for that period, or that the dividends recommended by the directors in respect of all classes of the company's shares for that period together with all interim dividends declared during that period exceed the amount of the company's profits for that period; or
- (c) any members of the company give notice under section 126(1) of their intention to move a resolution at the annual general meeting; or
- (d) an auditor of the company gives notice to it in writing that he is unwilling to be re-appointed as auditor.

(3) If a company which avails itself of subsection (1) of this section has bearer share certificates or bearer debentures issued and outstanding, it shall at least four weeks before the latest date by which it is required by section 119(1) to hold an annual general meeting publish in a daily newspaper circulating in Seychelles an advertisement containing the accounts and reports copies of which are required to be sent to shareholders and debenture holders, and the publication of that advertisement shall be deemed to be the sending of copies of those accounts and reports to the holders of such bearer share certificates and bearer debentures.

(4) If a company avails itself of subsection (1) of this section and satisfies the conditions therein contained, sections 119, 125, 127 to 133 inclusive, 137 and 140 and 159(2) and (4) shall not apply in respect of the annual general meeting or the accounts and reports which this Ordinance requires to be laid before the annual general meeting for the year in question.

(5) In this Ordinance references to a company's annual accounts shall mean its balance sheet, its profit and loss account and its group accounts laid or to be laid before an annual general meeting or, if the company avails itself of this section, circulated to its shareholders and debenture holders and (where applicable) advertised under subsection (3) of this section; and references to a company's annual accounts and reports shall likewise mean such accounts and the reports of the company's auditor and directors laid or to be laid before an annual general meeting, or if the company avails itself of this section, circulated and (where applicable) advertised as aforesaid.

#### **Provisions as to contents and form of annual accounts.**

**142.(1)** Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year, or if the company does not trade for profit, of its revenue and expenditure for the financial year.

(2) A company's balance sheet and profit and loss account shall comply with the requirements of the Sixth Schedule to this Ordinance, so far as applicable thereto.

(3) Save as expressly provided in the following provisions of this section, the requirements of subsection (2) and the said Sixth Schedule shall be without prejudice either to the general requirements of subsection (1) of this section or to any other requirements of this Ordinance.

(4) The Registrar, on the application or with the consent of a company's directors, may modify in relation to that company any of the requirements of this Ordinance as to the matters to be stated in a company's balance

sheet or profit and loss account (except the requirements of subsection (1)) for the purpose of adapting them to the circumstances of the company.

(5) If in respect of any accounts laid before the company at an annual general meeting, or in respect of any accounts circulated to shareholders and debenture holders or published under section 141, a company fails to comply with the provisions of this section and with the other requirements of this Ordinance as to the matters to be stated in accounts, every director of the company shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or by both such fine and such imprisonment:

Provided that a director shall not be sentenced to imprisonment for any such offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

(6) For the purposes of this section and the following provisions of this Ordinance, except where the context otherwise requires, any reference to a balance sheet or profit and loss account shall include any notes thereon or document annexed thereto giving information which is required by this Ordinance and is thereby allowed to be so given.

(7) The Governor in Council may by regulations supplement, amend or rescind any of the requirements of the Sixth Schedule to this Ordinance, and it shall then take effect subject to the modifications made by such regulations.

#### **Group accounts.**

**143.(1)** Where at the end of its financial year a company has subsidiaries, accounts or statements (in this Ordinance referred to as “group accounts”) dealing as hereinafter mentioned with the state of affairs and profit or loss of the company and the subsidiaries shall, subject to the next following subsection, be laid before the company in annual general meeting or, if the company avails itself of section 141, be circulated to its members and registered debenture holders and (where applicable) advertised under section 141(3), when the company’s own balance sheet and profit and loss account are so laid or circulated.

(2) Notwithstanding anything in the foregoing subsection -

- (a) group accounts shall not be required where the company is at the end of its financial year the wholly-owned subsidiary of another company or body corporate incorporated in Seychelles; and
- (b) group accounts need not deal with a subsidiary of the company if the company’s directors are of opinion that -
  - (i) it is impracticable, or would be of no real value to members of the company, in view of the insignificant amounts involved, or would involve expense or delay out of proportion to the value to members of the company; or
  - (ii) the result would be misleading, or harmful to the business of the company or any of its subsidiaries; or
  - (iii) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking;

and the Registrar consents to the omission of the assets and liabilities and the profit or loss of the subsidiary from the company’s group accounts, or, if the Registrar is willing to give such a consent in respect of all the company’s subsidiaries, the Registrar consents to the company not laying or circulating group accounts.

(3) If any company fails to comply with the provisions of this section, every director of the company shall, in respect of each default be guilty of an offence punishable by a fine not exceeding ten thousand rupees or to imprisonment for not more than two years, or to both such fine and imprisonment:

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

(4) For the purposes of this Ordinance a company shall be deemed to be the wholly-owned subsidiary of another company or body corporate if it has no members, shareholders or debenture holders except that other and that other's wholly-owned subsidiaries and its or their nominees.

(5) This section and sections 144 and 145 shall not come into operation until a date appointed by the Governor in Council by notice in the Gazette.

#### **Form and contents of group accounts.**

**144.(1)** The group accounts laid before an annual general meeting of a holding company or, if a holding company avails itself of section 141, the group accounts circulated to the shareholders and debenture holders of the holding company and (where applicable) advertised under section 141(3) shall be consolidated accounts comprising:-

- (a) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in group accounts;
- (b) a consolidated profit and loss account dealing with the profit and loss of the company and those subsidiaries.

(2) The group accounts laid before a company shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with thereby as a whole, so far as concerns shareholders and debenture holders of the company.

(3) Where the financial year of a subsidiary does not coincide with that of the holding company, the group accounts shall, unless the Registrar on the application or with the consent of the holding company's directors otherwise directs, deal with the subsidiary's state of affairs as at the end of its financial year ending with, or last before, that of the holding company, and with the subsidiary's profit or loss for that financial year.

(4) Without prejudice to subsection (2) of this section, the group accounts shall comply with the requirements of the Sixth Schedule to this Ordinance (as modified by any regulations made under section 142(7) and for the time being in force) so far as such requirements are applicable thereto:

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

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

**145.(1)** A holding company's directors shall secure that the financial year of each of its subsidiaries shall coincide with the company's own financial year, but if the financial year of a subsidiary has not previously coincided with the holding company's financial year, the Registrar may permit such an arrangement to continue if the company satisfies him either:-

- (a) that disproportionate expense would be incurred if the subsidiary's financial year were to be changed; or
- (b) that a true and fair view of the matters mentioned in section 144(2) will be given by the group accounts even though the subsidiary's financial year does not coincide with that of the holding company;

but the Registrar may at any time withdraw permission given by him under this subsection if, after affording the

holding company an opportunity to submit representations to him in writing and considering any such representations submitted by it, he is of the opinion that neither paragraph (a) nor (b) of this subsection continues to be satisfied.

(2) Where it appears to the Registrar desirable for a holding company or a holding company's subsidiary to extend its financial year so that the subsidiary's financial year may end with that of the holding company, and for that purpose to postpone the submission of the relevant accounts to a general meeting from one calendar year to the next, the Registrar may on the application or with the consent of the directors of the company whose financial year is to be extended direct that, in the case of that company, the submission of accounts to a general meeting, the holding of an annual general meeting or the making of an annual return shall not be required in the earlier of the said calendar years.

#### **Particulars of directors' emoluments etc.**

**146.(1)** In the annual accounts of a company, or in a statement annexed thereto, there shall, subject to and in accordance with the provisions of this section, be shown:-

- (a) the amount of each director's emoluments;
- (b) the amount of each director's and each past director's pensions; and
- (c) the amount of any compensation paid to or received by each director and each past director in respect of loss of office.

(2) The amount to be shown under paragraph (a) of subsection (1) of this section -

- (a) shall include emoluments paid to, or receivable by, a person in respect of his services as a director of the company, or in respect of his services, while a director of the company, as a director of a company belonging to the same group of companies as the company, or otherwise in connection with the management of the affairs of the company or a company belonging to the same group of companies as the company; and
- (b) shall distinguish between emoluments in respect of services as a director, whether of the company or of a company belonging to the same group of companies as the company, and other emoluments, and between emoluments paid or payable by the company and other emoluments;

and for the purposes of this section the expression "emoluments", in relation to a director, includes fees, commissions, shares or percentages of the profits of the company or of a company belonging to the same group of companies as the company, any sums paid by way of expenses allowance, any contribution paid in respect of him under any pension scheme and the estimated money value of any other benefits received or receivable by him otherwise than in cash.

(3) The amount to be shown under paragraph (b) of the said subsection (1):-

- (a) shall not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions thereunder are substantially adequate for the maintenance of the scheme, but save as aforesaid, shall include any pension paid or receivable in respect of any such services of a director or past director of the company as are mentioned in the last foregoing subsection, whether to or by him or, on his nomination or by virtue of dependence on or other connection with him, to or by any other person; and
- (b) shall distinguish between pensions in respect of services as a director, whether of the company or of a company belonging to the same group of companies as the company, and other pensions, and between pensions paid or payable by the company and other pensions;

and for the purposes of this section the expression “pension” includes any superannuation annuity, superannuation allowance, superannuation gratuity or similar payment, and the expression “pension scheme” means a scheme for the provision of pensions in respect of services as a director or otherwise which is maintained in whole or in part by means of contributions, and the expression “contribution” in relation to a pension scheme means any payment (including an insurance premium) paid for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions will or may become payable under the scheme.

(4) The amount to be shown under paragraph (c) of the said subsection (1) -

- (a) shall include any sums paid to or receivable by a director or past director by way of compensation for the loss of office as a director of the company or for the loss, while a director of the company or on or in connection with his ceasing to be a director of the company, of any other office in connection with the management of the company’s affairs, or of any office as a director or otherwise in connection with the management of the affairs of a company belonging to the same group of companies as the company; and
- (b) shall distinguish between compensation in respect of the office of director, whether of the company or of a company belonging to the same group of companies as the company, and compensation in respect of other offices, and between compensation paid or payable by the company and other compensation;

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

(5) The amounts to be shown under this section for any financial year shall be the sums receivable in respect of that year, whenever paid, or, in the case of sums not receivable in respect of a period, the sums paid during that year.

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

(7) If in the case of any accounts the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report thereon, or to give by way of note, so far as they are reasonably able to do so, a statement giving the required particulars.

(8) In this section any reference to a company belonging to the same group of companies as the company shall for the purposes of subsections (2) and (3) be taken as referring to such a company at the time the services were rendered, and for the purposes of subsection (4) be taken as referring to such a company immediately before the loss of office as director of the company.

#### **Particulars of waiver of emoluments.**

147. In the annual accounts of a company, or in a statement annexed thereto, there shall be shown:-

- (a) the number of directors who have waived rights to receive emoluments which, but for the waiver, would have fallen to be included in the amount shown in those accounts under paragraph (a) of section 146(1);
- (b) the aggregate amount of the said emoluments.

(2) For the purposes of this section -

- (a) it shall be assumed that a sum not receivable in respect of a period would have been paid at the time at which it was due to be paid;

- (b) a sum not so receivable that was payable only on demand, being a sum the right to receive which has been waived, shall be deemed to have been due for payment at the time of the waiver.

(3) Section 146(7) shall apply to the matters required by this section to be included in the annual accounts of a company.

**Particulars of loans to officers of company.**

**148.(1)** The annual accounts of a company, or a statement annexed thereto, shall, subject to the provisions of this section, contain particulars showing -

- (a) the amount of any loans made during the company's financial year to:-
  - (i) any officer of the company; or
  - (ii) any person who, after the making of the loan, became during that year an officer of the company;by the company or by a company belonging to the same group of companies as the company, or by any other person under a guarantee from or on a security provided by the company or such another company (including any such loans which were repaid during that year); and
- (b) the amount of any loans made in manner aforesaid to any such officer or person as aforesaid at any time before the company's financial year and outstanding at the expiration thereof.

(2) The foregoing subsection shall not require the inclusion in accounts of particulars of -

- (a) a loan made in the ordinary course of its business by the company or a company belonging to the same group of companies as the company, where the ordinary business of the company or, as the case may be, the other company, includes the lending of money; or
- (b) a loan made by the company or such another company to an employee of the company or the other company, as the case may be, if the loan does not exceed five thousand rupees or such greater sum as may be prescribed by regulations made under this Ordinance and is certified by the directors of the company or the other company, as the case may be, to have been made in accordance with any practice adopted or about to be adopted by the company or the other company with respect to loans to its employees;

not being, in either case, a loan made by the company under a guarantee from or on a security provided by a company belonging to the same group of companies as the company, or a loan made by a company belonging to the same group of companies as the company under a guarantee from or on a security provided by the company or another company belonging to the said group.

(3) Section 146(7) shall apply to the matters required by this section to be included in the annual accounts of a company.

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



#### **Particulars of subsidiaries.**

**149.(1)** Subject to the provisions of this section, where, at the end of its financial year, a company has subsidiaries, there shall, in the case of each subsidiary, be stated in, or in a statement annexed to, the annual accounts of a company:-

- (a) the subsidiary's name;
- (b) the country (if other than Seychelles) in which it is incorporated; and
- (c) in relation to shares of each class of the subsidiary held by the company or by nominees for it, the identity of the class and the proportion of the issued and outstanding shares of that class represented by the shares so held.

**(2)** Subsection (1) of this section shall not require the disclosure of information with respect to a company which is the subsidiary of another and is incorporated outside Seychelles or, being incorporated in Seychelles, carries on business outside Seychelles, if the disclosure would, in the opinion of the directors of the subsidiary's holding company, be harmful to the business of that holding company or of any of its subsidiaries, and the Registrar consents to the information not being disclosed.

**(3)** Section 146(7) shall apply to the matters required by this section to be included in the annual accounts of a company.

#### **Particulars of associated companies in which company holds shares.**

**150.(1)** Subject to the provisions of this section, if, at the end of its financial year, a company holds shares of any class in another company which is its associated company but not its subsidiary, there shall be stated in, or in a statement annexed to, the annual accounts of the first-mentioned company the name of that other company and the country (if other than Seychelles) in which it is incorporated, and the identity of each class of shares of that other company held by the first mentioned company or its nominees, and the proportion of the issued and outstanding shares of that class represented by the shares so held.

**(2)** Section 146(7) shall apply to the matters required by this section to be included in the annual accounts of a company.

#### **Particulars of company's holding company.**

**151.(1)** Subject to subsection (2), where, at the end of its financial year, a company is the subsidiary of another company or body corporate, there shall be stated in, or in a note on, or statement annexed to, the annual accounts of the first-mentioned company the name of the company or body corporate regarded by the directors as being the first-mentioned company's ultimate holding company and, if known to them, the country in which it is incorporated.

**(2)** The foregoing subsection shall not require the disclosure by a company which carries on business outside Seychelles of information with respect to the company or body corporate regarded by the directors as being the ultimate holding company of the first-mentioned company if the disclosure would, in their opinion, be harmful to the business of that holding company or of the first-mentioned company or any other of that holding company's subsidiaries, and the Registrar consents to the information not being disclosed.

**(3)** In this section "ultimate holding company" means a holding company of the company to whose annual accounts this section applies, being a holding company which is not itself a subsidiary of any other company or body corporate.

### **Duty to give information for purpose of sections 146 to 151.**

**152.(1)** It shall be the duty of every company which is the subsidiary, holding company, or subsidiary of the holding company, of another company within one month of the expiration of the financial year of that other company to notify it in writing of all the matters relating to the affairs of the company giving the notice which are required to be included in the annual accounts of that other company or in a statement annexed thereto, by sections 146 to 151 inclusive.

**(2)** It shall be the duty of every director of every company which is required to give a written notification to another company under the last foregoing subsection, and it shall also be the duty of every director of that other company, within one month of the expiration of the financial year of that other company to notify it in writing of all the matters relating to him personally which are required to be included in the other company's annual accounts, or in a statement annexed thereto, by sections 146 to 148 inclusive:

Provided that if any part of a director's emoluments is calculated by reference to the profits or gross receipts of any company or companies for a financial year thereof, or any class of such profits or gross receipts, the director shall be deemed to have complied with this subsection in respect of those emoluments if he notifies the manner in which the emoluments are so calculated and the amount received on account thereof during the financial year of the company to which the notification is given, and further notifies the amount thereof within one month after the annual accounts of the first mentioned company or each of those companies are approved by its directors under section 159(1).

**(3)** It shall be the duty of a company in which another company holds shares in circumstances which make it necessary for that other company to include particulars of its shareholding in its annual accounts under section 150, to notify that other company, within one month after it makes a written request in that behalf, of the number and nominal value of each class or its shares issued and outstanding on the date specified by the other company in its request, being the last day of its financial year.

**(4)** If:-

- (a)* a company fails to include in its annual accounts any matter required to be included therein by sections 146 to 151; or
- (b)* a company fails to make any of the notifications required to be made by it under subsections (1) and (3) within the time thereby limited, or makes a notification which is false, deceptive, misleading or incomplete;

every director of the company who is in default shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or by both such fine and such imprisonment.

**(5)** If a director fails to make any of the notifications required to be made by him under subsection (2) within the time thereby limited, or makes a notification which is false, deceptive, misleading or incomplete, he shall be guilty of an offence punishable in like manner as an offence under subsection (4).

**(6)** A director shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

**(7)** References in this section to matters required to be included in a company's annual accounts or in a statement annexed thereto shall be construed as references to matters which are required to be shown separately therein, and to matters which are required to be, or which may be, shown in combination with other matters.

### *Directors' Reports*

### **Duty to lay directors' annual report.**

**153.(1)** The directors shall lay before every annual general meeting of a company, or, if the company avails itself of section 141, the directors shall circulate to its shareholders and debenture holders and (where applicable) advertise under section 141(3), a report (in this Ordinance called “the directors’ annual report”) in respect of the company’s affairs, and if the company is a holding company, in respect of the affairs of its subsidiaries:

Provided that if the company is a wholly-owned subsidiary of another company or body corporate incorporated in Seychelles, the directors’ annual report need not deal with the affairs of its subsidiaries.

**(2)** The directors’ annual report shall state the names of the persons who, at any time during the financial year, were directors of the company and the principal activities of the company and of its subsidiaries in the course of that year and any significant change in those activities in that year, and shall also:-

- (a)* if significant changes in the fixed assets of the company or of any of its subsidiaries have occurred in that year, contain particulars of the changes, and, if, in the case of those assets, the market or saleable value thereof (as at the end of that year) differs substantially from the amount thereof as shown in the balance sheet, contain particulars of that difference;
- (b)* if in that year the company has issued any shares or debentures, state the reason for making the issue, the classes of shares or debentures issued and, in respect of each class of shares or debentures, the nominal value of the shares or the principal amount secured by the debentures which have been issued and the consideration received by the company for the issue;
- (c)* if, at the end of that year there subsists a contract with the company in which a director of the company has, or at any time in that year had, in any way, whether directly or indirectly, an interest, or there has, at any time in that year, subsisted a contract with the company in which a director of the company had, at any time in that year, in any way, whether directly or indirectly, an interest (being, in either case, a contract of significance in relation to the company’s business and in which the director’s interest is or was material), contain -
  - (i)** a statement of the fact of the contract subsisting or, as the case may be, having subsisted;
  - (ii)** the names of the parties to the contract (other than the company);
  - (iii)** the name of the director (if not a party to the contract);
  - (iv)** an indication of the nature of the contract;
  - (v)** an indication of the nature of the director’s interest in the contract;
- (d)* if, at the end of that year, there subsist arrangements to which the company is a party, being arrangements whose objects are, or one of whose objects is, to enable directors of the company or of a company which belongs to the same group of companies as the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company or any other company or body corporate, or there have, at any time in that year, subsisted such arrangements as aforesaid to which the company was a party, contain a statement explaining the effect of the arrangements and giving the names of the persons who at any time during that year were directors of the company or of a company which at any time during that year belonged to the same group of companies as the company, and who held, or whose nominees held, shares or debentures acquired in pursuance of the arrangements; and also giving particulars of all outstanding loans made or guaranteed by the company, or in respect of which the company has given any security, if the loan was made to or for the benefit of any such director with a view to enabling him or his nominee to acquire shares or debentures of the company or any other company or body corporate;
- (e)* in respect of each person who has at any time during the year been a director of the

company or of a company which at any time during that year belonged to the same group of companies as the company, or of a company which has at any time during that year been an associated company of the company, contain the entries required by section 111 to be made in the register of director's holdings kept by the company, or, in the case of a company which during the whole of the year has been a proprietary company, the entries required by section 113 to be kept in the register of subscription options kept by the company:-

- (i) at the beginning of the year;
  - (ii) at any time during the year when such a person became or ceased to be a director as aforesaid; and
  - (iii) at the end of the year;
- (f) contain particulars of any other matters so far as they are material for the appreciation of the state of the company's affairs by its shareholders or debenture holders, being matters the disclosure of which will not be harmful to the business of the company or of any company which belongs to the same group of companies as the company;
- (g) state the directors' proposals as to the application of the profits of the company shown in its profit and loss account, including its profits and revenue reserves carried forward from earlier financial years.
- (3) If the company is a holding company (other than a wholly-owned subsidiary of another body corporate incorporated in Seychelles) the directors' annual report shall also deal with the matters specified in subsection (2) in relation to each of the company's subsidiaries.
- (4) If the directors consider that disclosure of any matter required to be included in the directors' annual report by this section would be harmful to the company or to any company which belongs to the same group of companies as the company, they may with the consent of the Registrar omit that matter from the report.
- (5) If the directors' annual report does not contain a statement required to be included therein by this section, or contains a statement which is false, deceptive, misleading or incomplete, it shall be the duty of the auditors of the company, so far as they are reasonably able to do so, to include in their report on the accounts of the company under section 158 a statement or correction giving the information required by this section.
- (6) If the directors of a company fail to comply with this section, or if they send out to shareholders or debenture holders, or advertise under section 141(3), a directors' annual report which does not contain all the information required by this section, or which contains false, deceptive or misleading information, each of the directors shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or to both such fine and imprisonment:
- Provided that a director shall not be sentenced to imprisonment for any such offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.
- (7) The Governor in Council may by regulations alter or add to the matters required by subsection (2) to be contained in the directors' annual report, and such regulations may be made applicable to all companies or to companies which satisfy or do not satisfy conditions prescribed by the regulations, and different provisions may be made by the regulations in respect of different categories of companies.

#### **Particulars of different classes of business of company and its directors.**

**154.(1)** The directors of a company to which this section applies shall include in the directors' annual report:-

- (a) if during the financial year to which the report relates the company carried on two or more classes of business which differed substantially from each other, a statement of the extent (expressed in monetary terms) to which the carrying on of each class of

business contributed to or diminished the profit or loss of the company for the year before taxation;

- (b) if at any time during the year the company had one or more subsidiaries and the company and any of those subsidiaries carried on two or more classes of business which differed substantially from each other, a statement of the extent (expressed in monetary terms) to which the carrying on of each class of business contributed to or diminished the profit or loss of the company and its subsidiaries for the year before taxation as shown by the company's group accounts, or if it is not required to prepare group accounts for the year, by its profit and loss account.

(2) Section 153(5) and (6) shall apply to the matters required to be included in the directors' annual report by this section as they apply to the matters required to be included therein by that section.

(3) This section shall apply to such companies as the Governor in Council may from time to time prescribe by regulations, and such regulations may prescribe a company by reference to its having any of its shares or debentures quoted or dealt in on a stock exchange in Seychelles or on a recognised overseas stock exchange, or by reference to the amount of its assets or net worth or the amount of its profits, or by reference to the number of its shareholders or debenture holders, or by reference to any other matter.

#### *Audit*

#### **Appointment of auditors.**

**155.(1)** Every company shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that, until the conclusion of the next annual general meeting.

(2) At any annual general meeting a retiring auditor, however appointed, shall be reappointed without any resolution being passed unless:-

- (a) he is not qualified for reappointment; or
- (b) a resolution has been passed at that meeting appointing another person or persons to be auditor of the company instead of him, or providing expressly that he shall not be reappointed; or
- (c) he has given the company notice in writing of his unwillingness to be reappointed:

Provided that where notice is given of an intended resolution to appoint some person or persons instead of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons (as the case may be) the resolution cannot be proceeded with, the retiring auditor shall not be automatically reappointed by virtue of this subsection.

(3) Where at an annual general meeting no auditors are appointed or reappointed, the Registrar may appoint a person to fill the vacancy.

(4) The company shall, within one week after the conclusion of an annual general meeting at which no auditor is appointed or deemed by this section to be reappointed, give the Registrar notice of that fact, and, if a company fails to give notice as required by this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(5) Subject as hereinafter provided, the first auditors of a company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until the conclusion of that meeting:

Provided that -

- (a) the company may at an extraordinary general meeting held before the first annual general meeting of the company remove any such auditors, and appoint in their place any other persons who have been nominated for appointment by any shareholder of the company, and of whose nomination notice has been given to the shareholders of the company not less than fourteen days before the date of the meeting; and
- (b) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon the said powers of the directors shall cease; and
- (c) an auditor appointed by the directors under this subsection shall not be reappointed at the first annual general meeting of the company unless a resolution is passed by the meeting that he shall be reappointed.

(6) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues, the surviving or continuing auditor or auditors, if any, may act.

(7) The remuneration of the auditors of a company –

- (a) in the case of an auditor appointed by the directors or by the Registrar, shall be fixed by the directors or the Registrar, as the case may be;
- (b) subject to the foregoing paragraph, shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

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

(8) If a company avails itself of section 141, it shall be deemed for the purpose of this section to have held an annual general meeting at the latest date which by section 119(1) it is required to hold such a meeting, and it shall be deemed to have passed no resolution relating to the appointment of an auditor at that meeting.

(9) Notice of a nomination under paragraph (a) of subsection (5) may be given to shareholders with or in the same way as notice of the meeting at which a resolution appointing the nominee is intended to be proposed.

#### **Proposals not to re-appoint retiring auditor.**

**156.(1)** If the notice calling an annual general meeting or an extraordinary general meeting held under section 155(5) contains notice of a proposal that the person who is the auditor of the company, or that any of the persons who are auditors of the company, at the date of the notice shall not be reappointed, or that another person shall be appointed to be an auditor of the company, this section shall apply, and it shall be immaterial whether the meeting is called by the directors, the Registrar or any other person or by order of the court, and whether the proposal is included in the notice of the meeting at the instance of the directors or any other person.

(2) The directors or the other person who calls the general meeting shall give written notice of the proposal to the auditor or to all the auditors of the company (if more than one) holding office at the date of the notice calling the meeting:-

- (a) if the meeting is called pursuant to a requisition made under section 120(2), at least fifteen days before the notice calling the meeting is sent out or advertised under section 127;
- (b) in any other case, at least one month before the notice calling the meeting is sent out or advertised as aforesaid.

**(3)** If any auditor holding office at the date of the notice calling the meeting makes written representations in respect of the proposal to the company (not exceeding a reasonable length) and requests the notification of such representations to members of the company, the company shall, unless the representations are received by it too late for it to do so:-

- (a) in every notice or advertisement relating to the meeting at which the proposal is to be considered state the fact of the representations having been made;
- (b) send a copy of the representations to every member; and
- (c) in any advertisement of the meeting published under section 127(4), state that copies of the representations may be obtained by any shareholder or debenture holder or trustee for debenture holders of the company on written request being made at an address in Seychelles given for the purpose; and
- (d) send a copy of the representations to every shareholder, debenture holder or trustee for debenture holders of the company (not being a member thereof) within two days after receipt of a written request by him for such a copy at the address given in the advertisement of the meeting published under section 127(4), or if no such advertisement is published, at the company's registered office;

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

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

**(4)** If a company:-

- (a) fails to give written notice of a proposal to which this section applies to the auditor or all the auditors (if more than one) in compliance with subsection (2); or
- (b) fails in any notice or advertisement relating to the meeting at which the proposal is to be considered to state that representations have been made by an auditor in respect of the proposal (if that is the case); or
- (c) fails to send a copy of any written representations made by an auditor in respect of the proposal to every member of the company in compliance with subsection (3), and to every shareholder or debenture holder or trustee for debenture holders who makes a written request for such a copy within two days after the request is received by the company;

the company and every officer of the company who is in default shall be guilty of an offence punishable by a fine not exceeding one thousand rupees.

#### **Qualifications for appointment as auditor.**

**157.(1)** A person shall not be qualified for appointment as auditor of a company unless either:-

- (a) he is a member of a body of accountants (whether established in or outside Seychelles) for the time being recognised for the purposes of this section by the Minister; or

- (b) he is for the time being authorised by the Registrar to be so appointed, either as having similar qualifications, or as having obtained adequate knowledge and experience in the course of his employment by a member of a body of accountants recognised for the purposes of paragraph (a) of this subsection, or as having practised as an accountant in Seychelles before the coming into force of this Ordinance.

(2) None of the following persons shall be qualified for appointment as auditor of a company -

- (a) an officer or servant of the company;
- (b) a person who is a partner of or in the employment of an officer or servant of the company;
- (c) a body corporate;
- (d) a person who is disqualified from being appointed to be a director of any company by an order of the court made under section 165(1);

Provided that if three or more persons carry on practice as accountants in partnership in Seychelles, any one or more of them (not being officers or servants of the company) may be appointed to be an auditor or auditors of a company notwithstanding that another of them is an officer or servant, or others of them are officers or servants, of the company, if those of them who are appointed auditors of the company exceed in number those of them who are officers or servants of the company.

(3) A person shall not be qualified for appointment as auditor of a company if he is, by virtue of the subsection (2), not qualified for appointment as auditor of any other company or body corporate which belongs to the same group of companies as the first mentioned company, or would not be qualified for such appointment if the body corporate which belongs to the same group of companies as aforesaid were a company.

(4) If any person who is not qualified to be appointed an auditor of a company makes a report to the members or debenture holders of the company on the company's annual accounts or on the directors' annual report, he shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or to both such fine and such imprisonment.

#### **Auditors' report.**

**158.(1)** The auditors of a company shall make a report to the members and debenture holders of the company on the accounts examined by them, and, on every balance sheet, every profit and loss account and all group accounts laid before an annual general meeting of the company, or if the company avails itself of section 141, all such accounts circulated to its shareholders and debenture holders, during their tenure of office.

(2) The auditors report shall be read out at the annual general meeting and shall be open to inspection by any person entitled to attend the meeting.

(3) The report shall state whether in the auditors' opinion the company's balance sheet and profit and loss account, and (if it is required by section 143 to prepare group accounts) the group accounts, have been properly prepared in accordance with the provisions of this Ordinance, and whether in their opinion a true and fair view is given:-

- (i) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year;
- (ii) in the case of the profit and loss account (if it be not framed as a consolidated profit and loss account), of the company's profit or loss for its financial year;
- (iii) in the case of group accounts, of the state of affairs and profit or loss of the company and its subsidiaries dealt with thereby, so far as concerns members, shareholders and



debenture holders of the company.

(4) It shall be the duty of the auditors of a company, in preparing their report under this section, to carry out such investigations as will enable them to form an opinion as to the following matters, that is to say -

- (a) whether proper books of account have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them; and
- (b) whether the company's balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account are in agreement with the books of account and returns;

and if the auditors are of opinion that proper books of account have not been kept by the company or that proper returns adequate for their audit have not been received from branches not visited by them, or if the balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account are not in agreement with the books of account and returns, the auditors shall state that fact in their report.

(5) If a company is a holding company, the duties of the auditors of the company under subsection (4) shall extend to the books of account and returns of its subsidiaries and to the group accounts of the company.

(6) Every auditor of a company shall have a right of access at all times to the books, accounts and vouchers of the company, and (if it is a holding company) of its subsidiaries, and every auditor shall be entitled to require from the officers of the company and its subsidiaries such information and explanation as he thinks necessary for the performance of the duties of the auditors.

(7) If the auditors fail to obtain all the information and explanations which, to the best of their knowledge and belief, are necessary for the purposes of their audit, they shall state that fact in their report.

(8) The auditors of a company shall be entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to any general meeting which any shareholder of the company is entitled to receive, and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

(9) The auditors of a company shall have the powers conferred by this section, and shall be subject to the same duties as are imposed thereby, in carrying out their duty under section 153(5) to report on omissions from, and inaccuracies in, the directors' annual report.

#### *Signing and circulation of accounts and reports*

#### **Signing and circulation of accounts, etc.**

**159.(1)** The company's annual accounts and the directors' annual report shall be approved by the directors and signed by all of them before copies of such accounts or reports are sent to the members or debenture holders of the company and before any advertisement of such accounts or report is published:

Provided that if any director refuses to sign, or is unable by reason of physical or mental incapacity to sign, any such account or report this subsection shall be deemed to have been complied with if every copy of the account or report sent out or advertised as aforesaid contains a statement in clearly legible print of the name of the director and the fact of his refusal or incapacity.

(2) A copy of the company's annual accounts, the directors' annual report and the report of the auditors on the accounts of the company under section 158 shall, not less than twenty-one days before the date of the annual general meeting before which they are to be laid, be sent to every shareholder and debenture holder of the company and to the auditors of the company.

(3) If an annual general meeting is called with less than twenty-one days notice and is deemed to have been duly called by virtue of section 123(3), the foregoing subsection shall be deemed to have been complied with if the company's annual accounts, the director's annual report and the auditors' report are sent to every person mentioned in that subsection before or at the same time as the meeting is called.

(4) If the company has issued any bearer share certificates, or bearer debentures which are outstanding, it shall at the same time as it publishes under section 127(4) an advertisement of the annual general meeting before which the accounts and the reports will be laid, publish the company's annual accounts, the directors' annual report and the auditors' report in a daily newspaper circulating in Seychelles, and such publication shall as regards the holders of bearer share certificates and bearer debentures be deemed to be compliance with subsection (1) of this section.

(5) Any shareholder or debenture holder of a company shall, on making a written request, be entitled to be supplied by the company (without charge) with a copy of the company's most recent annual accounts, directors' annual report and auditors' report, but no one person shall be entitled to be supplied with more than one copy of each of those documents.

(6) If a company fails to comply with any provision of this section, every officer of the company who is in default shall be guilty of an offence punishable by a fine not exceeding one thousand rupees.

#### *Profits and dividends*

#### **Disposal of profits.**

**160.(1)** Dividends in respect of any class of shares of a company (other than interim dividends in respect of ordinary shares) may be declared only by an ordinary resolution passed at an annual general meeting:

Provided that if a company avails itself of section 141 of this Ordinance and does not hold an annual general meeting, the dividends recommended by the directors in the directors' annual report shall be deemed to have been declared by an ordinary resolution passed at an annual general meeting held on the day on which the company sends copies of its annual accounts and reports to its members and debenture holders in compliance with section 141(1), or if all the issued and outstanding shares of the company are represented by bearer share certificates, on the day on which it publishes an advertisement in compliance with section 141(3).

(2) No provision in the memorandum or articles shall be valid by which a dividend is expressed to be payable at a specified time, or on the occurrence of a specified event, or on the ascertainment of the profits earned by the company for a specified period, without the declaration of a dividend by an annual general meeting.

(3) An annual general meeting or an extraordinary general meeting may by ordinary resolution capitalise the whole or any part of the profits (including profits carried forward from previous financial years) or the whole or any part of the revenue reserves of a company, and, subject to the approval of any class of shareholders required by section 19, may provide for the application of the capitalised profits or reserves in any of the ways in which the capital reserves of a company may be applied by section 55(4) with the same consequences as if such an application were made.

(4) Notwithstanding any provision in the memorandum or articles of a company, a general meeting may resolve to dispose of the profits or revenue reserves of the company in a way authorised by this section, even though the directors recommend that the disposal should not be made, or recommend that a different disposal should be made, or prohibit or refuse to permit the disposal, and any creation of revenue reserves or transfer of profits to revenue reserves by the directors shall be ineffective unless approved by an annual general meeting:

Provided that nothing in this section shall empower a general meeting to dispose of the profits or revenue reserves of the company in a manner which is inconsistent with any contract which the company has entered into, or with an employee share subscription scheme to which the company is a party.

(5) In this Ordinance interim dividends mean dividends declared by directors between annual general meetings of a company under a power for that purpose contained in the memorandum or articles of the company, and revenue reserves mean the reserves of a company other than its capital reserve.

**Dividends to be paid only out of profits and reserves; computation of profits.**

**161.(1)** Dividends in respect of shares of a company and applications of profits and revenue reserves under section 160(3) may be declared or made only out of the profits (including profits carried forward from previous financial years) and the revenue reserves of the company computation as shown by the annual accounts of the company approved by an annual general meeting:

Provided that directors may declare an interim dividend in respect of ordinary shares out of the profits (including profits carried forward from previous financial years) and revenue reserves shown by the most recent annual accounts of the company and out of the profits which they estimate the company has earned since the date to which those annual accounts were made up, but before declaring an interim dividend the directors shall make provision for any loss which they estimate the company has incurred since that date.

(2) In calculating the profits of a company:-

- (a) proper provision shall be made for the depreciation, diminution in value or obsolescence of its fixed assets (other than shares, debentures or other securities held by it);
- (b) proper provision shall be made for writing off bad debts, the unrecovered part of debts which have been only partially recovered or are only partially recoverable, and the expenses of forming the company and issuing its shares and debentures;
- (c) the current assets of the company (other than cash, debts and liabilities owed to the company and shares, debentures and other securities held by it) shall be valued at their cost of acquisition, or the cost of acquiring the materials from which they are made, plus the cost of constructing, manufacturing or processing them, so far as such cost has been incurred, but such current assets shall in no case be valued at more than the amount which they may reasonably be expected to realise on a sale in the open market less the cost of completing them in order to make them marketable;
- (d) no appreciation in the value of the fixed or current assets of the company resulting from a revaluation shall be taken into account;
- (e) dividends or interest received by a company out of the profits of any of its subsidiaries for a financial year of the subsidiary which ended before it became the company's subsidiary shall not be taken into account;
- (f) interest paid by the company shall be treated (so far as is possible) as having been paid out of the profits and revenue reserves; and
- (g) reasonable provision shall be made for the company's contingent liabilities and for liabilities the amount of which cannot be ascertained with precision.

(3) Proper provision for the depreciation, diminution in value or obsolescence of a fixed asset shall be deemed to be made if either -

- (a) there is debited each year an amount equal to the quotient of the cost of acquisition, construction or development of the fixed asset (less its estimated disposal value at the end of its estimated useful life) and the number of the remaining years of its estimated useful life; or
- (b) there is debited each year a constant fraction of the cost of acquisition, construction or development of the fixed asset as diminished by provisions for depreciation,

diminution in value or obsolescence of the asset made in previous financial years, so that at the end of the estimated useful life of the asset its written down value will equal its estimated disposal value;

and for the purpose of this subsection:-

- (i) the estimated useful life of an asset means the number of years during which it was reasonably expected to assist the company to earn profits when it was acquired, constructed or developed; and
- (ii) the estimated disposal value of an asset means the amount reasonably estimated at that time as the price which it would realise on being sold in the open market at the end of its estimated useful life.

(4) Current assets (other than cash, debts and liabilities owed to the company and shares, debentures and other securities) may be valued by applying any reasonable accounting method which avoids the need for ascertaining the cost of acquiring, constructing or processing individual items out of a stock of goods (whether constructed, manufactured or processed by the company or not) which are physically similar and are disposed of by the company at a substantially similar price at any given time.

(5) It shall be permissible in valuing current assets of a kind which the company constructs, manufactures or processes to add to their value as ascertained under subsections (2) and (4) a reasonable proportion of the fixed overheads of the company which it reasonably expects to recoup out of the proceeds of disposal of the assets.

(6) For purpose of declaring dividends (including interim dividends) or making any application of profits or revenue reserves under section 160(3), the profits and revenue reserves of a company shall be diminished by -

- (a) any loss sustained by the company in any previous financial year (so far as not already written off out of profits or revenue reserves, or eliminated by a cancellation of paid up share capital or a reduction of capital reserve; and
- (b) any loss sustained by the company in a financial year subsequent to that in which the profits, or the profits transferred to revenue reserves, were earned:

Provided that it shall be permissible for a company to declare and pay the fixed dividend in respect of preference shares for a financial year if the company has earned profits in that year at least equal to the amount of the fixed dividend, and if the profits of the company for that year are less than the amount of the fixed dividend, the company may declare and pay a part of the fixed dividend amounting to not more than the profits earned in that year.

(7) A company may declare a dividend out of the profit obtained on the realisation of a fixed asset only if:-

- (a) any loss sustained on the sale of any other fixed asset in the same or a previous financial year has been written off out of profits or revenue reserves, or has been eliminated by a cancellation of paid up share capital or a reduction of capital reserve; and
- (b) the net worth of the company is not less than the sum of its paid up share capital and its capital reserve.

(8) A consolidated profit and loss account of a holding company may not be used as the basis on which a dividend may be declared in respect of any of the shares of the holding company, nor as the basis on which profits of the holding company may be applied under section 160(3).

(9) In this section the net worth of a company means the amount of its assets less the amount of its debts and liabilities, whether certain or contingent.

(10) This section shall apply to profits earned and losses incurred by a company before or after the coming into force of this Ordinance and to revenue reserves created by the transfer of such profits.

## *Directors*

### **Number of directors.**

**162.(1)** Every company shall have at least two directors.

**(2)** If at the coming into force of this Ordinance a company has less than two directors:-

- (a)* the director or any member of the company may call an extraordinary general meeting to appoint directors, and such a meeting may appoint one or more directors, or one or more additional directors; and
- (b)* the court may on the application of any shareholder or debenture holder of the company direct that such a meeting shall be held and may further give any direction which it could give under section 124.

**(3)** If a company has less than two directors, or in the case of an existing company, if it has less than two directors at any time after the expiration of six months from the coming into force of this Ordinance, no director or other person shall have power to carry on the business of the company or to enter into transactions on its behalf (other than calling general meetings) until the company has two or more directors:

Provided that nothing in this section shall affect the application of section 39.

**(4)** Nothing in this section shall affect the power of an annual general meeting to appoint directors.

### **Appointment of directors.**

**163.(1)** Subject to the provisions of this section, a director of a company may be appointed only by an ordinary resolution passed at a general meeting of the company for a period not exceeding five years, but any director may be reappointed in like manner on any number of occasions for a period not exceeding five years on each reappointment.

**(2)** The memorandum or articles of a company may prescribe the maximum and minimum number of directors of the company who shall be appointed (being not less than two directors), and such a maximum or minimum number may be varied from time to time by an ordinary resolution passed at a general meeting, but so that the minimum number is not less than two.

**(3)** The memorandum or articles may appoint or provide for the appointment of the first directors of the company, but unless the first directors are appointed by a general meeting of the company, they shall all cease to hold office at the termination of the first annual general meeting of the company, but shall be eligible for re-appointment at that meeting under subsection (1).

**(4)** If a casual vacancy occurs in the office of a director, the directors may fill it, and the person appointed by them shall retire at the termination of the next succeeding annual general meeting, but shall be eligible for re-appointment at that meeting under subsection (1).

**(5)** Any provision in the memorandum or articles of a company by which a director may be appointed in any other manner than the manner provided by this section shall be invalid:

Provided that the memorandum or articles may provide for the appointment of one director, or for the appointment of two or more directors (not exceeding in number one-third of the maximum number of directors who may be appointed for the time being) by the holders of debentures issued by the company or by the trustees of the debenture trust deeds covering such debentures.

(6) At a general meeting of a company a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(7) The memorandum or articles of a company may provide for the reappointment of a director at the expiration of his term of office without the passing of a resolution by a general meeting to that effect if no other person is or has been appointed by a general meeting in his place, but such a director shall not be reappointed under this subsection if an ordinary resolution is or has been passed at a general meeting that the vacant directorship shall not be filled, or if a resolution for the re-appointment of the director is defeated.

(8) This section shall not apply to a managing director or to a proprietary company, and shall apply to an existing company only from the date when all directors of the company holding office at the time when this Ordinance comes into force have completed the terms of office for which they were appointed before that time, or have ceased to be directors before the completion of such terms.

#### **Disqualifications for appointment as a director.**

**164.(1)** A person may not be appointed to be a director of a company if -

- (a) he is an undischarged bankrupt; or
- (b) an order has been made in respect of him under section 165 and the period of disability imposed by it has not expired; or
- (c) he is a trustee of a debenture trust deed covering debentures issued by the company or by a company belonging to the same group of companies as the company; or
- (d) it is a company or a body corporate.

(2) If a person is adjudged bankrupt or has an order made against him under section 165 after he is appointed to be a director, he shall forthwith cease to be a director, and a casual vacancy in the directorship which he held shall occur.

(3) The court may for special reasons permit a person who is disabled from being appointed to be a director by paragraph (a) or (b) of subsection (1) of this section, or who would but for this subsection have ceased to be a director by reason of subsection (2), to be appointed to be a director of a particular company or to continue to be a director of a particular company, (as the case may be), and if a person is permitted by the court to continue to be a director of a company, he shall be deemed not to have ceased to be a director by reason of subsection (2).

(4) If immediately before the coming into force of this Ordinance an existing company or a body corporate is a director of a company, the board of directors or governors of that existing company or body corporate may within six months thereafter nominate one of their own number to be a director of the company in place of the existing company or body corporate, and thereupon he shall become a director of the company for the same period and on the same conditions as if he had been appointed to be a director instead of the existing company or body corporate at the date when it was so appointed:

Provided that-

- (a) the person so nominated shall account to the existing company or body corporate for all remuneration which it would have received if paragraph (d) of subsection (1) had not been enacted; and
- (b) if no person is nominated as aforesaid within six months after the coming into force of this Ordinance, there shall be a casual vacancy in the directorship formerly held by the existing company or body corporate.

(5) Any person who acts as a director of a company at any time when he is disqualified by this section from being appointed to be a director, or from continuing to be a director, shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or to imprisonment for not more than two years, or to both such fine and imprisonment.

**Disqualification of a person from being a director by order of the court.**

**165.(1)** If -

- (a) a person is convicted of any offence involving fraud or dishonesty; or
- (b) a director, officer, or auditor of a company or a trustee of a debenture trust deed covering debentures issued by a company has committed a serious breach or persistent breaches of duties owed by him to a company or to its shareholders or debenture holders, or has been guilty of a serious or persistent failure to comply with this Ordinance; or
- (c) a director has failed, or has acquiesced in the failure of the other directors, to call a general meeting of a company with a view to pass a resolution to wind it up when he knows, or has reasonable cause to believe, that it is unable to pay its debts as they fall due or that the company's debts and liabilities exceed the value of its assets as ascertained in accordance with section 161;

the court may make an order that that person shall not be a director, or directly or indirectly in any way be concerned or take part in the management, of any company, or of any overseas company which carries on business in Seychelles, for such period not exceeding five years as may be specified in the order, and if he is sentenced to a term of imprisonment, the court may order that the said period shall be extended by the term of imprisonment which he actually undergoes.

(2) In this section the expression "company" includes an overseas company and the expression "the court" includes the court by which the person against whom an order under subsection (1) is to be made is convicted of an offence, or is found to have committed the breach or breaches of duty, and also any court having jurisdiction to wind up the company or overseas company.

(3) A person intending to apply for the making of an order under this section shall give not less than ten days' notice of his intention to the person against whom the order is sought, and on the hearing of the application the last-mentioned person may appear and himself give evidence or call witnesses:

Provided that nothing in this subsection shall affect the power of a court by whom a person is convicted of an offence to make an order under this section on its own motion.

(4) An application for the making of an order under this section may be made by the official receiver or the liquidator of the company, or by any person who is or has been a shareholder, debenture holder or creditor of the company; and on the hearing of any application for an order under this section, or of any application for permission to be appointed or to continue to be a director of a particular company by a person against whom an order has been made under this section, the official receiver or liquidator of the company (if it is in liquidation) shall appear and call the attention of the court to any matters which appear to him to be relevant, and may himself give evidence or call witnesses.

**Directors appointed by memorandum or articles or named in a prospectus or registration statement.**

**166.(1)** A person shall not be capable of being appointed to be director of a company by the memorandum or articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on or named in behalf of the company, or in a registration statement delivered to the Registrar by or on behalf of a company, unless before the registration of the memorandum and articles, or the publication of the prospectus, or the delivery of the registration statement to the Registrar (as the case may be), he has (by himself or by his agent

authorised in writing) -

- (a) signed and delivered to the Registrar for registration a consent in writing to act as such director; and
- (b) either -
  - (i) signed the memorandum for a number of shares not less than his share qualification (if any) prescribed by the memorandum or articles of the company; or
  - (ii) taken from the company and paid or agreed to pay for his qualification shares, if any; or
  - (iii) signed and delivered to the Registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any; or
  - (iv) made and delivered to the Registrar for registration a signed declaration to the effect that a number of shares, not less than his share qualification, if any, are registered in his name.

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

(3) References in this section to the share qualification of a director or proposed director shall be construed as meaning a share qualification required on his appointment or within a period determined by reference to the time of his appointment.

(4) On the application for registration of the memorandum and articles of a company, the applicant shall deliver to the Registrar a list of the persons who have consented to be directors of the company, and if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding one thousand rupees.

(5) Nothing in this section shall make it necessary for any person to comply with subsection (1) thereof more than once.

(6) In this Ordinance “qualification shares” means shares equal in number to the share qualification prescribed by the memorandum or articles in respect of a director, being shares of the class and conforming to the conditions (if any) which are so prescribed.

(7) This section shall not apply to a proprietary company.

#### **Qualification shares.**

**167.(1)** Without prejudice to the disqualification and the restrictions imposed by section 166, it shall be the duty of every director who is by the memorandum or articles of the company required to hold a share qualification, and who does not already hold qualification shares, to obtain his qualification shares within two months after his appointment, or such shorter time as may be fixed by the memorandum or articles.

(2) For the purpose of any provision in the memorandum or articles requiring a director to hold a share qualification, the holder of a bearer share certificate shall not be deemed to be the holder of the shares specified therein.

(3) The office of a director of a company shall be vacated if the director does not, within two months from the date of his appointment, or within such shorter time as may be fixed by the memorandum or articles, obtain



his qualification shares, or if, after the expiration of the said period or shorter time, he ceases at any time to hold his qualification shares or any of them.

(4) If the share qualification of a director is increased by an alteration of the memorandum or articles after he has been appointed, this section shall apply as if he had been appointed to be a director at the time the alteration is made.

(5) A person vacating office under this section shall be incapable of being reappointed as a director of the company until he has obtained his qualification shares or increased number of qualification shares (as the case may be).

(6) If, after the expiration of the period fixed by this section or such shorter time as may be fixed by the memorandum or articles, any person who has not obtained his qualification shares, or has ceased to hold his qualification shares or any of them, acts as a director of the company, he shall be liable to a fine not exceeding one hundred rupees for every day between the expiration of the said period or shorter time, or the day on which he ceased to hold his qualification shares or any of them (as the case may be), and the last day on which it is proved that he acted as a director.

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

**168.(1)** A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its memorandum or articles or in any agreement between it and him. Such a resolution may be passed at an annual general meeting or at an extraordinary general meeting, and it shall be immaterial whether the meeting is called by the directors, the Registrar or any other person, or by order of the court, and whether the proposed resolution is included in the notice of the meeting at the instance of the directors or any other person.

(2) The directors or the other person who calls the general meeting shall give written notice of the proposal to the director whose removal is proposed:-

- (a) if the meeting is called pursuant to a requisition made under section 120(2), at least fifteen days before the day when notices calling the meeting are sent to members of the company or when the meeting is advertised under section 127(4), whichever is the earlier; or
- (b) in any other case, at least one month before the date when notices calling the meeting are sent out or the meeting is advertised, as aforesaid.

(3) If the director whose removal is proposed makes written representations in respect of the proposal to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so:-

- (a) in every notice or advertisement relating to the meeting at which the proposal is to be considered, state the fact of the representations having been made;
- (b) send a copy of the representations to every shareholder, debenture holder and trustee for debenture holders of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company);
- (c) in any advertisement of the meeting published under section 127(4), state that copies of the representations may be obtained by any shareholder, debenture holder or trustee for debenture holders of the company on a written request being made at an address in Seychelles given for the purpose; and
- (d) send a copy of the representations to every shareholder, debenture holder or trustee for debenture holders of the company to whom notice of the meeting has not been sent, within two days after receipt of a written request by him for such a copy at the address given in the advertisement of the meeting published under section 127(4), or

if no such advertisement is published, at the company's registered office;

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

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

(4) If a director who is removed from office under this section is a managing director of the company, he shall on such removal also be removed from office as a managing director without any separate resolution being necessary for that purpose.

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

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

(7) Nothing in this section shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as a director, or of any appointment, office or employment under the company which terminates with his appointment as a director, or as derogating from any power to remove a director which may exist apart from this section:

Provided that the damages or compensation payable to a director, whether fixed as liquidated damages or compensation by any agreement entered into by him, and whether constituting damages or compensation for breach of any such agreement or a condition to be fulfilled by the company or by any other person if his appointment is terminated, shall not exceed the aggregate remuneration to which he has been entitled during the three years immediately preceding the termination of his appointment for his services as a director of the company and in respect of any other appointment, office or employment under the company which terminates with his appointment as a director.

(8) For the purposes of this section a person shall be deemed to hold an appointment, office or employment under the company if he holds it by virtue of a contract with the company or its holding company or subsidiary, or if he was appointed to it by the company or its holding company or subsidiary under a provision for the purpose contained in the memorandum or articles of any such company.

(9) If a company -

- (a) fails to give written notice to a director of a proposal to remove him from office in compliance with subsection (2); or
- (b) fails, in any notice or advertisement relating to the meeting at which the proposal is to be considered, to state that representations have been made by the director whose removal is proposed (if that is the case); or
- (c) fails to send a copy of any written representations made, by the director whose removal is proposed, in respect of the proposal to every shareholder, debenture holder and trustee for debenture holders of the company to whom is sent a notice of the meeting at which the proposal is to be made, and to every other shareholder, debenture holder or trustee for debenture holders who makes a written request for such a copy within two days after the request is received by the company;

the company and any officer of the company who is in default shall be guilty of an offence punishable by a fine

not exceeding one thousand rupees.

(10) This section shall not apply -

- (a) to a proprietary company; or
- (b) to a director appointed or nominated by trustees of one or more debenture trust deeds, or by debenture holders, pursuant to a right to make the appointment or nomination conferred by a debenture trust deed or debentures.

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

**169.(1)** Every company shall keep at its registered office a register of its directors and secretaries.

(2) The said register shall contain the following particulars with respect to each director, that is to say, his present Christian name and surname, any former Christian name or surname, his usual residential address, his nationality, his business occupation (if any), and particulars of any other directorships held by him:

Provided that it shall not be necessary for the register to contain particulars of a directorship held by a director in a company of which the company is the wholly-owned subsidiary.

(3) The said register shall contain the following particulars with respect to the secretary or, where there are joint secretaries, with respect to each of them, that is to say -

- (a) in the case of an individual, his present Christian name and surname, any former Christian name and surname and his usual residential address; and
- (b) in the case of a company or corporation, its corporate name and registered or principal office:

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

(4) The company shall, within the periods respectively mentioned in subsection (5), send to the Registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register, specifying the date of the change.

(5) The periods referred to in the last foregoing subsection are the following, namely, -

- (a) the period within which the said return is to be sent shall be a period of fifteen days from the appointment of the first directors of the company; and
- (b) the period within which the said notification of a change is to be sent shall be fifteen days from the happening thereof:

Provided that, in the case of a return containing particulars with respect to the persons who are the company's directors and secretary at the date when this Ordinance comes into force, the period shall be fifteen days from the coming into force of this Ordinance.

(6) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any shareholder or debenture holder of the company without charge, and of any other person on payment of one rupee, or such less sum as the company may specify, for each inspection.

(7) If a company fails to comply with any of the provisions of subsections (1) to (5) inclusive of this

section, the company and any officer of the company who is in default shall be guilty of an offence punishable by a fine not exceeding one hundred rupees for every day during the first month that default continues, two hundred and fifty rupees for every day during the next two months that default continues, and five hundred rupees for every day that default continues thereafter.

(8) If any inspection required under this section is refused -

- (a) the court may by order compel an immediate inspection of the register; and
- (b) the company and any officer of the company who is in default shall be guilty of an offence punishable by a fine not exceeding one hundred rupees and further by a default fine not exceeding one hundred rupees.

(9) For the purpose of this section -

- (a) the expression “Christian name” includes a forename or personal name and the expression “surname” includes a family name;
- (b) references to a former Christian name or surname does not include -
  - (i) in the case of any person, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years, or has been changed or disused for a period of not less than twenty years; or
  - (ii) in the case of a married woman, the name or surname by which she was known prior to the marriage.

#### **Particulars of directors to be included in company’s publications.**

**170.(1)** Every company to which this section applies shall, in all written and printed publications and business letters on or in which the company’s name appears and which are issued or sent by the company to any person within or outside Seychelles, state in legible characters with respect to every director the following particulars:-

- (a) his present Christian name, or the initials thereof, and present surname;
- (b) any former Christian names and surnames;
- (c) his nationality, if not British:

Provided that, if special circumstances exist which render it in the opinion of the Registrar expedient that such an exemption should be granted, the Registrar, may by order grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by this subsection.

(2) If a company makes default in complying with this section, the company and every officer of the company who is in default shall be liable for each offence to a fine not exceeding one thousand rupees.

(3) For the purpose of this section -

- (a) the expression “initials” includes a recognised abbreviation of a Christian name; and
- (b) the expressions “Christian name”, “surname”, “former Christian name” and “former surname” shall have the same meaning as in section 169.

(4) This section shall apply to every company incorporated under this Ordinance, every existing company and every overseas company which has established a place of business in Seychelles or which carries on business there.

### **Duties of directors.**

**171.(1)** It shall be the duty of the directors of a company:-

- (a) to exercise their powers in accordance with this Ordinance and within the limits and subject to the conditions and restrictions established by the company's memorandum and articles;
- (b) to obtain the authorisation of a general meeting before doing any act or entering into any transaction for which the authorisation or consent of a general meeting is required by this Ordinance or by the company's memorandum or articles;
- (c) to exercise their powers in good faith in what they reasonably consider to be the interests of the shareholders of the company as a whole and for the respective purposes for which such powers are explicitly or impliedly conferred;
- (d) to account to the company for any monetary gain, or the value of any other gain or advantage, obtained by them in connection with the exercise of their powers, or by reason of their position as directors of the company, except remuneration, pensions, provisions and compensation for loss of office in respect of their directorships of any company which are lawfully authorised or approved by a resolution passed by a general meeting and (where necessary) by a meeting of a class of shareholders;
- (e) not to make use of any information received by them respectively as directors otherwise than for the benefit of the shareholders of the company as a whole, either during their respective terms of office or thereafter;
- (f) not to compete with the company or become a director or officer of a competing company, unless a general meeting by ordinary resolution authorises the director concerned to do so in any specific case;
- (g) if directors have any interest, whether direct or indirect, immediate or prospective, in any contract or transaction or proposed contract or transaction with the company, to disclose each of their respective interests to the meeting of the directors of the company at which the contract or transaction is first taken into consideration, or to the first meeting of the directors held after the interest arises (whichever is the later), and in such written disclosure to state the nature and extent of their respective interests and the effect or probable effect on them of the contract or transaction; and
- (h) not to use any assets of the company for any illegal or improper purpose, and not to do, or knowingly allow to be done, anything by which the company's assets may be damaged or lost (otherwise than in the ordinary course of carrying on its business);
- (i) to transfer forthwith to the company all cash or assets acquired on its behalf (whether before or after its incorporation) or as the result of employing its cash or assets, and until such transfer is effected to hold such cash or assets on behalf of the company and to use it only for the purposes of the company;
- (j) to attend meetings of the directors of the company with reasonable regularity, unless prevented from so doing by illness or other reasonable excuse:

Provided that nothing in this section shall affect the operation of sections 33, 34 and 39.

**(2)** The duties imposed by this section shall be owed to the company, and not to the members, shareholders, debenture holders or creditors of the company, but:-

- (a) an application may be made to the court by any shareholder or debenture holder for a declaration that any act or transaction, or proposed act or transaction, by the directors

or any director or former director involves a breach of any of their said duties, and if the court makes such a declaration it may issue an injunction to restrain the directors or any director or former director from doing any such proposed act or entering into any such proposed transaction; and

- (b) an action for damages for breach of the said duties may be brought in the name of the company by the holders of at least one-tenth of the issued and outstanding shares of the company which carry unrestricted voting rights, or on behalf of the holders of that fraction of those shares by any one or more of their number authorised by each of the others of them in writing.

(3) The notice of a general meeting called to give an authorisation under paragraph (f) of subsection (1) of this section shall contain or be accompanied by a statement in clearly legible print setting out -

- (a) the nature of the business which the director intends to carry on and the extent to which it is likely to compete with any class of business carried on by the company; or
- (b) the name and the class or principal classes of business carried on by the competing company of which he intends to become a director or officer, and the extent to which any class of business carried on by it competes or is likely to compete with that of the company.

(4) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a member, shareholder, debenture holder or officer of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract so made:

Provided that no such notice shall be of effect unless it is given at a meeting of the directors, or unless the director ensures it is brought up and read at the next meeting of the directors after it is given.

(5) Any person who commits a breach of a duty imposed on him by paragraphs (d), (e), (f), (h) or (j) of subsection (1) shall, without prejudice to the generality of the expression, be deemed to have committed a serious breach of duty within the meaning of sections 28(2) and 165(1).

(6) A person who -

- (a) knowingly commits a breach of any duty imposed on him by subsection (1) of this section; or
- (b) commits a breach of a duty imposed on him by paragraphs (d), (e), (g), (h) or (i) of that subsection;

shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or to both such fine and such imprisonment, but a person shall not be sentenced to a term of imprisonment unless the court is satisfied that he acted wilfully.

(7) If a company has a subsidiary, directors of the company and the subsidiary shall owe the same duties under subsection (1) to the company in respect of the affairs of the subsidiary and their conduct in relation to the subsidiary as though the company and the subsidiary were one company, and the company owned the subsidiary's assets and undertaking, and the whole of this section shall then be applied accordingly:

Provided that nothing in this subsection shall affect the duties of the directors of the subsidiary toward the subsidiary and the remedies conferred by this section for the breach of any such duties.

#### **Loans to directors.**

172. It shall not be lawful for a company to make a loan to any person who is a director of it or of a

company which belongs to the same group of companies as the company, or to enter into any guarantee, or provide any security, in connection with a loan made to such a person as aforesaid by any other person:

Provided that nothing in this section shall apply either -

- (a) to anything done by a company which is for the time being a proprietary company; or
- (b) to anything done by a company in respect of a director who holds a salaried employment or office under the company or under a company which belongs to the same group of companies as the company with a view to enabling him to subscribe for or purchase shares or debentures of the company or of any such other company;
- (c) subject to the next following subsection, to anything done to provide a director of the company with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or
- (d) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business.

(2) Paragraphs (b) and (c) of the proviso to subsection (1) shall not authorise the making of any loan, or the entering into any guarantee, or the provision of any security, except either -

- (a) with the prior authorisation of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed in the notice calling the meeting and in any advertisement published under section 127(4); or
- (b) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability in respect of which the guarantee or security was given shall be discharged, as the case may be, within six months from the conclusion of that meeting,

and in no case shall a loan be made, guaranteed or secured by a company under paragraph (b) aforesaid except on condition that it shall be wholly repaid within two years from the time when it is made.

(3) Where the authorisation of the company is not given in accordance with any such condition as is mentioned in paragraph (b) of subsection (2), the directors who authorise the making of the loan, or the entering into the guarantee, or the provision of the security, shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

(4) If a loan is made, or a guarantee is given, or security is provided by a company in contravention of this section:-

- (a) the contract of loan, or guarantee, or the security shall be as valid and enforceable as though no contravention had occurred;
- (b) every director in default and every person who participates in the making of the loan or its use by the borrower, or in the giving of the guarantee or the providing of the security, knowing of the contravention aforesaid:-
  - (i) shall be liable to compensate the company for any loss suffered by it; and
  - (ii) shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or to both such fine and such imprisonment.

### **Directors' duties in connection with allotment of shares and debentures.**

**173.(1)** Before issuing or re-issuing any shares or debentures of a company, the directors of the company shall offer the shares or debentures for subscription to the existing shareholders of the company in proportion to the respective nominal values of their shareholdings, and the shares and directors may allot shares or debentures in some other manner only to the extent that they are not subscribed for pursuant to the said offer:

Provided that this section shall not apply to:-

- (a) shares allotted to the subscribers of the company's memorandum of association; or
- (b) shares allotted to directors to provide them with the share qualification specified in the memorandum or articles; or
- (c) shares allotted to trustees of a scheme authorised by an ordinary resolution passed by a general meeting of the company, being a scheme by which the company provides money gratuitously to enable the trustees to subscribe for or purchase fully paid shares of the company, or of any other company or body corporate, to be held by or for the benefit of employees (including directors holding a salaried employment or office) of the company, or of a company which belongs to the same group of companies as the company; or
- (d) shares or debentures allotted to employees (including directors holding a salaried employment or office) of the company, or of a company which belongs to the same group of companies as the company, under an employee share subscription scheme (whether involving the issue of options to subscribe to the beneficiaries of the scheme or not), being a scheme which has been authorised by an ordinary resolution passed by a general meeting of the company; or
- (e) shares or debentures of a company (other than a proprietary company) which the directors have been authorised to issue by an ordinary resolution passed by a general meeting of the company under section 122(3) or (5) during a period not exceeding one year from the passing of the resolution, subject to the conditions (if any) imposed by the resolution; or
- (f) shares or debentures of a proprietary company which the directors have been authorised to issue otherwise than in proportion to the respective nominal values of the shareholdings of the existing shareholders by a special resolution passed at a general meeting of the company; or
- (g) shares or debentures properly allotted for a consideration other than cash pursuant to sections 6(1) or 122(3); or
- (h) shares or debentures in respect of which a class of shareholders have waived their rights under this section by a resolution passed by the majority specified in section 19 at a meeting of the class held under that section.

**(2)** If shares or debentures are offered to shareholders, or to one or more classes of shareholders, under this section, the directors may not issue any of the shares or debentures to other persons:-

- (a) at an issue price less than that at which they were offered to the existing shareholders, or less than the issue price at which they were most recently offered to the existing shareholders (as the case may be); or
- (b) more than one year after the offer, or the most recent of two or more successive offers (as the case may be), is made to the existing shareholders.

**(3)** If shares or debentures are offered for subscription to existing shareholders on two or more successive occasions, the issue price at which they are offered on a later occasion may be greater or less than the issue price at which they were offered on a previous occasion.



(4) This section shall apply to the issue of options to subscribe for shares or debentures as it applies to the allotment of shares or debentures.

(5) If a company issues convertible debentures, this section shall not apply to shares allotted in satisfaction of the conversion rights of any debenture holder, and for the purpose of this Ordinance:-

- (a) the expression “convertible debenture” means a debenture which, by its terms or by the terms of the covering trust deed, confers conversion rights which entitle the holder of the debenture to exchange his debenture for a specified number of fully or partly paid shares, or to subscribe at a specified issue price for shares in proportion to the principal amount of his debenture; and
- (b) the conversion rights of the holder of a convertible debenture include any right conferred on him by the debenture or the covering trust deed to acquire additional shares to those mentioned in paragraph (a) of this subsection in proportion to the number of shares which the company has (under sections 55(4) or 160(3) or otherwise) since the issue of the convertible debentures issued to its shareholders as bonus shares paid up out of capital reserve or by means of a capitalisation of profits or revenue reserves, or has since that time offered for subscription to its shareholders by way of a rights issue.

(6) In this Ordinance “employee share subscription scheme” means a scheme to which a company is a party and which, by the furnishing of money by the company, by the allocation of a fraction of the company’s profits, the making available of shares or debentures of the company or of any other company or body corporate, or otherwise, provides facilities for the subscription or purchase of such shares or debentures by employees (including salaried directors) of the company or of another company which belongs to the same group of companies as the company.

(7) If directors allot shares or debentures in contravention of this section:-

- (a) the allotment shall be valid in favour of a person who subscribes for or purchases them in good faith without knowledge that this section has been complied with, and in favour of his successors in title; and
- (b) any director who participated or acquiesced in the allotment shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or to both such fine and such imprisonment.

#### **Directors’ remuneration.**

**174.(1)** No remuneration shall be paid to a director unless the amount or rate thereof is specified in the memorandum or articles of the company, or in a written service agreement between the company and the director which has been authorised or approved by a general meeting of a company:

Provided that if such a service agreement is entered into without the prior authorisation of a general meeting, remuneration may be paid to the director thereunder for a period not exceeding six months until the remuneration is approved by a general meeting, and if such approval is refused no remuneration paid in respect of a period prior to the refusal shall be recoverable by the company from the director.

(2) No payment shall be made by a company:-

- (a) to a director or former director as a pension or retirement benefit;
- (b) to a director or former director as compensation for loss of office or as consideration for or in connection with his retirement from office;
- (c) to a dependant of, or to a person nominated by, a director or former director by way of a pension or a provision; or

- (d) to any person in return for an undertaking to provide any benefit falling within the foregoing paragraphs:

unless the payment has previously been authorised or approved by an ordinary resolution passed at a general meeting of the company, or unless the payment is provided for by a written service agreement between the company and the director and the term relating to the payment has been approved by an ordinary resolution passed at a general meeting before or within six months after the agreement was entered into.

(3) No payment to which this section applies shall be made by a company free of income tax, or otherwise calculated by reference to, or varying with, the amount of income tax payable by any person, or by reference to, or varying with, or to or with any specified rate of income tax, and the payment to be made shall be a gross sum subject to income tax equal to the net sum for which the memorandum or articles or any resolution or contract in respect of the payment actually provides.

(4) In this section and section 171 the expressions –

(a) “remuneration” shall include salary, fees, commission, share or percentage of profits, expenses allowance and any other form of emolument, whether in the form of cash or not, relating to services as a director of the company or of any of its subsidiaries;

(b) “pension” shall include any superannuation allowance, superannuation gratuity or similar payment;

“dependant” shall include any person, whether related to a director or former director or not, who is entitled to any benefit or advantage under a contract, trust, scheme or arrangement to which the company is a party by reason of his connection with the director or former director;

“provision” shall include any payment of money to, or the conferment of any benefit on, the recipient, whether on one occasion or on two or more successive occasions; and

“income tax” shall mean any tax imposed on and calculated by reference to the amount of the income of a person by the law of Seychelles or of any other country.

(5) Nothing in this section shall enable a company or any other person to recover any premium paid by the company to an insurance company in order to secure the provision to another person of any benefit falling within paragraph (a), (b) or (c) of subsection (2), but if the payment of the premium has not been authorised under that subsection, the value of any benefit falling within any of those paragraphs which is conferred by the insurance company shall be recoverable by the company from the person who receives it.

#### **Compensation for loss of office by a director on transfer of company’s undertaking.**

**175.(1)** It shall not be lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment (including the amount thereof) have been disclosed to the shareholders of the company and the proposal has been approved by the company by an ordinary resolution passed in general meeting.

(2) Where a payment which is prohibited by this section is made to a director of the company, the amount received shall be deemed to have been received by him on behalf of the company, and may be recovered by it from him as a debt immediately due and payable.

(3) Particulars of a proposed payment to a director within this section shall be sufficiently disclosed to shareholders of the company if the particulars are included in or accompany the notice calling the general meeting and any advertisement of the meeting published by the company under section 127(4).

(4) If any person makes or receives a payment, or if a director of the company acquiesces in the making of a payment, which is prohibited by this section, he shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or by both such fine and such imprisonment, but a person shall not be sentenced, to a term of imprisonment unless the court is satisfied that he acted wilfully.

**Compensation for loss of office by a director on transfer of shares in the company.**

**176.(1)** Where, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from:-

- (a) an offer made to all the shareholders of the company; or
- (b) an offer made by or on behalf of some other company or body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company; or
- (c) an offer made with a view to acquiring at least twenty per cent of the issued and outstanding shares of any class of the company, being shares which carry unrestricted voting rights; or
- (d) any other offer which is conditional on acceptance to a given extent;

a payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, it shall be the duty of that director to ensure that particulars with respect to the proposed payment (including the amount thereof) shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(2) If:-

- (a) any such director fails to take all proper steps to ensure that particulars are given as aforesaid; or
- (b) any person who has been required by any such director to include the said particulars in or send them with any such notice as aforesaid fails so to do:

he shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or to imprisonment for not more than two years, or to both such fine and such imprisonment, but a person shall not be sentenced to a term of imprisonment unless the court is satisfied that he acted wilfully.

(3) If -

- (a) the requirements of subsection (1) of this section are not complied with in relation to any such payment as is therein mentioned; or
- (b) the making of the proposed payment is not, before the execution and delivery of a transfer of any shares in pursuance of the offer, approved by a meeting of the holders of the class of shares all or some of which are the subject of the offer, and if there are two or more such classes, by separate meetings of the holders of each such class;

any sum received by the director on account of the payment shall be deemed to have been received by him on behalf of any persons who have accepted the offer in respect of their shares in proportion to the consideration offered for their respective shares, and the expenses incurred by the director in distributing that sum amongst those persons shall be borne by him and not retained out of that sum. Each such person may sue the director for the proportion of the said sum held on his behalf as though it were a debt immediately due and payable to that person.

(4) A meeting of a class of shareholders under the last foregoing subsection shall be held in accordance

with section 19(2), and a resolution approving a payment to which this section relates shall be valid if passed by a simple majority of the votes cast.

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

#### **Provisions Supplementary to sections 174, 175 and 176.**

**177.(1)** Where in proceedings for the recovery of any payment as having, by virtue of section 175 or 176, been received by any person on behalf of the company or any other persons, it is shown that:-

- (a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement or the offer leading thereto was made; and
- (b) the company or any person to whom the transfer was made was privy to that arrangement;

the payment shall be deemed, except insofar as the contrary is shown, to be one to which those sections apply.

(2) If in connection with any such transfer as is mentioned in section 175 or 176 -

- (a) the price to be paid to a director whose office is to be abolished, or who is to retire from office, for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares; or
- (b) any valuable consideration is given to any such director;

the excess of the price or the money value of the consideration, as the case may be, shall, for the purposes of that section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(3) It is hereby declared that references in sections 174, 175 and 176 to payments made to any director of a company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, do not include any *bona fide* payment by way of damages (not exceeding the amount specified in the proviso to section 168(7)) or by way of pension in respect of past services, and for the purposes of this subsection the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

#### **Managing directors.**

**178.(1)** The directors of a company may appoint one or more of their number to be the managing director or managing directors of the company, and may revocably delegate to him, or to them jointly or separately, such of the powers of the directors as they think fit, but without prejudice to their right subsequently to vary such delegated powers or to exercise any such powers themselves.

(2) If the appointment of a managing director is authorised by an ordinary resolution passed by a general meeting of the company, or is approved by such a resolution passed not later than six months after his appointment by the directors, the managing director may be appointed to hold office as such for more than five years, and thereupon section 163(1) and any provisions in the memorandum or articles as to the maximum period for which directors may be appointed and as to the retirement of directors by rotation shall not apply to him so long as he continues to be a managing director.

(3) The notice of a meeting called to pass a resolution under subsection (2) and any advertisement of that meeting published under section 127(4) shall include or be accompanied by a statement of the period for which the managing director has been, or is proposed to be, appointed, and a concise statement of the powers which have been delegated, or which it is proposed to delegate, to him.

(4) This section shall not apply to a proprietary company.

(5) Nothing in this section shall be taken as affecting section 34(2).

#### *Secretaries*

#### **Appointment of secretary etc.**

**179.(1)** Every company shall have a secretary who may be an individual, a company or body corporate, or a firm (as from time to time constituted).

(2) Anything required or authorised to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorised generally or specially in that behalf by the directors.

#### **Persons acting as director and secretary.**

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

#### *Proceedings against officers for breach of duty*

#### **Provisions exempting officers from liability.**

**181.** Subject as hereinafter provided, any provision, whether contained in the memorandum or articles of a company or in any contract with a company or otherwise, for exempting any officer or auditor of the company from, or indemnifying him against, liability in respect of any negligence, default or breach of duty of which he may be guilty in relation to the company shall be void:

Provided that, notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, or in connection with any application under section 182 in which relief is granted to him by the court.

#### **Relief from liability by order of the court.**

**182.(1)** If in any proceedings for negligence, default or breach of duty against an officer or auditor of a company it appears to the court hearing the case that that officer or auditor is or may be liable in respect of the negligence, default or breach of duty, 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 or breach of duty, that court may relieve him, either wholly or partly, from his

liability on such terms as the court may think fit.

(2) Where any such officer or person aforesaid has reason to apprehend that any claim will or may be made against him in respect of any negligence, default or breach of duty, he may apply to the court for relief, and the court 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 or breach of duty had been brought.

### *Inspections and Investigations*

#### **Appointment of inspector to investigate the affairs of a company.**

**183.(1)** The Registrar may appoint one or more competent inspectors to investigate the affairs of a company, and to report thereon in such manner as the Registrar may direct, on the application either of not less than fifty persons being shareholders or debenture holders of the company (or of a company which belongs to the same group of companies as the company, or of an associated company of the company) or on the application of persons who hold at least one tenth of the issued and outstanding shares carrying unrestricted voting rights of any such company as aforesaid.

(2) The Registrar may, of his own motion or at the request of any person, appoint one or more competent inspectors as aforesaid if it appears to him that there are circumstances relating to a company which give cause to suspect:-

- (a) that the company was formed for a fraudulent or unlawful purpose; or
- (b) that its affairs are being, or have been, conducted with intent to defraud its creditors or the creditors of any other person, or otherwise for a fraudulent or unlawful purpose; or
- (c) that its affairs are being or have been conducted in a manner which is unfairly prejudicial to any section of its shareholders or debenture holders; or
- (d) that persons concerned with the formation or management of the company have in connection therewith been guilty of the breach of any duty imposed on them by this Ordinance or by the memorandum or articles, or have otherwise been guilty of misconduct;
- (e) that shareholders and debenture holders of the company have not been given all the information with regard to its affairs to which they are entitled under this Ordinance or the memorandum or articles of the company.

(3) Any application or request for the appointment of an inspector shall be supported by such evidence as the Registrar may require for the purpose of showing that the applicants have good reason for applying for or requesting the investigation, and the Registrar may, before appointing an inspector, require the applicants to give security, to an amount not exceeding one thousand rupees or such larger sum as may be prescribed, for payment of the costs of the investigation.

(4) Without prejudice to his powers under the foregoing subsections, the Registrar shall appoint one or more competent inspectors as aforesaid if the court makes an order declaring that the affairs of the company should be investigated by an inspector appointed by the Registrar.

(5) The court may exercise its power under the last foregoing subsection, either of its own motion in the course of or at the conclusion of any proceedings, whether civil or criminal, and whether the company is a party to the proceedings or not, or on the application of any person who has previously applied to or requested the Registrar to appoint an inspector, and in that case the court may take into account a written statement by the Registrar of his reasons for not acceding to the application or request:

Provided that the court shall not exercise its power under the last foregoing subsection without giving the directors of the company an opportunity to be heard by it.

(6) This section and sections 184 to 191 shall not come into operation until a date appointed by the Governor in Council by notice in the *Gazette*.

#### **Preliminary inspection of company's books and papers.**

**184.(1)** In order to determine whether to appoint an inspector or inspectors to investigate the affairs of a company, the Registrar shall have power to give directions to:-

- (a) that company;
- (b) any company or body corporate which belongs to the same group of companies as the company, or which is an associated company of the company or any such other company or body corporate;
- (c) a company or body corporate whose affairs appear to the Registrar to be so connected with those of such a body as is mentioned in paragraph (a) or (b) above as to affect materially the question whether or not that body is insolvent:

requiring the company or body corporate, at such time and place as may be specified in the directions, to produce such books or papers as may be so specified.

(2) An officer of the Registrar duly authorised in that behalf shall have power, on producing (if required so to do) evidence of his authority, to require any such company or body corporate as aforesaid to produce to him forthwith any books or papers which the officer may reasonably require for the purpose of the foregoing subsection.

(3) Where by virtue of the foregoing provisions of this section the Registrar, or an officer of the Registrar, has power to require the production of any books or papers from any company or body corporate, the Registrar or officer shall have the like power to require production of those books or papers from any person who appears to the Registrar or officer to be in possession of them; but where any such person claims a right to detain books or papers produced by him, the production shall be without prejudice to that right.

(4) Any power conferred by this section to require a company, body corporate or other person to produce books or papers shall include power -

- (a) if the books or papers are produced -
  - (i) to take copies of them or extracts from them; and
  - (ii) to require that person, or any other person who is a present or past officer of, or is employed by, the company or body corporate, to provide an explanation of any of them;
- (b) if the books or papers are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) If a requirement to produce books or papers, or provide an explanation, or make a statement, which is imposed under this section is not complied with, the company, body corporate or other person on whom the requirement was so imposed shall be guilty of an offence punishable by a fine not exceeding one thousand rupees; but where a person is charged with an offence under this subsection in respect of a requirement to produce any books or papers, it shall be a defence to prove that they were not in his possession or under his control, and that it was not reasonably practicable for him to comply with the requirement.

#### **Issue of search warrant.**

**185.(1)** If the court or a magistrate is satisfied on information on oath laid by an officer of the Registrar, or laid under the authority of the Registrar, that there are reasonable grounds for suspecting that there are on any premises any books or papers of which production has been required under section 184 and which have not been produced in compliance with that requirement, the court or the magistrate may issue a warrant authorising any police officer, together with any other persons named in the warrant and any other police officers, to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) and to search the premises and take possession of any books or papers appearing to be such books or papers as aforesaid, or to take, in relation to any books or papers so appearing, any other steps which may appear necessary for preserving them and preventing interference with them.

**(2)** Every warrant issued under this section shall continue in force until the end of the period of one month after the date on which it is issued.

**(3)** Any books or papers of which possession is taken under this section may be retained for a period of three months or, if within that period there are commenced any proceedings for an offence under this Ordinance to which they are relevant, until the conclusion of those proceedings.

**(4)** A person who obstructs the exercise of a right of entry or search conferred by virtue of a warrant issued under this section, or who obstructs the exercise of a right so conferred to take possession of any books or papers, shall be guilty of an offence punishable by a fine not exceeding one thousand rupees; but where a person is charged with an offence under this subsection in respect of a requirement to produce any books or paper, it shall be a defence to prove that they were not in his possession or under his control, and that it was not reasonably practicable for him to comply with the requirement.

#### **Information and documents obtained under sections 184 and 185 to be confidential.**

**186.(1)** No information or document relating to a body which has been obtained under section 184 or 185 shall, without the previous consent in writing of that body, be published or disclosed, except to the Registrar or an officer of his department or an inspector appointed by the Registrar under section 183, unless the publication or disclosure is required -

- (a)* with a view to the institution of, or otherwise for the purposes of, any criminal proceedings pursuant to, or arising out of, this Ordinance;
- (b)* for the purpose of enabling the Registrar to consider whether or not he should exercise with respect to the body a power conferred on him by this Ordinance;
- (c)* for the purposes of complying with any requirement, or exercising any power, imposed or conferred by this Ordinance with respect to reports made by inspectors appointed as aforesaid; or
- (d)* with a view to the institution by the Registrar of proceedings in the name of any company or body corporate for the recovery of any property or damages or for any other relief whatsoever, or for the presentation by the Registrar of a petition for the winding up of any company or body corporate or a petition under section 201 in respect of the affairs of any company.

**(2)** A person who publishes or discloses any information or document in contravention of this section shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

#### **Investigation of related companies.**

**187.** If an inspector appointed under section 183 to investigate the affairs of a company thinks it necessary



for the purposes of his investigations to investigate also the affairs of any other company or body corporate which is or has at any relevant time been -

- (a) the company's holding company or subsidiary; or
- (b) a subsidiary of a company which is or has at any relevant time been the company's holding company;
- (c) a company which is or has at any relevant time been the holding company of a company which has at any relevant time been the company's subsidiary; or
- (d) a company which or has at any relevant time been an associated company of any company falling within paragraph (a), (b) or (c);

he shall have power so to do, and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.

#### **Production of evidence and documents to inspectors.**

**188.(1)** It shall be the duty of all officers and agents of the company and of all officers and agents of any other company or body corporate whose affairs are investigated under section 187 to produce to the inspector all books and documents of or relating to the company or, as the case may be, the other company or body corporate, which are in their custody or power, and otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

**(2)** An inspector may examine on oath the officers and agents of the company or such other company or body corporate in relation to its business, and may administer an oath accordingly.

**(3)** If any officer or agent of the company or such other company or body corporate refuses to produce to the inspector any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspector with respect to the affairs of the company or other company or body corporate, as the case may be, the inspector may certify the refusal under his hand to the court, and the court may thereupon inquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender, and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the court.

**(4)** If an inspector thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath should be so examined, he may apply to the court, and the court may, if it sees fit, order that person to attend and be examined on oath before it on any matter relevant to the investigation, and on any such examination -

- (a) the inspector may take part therein either personally or by attorney or counsel;
- (b) the court may put such questions to the person examined as the court thinks fit;
- (c) the person examined shall answer all such questions as the court may put or allow to be put to him, but may at his own cost employ a barrister or attorney who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him;

and notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him:

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

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

#### **Inspectors’ reports.**

**189.(1)** The inspector may, and if so directed by the Registrar shall, make interim reports to the Registrar, and on the conclusion of the investigation shall make a final report to the Registrar.

Any such report shall be written or printed, as the Registrar directs.

(2) The Registrar shall -

- (a) forward a copy of any report made by the inspectors to the registered office of the company; and
- (b) furnish a copy thereof on request and on payment of the prescribed fee to any other person who is a shareholder, debenture holder or creditor of the company or of any other company or body corporate whose affairs have been investigated under section 187;

and may also cause the report to be printed and published.

#### **Proceedings on inspectors’ report.**

**190.(1)** If from any report made under section 189 it appears to the Registrar that any person has, in relation to the company or to any other company or body corporate whose affairs have been investigated by virtue of section 187, been guilty of an offence for which he is criminally liable, the Registrar shall refer the matter to the Attorney-General for consideration of the question whether a prosecution should be instituted.

(2) If, where any matter is referred to the Attorney-General under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company or other company or body corporate as aforesaid (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which they are reasonably able to give.

Section 188(5) shall apply for the purposes of this subsection as it applies for the purposes of that section.

(3) If, in the case of any company or body corporate liable to be wound up under this Ordinance, it appears to the Registrar, from any such report as aforesaid that it is expedient so to do by reason of any such circumstances as are referred to in paragraphs (a) to (d) inclusive of section 183(2), the Registrar may, unless the company or body corporate is already being wound up by the court, present a petition for it to be so wound up on the ground that it is just and equitable that it should be wound up, or, in the case of a company, a petition for an order under section 201, or both.

(4) If from any such report as aforesaid it appears to the Registrar that proceedings ought, in the interest of shareholders, debenture holders or creditors of any such company or body corporate, to be brought for the recovery of any property or damages or for any other relief whatsoever, he may bring proceedings for that purpose in the name of the company or body corporate, and shall have sole control over the conduct of such proceedings, including power to discontinue them, or to enter into a compromise or make a settlement which shall be binding on the company or body corporate, but the Registrar shall indemnify the company or body corporate against all costs and expenses incurred by it in or in connection with such proceedings.

### **Expenses of investigation.**

**191.(3)** The expenses of and incidental to an investigation by an inspector appointed by the Registrar under the foregoing provisions of this Ordinance shall be defrayed in the first instance by the Registrar, but the following persons shall, to the extent mentioned, be liable to indemnify the Registrar, that is to say:-

- (a) any person who is convicted on a prosecution instituted as a result of the investigation by or on behalf of the Registrar, or against whom judgment is given in any proceedings brought by the Registrar under section 190(4), may in the same proceedings be ordered by the court to pay the said expenses to such extent as may be specified in the order;
- (b) any company or body corporate in whose name proceedings are brought as aforesaid shall be liable to the amount or value of any sums or property recovered by it as a result of those proceedings; and
- (c) unless, as a result of the investigation, a prosecution is instituted by or on behalf of the Attorney-General:-
  - (i) any company or body corporate dealt with by the report, where the inspector was appointed otherwise than under section 183(2), shall be liable, except so far as the Registrar otherwise directs; and
  - (ii) the applicants for the investigation, where the inspector was appointed under section 183(1) shall be liable to such extent (if any) as the Registrar may direct;

and any amount for which a company or body corporate is liable by virtue of paragraph (b) of this subsection shall be a first charge on the sums or property mentioned in that paragraph.

**(2)** The report of an inspector appointed otherwise than under section 183(2) may, if he thinks fit, and shall, if the Registrar so directs, include a recommendation as to the directions (if any) which he thinks appropriate, in the light of his investigation, to be given under paragraph (c) of subsection (1).

**(3)** For the purposes of this section, any costs or expenses incurred by the Registrar in or in connection with proceedings brought under section 190(4) shall be treated as expenses of the investigation giving rise to the proceedings.

**(4)** Any liability to indemnify the Registrar imposed by paragraphs (a) and (b) of subsection (1) of this section shall, subject to satisfaction of the Registrar's right to repayment, be a liability also to indemnify all persons against liability under paragraph (c) thereof, and any such liability imposed by the said paragraph (a) shall, subject as aforesaid, be a liability also to indemnify all persons against liability under the said paragraph (b); and any person liable under the said paragraph (a) or (b) or either subparagraph (i) or (ii) of the said paragraph (c) shall be entitled to a contribution from any other person liable under the same paragraph or subparagraph, as the case may be, according to the amount of their respective liabilities thereunder.

### **Investigation of beneficial ownership and control of company.**

**192.(1)** Where it appears to the Registrar that there is good reason so to do, he may of his own motion, or at the request of any person, appoint one or more competent inspectors to investigate and report on the ownership of beneficial interests (whether vested, absolute, contingent or conditional or not, and whether in respect of capital or income or voting rights) in any shares or debentures of any company, and otherwise with respect to the company for the purpose of determining the persons who are or have been financially interested in the success or failure (real or apparent) of the company, or able to control or materially to influence the policy of the company.

(2) The appointment of an inspector under this section may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a company is made to the Registrar by members of the company, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under section 183(1), the Registrar shall appoint an inspector to conduct the investigation unless he is satisfied that the application is vexatious, and the inspector's appointment shall not exclude from the scope of his investigation any matter which the application seeks to have included therein, except insofar as the Registrar is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of an inspector's appointment his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(5) The Registrar shall appoint one or more competent inspectors under this section if the court makes an order declaring that an investigation thereunder should be made into any matter specified by the court in the order, and section 183(5) except the proviso thereto shall apply in relation to such an order.

(6) For the purposes of any investigation under this section, sections 184 to 189 inclusive shall apply with the necessary modifications of references to the affairs of the company or to those of any other company or body corporate, so, however, that -

- (a) the said sections shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or to have been, financially interested in the success or failure or the apparent success or failure of the company, or of any other company or body corporate the beneficial ownership of whose shares or debentures is investigated with that of the company, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be; and
- (b) the Registrar shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section, or with a complete copy thereof, if he is of opinion that there is good reason for not divulging the contents of the report or of parts thereof, unless the court otherwise orders on an application made to it for the purpose.

(7) This section and sections 193 to 195 inclusive shall come not into operation until a date appointed by the Governor in Council by notice in the *Gazette*, and the Governor in Council may for the purpose of bringing those sections into operation, also bring into operation sections 184 to 189 inclusive insofar as they are applied by subsection (6).

#### **Power of Registrar to require information as to interests in shares or debentures.**

**193.(1)** Where it appears to the Registrar that there is good reason to investigate the ownership of beneficial interests (whether vested, absolute, contingent or conditional or not, and whether in respect of capital or income or voting rights) in any shares or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, he may require any person whom he has reasonable cause to believe -

- (a) to be or to have been interested in those shares or debentures; or
- (b) to act or to have acted in relation to those shares or debentures as the legal adviser or agent of someone interested therein;

to give to the Registrar any information which that person has or can reasonably be expected to obtain as to present and past interests in those shares or debentures, and as to the names and addresses of the persons who

have or have had any such interests and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) Without prejudice to the generality of the expression “interest”, a person shall be deemed to have an interest in a share or debenture if he has a derivative interest therein, or any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.

(3) Any person who fails to give any information required of him under this section, or who in giving any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or to both such fine and such imprisonment.

#### **Power of Registrar to impose restrictions on shares or debentures under investigation.**

**194.(1)** Where in connection with an investigation under sections 192 or 193 it appears to the Registrar that there is difficulty in finding out the relevant facts about any shares or debentures (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Ordinance, the Registrar may by order direct that the shares or debentures shall until further order be subject to the restrictions imposed by this section.

(2) So long as any shares or debentures are directed to be subject to the restrictions imposed by this section

- (a) any transfer of those shares or debentures, or in the case of unissued shares or debentures, any transfer of the right to be issued therewith and any issue thereof, shall be void;
- (b) no voting rights shall be exercisable in respect of those shares or debentures;
- (c) no further shares or debentures shall be issued in right of those shares or debentures, or in pursuance of any offer made to the holder thereof;
- (d) except in a winding up, no payment shall be made of any sums due from the company on those shares or debentures, whether in respect of capital, principal, dividends, interest or otherwise.

(3) Where the Registrar makes an order directing that shares or debentures shall be subject to the said restrictions, or refuses to make an order directing that shares or debentures shall cease to be subject thereto, any person aggrieved thereby may apply to the court, and the court may, if it sees fit, direct that the shares or debentures shall cease to be subject to the said restrictions.

(4) If the Registrar makes an order under subsection (1) in respect of registered shares or debentures, he shall give notice thereof to the company together with a copy of the order, and thereupon section 110 shall apply as though the notice were a notice of interest under that section and the Registrar had a derivative interest in the shares or debentures:

Provided that unless the Registrar notifies the company within the period of fourteen days mentioned in section 110(5) that it may register a transfer of shares or debentures, the same consequences shall follow as if the court had made an order enjoining the registration of the transfer at the expiration of that period and that order were not subject to appeal.

(5) Nothing in this section shall affect the validity and effectiveness of a transfer for valuable consideration of shares or debentures represented by a bearer share certificate or a bearer debenture to a person who has no actual knowledge of an order made in respect of the shares or debentures under subsection (1).

(6) Any order (whether made by the Registrar or the court) which directs that shares or debentures shall cease to be subject to restrictions imposed under subsection (1), may, if the order is expressed to be made with a view to permitting a transfer of those shares or debentures, continue the restrictions mentioned in paragraph (c) of subsection (2), either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

(7) Any person who -

- (a) exercises or purports to exercise any right to dispose of any shares or debentures which, to his knowledge, are for the time being subject to restrictions imposed under subsection (1), or of any right to be issued with any such shares or debentures; or
- (b) votes at any general meeting or any meeting of a class of shareholders or debenture holders in respect of any such shares or debentures, whether as holder of the shares or debentures or as a proxy, or appoints a proxy to vote in respect thereof at such a meeting; or
- (c) being the holder of any such shares or debentures, fails to give notice that they are subject to restrictions imposed under subsection (1) to any person whom he does not know to be aware of that fact but does know to be entitled, apart from the said restrictions, to vote in respect of those shares or debentures as a transferee thereof, or as a person in whom the right to vote vests by operation of law, or under an order of any court;

shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees.

(8) Where shares or debentures in any company are issued in contravention of the said restrictions, every officer of the company who is in default shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees.

#### **Duties of lawyers and banks.**

**195.** A legal adviser or a bank shall not be exempted from the duty to give evidence, produce documents or provide information under sections 192 or 193 by reason of any professional or other privilege, or by reason of any contractual or other obligation to a client or customer, and a legal adviser or bank who gives evidence, produces documents or gives evidence as aforesaid shall not be liable to any client or customer for having done so.

#### *Compromises and Arrangements*

#### **Power of court to sanction compromises and arrangements.**

**196.(1)** Where a compromise or arrangement is proposed between a company and its shareholders, debenture holders or creditors, or any class of them, the court may on the application of the company or of any person affected by the compromise or arrangement, or, in the case of a company being wound up, of the liquidator, order a meeting of the shareholders, debenture holders or creditors, or of the class or classes of shareholders, debenture holders or creditors affected by the compromise or arrangement, to be called and held in such manner as the court directs.

(2) If two or more classes of shareholders, debenture holders or creditors are affected by the compromise or arrangement, the court shall direct a separate meetings to be held for each such class, and for the purpose of this section creditors shall be deemed to belong to different classes if there is any difference between them as to:-

- (a) any security or guarantee for the payment of their claims; or
- (b) the order in which their respective claims would rank for payment if an order for the winding up of the company were made on the date when the meeting is to be held; or
- (c) the date when their claims fall due for payment, that is to say, whether their claims are immediately owing and are payable not later than one year after the date of the meeting, or are contingent or not immediately owing or are payable more than one year after that date.

(3) If the shareholders, debenture holders or creditors, or the members of the class or each of the classes of such persons, at the meetings directed by the court resolve, by the votes of the holders of three-quarters in value of the interest represented at each such meeting in respect of which votes are cast by the holders of such interests or their proxies, to agree to the compromise or arrangement, the compromise or arrangement shall, if approved by the court and subject to subsection (9), be binding on all the shareholders, debenture holders or creditors, or on all the members of the class or classes of such persons, who are affected by the compromise or arrangement, and also on the company and, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(4) The court shall not approve a compromise or arrangement unless it is satisfied that:-

- (a) the notice calling the meeting or each of the meetings held under this section, or a statement accompanying it, contained an adequate explanation of the terms and effect of the compromise or arrangement and sufficiently disclosed the interests mentioned in section 197 and the effect of the compromise or arrangement on them;
- (b) the persons who voted in favour of the compromise or arrangement at the meeting or at each of the meetings directed by the court, acted in good faith in the interests of the shareholders, debenture holders or creditors for whom the meeting was held, or in good faith in the interests of the class of such persons to which they belong; and
- (c) the compromise or arrangement is fair and reasonable, having regard to the interests of the persons affected thereby, and, if the company is insolvent, the rights of those persons if the company were to be wound up by the court forthwith.

(5) A copy of each notice calling a meeting directed by the court, of every statement accompanying the notices calling such meetings, of the document embodying the compromise or arrangement and of the application to the court to approve it, shall be delivered to the Registrar by the company or other person who makes the application immediately after the application has been made, and the Registrar, without being made a party to the proceedings, may make representations to the court on the hearing of the application.

(6) Whether the Registrar makes representations on the hearing of the application to the court to approve the compromise or arrangement or not, the court may at any stage of the proceedings refer the compromise or arrangement to him for his report and opinion, and the court may take any such report and opinion into account in deciding whether to approve the compromise or arrangement, or to refuse its approval, or to give its approval subject to conditions or subject to the modification of the compromise or arrangement.

(7) It is hereby declared that the court may approve a compromise or arrangement under this section notwithstanding that:-

- (a) it is not within the objects or powers of the company contained in its memorandum; or
- (b) it could be effected, wholly or partially, under some other provision of this Ordinance.

(8) On the hearing of an application to the court to approve a compromise or arrangement, the court may give its approval subject to such conditions or modifications of the compromise or arrangement as it thinks fit and the compromise or arrangement as so approved by the court shall, subject to subsection (9), be binding on the persons mentioned in subsection (3).

(9) An order of the court approving a compromise or arrangement shall have no effect until a copy of the order has been delivered to the Registrar for registration, and if the compromise or arrangement affects shareholders or any class of shareholders of the company, a copy of every such order shall be annexed to every copy of the memorandum or articles of the company issued after the order has been made as though it were an alteration or addition made thereto under this Ordinance, and section 17 shall apply accordingly.

(10) In this section and sections 197 and 198 the expression “company” means any company liable to be wound up under this Ordinance, and without prejudice to the generality of the expression, an “arrangement” includes -

- (a) a reorganisation of the share capital of a company by the consolidation of shares of different classes, or by the division of shares into shares of different classes, with or without an alteration of the nominal or paid up values of any of the shares or the alteration of the rights attached to them;
- (b) a reconstruction of a company or an amalgamation of a company with one or more other companies, whether already incorporated or to be incorporated under the arrangement; and
- (c) an arrangement for the acquisition of the whole of the shares or debentures, or the whole of a class of shares or debentures, of a company by another company in consideration of cash or the allotment or transfer of shares or debentures of that other company or of any other body corporate.

**Information to be sent to persons affected by compromise or arrangement.**

**197.(1)** Where a meeting of shareholders, debenture holders or creditors of a company, or of a class of shareholders, debenture holders or creditors of a company, is called under the last foregoing section there shall –

- (a) with every notice calling the meeting which is sent to a shareholder, debenture holder or creditor be sent also a copy of the document embodying the compromise or arrangement and a statement explaining the effect of it and disclosing any material interests affected by it of the directors and substantial shareholders of the company, of any company which belongs to the same group of companies as the company, and of any company which is an associated company of the company or of any company which belongs to the same group as aforesaid, whether such interests are held by those persons as directors or as shareholders, debenture holders or creditors of any of the said companies or otherwise;
- (b) in every notice calling the meeting which is given by advertisement, be included either a copy of the document embodying the compromise or arrangement and such a statement as is mentioned in paragraph (a) of this subsection, or a notification of an address in Seychelles at which shareholders, debenture holders or creditors entitled to attend the meeting may obtain copies of that document and of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement mentioned in subsection (1) shall also disclose the material interests affected by it of the trustees of any trust deed covering the debentures, and if any trustee is a corporation, shall also disclose such interests of the trustee’s directors.

(3) Where a notice given by advertisement includes a notification that copies of the document embodying the compromise or arrangement and of a statement explaining the effect of the compromise or arrangement may be obtained by shareholders, debenture holders or creditors entitled to attend the meeting, every such shareholder, debenture holder or creditor shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the document and of the statement.

(4) It shall be the duty of every person who has a material interest in the compromise or arrangement



which is required to be disclosed under subsection (2) or subsection (3) to notify the company of his interest and of the way in which it will be affected by the compromise or arrangement as soon as he becomes aware that the compromise or arrangement is to be submitted to a meeting or meetings of the persons affected thereby, and if he fails to do so he shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees.

(5) Where a company, or any other person who has obtained an order of the court under section 196(1), fails to comply with any requirement of this section, every officer of the company who is in default or that other person (as the case may be) shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees, and for the purpose of this subsection, a liquidator of the company shall be deemed to be an officer of the company:

Provided that in a prosecution under this subsection, the accused shall not be guilty of an offence if he shows that the failure to comply with this section was due to the failure of some other person to supply the necessary particulars as to his interests, and that no other sufficient information as to those interests was available to the accused.

### **Reconstructions and amalgamations.**

**198.(1)** Where an application is made to the court under section 196 for the approval 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 purpose of or in connection with a scheme for the construction of any company or companies, or the amalgamation of any two or more companies, or for the acquisition of the whole of the shares or debentures, or the whole of a class of shares or debentures, of a company by another company, and that under the scheme the whole or any part of the undertaking, property, shares or debentures of any company concerned in the scheme (in this section referred to as “a transferor company”) is to be transferred to another company (in this section referred to as “the transferee company”), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:-

- (a) the transfer to the transferee company of the whole or any part of the undertaking, property, shares or debentures, or the whole or part of the liabilities, of any transferor company;
- (b) the allotment, transfer or appropriation by the transferee company of any shares or debentures which under the compromise or arrangement are to be allotted, transferred or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (d) in the case of a reconstruction or amalgamation, the dissolution, without winding up, of any transferor company;
- (e) the provision to be made for any persons, who within such time and in such manner as the court directs, dissent from the compromise or arrangement;
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation or acquisition of shares or debentures shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property or those liabilities shall, by virtue of the order, be transferred to and become the property or liabilities of the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) An order under this section may provide for the transfer of contracts, rights and obligations notwithstanding that, apart from the provisions of this Ordinance, such contracts, rights or obligations are not assignable or transferable by agreement, and may also direct that the transferee company shall be substituted for

any transferor company in respect of any office or appointment made by any person or body of persons or by the court.

(4) Where an order is made under this section, every company in relation to which the order is made shall cause a copy of it to be delivered to the Registrar for registration within fourteen days after the order is drawn up, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(5) If an order made under this section provides for the transfer of shares or debentures of any company, the order shall operate as though it were an instrument of transfer executed by all necessary parties, and the company shall register the transfer accordingly in its register of members or debenture holders and shall issue all necessary certificates in respect of the shares or debentures to the persons entitled thereto.

(6) In this section the expression “property” includes property, rights and powers of every description, and the expression “liabilities” includes duties.

#### *Offers to acquire shares and debentures*

##### **Takeover bids.**

**199.(1)** This section shall apply to an offer to acquire shares or debentures, or an invitation to make tenders of shares or debentures, which is addressed by any person, company or body corporate (in this section called “the offerer”) to more than twenty-five persons, if the purpose of the offer or invitation is the acquisition by the offerer, or by any other person on whose behalf the offer or invitation is made, of:-

- (a) all the issued and outstanding shares or debentures of a company (other than the offerer), or all the issued and outstanding shares or debentures of a particular class of such a company; or
- (b) a specified fraction of such shares or debentures or of such shares or debentures of a particular class; or
- (c) sufficient shares of a company (other than the offerer) so as to make the offerer or the person on whose behalf the offer or invitation is made (in consequence of the acquisition and of any shares already held by the offerer or that person, or by nominees for either of them) the holding company of that company; or
- (d) sufficient shares of a company (other than the offerer) so as to give the offerer or the person on whose behalf the offer or invitation is made (in consequence of the acquisition, of any shares already held by the offerer or that person or by nominees for either of them, and of any voting agreements entered into by them or any of them) the right to exercise or control the exercise of not less than twenty per cent of the votes which may be cast in respect of issued and outstanding shares carrying unrestricted voting rights at general meetings of the company; or
- (e) any shares of a company (other than the offerer) if the offerer or the person on whose behalf the offer or invitation is made is the company’s holding company; or
- (f) any shares of a company (other than the offerer) if, by any of the means mentioned in paragraph (d) of this subsection, the offerer or person on whose behalf the offer or invitation is made has the right to exercise or control the exercise of not less than twenty per cent of the votes which may be cast in respect of the issued and outstanding shares carrying unrestricted voting rights at general meetings of the company.

(2) An offer or invitation to which this section applies shall be made in writing by a document in the same

form and containing the same information sent to all the persons to whom the offer or invitation is addressed, and that document shall contain:-

- (a) a statement of the price or consideration offered for the shares or debentures whose acquisition is sought, or, in the case of an invitation, the range of prices or consideration within which tenders of shares made by the persons to whom the invitation is addressed will be considered by the offerer;
- (b) a statement of the most recent known price at which any of the shares or debentures which are the subject of the offer or invitation, or any shares or debentures of the same class, have been sold on a stock exchange, or if none of them are quoted on a stock exchange, the most recent known price at which a sale of any of them has taken place;
- (c) if any of the shares or debentures which are the subject of the offer or invitation, or any shares or debentures of the same class, have been quoted on a stock exchange within the preceding twelve months, a statement of the prices, or if more than six sales have taken place within that period, at least six prices at which sales have taken place on a stock exchange during that time, including the highest price and the lowest price at which such sales have taken place;
- (d) if the offer or invitation provides for the issue or transfer of shares or debentures of another company or body corporate as consideration for the acquisition of the shares or debentures to which the offer or invitation relates, a statement of the prices mentioned in paragraphs (b) and (c) in respect of sales of any of the shares or debentures so to be issued or transferred, or in respect of sales of shares or debentures of the same class (if any);
- (e) a statement of the price or consideration offered or agreed to be paid to each director and each substantial shareholder of the company, and to each director and each substantial shareholder of a company which belongs to the same group of companies as the company, and to each director of a company which is an associated company of any of those companies, for the acquisition from him of any shares or debentures of the same class as the shares or debentures to which the offer or invitation relates;
- (f) a statement of the amount and nature of any payment, consideration, compensation, benefit or advantage arranged to be given to, or conferred on, any person mentioned in paragraph (e) in connection with the offer or invitation, whether conditional on acceptance of the offer or invitation by the persons to whom it is addressed, or by some of them, or not;
- (g) the date when the offer or invitation will close, being not less than thirty-five days nor more than forty-two days from the date when the offer or invitation is sent to the persons to whom it is addressed;
- (h) if the offer or invitation is made on behalf of, or for the benefit of, any person not named in it as the offerer, the name and address of that person.

(3) Not less than three days before an offer or invitation to which this section applies, or any document which supplements such an offer or invitation, is sent to the persons to whom it is addressed, a copy of it signed by the offerer and by every person on behalf of whom it is made shall be delivered to-

- (a) the Registrar for registration; and
- (b) the company in respect of whose shares or debentures the offer or invitation is made.

(4) A copy of any communication (whether written or oral) sent or made by the directors of the company whose shares or debentures are the subject of the offer or invitation to any of the persons to whom the offer or invitation is addressed in connection with the offer or invitation shall, within two days after the communication is sent or made, be delivered to the Registrar, and that copy shall be authenticated by the signatures of at least

two directors of the company.

(5) If:-

- (a) an offer to which this section applies is expressed to be conditional on its acceptance by the holders of a specified number or fraction of the shares or debentures in respect of which the offer is made; or
- (b) an invitation to which this section applies is expressed to be conditional on the tender of a specified number or fraction of the shares or debentures to which the invitation relates at or below a specified price, or for, or for not more than, a specified consideration;

the condition shall, notwithstanding the number of acceptances or tenders received by the offerer, be deemed not to have been fulfilled, and all acceptances of the offer or tenders made in response to the invitation, shall become void, unless within seven days after the date on which the offer or invitation closes the offerer:-

- (i) makes a written declaration signed by him, or if the offerer is a company or body corporate, by at least two of its directors, stating that the said condition was fulfilled at or before the date when the offer or invitation closed, and giving particulars of the number and classes of shares or debentures in respect of which the offer or invitation was made and in respect of which the offer has been accepted or tenders have been made in response to the invitation;
- (ii) makes a list in alphabetical order of the holders of shares or debentures who have accepted the offer or tendered shares or debentures in response to the invitation, showing against the name of each holder the number and class of the shares or debentures in respect of which he has accepted the offer or made a tender;
- (iii) makes a written confirmation signed by the offerer, or if the offerer is a company or body corporate, by at least two of its directors, that the offeror will acquire all the shares or debentures specified in the list made under paragraph (ii), or that the offerer will acquire some only of those shares or debentures, and in that case the shares or debentures which the offerer will acquire shall be specified by reference to the names of the holders of them;
- (iv) sends a copy of the declaration and confirmation made under paragraphs (i) and (iii) to each of the persons mentioned in the list made under paragraph (ii);
- (v) delivers to the Registrar for registration, and to the company in respect of whose shares or debentures the offer or invitation was made, a copy of the said declaration, list and confirmation.

(6) Nothing contained in subsection (5) shall affect the right of any person to sue the offerer or the person on whose behalf it makes an offer for damages or other relief in respect of any breach of contract.

(7) Within seven days after the offerer delivers a copy of the declaration, list and confirmation under subsection (5) to the company in respect of whose shares or debentures the offer or invitation was made, the offerer shall pay, transfer or make available to the persons mentioned in the said list the price or consideration for the shares or debentures to be acquired from them respectively, and the persons so mentioned in the said list shall deliver to the offerer the certificates in respect of the said shares or debentures together with all necessary transfers executed by them.

(8) If after an offer or invitation to which this section applies is sent to the persons to whom it is addressed, the offerer or the person on whose behalf the offer or invitation is made increases the amount of the price or other consideration offered, or the maximum price or the maximum amount of the consideration mentioned in the invitation, this section shall take effect as though the increased price or consideration had been specified in the original offer or invitation, and:-

- (a) within two days after the increase is notified to any person to whom the original offer

or invitation was addressed, written notification of the increase shall be sent by the offerer to every other such person, and a copy of the notification signed by the offerer and by every person on whose behalf the original offer or invitation was made shall be delivered to the Registrar for registration, and to the company in respect of whose shares or debentures the original offer or invitation was made;

- (b) if a contract for the transfer of any shares or debentures has already been concluded in consequence of the original offer, the price or consideration to be paid or given for the shares or debentures under that contract shall be increased accordingly;
- (c) any person who has made a tender to the offerer in response to the original invitation may withdraw his tender or submit a new tender.

(9) If the offerer makes a confirmation under subsection (5) in respect of less than all the shares or debentures specified in the list made under that subsection, the offerer shall be under an obligation to acquire from their respective holders a rateable proportion of all the shares or debentures in respect of which the offer made by the offerer has been accepted, or, in the case of an invitation made by the offerer in response to which more shares or debentures have been tendered at the same price, or for the same consideration, than the offerer is willing to acquire in accordance with the terms of the invitation, the offerer shall be under an obligation to acquire from their respective holders a rateable proportion of all the shares or debentures so tendered.

(10) Sections 45, 46 and 50 shall apply to an offer or invitation to which this section applies as if it were a prospectus, as if the person, company or body corporate by or on behalf of whom the offer or invitation is made were persons authorising the issue of a prospectus, and as if the persons accepting the offer or invitation were persons who subscribed for shares or debentures under such a prospectus.

(11) If an offer or invitation made under this section is a prospectus, the provisions of this Ordinance in respect of prospectuses shall apply in addition to the provisions of this section.

(12) An application may be made to the court by any interested person for an order:-

- (a) rectifying any statement in or omission from a declaration, list or confirmation made under subsection (5); or
- (b) declaring that the offerer or any person on whose behalf the offer or invitation is made is bound or entitled to acquire the shares or debentures of another person in consequence of the offer or invitation, and ordering the specific enforcement of any obligation to acquire or transfer such shares or debentures; or
- (c) declaring that any shares or debentures are not affected by any obligation arising in consequence of the offer or invitation.

(13) It shall not be lawful for any person, company or body corporate to make an offer or invitation to which this section applies on behalf of a company if the offer or invitation relates to shares of that company.

(14) An offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or by both such fine and such imprisonment, is committed by:-

- (a) a person who sends out an offer or invitation to which this section applies if the offer or invitation does not contain the statements required by subsection (2); or
- (b) a person who sends out an offer or invitation to which this section applies, or any document which supplements such an offer or invitation, fails to deliver a copy thereof to the Registrar and to the company to whose shares or debentures it relates in accordance with this section; or
- (c) any person who knowingly makes or concurs in the making of a declaration, list or confirmation under subsection (5) which is false in a material particular, or which omits any matter which should be included therein, or who knowingly deliver or concurs in the delivery of a copy of such a document to the Registrar or to the

company in respect of whose shares or debentures the offer or invitation was made;  
or

(d) a person who sends out an offer or invitation in contravention of subsection (13).

(15) The directors of a company who send or make a communication which falls within subsection (4) to any of the persons mentioned in that subsection without delivering a copy thereof to the Registrar in compliance with that subsection shall each be guilty of an offence punishable by a fine not exceeding one thousand rupees.

(16) This section shall not apply to an offer or invitation made before the coming into force of this Ordinance.

### **Compulsory acquisition of shares.**

**200.(1)** Where an offer, invitation, scheme or contract involving the transfer of the whole or part of the shares of any class of a company (in this section referred to as “the transferor company”) to another company or body corporate, (in this section referred to as “the transferee company”), has within two months after the making of the offer in that behalf by the transferee company been accepted or assented to by the holders of not less than nine tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or a company which belongs to the same group of companies as the transferee company), the transferee company may, at any time within two months after the expiration of the said two months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and when such a notice is given the transferee company shall, unless, on the application made by the dissenting shareholder within two months 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 offer, invitation, scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company:

Provided that this subsection shall apply only if:-

- (a) the price or consideration to be paid or given under the offer, invitation, scheme or contract is the same for each of the shares to which the offer, invitation, scheme or contract relates;
- (b) the offer, invitation, scheme or contract does not provide for any payment of compensation for loss of office, or as consideration for or in connection with retirement from office, for which the approval of a general meeting or of a meeting of a class of shareholders is required by sections 174, 175 or 176; and
- (c) the offer, invitation, scheme or contract provides that any shareholder who wishes to do so may, instead of accepting a consideration other than cash for the transfer of his shares, require the transferee to pay to him a specified price in cash.

(2) Where, in pursuance of any such offer, invitation, scheme or contract as aforesaid, shares of any class of a company are transferred to another company or body corporate or its nominee, and those shares, together with any other shares of the same class held by, or by a nominee for, the transferee company or a company which belongs to the same group of companies as the transferee company at the date of the transfer, comprise or include nine tenths in value of the issued and outstanding shares of that class, then -

- (a) the transferee company shall within two months from the date of the transfer (unless on a previous transfer in pursuance of the offer, invitation, scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holders of the remaining shares of that class who have not accepted or assented to the offer, invitation, scheme or contract; and
- (b) any such holder may within two months from the giving of the notice to him require the transferee company to acquire the shares in question:

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

(3) Where a notice has been given by the transferee company under subsection (1) of this section and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of two months from the date on which the notice has been given, or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares:

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

(4) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on behalf of the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(5) In this section the expression “dissenting shareholder” includes a shareholder who has not accepted or assented to the offer, invitation, scheme or contract and any shareholder who has failed to transfer his shares to the transferee company in accordance with the terms of the offer, invitation, scheme or contract.

### *Minorities*

#### **Protection of minority shareholders.**

**201.(1)** Any shareholder of a company who complains that the affairs of the company are being conducted in a manner which is oppressive or unfairly prejudicial to some part of the share holders (including himself) or, in a case falling within section 190(3), the Registrar, may make an application by way of petition to the court for an order under this section.

(2) If on the hearing of the application the court is satisfied either:-

- (a) that the applicant, either alone or together with other shareholders, has been treated oppressively in one or more respects over a period of time, or that action has been taken by the persons who are or were in control of the affairs of the company, being action which was known by them to be likely to prejudice unfairly the interests of the applicant, either alone or together with other shareholders; or
- (b) the persons who are or were in control of the affairs of the company have been guilty of serious misconduct or breaches of duty which has or have prejudicially affected the interests of the applicant, either alone or together with other shareholders;

the court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any shareholders of the company by other shareholders of the company or for the acquisition of any such shares by the company and, in the case of such an acquisition by the company, for the reduction accordingly of the company's capital, or otherwise.

(3) Without prejudice to the generality of its powers under the last foregoing subsection, the court may

order that: -

- (a) an action or other proceeding shall be brought in the company's name and conducted by any person (including the Registrar) appointed by the court;
- (b) a director, managing director or other officer or an auditor of the company shall be removed from any office, appointment or employment held by him under the company or its holding company or subsidiary, and that some other person nominated or approved by the court shall be appointed to any such office, appointment or employment in his place;
- (c) any person shall be appointed to be a director or managing director of the company or of its holding company or subsidiary on such terms and condition as the court thinks fit;
- (d) a dividend shall be paid by the company to shareholders or any class of shareholders of the company or by a subsidiary of the company to the company;
- (e) any person shall pay damages or compensation to the company or to the applicant for any loss suffered in consequence of that person's misconduct or breach of duty.

(4) Where an order under this section makes any alteration in or addition to any company's memorandum or articles, then, notwithstanding anything in any other provision of this Ordinance, but subject to the provisions of the order, the company concerned shall not have power without the leave of the court to make any further alteration in, or addition to, the memorandum or articles inconsistent with the provisions of the order; but, subject to the foregoing provisions of this subsection, the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company, and the provisions of this Ordinance shall apply to the memorandum or articles as so altered or added to accordingly.

(5) A copy of any order under this section altering or adding to, or giving leave to alter or add to, a company's memorandum or articles shall, within fifteen days after the making thereof, be delivered by the company to the Registrar for registration; and if a company makes default in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(6) This section shall not come into operation until a date appointed by the Governor in Council by notice in the *Gazette*.

## **PART VI – WINDING UP**

### **(I) PRELIMINARY**

#### *Modes of winding up*

#### **Modes of winding up.**

**202.(1)** The winding up of a company may be either -

- (a) by the court; or
- (b) voluntary.

(2) The provisions of this Ordinance with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.



**Liability of contributories.**

**203.** In the event of a company being wound up, every present and past member and shareholder shall be liable to contribute to the assets of the company to an amount sufficient for the payment of its debts and liabilities, and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the following qualifications -

- (a) a past member or shareholder shall not be liable to contribute if he has ceased to be a member or shareholder for one year or upwards before the commencement of the winding up;
- (b) a past member or shareholder shall not be liable to contribute unless it appears to the court that the existing members and shareholders are unable to satisfy the contributions required to be made by them in pursuance of this Ordinance;
- (c) no contribution shall be required from any member or shareholder exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member or shareholder;
- (d) nothing in this Ordinance shall invalidate any provision contained in any contract or guarantee whereby the liability of an individual member or shareholder of the company by the terms of the contract or guarantee is restricted to less than the amount which he would be liable to contribute under this section if the company were wound up, or is increased beyond that amount, and if any such contract is entered into or if any such guarantee is given, this section shall take effect as though it had not been entered into or given;
- (e) a sum due to any member or shareholder of a company, in his character of a member or shareholder, by way of dividends, profits, capital, redemption premiums or otherwise, shall not be deemed to be a debt of the company payable to that member or shareholder in a case of competition between himself and any other creditor or claimant, of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

**Meaning of “contributory” and enforcement of liability.**

**204.(1)** The term “contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

**(2)** The liability of a contributory shall be deemed to be a debt accruing due from him at the time when the winding up commences, but payable at the times when calls are made for enforcing the liability.

**(3)** If a contributory dies either before or after he has been placed on the list of contributories, his heirs or the persons entitled to his estate 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.

**(4)** If the heirs or persons entitled to the estate of a deceased contributory make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment thereof of the money due.

**(5)** If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories -

- (a) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and
  - (b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.
- (6) If a contributory is interdicted either before or after he has been placed on the list of contributories, the last foregoing subsection shall apply as though he had become bankrupt, with the substitution, for references to a trustee in bankruptcy, of references to his tutor, or if he has no tutor, to a person appointed by the court to represent him.

## (II) WINDING UP BY THE COURT

*Cases in which a company may be wound up by the court*

### Grounds for winding up.

**205.** A company may be wound up by the court if -

- (a) the company has by special resolution resolved that the company be wound up by the court;
- (b) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;
- (c) the number of members is reduced below two;
- (d) the company is unable to pay its debts;
- (e) the company is a proprietary company and a ground exists on which the court may make an order expelling a member (other than the petitioner) from membership of the company;
- (f) the court is of opinion that it is just and equitable that the company should be wound up.

### Inability of a company to pay its debts.

**206.** A company shall be deemed to be unable to pay its debts -

- (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding one thousand rupees then due, has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (b) if execution or other process issued on a judgment, decree or order of the court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

- (c) if it is proved to the satisfaction of the court either -
  - (i) that the debts of the company immediately due exceed in total the value of the company's readily realisable assets, that is to say, its holdings of cash, bank notes, Treasury bills, securities quoted on a stock exchange in Seychelles or on a recognised overseas stock exchange, and money deposited at a bank in Seychelles being money which is repayable on demand or upon not more than fourteen days' notice; or
  - (ii) that the present value of all the debts and liabilities of the company (after discounting the amount of those which are not immediately due at the rate of five per cent per annum from the date when they will or may become due) exceeds the value of the company's readily realisable assets plus the present value of its other assets (after discounting the realisable value of those assets at the rate of five per centum per annum from the earliest date when it is likely that they would be realised if the company were wound up); or
- (d) if it is proved to the satisfaction of the court that the company is otherwise unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

*Petition for winding up and effect thereof*

**Petitioners.**

**207.(1)** An application to the court for the winding up of a company shall be by petition presented, subject to the provisions of this section, by:-

- (a) the company; or
- (b) any creditor or creditors (including any contingent or prospective creditor or creditors); or
- (c) any shareholder; or
- (d) any contributory; or
- (e) any debenture holder; or
- (f) any persons belonging to two or more of the foregoing categories together; or
- (g) the Registrar under section 190(3).

**(2)** An application for the winding up of a company on the ground set out in paragraph (e) of section 205 may be made only by a shareholder of the company.

**(3)** The court shall not give a hearing to a winding up petition presented by a contingent or prospective creditor, or by a contributory who is not a shareholder or a member of the company at the date when the petition is presented to the court, 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.

**(4)** Where a company is being wound up voluntarily, a winding up petition may be presented by the Official Receiver as well as by any other person authorised in that behalf under the other provisions of this section, but the court shall not make a winding up order on the petition unless it is satisfied that the voluntary

winding up cannot be continued with due regard to the interests of the creditors or contributories.

(5) For the avoidance of doubt it is hereby declared that a person who has applied to the court for the winding up of a company may have a caution stating the date of the winding up petition and the name of the petitioner entered against every parcel of land of which the company is the registered proprietor under the Land Registration Ordinance, 1965.

#### **Power of the court.**

**208.(1)** On hearing a winding up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged or charged, or are subject to privileges under articles 2101, 2102 or 2103 of the Civil Code, to a total amount equal to, or in excess of, the value of those assets, or that the company has no assets.

(2) Where the petition is presented by a creditor, shareholder, contributory or debenture holder of the company on the ground that it is just and equitable that the company should be wound up, or by a shareholder of the company on the ground set out in paragraph (e) of section 205, the court, if it is of opinion -

- (a) that the petitioner is entitled to relief either by winding up the company or by some other means; and
- (b) that in the absence of any other remedy it would be just and equitable that the company should be wound up;

shall make a winding up order, unless it is also of the opinion both that some other remedy is available to the petitioner, and that he is acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

#### *Commencement of winding up*

#### **Commencement of winding up.**

**209.(1)** Where, before the presentation of a petition for the winding up of a company by the court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

#### *Consequences of winding up petition and order*

#### **Stay of proceedings.**

**210.(1)** At any time after the presentation of a winding up petition, and before a winding up order has been made, the company, or the petitioner or any of the petitioners, or any creditor, shareholder, contributory or debenture holder, may, if any action or proceeding is pending against the company, apply to the court to restrain further proceedings in the action or proceeding, and the court may stay or restrain the proceedings accordingly

on such terms as it thinks fit.

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

#### *Liquidators*

##### **Provisional liquidator.**

**211.(1)** Subject to the provisions of this section, the court may appoint a liquidator provisionally at any time after the presentation of a winding up petition, and either the Official Receiver or any other fit person may be appointed.

(2) Where a liquidator is provisionally appointed by the court, the court may restrict his powers in such manner as it thinks fit by the order appointing him or by a subsequent order, but, subject to any restriction so imposed, the provisional liquidator shall have the same powers and be subject to the same liabilities as a liquidator appointed after the making of a winding up order.

##### **Avoidance of dispositions of company's property.**

**212.(1)** In a winding up by the court, any disposition of the assets of the company and any transfer of shares, or alteration in the status of the members or shareholders of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

(2) An application may be made to the court to sanction a transaction to which this section relates either before or after the making of a winding up order.

##### **Registration of winding up order.**

**213.(1)** On the making of a winding up order, a copy of the order shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute thereof in his records relating to the company.

(2) A winding up order shall contain as part thereof an inhibition upon all dispositions of and dealings with land of which the company is the registered proprietor under the Land Registration Ordinance, 1965, except dispositions and dealings by the liquidator in exercise of the powers conferred on him by this Ordinance, and upon production of a copy of the winding up order, the officer responsible for keeping the Land Register shall enter the inhibition contained therein against every parcel of land of which the company is the registered proprietor.

#### *Official Receiver*

##### **Meaning of Official Receiver.**

**214.** For the purposes of this Ordinance, the term "Official Receiver" means such person or persons as the Chief Justice shall from time to time appoint to be an Official Receiver for the purposes of this Ordinance.

### **Statement of affairs.**

**215.(1)** Where the court has made a winding up order or appointed a provisional liquidator, there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the Official Receiver a statement as to the affairs of the company in the prescribed form, showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, the privileges to which they are respectively entitled, and such further or other information as may be prescribed or as the Official Receiver may require.

**(2)** The statement shall be submitted and verified by a declaration in the prescribed form signed by at least two persons who are at the relevant date directors of the company and by the person who is at that date the secretary of the company, or by such of the persons hereinafter in this subsection mentioned as the Official Receiver, subject to the direction of the court, may require to submit and verify the statement, that is to say, persons -

- (a)* who are or have been directors or officers of the company;
- (b)* who have taken part in the formation of the company at any time within one year before the relevant date;
- (c)* 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 Receiver capable of giving the information required;
- (d)* who are or have been within the said year officers of or in the employment of a company, which is, or within the said year was, an officer of the company to which the statement relates.

**(3)** The statement shall be submitted within fourteen days from the relevant date, or within such extended time as the Official Receiver or the court may for special reasons appoint.

**(4)** Any person making or concurring in making the statement and declaration required by this section shall be allowed, and shall be paid by the Official Receiver or provisional liquidator (as the case may be) out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and declaration as the Official Receiver may consider reasonable, subject to an appeal to the court.

**(5)** If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine of one thousand rupees and a further fine of one hundred rupees for every day during which the default continues.

**(6)** If any person verifies the whole or part of the statement submitted in pursuance of this section knowing that any fact or matter contained therein or in the part thereof which he verifies is false, misleading or incomplete, or if any person verifies the whole or part of such a statement recklessly without reasonable grounds for believing that the facts or matters contained therein or in the part thereof which he verifies are true, or if any person verifies the whole or part of such a statement knowing that any material particular which should be contained therein or in the part thereof which he verifies has been omitted, he shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or by both such fine and such imprisonment.

**(7)** Any person stating himself in writing to be a creditor, shareholder, contributory or debenture holder 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 make a copy thereof or extract therefrom.

**(8)** Any person untruthfully so stating himself to be a creditor, shareholder, contributory or debenture holder shall be guilty of a contempt of court and shall, on the application of the liquidator or of the Official Receiver, be punishable accordingly.

(9) In this section the expression “the relevant date” means in a case where a provisional liquidator is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding up order.

#### **Reports by Official Receiver.**

**216.(1)** In a case where a winding up order is made, the Official Receiver shall, as soon as practicable after receipt of the statement to be submitted under the last foregoing section, or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court:-

- (a) as to the amount of capital issued, subscribed, and paid up of the company, and the estimated amount of its assets and liabilities; and
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The Official Receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed, and whether in his opinion any fraud or breach of duty has been committed by any person in its promotion or formation, or by any director or other officer of the company or by any other person in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

#### *Liquidators*

#### **Appointment of liquidator.**

**217.(1)** For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as are specified in this Ordinance and such additional duties as the court shall impose, the court may appoint a liquidator or liquidators.

(2) If before making a winding up order in respect of a company the court has appointed a provisional liquidator, he shall upon the making of the order continue to be the liquidator of the company unless and until the court otherwise orders, and any restrictions on his powers imposed by the court when he was the provisional liquidator shall cease to be operative.

#### **Official Receiver as liquidator.**

**218.** Subject to section 217(2), the following provisions with respect to liquidators shall have effect on a winding up order being made:-

- (a) the Official Receiver shall by virtue of his office become the provisional liquidator, and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;
- (b) unless the court otherwise orders, the Official Receiver shall summon separate meetings of the creditors and shareholders of the company for the purpose of determining whether or not an application is to be made to the court for appointing a

liquidator in the place of the Official Receiver;

- (c) the court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and shareholders in respect of the matter aforesaid, the court shall decide the difference and make such order thereon as the court may think fit;
- (d) in a case where a liquidator is not appointed by the court, the Official Receiver shall be the liquidator of the company;
- (e) the Official Receiver shall by virtue of his office be the liquidator during any vacancy;
- (f) a liquidator shall be described, where a person other than the Official Receiver is liquidator, by the style of "the liquidator" and, where the Official Receiver is liquidator, by the style of "the Official Receiver and liquidator," of the particular company in respect of which he is appointed, and not by his individual name.

#### **Provisions as to liquidator other than the Official Receiver.**

**219.(1)** Where in the winding up of a company by the court a person other than the Official Receiver is appointed liquidator, that person:-

- (a) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security for the proper performance of his duties in the prescribed manner to the satisfaction of the registrar of the court;
- (b) shall give the Official Receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling the Official Receiver to perform his duties under this Ordinance.

**(2)** This section shall not apply to a provisional liquidator appointed before a winding up order is made unless he continues to be the liquidator of the company after the order is made.

#### **General provisions as to liquidators.**

**220.(1)** A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

**(2)** Where a person other than the Official Receiver is appointed liquidator, he shall receive such salary or remuneration, by way of percentage or otherwise, as the court may direct, and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

**(3)** A vacancy in the office of a liquidator appointed by the court shall be filled by the court

**(4)** If more than one liquidator is appointed by the court, the court shall declare whether any act by this Ordinance required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

**(5)** Sections 38 and 39 shall apply to a liquidator, or to each of two or more liquidators, as though he or each of them were a managing director of the company.



### **Custody and vesting of company's assets.**

**221.(1)** Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator, or the provisional liquidator, as the case may be, shall take into his custody, or under his control, all the assets to which the company is or appears to be entitled.

**(2)** Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the assets of whatsoever description belonging to the company or held by trustees, agents or other persons on its behalf shall vest in the liquidator by his official name, and thereupon the assets to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to those assets or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its assets.

### **Powers of liquidator.**

**222.(1)** The liquidator in a winding up by the court shall have power with the sanction either of the court or of the committee of inspection -

- (a)* to bring or defend any action or other legal proceeding in the name and on behalf of the company;
- (b)* to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof;
- (c)* to appoint a legal adviser or agent to assist him in the performance of his duties;
- (d)* to pay any creditors in full if the assets of the company remaining in his hands will suffice to pay in full the debts and liabilities of the company which rank for payment before, or equally with, the debts or claims of the first mentioned creditors;
- (e)* to make any compromise or arrangement with creditors or debenture holders or persons claiming to be creditors or debenture holders, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
- (f)* to compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

**(2)** The liquidator in a winding up by the court shall have power:-

- (a)* to sell the assets of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
- (b)* to do all acts and to execute, in the name and on behalf of the company, all deeds, instruments, receipts, and other documents, and for that purpose to have instruments authenticated by notarial act;
- (c)* to prove, rank, and claim in the bankruptcy, insolvency, or winding up of any contributory, for any amount owing to the company, and to receive dividends in the bankruptcy, insolvency, or winding up in respect of that amount;

- (d) 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;
- (e) to raise on the security of the assets of the company any money required for the purposes of the winding up;
- (f) to take out in his official name letters of administration or representation to the estate of 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 or its assets 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 representation or to recover the money, be deemed to be due to the liquidator himself;
- (g) to appoint an agent to do any business which the liquidator is unable to do himself;
- (h) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor, shareholder, contributory or debenture holder, or the person on whose application the winding up order was made, may apply to the court with respect to any exercise or proposed exercise of any of those powers.

#### **Control over exercise of liquidators powers.**

**223.(1)** Subject to the provisions of this Ordinance, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or shareholders at any meeting, or by the committee of inspection, and any directions given by the creditors or shareholders at any meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon meetings of the creditors or shareholders for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or shareholders by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by shareholders of the company who are entitled to at least one-tenth of the voting rights exercisable at meetings of shareholders, or by creditors whose debts and claims against the company admitted by the liquidator or by the court amount to at least one-tenth in value of all the debts and claim so admitted.

(3) The liquidator may apply to the court in the prescribed manner for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Ordinance, the liquidator shall use his own discretion in the winding up of the company's affairs.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

#### **Books to be kept by liquidator.**

**224.** Every liquidator of a company which is being wound up by the court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor, shareholder, contributory or debenture holder may, subject

to the control of the court, personally or by his agent inspect any such books and make copies thereof or extracts therefrom.

#### **Payments by liquidator into bank.**

**225.(1)** Every liquidator of a company which is being wound up by the court shall pay the money received by him into such bank as the court may direct.

**(2)** If any such liquidator at any time retains for more than ten days a sum exceeding five thousand rupees, or such other amount as the court in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the court, he shall pay interest on the amount so retained in excess at the rate of twenty per cent per annum, and shall be liable to disallowance of all or such part of his remuneration as the court may think just, and to be removed from his office by the court, and shall be liable to pay any expenses occasioned by reason of his default.

**(3)** A liquidator of a company which is being wound up by the court shall not pay any sums received by him as liquidator into his private banking account.

#### **Audit of liquidator's accounts.**

**226.(1)** Every liquidator of a company which is being wound up by the court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Official Receiver an account of his receipts and payments as liquidator.

**(2)** The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a declaration in the prescribed form signed by the liquidator, or, if there are more liquidators than one, by all the liquidators.

**(3)** The Official Receiver shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the Official Receiver with such vouchers and information as the Official Receiver may require, and the Official Receiver may at any time require the production of and inspect any books or accounts kept by the liquidator.

**(4)** When the account has been audited, one copy thereof shall be filed and kept by the Official Receiver, and the other copy shall be delivered to the court for filing, and each copy shall be open to the inspection of any person without payment of a fee.

**(5)** The Official Receiver shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor, shareholder, contributory or debenture holder who has furnished him with an address in Seychelles to which such copies or summaries are to be sent.

#### **Supervision of liquidators.**

**227.(1)** The Official Receiver shall take cognisance of the conduct of liquidators of companies which are being wound up by the court, and if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by this Ordinance or regulations made thereunder with respect to the performance of his duties, or if any complaint is made to the Official Receiver by any creditor, shareholder, contributory or debenture holder in regard thereto, the Official Receiver shall inquire into the matter and take such action thereon as he may think expedient.

**(2)** The Official Receiver may at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Official

Receiver thinks fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The Official Receiver may also direct an investigation to be made of the books and vouchers of the liquidator.

(4) Any of the powers conferred on the Official Receiver by this section may also be exercised by the Registrar, and if the Registrar exercises any such power, the Official Receiver shall suspend any action taken by him in respect of the same matter, and shall make available to the Registrar all documents, evidence and information relating thereto in his possession or power, and shall assist the Registrar so far as he is able in the exercise of the said powers by him.

#### **Release of liquidators.**

**228.(1)** When a liquidator of a company which is being wound up by the court has realised all the assets of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend (if any) to the creditors, and adjusted the rights of the contributories among themselves, and made a final payment (if any) to the contributories, or has resigned, or has been removed from his office, the Official Receiver shall, on his application, cause a report of his accounts to be prepared, and on his complying with all the requirements of the Official Receiver, shall submit the report to the Registrar together with a recommendation that a release of the liquidator should or should not be granted, and the Registrar shall take the report and recommendation into consideration and shall also consider any objection which may be urged by any creditor, shareholder, contributory, debenture holder or other interested person against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the court.

(2) Where the release of a liquidator is withheld, the court may, on the application of any creditor, shareholder, contributory, debenture holder or other interested person, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Registrar releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

#### *Committees of inspection*

#### **Constitution of committee of inspection.**

**229.(1)** When a winding up order has been made by the court, it shall be the business of the separate meetings of creditors and shareholders summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator other than of the Official Receiver, to determine further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2) The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and shareholders in respect of the matters aforesaid, the court shall decide the difference and make such order thereon as the court may think fit.

### **Appointment of members of committee and proceedings by it.**

**230.(1)** A committee of inspection appointed in pursuance of this Ordinance shall consist of creditors, debenture holders, shareholders and contributories (other than shareholders) of the company, or persons holding general powers of attorney from such persons, in such proportions as may be agreed on by the meetings of creditors and shareholders, or as, in the case of a difference, may be determined by the court, and members of the committee appointed as creditors, debenture holders, shareholders, or contributories (other than shareholders) shall as members of the committee represent the interests of all the persons who belong to the category by virtue of which they were respectively appointed.

(2) The committee shall meet at such times as it from time to time resolves, and failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of its members present at a meeting, but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt, or compounds or makes an arrangement with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors, shareholders, contributories or debenture holders (as the case may be), his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution passed by a meeting of creditors, if he represents creditors or debenture holders, or by an ordinary resolution passed by a meeting of shareholders if he represents shareholders or contributories, provided that at least seven days' notice has been given of the meeting stating the purpose for which it is called.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of shareholders, as the case may require, to fill the vacancy, and the meeting may, by resolution, appoint another person who is qualified to be a member of the committee. If the vacancy occurs in respect of a person appointed to represent creditors or debenture holders the vacancy shall be filled by a meeting of creditors, and in any other case it shall be filled by a meeting of shareholders.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

### **Powers of Registrar where no committee of inspection.**

**231.** Where in the case of a winding up there is no committee of inspection, the Registrar may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Ordinance authorised or required to be done or given by the committee.

### *Meetings of shareholders and creditors*

### **Provisions as to meetings of shareholders and creditors.**

**232.(1)** The provisions of this Ordinance governing general meetings of a company which is not being wound up shall apply to meetings of shareholders of a company which is being wound up by the court, except that:-

- (a) no restrictions or limitations imposed by the memorandum or articles on the voting

rights of any shareholders shall apply, and for this purpose a provision in the terms of issue of shares of an existing company that the holders of such shares shall not be entitled to vote or shall be subject to a restriction or limitation on their right to vote, at general meetings shall be treated as though it were a restriction on their rights to vote imposed by the memorandum of the company; and

- (b) a contributory (other than a shareholder) who has paid the whole amount or the balance of the amount payable in respect of a share in the winding up shall be deemed to be a shareholder in place of the person who is the holder of the share.

**(2) At meetings of creditors of a company which is wound up by the court:-**

- (a) each creditor shall be entitled to vote in proportion to the amount of his debt or claim admitted by the liquidator or by the court;
- (b) unless this Ordinance otherwise provides, a resolution shall be considered to have been passed and to be binding on all creditors of the company if more votes are cast in favour of the resolution than are cast against it;
- (c) debenture holders shall be deemed to be creditors of the company for the amount of principal, redemption premiums, interest and costs payable to each of them respectively, and the trustees for debenture holders (if any) shall be creditors only for the amount of any remuneration and of any costs and expenses due from the company to them personally;
- (d) a quorum shall consist of creditors entitled in the aggregate to at least one-tenth of the debts and claims against the company which have been admitted by the liquidator, but no quorum shall be required at an adjourned meeting; and
- (e) a resolution passed at an adjourned meeting of creditors shall for all purposes be created as being passed on the date when it was in fact passed, and shall not be deemed to have been passed on any earlier date.

*General powers of the court in case of winding up by the court*

**Stay of winding up.**

**233.(1)** At any time after making an order for winding up a company, the court may, on the application either of the liquidator or the Official Receiver or any creditor, shareholder, contributory or debenture holder of the company, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

**(2)** On any application under this section the court may, before making an order, require the Official Receiver or the Registrar to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

**(3)** A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar who shall make a minute of the order in his records relating to the company.

**Settlement of list of contributories etc.**

**234.(1)** As soon as may be after making a winding up order in respect of a company, the court shall settle a list of contributories from the company's register of members, with power to rectify the register of members where rectification is necessary, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities:

Provided that, where it appears to the court that it will not be necessary to make calls on or to adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

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

**(3)** The court may settle a list of shareholders of the company in any case where it dispenses with the settlement of a list of contributories.

#### **Delivery of property to liquidator.**

**235.** The court may, at any time after making a winding up order in respect of a company, require any member, shareholder or contributory, or any director, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to the liquidator any assets, or books and papers in his hands to which the company is *prima facie* entitled.

#### **Examination of directors, officers etc.**

**236.(1)** The court may, at any time after the appointment of a provisional liquidator or the making of a winding up order, summon before it any director or officer of the company or person known or suspected to have in his possession any assets of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs, or assets of the company.

**(2)** The court may examine any such person on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

**(3)** The court may require any such person to produce any books and papers in his custody or power relating to the company, but, where he claims any to retain books or papers produced by him, the production shall be without prejudice to that right, and the court shall have jurisdiction in the winding up to determine all questions relating to that right.

**(4)** If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

#### **Order against contributory to pay amount owed to company; power of court to make calls.**

**237.(1)** The court may at any time after making a winding up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due to the company from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Ordinance.

**(2)** The court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court

considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(3) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

(4) In the case of any company, when all the creditors have been paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call, but subject as aforesaid, no contributory shall be entitled or permitted to set off against any call due from him any sum for which he has a claim against the company.

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

#### **Miscellaneous powers of court.**

**238.(1)** The court may fix a time or times within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

(2) The court may, in the event of the assets being insufficient to satisfy the debts and liabilities of the company, make an order as to the payment out of its assets of the costs, charges, and expenses incurred in the winding up in such order of priority as the court thinks just.

(3) The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the shareholders of the company or the persons claiming under them in accordance with their respective rights.

(4) The court may, at any time after making a winding up order, make such order for inspection of the books and papers of the company by creditors, shareholders, contributories or debenture holders as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors, shareholders, contributories and debenture holders accordingly, but not further or otherwise.

#### **Order for payment into a bank.**

**239.(1)** The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into a bank appointed by the court to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into such a bank shall be subject in all respects to the orders of the court.

#### **Special manager.**

**240.(1)** Where in any winding up proceedings the Official Receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the assets or business of the company, or the interests of the creditors, shareholders, contributories or debenture holders, require the appointment of a special manager of the assets or business of the company other than himself, apply to the court, and the court may on such application, appoint a special manager of the said assets or business to act during such time as the court may direct, with such powers, including any of the powers of a receiver under section 73(4), as may be entrusted to him by the court.



- (2) The special manager shall give such security and account in such manner or as the court directs.
- (3) The special manager shall receive such remuneration as may be fixed by the court.

#### **Public examination of directors etc.**

**241.(1)** Where an order has been made for winding up a company by the court, and either –

- (a) the Official Receiver has in any report to the court made by him under this Ordinance stated that in his opinion a fraud or a serious breach of duty or serious misconduct has been committed by any person in the promotion or formation of the company, or by any director or officer of the company in relation to the company since its formation; or
- (b) a *prima facie* case is established by any creditor, shareholder, contributory or debenture holder of the company that a fraud or a serious breach of duty or serious misconduct has been committed by any such person;

the court may direct that that person shall attend before the court on a day appointed by the court for that purpose and be publicly examined as to the promotion or formation, or the conduct of the business, of the company, or as to his conduct and dealings as an officer thereof.

- (2) The Official Receiver shall take part in the examination, and for that purpose may employ a barrister or an attorney.
- (3) The liquidator (where the Official Receiver is not the liquidator), any creditor, shareholder, contributory or debenture holder of the company, and the Registrar, may also take part in the examination either personally or by a barrister or an attorney.
- (4) The court may put such questions to the person examined as the court thinks fit.
- (5) The person examined shall be examined on oath and shall answer all such questions as the court may put or allow to be put to him, including questions the answers to which will or may incriminate him.
- (6) A person ordered to be examined under this section shall be entitled at his own cost, before his examination, to be furnished with a copy of any report by the Official Receiver which contains allegations against him, and may at his own cost employ a barrister or an attorney, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him:  
  
Provided that, if any such person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the Official Receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the Official Receiver to be relevant, and if the court, after hearing any evidence given or witnesses called by the Official Receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.
- (7) Notes of the examination shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him in civil or criminal proceedings, and shall be open to the inspection of any person without payment of a fee at all reasonable times.
- (8) The court may, if it thinks fit, adjourn the examination from time to time.

#### **Arrest of absconders.**

**242.** The court, at any time either before or after making a winding up order, on proof of probable cause for

believing that a contributory, director or officer is about to quit Seychelles, or otherwise to abscond, or to remove or conceal any of his assets for the purpose of evading payment of calls or discharging his liabilities to the company, or of avoiding examination respecting the affairs of the company, may cause the contributory, director or officer to be arrested, and his books and papers and moveable property to be seized, and him and them to be safely kept until such time as the court may order.

#### **Powers of court cumulative.**

**243.** Any powers by this Ordinance 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 heirs, estate or assets of any contributory or debtor, for the recovery of any call or other sums.

#### **Delegation of court's powers to liquidator.**

**244.** Provision may be made by regulations for enabling or requiring all or any of the powers and duties conferred and imposed on the court by this Ordinance in respect of the following matters relating to a company which is being wound up by the court, namely:-

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and shareholders of the company;
- (b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets of the company;
- (c) the paying, delivery, surrender or transfer of money, assets, books or papers to the liquidator;
- (d) the making of calls;
- (e) the fixing of a time within which debts and claims must be proved;

to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court:

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the authorisation of the committee of inspection.

#### **Dissolution of company.**

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

**(2)** A copy of the order shall within fourteen days from the date thereof be delivered to the Registrar by the liquidator, and the Registrar shall enter in his records a minute of the dissolution of the company.

**(3)** If the liquidator makes default in complying with the requirements of this section, he shall be liable to a fine of one hundred rupees for every day during which he is in default.

#### *Enforcement of and appeal from orders*

### **Enforcement of and appeals from orders of the court.**

**246.(1)** Orders made by the court under this Ordinance may be enforced in the same manner as orders made in any action pending therein.

**(2)** Subject to regulations under section 308, an appeal from any order or decision made or given in the winding up of a company by the court under this Ordinance shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court.

### **(III) VOLUNTARY WINDING UP**

#### *Resolutions for and commencement of voluntary winding up*

#### **Winding up resolutions.**

**247.(1)** A company shall be wound up voluntarily if -

- (a)* a general meeting of the company so resolves by special resolution; or
- (b)* a general meeting of the company so resolves by an ordinary resolution which states that the company is unable to pay its debts.

**(2)** Any member or shareholder of the company may within fourteen days after the passing of a resolution under paragraph (b) of the last foregoing subsection apply to the court for an order cancelling the resolution on the ground that the company was able to pay its debts at the date of the passing thereof.

**(3)** Section 136 shall apply to a resolution passed by a general meeting under this section with the substitution of a period of fourteen days for the period of one month mentioned in subsection (1) thereof.

**(4)** The fact that an application is made to the court under either of the two last foregoing subsections shall not prevent the winding up resolution from taking effect, unless the court otherwise orders, but no further steps to wind up the company than holding a meeting of creditors and the appointment of a liquidator and a committee of inspection shall be taken until all such applications are disposed of by the court, and until that time the liquidator shall not exercise any of his powers, except his power to take possession of the company's assets and to recover debts and other sums due to it (other than amounts payable by contributories as such).

**(5)** For the purpose of this section a company is unable to pay its debts if the court would have jurisdiction to order it to be wound up by the court on the ground that it is unable to pay its debts.

**(6)** In this Ordinance the expression "a winding up resolution" means a resolution that a company shall be wound up voluntarily passed under this section.

#### **Advertisement of winding up resolution.**

**248.(1)** When a company has passed a winding up resolution, it shall, within seven days after the passing of the resolution, give notice of the resolution by advertisement in the *Gazette*.

**(2)** If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine, and for the purpose of this subsection the liquidator of the company shall be deemed to be an officer of it.

### **Notification to Registrar of winding up resolution.**

**249.(1)** Within seven days after a winding up resolution is passed, the company shall notify the Registrar of the passing of the resolution and of the time and date on which it was passed.

**(2)** At any time after a winding up resolution is passed the liquidator or any member, shareholder, creditor or debenture holder may apply to the court to impose an inhibition on all dispositions of and dealings with land of which the company is the registered proprietor under the Land Registration Ordinance 1965, and upon being satisfied that the winding up resolution has been duly passed, the court shall order that the same inhibition shall be imposed with the same consequences as though the court had made a winding up order in respect of the company.

**(3)** If a company fails to notify the Registrar of the passing of a winding up resolution in accordance with subsection (1) of this section, every officer of the company who is in default shall be liable to a default fine, and for the purpose of this subsection the liquidator of the company shall be deemed to be an officer of it.

### **Commencement of voluntary winding up.**

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

### *Consequences of voluntary winding up*

### **Effect of voluntary winding up.**

**251.** In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the company shall, notwithstanding anything to the contrary in its memorandum or articles, continue to be a body corporate until it is dissolved under the provisions of this Ordinance.

### **Avoidance of transfers of shares etc.**

**252.** Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

### *Declaration of solvency*

### **Members' voluntary winding up.**

**253.(1)** Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors, may at a meeting of the directors make a declaration signed by them 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 such period, not exceeding twelve months from the commencement of the winding up, as may be specified in the declaration.

- (2) A declaration made as aforesaid shall have no effect for the purposes of this Ordinance unless -
- (a) it is made within five weeks immediately preceding the date of the passing of the winding up resolution and is delivered to the Registrar for registration before that date; and
  - (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration, not being a date earlier than three months before the date of the declaration; and
  - (c) the winding up resolution is passed as a special resolution.
- (3) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be liable to a fine not exceeding ten thousand rupees or to imprisonment for not more than two years, or to both such fine and imprisonment; and if the company is wound up in pursuance of a resolution passed within a period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.
- (4) A winding up in respect of which a declaration has been made and delivered in accordance with this section is in this Ordinance referred to as "a member's 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 Ordinance referred to as "a creditors' voluntary winding up".

*Provisions applicable to a members' voluntary winding up*

**Provisions governing members' voluntary winding up.**

**254.** The provisions contained in the five sections of this Ordinance next following shall apply in relation to a members' voluntary winding up.

**Appointment and powers of liquidator.**

**255.(1)** 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.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.

(3) If more than one liquidator is appointed, the resolution appointing them shall state whether they shall exercise their powers jointly or separately and individually.

**Vacancy in office of liquidator.**

**256.(1)** If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any shareholder or contributory or, if there were more liquidators than one, by any of the continuing liquidators.

(3) The meeting shall be held in manner provided by this Ordinance, or in such manner as may, on application by any shareholder, contributory or by a continuing liquidator, be determined by the court.

#### **Conversion of a member's voluntary winding up into a creditor's voluntary winding up.**

**257.(1)** If, in the case of a member's voluntary winding up, the liquidator has reasonable cause to believe that the company will not be able to pay its debts in full within the period stated in the declaration made under section 253, he shall forthwith summon a meeting of the creditors of the company, and shall lay before the meeting a statement of the assets and liabilities of the company.

(2) Unless the meeting of creditors resolves that the winding up shall continue as a members' voluntary winding up, the winding up shall, as from the date when the liquidator calls the meeting of creditors, become a creditors' voluntary winding up, and the meeting of creditors shall have the same powers as a meeting of creditors held under section 262.

(3) Section 232(2) shall apply to a meeting of creditors under this section as it applies to a meeting of creditors in a winding up by the court.

(4) If the liquidator fails to comply with subsection (1) of this section, he shall be liable to a fine not exceeding ten thousand rupees.

#### **Annual meetings of members.**

**258.(1)** In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section within three months after the expiration of each year of the winding up, he shall be liable to a default fine.

#### **Final meeting of members and dissolution of company.**

**259.(1)** As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the assets of the company have 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 necessary explanation thereof.

(2) The meeting shall be called by advertisement in the *Gazette* and in one daily newspaper circulating in Seychelles specifying the time, place, and object thereof, and published one month at least before the meeting,

(3) Within one week after the meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a default fine:

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

(4) The Registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of 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.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the Registrar a copy of the order for registration, and if that person fails to do so, he shall be liable to a fine of one hundred rupees for every day during which the default continues.

(6) If a liquidator fails to call a general meeting of the company as required by this section, he shall be liable to a fine not exceeding one thousand rupees.

*Provisions applicable to a creditor's voluntary winding up*

**Provisions governing creditors' voluntary winding up.**

**260.** The provisions contained in the seven sections of this Ordinance next following shall apply in relation to a creditors' voluntary winding up.

**First meeting of creditors.**

**261.(1)** The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the winding up resolution is to be proposed, and shall cause notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the *Gazette* and once at least in one daily newspaper circulating in Seychelles.

(3) The directory of the company shall -

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company, the estimated amount of their claims, the securities they respectively hold for their claims, and the privileges to which they are respectively entitled under articles 2101, 2102 and 2103 of the Civil Code to be laid before the meeting of creditors to be held as aforesaid; and

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) of this section shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made -

(a) by the company in complying with subsection (1) or (2) of this section;

(b) by the directors of the company in complying with subsection (3) of this section;

(c) by any director of the company in complying with subsection (4) of this section;

the directors or director in default shall be liable to a fine of ten thousand rupees.

#### **Appointment of liquidator and committee of inspection.**

**262.(1)** The creditors and the shareholders of the company at their respective meetings mentioned in section 261 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 shareholders of 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 shareholders shall be liquidator;

Provided that in the case of different persons being nominated, any director, shareholder, creditor or debenture holder of the company may, within seven 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 shareholders of 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 or jointly with the person appointed by the creditors.

**(2)** The creditors at the meeting to be held in pursuance of section 261 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 shareholders of 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 shareholders of 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.

**(3)** Subject to the provisions of this section, the provisions of section 230 (except subsection (1) thereof) shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court, with the substitution of references to shareholders of the company for references therein to shareholders and contributories.

#### **Remuneration of liquidator and cessation of directors' powers.**

**263.(1)** The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

**(2)** On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

#### **Vacancy in office of liquidator.**

**264.** 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.

#### **Annual meetings of members and creditors.**



**265.(1)** In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

**(2)** If the liquidator fails to comply with this section within three months after the expiration of each anniversary of the commencement of the winding up, he shall be liable to a default fine.

#### **Final meeting and dissolution.**

**266.(1)** As soon as the affairs of the company are fully wound up, the liquidator shall make up an account, showing how the winding up has been conducted and the assets of the company have 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 those meetings and giving any necessary explanation thereof.

**(2)** Each such meeting shall be called by advertisement in the *Gazette*, and in one daily newspaper circulating in Seychelles specifying the time, place, and object thereof, and published one month at least before the meeting.

**(3)** Within one week 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, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a default fine:

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

**(4)** The Registrar on receiving the account and either of the returns hereinbefore mentioned in respect of each such meeting 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.

**(5)** It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the Registrar a copy of the order for registration, and if that person fails so to do he shall be liable to a fine of one hundred rupees for every day during which the default continues.

**(6)** If a liquidator fails to call a general meeting of the company or a meeting of creditors as required by this section he shall be liable to a fine not exceeding one thousand rupees.

#### **Application of provisions governing meetings of creditors in a winding up by the court.**

**267.** Sections 232(2) shall apply to meetings of creditors in a creditors' voluntary winding up as it applies to meetings of creditors in a winding up by the court.

*Provisions applicable to every voluntary winding up*

### **Provisions governing every voluntary winding up.**

**268.** The provisions contained in the seven sections of this Ordinance next following shall apply to every voluntary winding up, whether a members' or a creditors' voluntary winding up.

### **Application of company's assets.**

**269.(1)** All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

**(2)** Subject to the payment of the costs and expenses of the winding up, to the satisfaction of the liabilities of the company which are preferential payments, to the rights of creditors who are entitled to securities or to privileges under articles 2102 and 2103 of the Civil Code, and to the application of the rules of bankruptcy law in the case of insolvent companies, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities rateably, and, subject to such application, shall be distributed among the shareholders in proportion to the nominal values of their respective shares.

### **Powers of the liquidator.**

**270.(1)** The liquidator may -

- (a)* 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 paragraphs (d), (e) and (f) of section 222(1) to a liquidator in a winding up by the court;
- (b)* exercise any of the other powers exercisable by a liquidator in a winding up by the court;
- (c)* exercise the power of the court in a winding up by the court of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;
- (d)* exercise the power of the court in a winding up by the court of making calls;
- (e)* summon general meetings of the company for any purpose he may think fit.

**(2)** The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

### **Power of court to appoint a liquidator.**

**271.(1)** If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.

**(2)** The court may, on cause shown, remove a liquidator and appoint another liquidator.

### **Notification of liquidator's appointment.**

**272.(1)** The liquidator shall, within seven days after his appointment, deliver to the Registrar for registration a notice of his appointment in the prescribed form.

- (2) If the liquidator fails to comply with the requirements of this section he shall be liable to a default fine.

**Power of court to determine questions and to exercise powers of the court in winding up by the court.**

**273.(1)** The liquidator or any creditor, shareholder, contributory or debenture holder of the company may apply to the court:-

- (a) to determine any question arising in the winding up of the company; or
- (b) to exercise all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the exercise of the power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

(3) Without prejudice to the generality of the powers conferred on the court by this section, the court may make an order:-

- (a) staying any actions or other proceedings pending in any court against the company at the commencement of the winding up;
- (b) preventing the bringing of any action or proceedings against the company after the commencement of the winding up unless leave of the court is first obtained;
- (c) directing that a liquidator shall be released from all liability in respect of any act done, or default made, by him in the winding up of the affairs of the company or otherwise in relation to his conduct as liquidator;
- (d) revoking any release granted under the last foregoing paragraph on the ground that it was obtained by fraud or by the suppression or concealment of any material fact; and
- (e) directing that a public examination shall be held under section 241 of any person whose public examination could be ordered under that section if the company were wound up by the court.

**Order that company in voluntary liquidation shall be wound up by the court.**

**274.** The voluntary winding up of a company shall not affect the power of the court to order that the company shall be wound up by the court on the application of any person who may present a petition under section 207, but on the hearing of the petition the court shall:-

- (a) take into account the wishes of the creditors of the company, and may direct that a meeting of creditors shall be held to ascertain their wishes;
- (b) except where the petition is presented by a creditor or a debenture holder of the company, take into account the wishes of the shareholders of the company, and may direct that a general meeting or a meeting of a class of shareholders shall be held to ascertain their wishes;
- (c) ascertain whether the creditors, shareholders, contributories or debenture holders of the company will benefit if the court makes an order that the company shall be wound up by the court, and take into account the additional cost of a winding up by the court in comparison with the value of any such benefit; and

- (d) ascertain whether there is any matter relating to the promotion or management of the company or the conduct of its affairs into which an inquiry should be made, and whether such an inquiry can more conveniently be made if the company is wound up by the court.

**Provisions as to general meetings of a company in voluntary liquidation.**

**275.** In connection with general meetings of a company which is being wound up voluntarily:-

- (a) no restrictions or limitations imposed by the memorandum or articles on the voting rights of any shareholders shall apply at such meetings, and for this purpose a provision in the terms of issue of shares of an existing company that the holders of such shares shall not be entitled to vote, or shall be subject to a restriction or limitation on their right to vote, at general meetings shall be treated as though it were a restriction on their right to vote imposed by the memorandum of the company; and
- (b) a contributory (other than a shareholder) who has paid the whole amount or the balance of the amount payable in respect of a share in the winding up shall be deemed to be a shareholder in place of the person who is the holder of the share.

**(iv) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP**

*Proof and ranking of claims*

**Admissible debts and claims.**

**276.** In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Ordinance of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims which are subject to any contingency or sound only in damages, or which for some other reason do not bear a certain value.

**Application of bankruptcy rules.**

**277.(1)** In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors, to the debts and claims which may be proved and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, and all persons who under such rules would be entitled to prove for and receive dividends out of the assets of such a person may make such claims against the company as they respectively are entitled to by virtue of this section.

**(2)** In the winding up of a company it shall be assumed that the company is insolvent until it appears, by the reduction of assets of the company to the possession or control of the liquidator, and the recovery by the liquidator of debts and liabilities recoverable by the company, that there will be sufficient to satisfy all debts and claims against the company in full.

**(3)** If the assets mentioned in the last foregoing subsection are sufficient to satisfy debts and claims against the company which would be provable against the estate of a person adjudged bankrupt, but not also to satisfy other claims against the company, the assets shall be applied primarily in satisfying the first mentioned claims, and any surplus shall be applied toward discharging the other claims rateably as between themselves.

(4) For the purposes of this Part of this Ordinance creditor of a company who is entitled to a privilege over any of its assets under articles 2102 or 2103 of the Civil Code shall be deemed to be a secured creditor and to have a security upon the assets over which the privilege exists.

(5) In the winding up of any company any privilege or judicial hypothecation obtained under articles 2101 or 2123 of the Civil Code shall be void, and a creditor claiming any such rights shall be deemed to be an unsecured creditor.

#### **Preferential payment.**

**278.(1)** In a winding up there shall be paid in priority to all other debts or claims against the company -

- (a) all income tax and other taxes assessed on the company up to the 31st day of December next preceding the date on which the winding up order was made or the winding up resolution was passed (whichever is the earlier), but not exceeding in the whole one year's assessment, the year for which priority is claimed being selected by the Chief Income Tax Officer;
- (b) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the company during four months next before the date on which the winding up order was made or the winding up resolution was passed (whichever is the earlier), and all wages (whether payable for time or for piece work) of any workman or labourer in respect of services so rendered, being a sum which in the case of any one claimant does not exceed two thousand rupees;
- (c) unless the company has at the commencement of the winding up under such a contract with insurers as is mentioned in section 24 of the Workmen's Compensation Ordinance, 1970 rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Ordinance, being amounts which have accrued before the date on which the winding up order was made or the winding up resolution was passed (whichever is the earlier).

(2) Any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause, or in respect of a period for which notice of dismissal has or should have been given under section 12 of the Employment of Servants Ordinance, shall be deemed to be wages in respect of services rendered to the company during that period.

(3) Where any compensation under the Workmen's Compensation Ordinance, 1970 is a weekly payment, the amount due in respect thereof shall, for the purposes of paragraph (c) of subsection (1), be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Ordinance.

(4) If any person:-

- (a) lends money to a company to enable it to satisfy, in whole or part, a debt or claim which is, or which if not so satisfied would be, a debt or claim to which priority is given by subsection (1); or
- (b) guarantees or gives security for the payment of any such debt or claim, and either before or after a winding up order is made or a winding up resolution is passed in respect of the company, satisfies the debt or claim, in whole or part, by paying it himself or by the security given by him being realised;

that person shall in the winding up of the company be entitled to priority under subsection (1) for the amount of the loan made by him, or for an indemnity in respect of the guarantee or security given by him, to the extent that the amount of the debt or claim which was satisfied out of the loan, or by that person, or out of the security

given by him, has been diminished.

(5) For the purpose of the last foregoing subsection:-

- (a) a loan shall include any form of advance and an overdraft at a bank;
- (b) a person shall be deemed to have given a guarantee or security if he is personally liable to satisfy a debt or claim by a rule of law or an enactment, or if any of his assets may be seized, distrained upon or sold in order to satisfy the debt or claim, or if any of his assets are charged with the debt or claim or are ordered to be sold by order of any court in order to satisfy it;
- (c) a person who lends money to a company to enable it to pay any of its debts, or who gives a guarantee or security in respect of all its debts, or all its debts of a particular class, shall be deemed to have made a loan to enable it to satisfy debts or claims to which priority is or would be given by subsection (1), or to have guaranteed or given security for such debts or claims, to the extent that the loan is actually used to satisfy such debts or claims, or to the extent that the guarantor or the person giving the security satisfies them, or to the extent that they are satisfied by the realisation of the security, whether the contract of loan or guarantee or the instrument creating the security expressly refers to such debts or claims or not; and
- (d) a security shall be deemed to be realised if any of the assets subject to it are sold or are ordered by a court to be sold, or if a receiver is appointed in respect of any of those assets, or if the person entitled to the security takes possession of any of those assets.

(6) The debts and claims to which priority is given by subsections (1) and (4) shall -

- (a) rank equally among themselves and be paid in full, unless the assets of the company are insufficient to meet them, in which case they shall abate in equal proportions; and
- (b) so far as the assets of the company available for payment of all its debts and liabilities are insufficient to meet them, have priority over the claims of creditors and debenture holders secured by general floating charges created by the company, and be paid accordingly out of any property comprised in or subject to such charges.

(7) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the debts and claims to which priority is given by subsections (1) and (4) shall be discharged forthwith so far as the assets of the company are sufficient to meet them, and in the case of debts to which priority is given by paragraph (c) of subsection (1), formal proof thereof shall not be required.

Provided that nothing contained in this subsection shall give any priority to the costs and expenses of the winding up over the amounts secured by a general floating charge created by the company.

(8) In the event of a landlord or other person having distrained or enforced a privilege under article 2102 of the Civil Code on any goods or effects of the company within three months next before the date of a winding up order or resolution, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on or over which the privilege is exercised 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.

(9) Subsection (5) shall also apply in the circumstances in which section 20 of the Companies (Debentures and Floating Charges) Ordinance, 1970 applies.

#### **Fraudulent preferences.**

**279.(1)** Any transfer, mortgage, charge, hypothecation or pledge over any assets, or any delivery of goods, or payment, or proceedings or execution or other act relating to assets of a company created, made or done within six months before the commencement of the winding up of a company at a time when it cannot pay its debts as they fall due, with a view to giving any creditor of or surety for the company a preference over its other creditors, shall in the event of the company being wound up be deemed a fraudulent preference of its creditors and be invalid accordingly.

**(2)** Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

#### **Persons fraudulently preferred.**

**280.(1)** If anything created, made or done is void under section 279(1) as a fraudulent preference of a person interested in assets, mortgaged, charged, hypothecated or pledged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as a surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.

**(2)** The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the charge for the company's debt was then subject.

**(3)** On any application made to the court with respect to any payment on the ground that the payment was a fraudulent preference of a surety, the court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety as a third party as in the case of an action for the recovery of the sum paid. This subsection shall apply with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.

#### **Disclaimer by liquidator.**

**281.(1)** Where any part of the assets of a company which is being wound up consists of interests in land burdened with onerous servitudes or obligations, of shares or stock in companies, of unprofitable contracts, or of any other assets which are unsaleable, or not readily saleable, by reason of the person entitled thereto being liable to perform any onerous act, or to pay any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the assets, 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 assets:

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

**(2)** The disclaimer shall operate to determine, as from the date of disclaimer, the ownership, rights, interest, and liabilities of the company in or in respect of the property to which the disclaimer relates, but shall not, except so far as is necessary for the purpose of releasing the company and the assets of the company from liability, affect the rights or liabilities of any other person.

**(3)** The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.

**(4)** The liquidator shall not be entitled to disclaim any assets under this section in any case where an

application in writing has been made to him by any person interested in the property concerned requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight 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.

(5) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The court may, on the application by any person who either claims any interest in any property in respect of which the liquidator has executed a disclaimer, or of any person who is under any liability not discharged by this Ordinance in respect of any such property, and on hearing any such persons as it thinks fit, make an order for the vesting of any interest in the property in, or the delivery of the property to, any persons entitled thereto, or in whom it may seem just that any such interest should be vested, or to whom it may seem just that such property should be delivered by way of compensation for such liability as aforesaid, 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 transfer or assignment for the purpose:

Provided that, where the assets disclaimed are 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 a person entitled to a mortgage, charge or hypothecation, except upon the terms of making that person -

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or
- (b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been transferred by the company 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 under-lessee or person entitled to a mortgage, charge or hypothecation who declines 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 an interest equivalent to that which the company had 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 encumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

(8) A vesting order may be made under this section in favour of a person who is directed to hold the interest vested in him thereby on behalf of other persons, being persons in whose favour a vesting order could be made under subsection (6), and in particular a vesting order may be made in favour of a trustee of a debenture trust deed on behalf of the holders of debentures covered by the trust deed.

#### **Avoidance of execution against company's property.**

**282.(1)** Where a creditor has issued execution against any assets of a company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution against the liquidator in the winding up of the company, unless he has completed the execution before the commencement of the winding up:

Provided that -



- (a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purposes of the foregoing provision be substituted for the date of the commencement of the winding up; and
- (b) a person who purchases in good faith any assets of a company sold to him under a warrant, writ or order of the court for the execution of any judgment or decree shall in all cases acquire a good title to them against the liquidator.

**(2) An execution shall be taken to be completed:-**

- (a) in the case of coins, bank notes, securities for money payable to bearer and shares or debentures represented by bearer certificates, by their seizure under a warrant of execution;
- (b) in the case of tangible moveables, by their seizure and sale under a warrant of execution;
- (c) in the case of the attachment of a debt, by the court making or validating an order for the attachment;
- (d) in the case of money or securities for money in court, by the making of an order of the court that such money or securities shall be paid or transferred to the judgment creditor;
- (e) in the case of shares or debentures of any company or stock or other securities issued by the Government of Seychelles or any government, public authority or local authority (whether in Seychelles or not), not being shares, debentures, stock or securities within paragraph (a) of this subsection, by the making of an order of the court charging the shares, debentures, stock or other securities with the amount payable to the judgment creditor;
- (f) in the case of any moveable property not within paragraphs (a), (b), (c) or (d), by the appointment of a receiver by way of equitable execution; and
- (g) in the case of land in Seychelles, by -
  - (i) the seizure of the land under a writ of possession; or
  - (ii) the making of an order for the sale of the land; or
  - (iii) the appointment of a receiver by way of equitable execution.

**(3)** In this section the expression “the benefit of the execution” means the right of the judgment creditor to proceed with the execution and to obtain payment thereby of the amount payable to him, but does not include the right to retain payments made on account of the judgment debt or the judgment creditor’s costs, or to retain amounts recovered by the partial realisation of any assets which are the subject of the execution.

**Duties of the registrar of the court in respect of executions against a company.**

**283.(1)** Where any goods of a company are taken in execution, and, before the completion of the execution, notice is served on the registrar that a provisional liquidator has been appointed or that a winding up order has been made or that a resolution for voluntary winding up has been passed, the registrar shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Where under an execution in respect of a judgment for a sum exceeding one thousand rupees the goods of a company are sold or money is paid in order to avoid seizure or sale, the registrar shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or, of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company, and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the registrar shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) In this section the expression “goods” means all tangible moveables, coins, bank notes, securities for money payable to bearer and shares and debentures represented by bearer certificates, and the expression “registrar” means the registrar of the court or any other officer charged with the execution of a warrant or writ or other process of execution.

(4) An execution against goods shall be taken to be completed for the purpose of this section in the circumstances mentioned in paragraphs (a) and (b) of section 282(2).

#### **Avoidance of executions and distress begun after commencement of the winding up of a company.**

**284.(1)** If a company is wound up by the court, or is wound up voluntarily by way of a creditors’ voluntary winding up, any execution or distress or the enforcement of a privilege under article 2102 of the Civil Code commenced against the company’s assets after the commencement of the winding up shall be void.

(2) The court may direct that the foregoing subsection shall apply as from the date of the order of the court in the case of a member’s voluntary winding up, and an application to the court may be made for this purpose by the liquidator or a creditor, shareholder, contributory or debenture holder of the company, but the court shall accede to the application only if a *prima facie* case is established that the company is unable to pay its debts within the meaning of paragraph (c) of section 206.

(3) Subsection (1) of this section shall apply to a company which is wound up by way of a members’ voluntary winding up as from the date when the winding up becomes a creditors’ voluntary winding up under section 257.

#### **Power of court to permit an execution or distress.**

**285.(1)** The court may, notwithstanding anything contained in sections 282, 283 and 284 empower a creditor or a person who, apart from this Ordinance, is entitled to levy execution or a distress, or to enforce a privilege under article 2102 of the Civil Code:-

- (a) to commence or to proceed with a process of execution or distress, or the enforcement of the privilege;
- (b) to receive, recover or retain the proceeds of an execution or distress, or the proceeds of enforcing the privilege, or any money paid to avoid or delay an execution or distress or the enforcement of the privilege; and
- (c) to require the registrar of the court, or any officer charged with the execution of a warrant or writ or other process of execution, or the liquidator of the company, to account to that creditor or person for the proceeds of sale of any assets of the company.

(2) In deciding whether to exercise its powers under this section the court shall take into account the conduct of the company, of the person who applies to the court to exercise its powers in his favour and of the creditors of the company generally.

**Offences by directors and officers of a company which is wound up.**

**286.(1)** If any person, being a past or present director or officer of a company which at the time of the commission of the alleged offence is being wound up, whether by the court or voluntarily, or is subsequently ordered to be wound up by the court, or subsequently passes a resolution for voluntary winding up:-

- (a) does not to the best of his knowledge and belief fully and truly disclose to the liquidator all the assets of the company, and how, and to whom, and for what consideration, and when, the company disposed of any of such assets, otherwise than in the course of carrying on the business of the company in the ordinary way; or
- (b) does not deliver up to the liquidator, or as he directs, such of the assets of the company as are in his custody or under his control, and which he is required by law to deliver up; or
- (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control, being books and papers which belong to the company and which he is required by law to deliver up; or
- (d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any of the assets of the company to the value of one thousand rupees or upwards, or conceals any debt due to or from the company; or
- (e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the assets of the company to the value of one thousand rupees or upwards; or
- (f) makes any material omission in any statement relating to the affairs of the company; or
- (g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof; or
- (h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or
- (i) 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; or
- (j) within twelve months next before the commencement of the winding up or at any time thereafter, makes or concurs in the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or
- (k) 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 concurs in the fraudulent parting with, altering, or making any omission in, any document affecting or relating to the assets or affairs of the company; or
- (l) 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 assets of the company by fictitious losses or expenses; or
- (m) 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 assets for or on behalf of the company on credit which the company does not subsequently pay for; or

- (n) within twelve months next before the commencement of the winding up or at any time thereafter, sells, transfers, hypothecates, mortgages, charges, pledges, or otherwise disposes of any assets of the company which have been obtained on credit and have not been paid for, unless such sale, transfer, hypothecation, mortgage, charge, pawning, pledge, or disposition is made in the course of carrying on the business of the company in the ordinary way; or
- (o) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up;

he shall be guilty of an offence and shall, in the case of the offences mentioned respectively in paragraphs (m), (n) and (o) of this subsection, be liable to imprisonment for not more than five years, and in the case of any other offence mentioned in this subsection shall be liable to imprisonment for not more than two years:

Provided that it shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (m), (n) and (o), if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person sells, transfers, hypothecates, mortgages, charges, pawns, pledges or otherwise disposes of any assets in circumstances which amount to an offence under paragraph (n) of subsection (1) of this section, and another person purchases, accepts or takes an hypothecation, mortgage, charge or pledge or other disposition of the assets knowing that thereby an offence is committed by the first mentioned person, that other person shall be guilty of an offence punishable by imprisonment for not more than five years.

#### **Falsification of books and papers of a company.**

**287.** If any director or officer, shareholder or contributory of any company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or concurs in the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of an offence punishable by imprisonment for not more than two years.

#### **Frauds by directors and officers.**

**288.** If any person, being at the time of the commission of the alleged offence a director or officer of a company which is subsequently ordered to be wound up by the court, or subsequently passes a resolution for voluntary winding up -

- (a) has by false pretences or by means of any other fraud induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift, transfer, hypothecation, mortgage or pledge of, or charge on, or has caused or connived at the levying of any execution against, any of the assets of the company;
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the assets of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company;

he shall be guilty of an offence punishable by imprisonment for not more than five years.

### **Failure to keep proper books of account.**

**289.(1)** If, where a company is wound up, it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, every director or officer of the company who was knowingly a party to or connived at the default of the company shall, unless he shows that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable, be guilty of an offence punishable by imprisonment for not more than two years.

**(2)** For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

### **Fraudulent trading.**

**290.(1)** If in the course of the winding up of a company it appears that any business of the company has been carried on:-

- (a)* with intent to defraud creditors of the company or the creditors of any other person, or for any fraudulent purpose; or
- (b)* with reckless disregard of the company's obligation to pay its debts and liabilities; or
- (c)* with reckless disregard of the insufficiency of the company's assets to satisfy its debts and liabilities;

the court, on the application of the Official Receiver or the liquidator or any creditor, shareholder, contributory or debenture holder of the company, may, if it thinks proper so to do, declare that any of the directors or officers, whether past or present, of the company, or any other persons who were knowingly parties to the carrying on of the business in manner aforesaid, shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct, and may order the amount of such debts or other liabilities to be paid to the persons to whom they are respectively owed or to the liquidator for the benefit of the creditors of the company generally.

**(2)** Where the court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such director, officer or other person under the declaration a charge on any debt or obligation payable by the company to him, or on any hypothecation, mortgage or charge, or any interest in any hypothecation, mortgage or charge, on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the director, or such a company or person, and the court may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

For the purpose of this subsection, the expression "assignee" includes any person to whom or in whose favour, by the directions of the director, officer or other person the debt, obligation, hypothecation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for money or money's worth paid or given in good faith by any person who had at the time no notice of any of the matters on the ground of which the declaration is made.

**(3)** Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1) of this section, every director or officer of the company and any other person who was knowingly a party to the carrying on of the business in manner aforesaid, shall, whether the company is wound up or not,

be guilty of an offence punishable by imprisonment for not more than five years.

(4) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.

#### **Prosecution of directors and officers.**

**291.(1)** If it appears to the court in the course of winding up a company that any past or present director or officer, or any member, shareholder, creditor or debenture holder 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 to refer the matter to the Attorney-General.

(2) If it appears to the liquidator in the course of any winding up that any past or present director or officer, or any member, shareholder, creditor or debenture holder of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Attorney-General and shall furnish him with such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as the Attorney-General may require.

(3) Where any report is made under the last foregoing subsection to the Attorney-General, he may, if he thinks fit, refer the matter to the Registrar for further enquiry, and the Registrar shall thereupon investigate the matter, and the Attorney-General may, if he thinks it expedient, apply to the court for an order conferring on the Registrar or any person designated by the Registrar for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Ordinance in the case of a winding up by the court.

(4) If it appears to the court in the course of a voluntary winding up that any past or present director or officer, or any member, shareholder, creditor or debenture holder 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 Attorney-General under subsection (2) of this section, the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly, the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2) of this section.

(5) If, where any matter is reported or referred to the Attorney-General under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this subsection, the expression “agent” in relation to a company shall be deemed to include any banker of the company, any barrister, attorney or notary who has acted for the company and any person who is or has been an auditor of the company.

(6) If any person fails or neglects to give assistance in manner required by the last foregoing subsection, the court may, on the application of the Attorney-General direct that person to comply with the requirements of the said subsection, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

(7) All costs and expenses properly incurred by the liquidator under this section shall be payable out of the assets of the company in priority to all other liabilities.

#### **Misfeasance proceedings.**

**292.(1)** If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or assets of the company, or has been guilty of any wrong doing or breach of duty in relation to the company, the court may, on the application of the Official Receiver, or of the liquidator, or of any shareholder, contributory, creditor or debenture holder, enquire into the conduct of the promoter, director, liquidator, or officer, and compel him to repay or restore the money or assets 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, wrongdoing, or breach of duty as the court thinks just.

**(2)** The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

*Supplementary provisions as to winding up*

**Disqualification of body corporate from appointment as liquidator.**

**293.** A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by the court or in a voluntary winding up, and -

- (a) any appointment made in contravention of this provision shall be void; and
- (b) any body corporate which acts as liquidator of a company shall be liable to a fine not exceeding ten thousand rupees.

**Order against liquidator to make good default.**

**294.(1)** If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the court may, on an application made to the court by any shareholder, contributory, creditor or debenture holder of the company or by the Registrar, make an order directing the liquidator to make good the default within such time as may be specified in the order.

**(2)** Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

**(3)** Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid.

**Publication of fact that company is in liquidation.**

**295.(1)** Where a company is being wound up, whether by the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

**(2)** If default is made in complying with this section, the company and every director, secretary or other officer of the company, and every liquidator of the company and every receiver or manager for debenture holders, who knowingly and wilfully authorises or permits the default, shall be liable to a fine of one thousand rupees.

#### **Exemption from stamp duty etc.**

**296.** In the case of a winding up by the court of a company, or of a creditors' voluntary winding up of a company -

- (a) every instrument of transfer or disposition and every hypothecation, mortgage or charge of any assets of the company which, after the execution thereof, is or remains part of the assets of the company; and
- (b) every power of attorney, proxy, appointment, writ, order, certificate, affidavit, bond, obligation or other instrument or writing (whether in the form of a notarial deed or not) relating solely to the assets of any company which is being so wound up, or to any proceeding under any such winding up;

shall be exempt from duties chargeable under any enactment relating to stamp duties and from all amounts which would otherwise be payable in respect thereof under the Mortgage and Registration Ordinance, and they shall be registered thereunder (where necessary) without any charge being made.

#### **Books and papers of company to be evidence.**

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

#### **Disposal of books and papers of company.**

**298.(1)** When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say:-

- (a) in the case of a winding up by the court in such way as the court directs;
- (b) in the case of a members' voluntary winding up, in such way as a general meeting of the company by ordinary resolution directs, and, in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as a meeting of the creditors of the company by resolution, may direct.

**(2)** After five years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

**(3)** Provision may be made by regulations for enabling the court to prevent, for such period (not exceeding five years from the dissolution of the company) as the court thinks proper, the destruction of the books and papers of a company which has been wound up, and for enabling any shareholder, contributory, creditor or debenture holder of the company to make representations in respect thereof to the court.

**(4)** If any person acts in contravention of any regulations made for the purposes of this section or of any direction of the court thereunder, he shall be liable to a fine of one thousand rupees.

#### **Returns by liquidator to Registrar.**

**299.(1)** If, where a company is being wound up, the winding up is not concluded within one year after its



commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a shareholder, contributory, creditor or debenture holder of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom.

(3) If a liquidator fails to comply with this section, he shall be liable to a fine of one hundred rupees for each day during which the default continues.

#### **Unclaimed assets.**

**300.(1)** If it appears either from any statement sent to the Registrar under section 299 or otherwise that a liquidator has in his possession or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipts, the liquidator shall forthwith pay the said money into court, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(2) Any person claiming to be entitled to any money paid into court in pursuance of this section may apply to the court for payment thereof, and the court may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

#### *Supplementary powers of the court*

#### **Ascertainment of wishes of creditors, members etc.**

**301.** The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the shareholders, contributories, creditors and debenture holders of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of shareholders, contributories, creditors, or debenture holders 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.

#### **Affidavits etc.**

**302.(1)** Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Ordinance may be sworn in Seychelles or elsewhere before any court, judge or person lawfully authorised to take and receive affidavits or sworn declarations.

(2) All courts, judges, magistrates, and other persons acting judicially shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge or person, attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Ordinance.

#### *Disposal of assets of companies in accordance with the memorandum*

#### **Enforcement of the provisions of the memorandum.**

**303.** If by the memorandum of association of a company it is provided that upon the winding up of the company any assets remaining after the debts and liabilities of the company and the costs and expenses of the winding up have been discharged shall be applied otherwise than by being distributed among the shareholders and contributories of the company, such assets shall be applied accordingly, and the Attorney-General may take proceedings for the application of such assets in the manner directed by the memorandum of the company, or for a purpose similar to the application directed by the memorandum if that application cannot be carried out.

*Provisions as to dissolution*

**Avoidance of dissolution.**

**304.(1)** Where a company has been dissolved, after being wound up by the court or voluntarily, the court may at any time within twelve 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, rescinding the dissolution, and upon a copy of the order being delivered to the Registrar the company shall, subject to any directions by the court, be deemed to have continued in existence as if it had not been dissolved.

**(2)** It shall be the duty of the person on whose application the order was made, within fourteen days after the making of the order, or such further time as the court may allow, to deliver to the Registrar for registration a copy of the order, and if that person fails so to do, he shall be liable to a fine of one hundred rupees for every day during which the default continues.

**Power of Registrar to strike name of defunct company off the register.**

**305.(1)** Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or is in operation.

**(2)** If the Registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

**(3)** If the Registrar either receives an answer to the effect that the company is not carrying on business or is not in operation, or does not within one month after sending the second letter receive any answer, he may publish in the *Gazette*, and send to the company by post, 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.

**(4)** If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the *Gazette* and send to the company or the liquidator (if any) a like notice as is provided in subsection (3).

**(5)** If a company which is not being wound up fails to deliver an annual return to the Registrar under section 114, having annexed thereto the documents required by section 115 or 116 (as the case may be) within six months after the latest date by which such an annual return should be delivered, the Registrar shall publish in the *Gazette* and send to the company a like notice as is provided by subsection (3).

**(6)** At the expiration of the time mentioned in a notice sent under subsection (3). (4) or (5), the Registrar shall, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall thereupon publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of such a notice the

company shall be dissolved:

Provided that -

- (a) the liability, if any, of every director, officer, member, shareholder and contributory of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(7) If a company or any member, shareholder, contributory, creditor or debenture holder thereof or any other interested person is aggrieved by the company having been struck off the register, the court on an application made by the company or any such person before the expiration of twelve years from the publication in the *Gazette* of the notice aforesaid may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon a copy of the order being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons the same position as nearly as may be as if the name of the company had not been struck off.

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

#### **Property of dissolved company to be *bona vacantia*.**

306. Where a company is; dissolved, all assets whatsoever vested in or held on behalf of or for the benefit of the company immediately before its dissolution (including leasehold interests, but not including assets held by the company on behalf of or for the benefit of any other person) shall, subject and without prejudice to any order which may at any time be made by the court under the section 304 or 305 be deemed to be *bona vacantia*, and shall accordingly belong to the Crown in right of Seychelles, and shall vest and may be dealt with in the same manner as other *bona vacantia* accruing to the Crown as aforesaid.

#### **Disclaimer by Crown**

307.(1) Where any assets vest in the Crown under the last preceding section, the Crown's title thereto under that section may be disclaimed by a notice by the Governor.

(2) Where a notice of disclaimer under this section is executed as respects any assets, those assets shall be deemed not to have vested in the Crown under the last preceding section, and subsections (2) and (6) of section 281 shall apply in relation to the assets as if they had been disclaimed under subsection (1) of the said section immediately before the dissolution of the company.

(3) The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Crown, either expressly or by taking possession or other act evincing that intention.

(4) A notice of disclaimer under this section shall be of no effect unless it is executed within twelve months of the date on which the vesting of the assets as aforesaid came to the notice of the Governor, or, if an application in writing is made to the Governor by any person interested in the property concerned requiring him to decide whether he will or will not disclaim, within a period of three months after the receipt of the application or such further period as may be allowed by the court which would have had jurisdiction to wind up the

company if it had not been dissolved.

(5) A statement in a notice of disclaimer of any property under this section that the vesting of the assets came to the notice of the Governor on a specified date, or that no such application as aforesaid was received by him with respect to the property before a specified date shall, until the contrary is proved, be sufficient evidence of the fact stated.

(6) A notice of disclaimer under this section shall be delivered to the Registrar and retained and registered by him, and copies thereof shall be published in the *Gazette* and sent to any persons who have given the Governor notice that they claim to be interested in the property concerned.

### *Regulations*

### **Regulations**

**308.** The Governor in Council may make regulations for carrying this Part of this Ordinance into effect and for making provision as respects the winding up and dissolution of companies and costs and fees in connection therewith.

## **PART VII – OVERSEAS COMPANIES**

### **Overseas companies to which Part VII applies.**

**309.(1)** This Part of this Ordinance shall apply to all overseas companies which, after this Ordinance comes into operation, establish a place of business or carry on business in Seychelles and to all overseas companies which have before this Ordinance comes into operation, established a place of business or carried on business in Seychelles, and either continue to have an established place of business or to carry on business there after this Ordinance comes into operation.

(2) An overseas company shall be considered as carrying on business in Seychelles if it -

- (a) enters into two or more contracts with persons resident there, or with companies formed or incorporated there, being contracts which -
  - (i) are entered into in connection with the business or objects which the overseas company carries on or pursues ; and
  - (ii) by their express or implied terms are to be wholly or substantially performed in Seychelles, or may be so performed at the option of any party thereto; or
- (b) appoints an agent who resides or has a place of business in Seychelles to represent the overseas company in connection with the making or performance of two or more contracts which fall within paragraph (a) of this subsection, or in connection with the transactions of the overseas company in Seychelles generally, whether the appointment is made for a fixed period of time or not; or
- (c) owns, possesses or uses assets situate in Seychelles for the purpose of carrying on or pursuing its business or objects, if it obtains or seeks to obtain from those assets directly or indirectly, any revenue, profit or gain, whether realised in Seychelles or not; or

- (d) issues, or is deemed under section 48 to issue, in Seychelles a prospectus offering its shares or debentures for subscription or purchase.

(3) An overseas company shall not be considered as entering into a contract within paragraph (a) of subsection (2) if it subscribes for or purchases shares or debentures of a company incorporated under this Ordinance or of an existing company.

#### **Registration of particulars of overseas companies.**

**310.(1)** Overseas companies which, after this Ordinance comes into operation, establish a place of business in Seychelles or commence to carry on business in Seychelles shall, within fourteen days after the establishment of the place of business or the commencement of business as aforesaid, deliver to the Registrar for registration:-

- (a) a certified copy of the charter, statutes, memorandum and articles of association, certificate or articles of association or incorporation of the company or the other instrument which constitutes the overseas company or contains the regulations which govern it, and, if the instrument is not written in the English language, a certified translation thereof;
- (b) a list of the directors and secretary of the company containing the particulars mentioned in subsection (3);
- (c) the name of the person or persons who has or have been appointed to be the managing agent or agents of the overseas company in Seychelles, and the particulars in respect of that person or each of those persons mentioned in subsection (3); and
- (d) the names of two or more persons who have been appointed to accept on behalf of the company service of process and any notices required to be served on the overseas company, and the particulars in respect of those persons mentioned in subsection (3).

(2) Any of the persons appointed for the purposes mentioned in paragraphs (c) and (d) of subsection (1) may be an individual or a firm resident or carrying on business in Seychelles, or a company formed or incorporated in Seychelles.

(3) The particulars required by paragraphs (b), (c) and (d) of subsection (1) shall be-

- (a) with respect to each individual who is a director, managing agent in Seychelles or person appointed to accept service on behalf of the overseas company in Seychelles, his present Christian name and surname and any former Christian name or surname, his usual residential address, his nationality and his business occupation (if any) or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships;
- (b) with respect to a company, body corporate or firm which is a director, managing agent or person appointed to accept service on behalf of the overseas company in Seychelles, its corporate or firm name, the country where it was formed or incorporated, and its registered office (if any) and its principal place of business in Seychelles (if any);
- (c) with respect to the secretary of the overseas company or, where there are joint secretaries, with respect to each of them -
  - (i) in the case of an individual, his present Christian name and surname, any former Christian name and surname and his usual residential address; and
  - (ii) in the case of a company, body corporate or firm, its corporate or firm name and its registered office (if any) and principal place of business in Seychelles (if any).

Section 169(9) shall apply for the purpose of the construction of references in this subsection to present and former Christian names and surnames as they apply for the purpose of the construction of such references in that section.

(4) Overseas companies which have established a place of business in Seychelles or carried on business in Seychelles before this Ordinance comes into operation, and which continue to have an established place of business or to carry on business in Seychelles thereafter, shall within fourteen days after this Ordinance comes into operation deliver to the Registrar the documents specified in subsection (1), but an overseas company shall not be required to deliver a certified copy of its charter, statutes, or memorandum or articles of association, certificate or articles of association or incorporation, or the other instrument which constitutes the overseas company or contains the regulations which govern it, nor to deliver a certified translation thereof, if the overseas company already delivered copies of those documents in compliance with section 7 of the Overseas Corporation Ordinance, 1959.

(5) If any overseas company to which this Part of this Ordinance applies ceases to have a place of business or to carry on business in Seychelles, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given the obligation of the overseas company to deliver any document to the Registrar under this Part of this Ordinance shall cease:

Provided that if the Registrar is satisfied by any other means that the company neither has a place of business nor carries on business in Seychelles, it shall be lawful for him to make an entry to that effect against the particulars delivered by the overseas company, and thereupon the obligation of the company to deliver any document to the Registrar under this Part of this Ordinance shall cease.

(6) When an overseas company has delivered a notice or notices to the Registrar under subsection (5) which show that the company neither has a place of business in Seychelles nor carries on business there, the overseas company shall, for the purposes of this Ordinance, be deemed not to be a company to which this Part of this Ordinance applies as from this date such notice or the later or latest of such notices is delivered, but without prejudice to the duty of the overseas company to comply with this section if after that date it establishes a place of business in Seychelles or carries on business there.

(7) If the Registrar has cause to believe that any notice delivered to him under subsection (5) contains any statement which is untrue or omits any matter which should be stated therein, he may direct that subsection (6) shall not apply to the overseas company in consequence of the delivery of that notice.

(8) If any person delivers or concurs in delivering to the Registrar any notice or other document under this section which he knows to be false, or to contain a statement which is false, or to omit any matter which should be stated therein, he shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or imprisonment for not more than two years, or by both such fine and such imprisonment.

(9) If an overseas company to which this Part of this Ordinance applies fails to comply with subsection (1) or (4) as the case may be, every director of the company who is in default and the managing agent of the company in Seychelles shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or imprisonment for not more than two years, or by both such fine and such imprisonment.

#### **Personality and capacity of overseas companies.**

**311.(1)** An overseas company to which this Part of this Ordinance applies which has corporate status or personality or moral personality by the law of the country where it was formed or incorporated shall for all purposes be deemed to be a body corporate, and may hold assets, contracts and transactions, and sue and be sued in its corporate name.

(2) An overseas company to which this Part of this Ordinance applies which has delivered to the Registrar the documents and particulars required by subsections (1) or (3) of section 310 within the period thereby limited shall, subject to the provisions of the Immovable Property (Transfer Restriction) Ordinance, 1963, have the same power to hold land as if it were a company incorporated under this Ordinance.

(3) In all other respects the powers of an overseas company to which this Part of this Ordinance applies

and the powers and authority of its directors shall be governed by the law of the country where the company was incorporated, but:-

- (a) section 33(1) and (2) and section 34(1), (2) and (3) shall apply to an overseas company to which this Part of this Ordinance applies in connection with contracts and transactions which are entered into or carried out (in whole or part) in Seychelles, or which are expressly or impliedly subject to the law of Seychelles, as though the overseas company were a company other than a proprietary company; and
- (b) subject to paragraph (a), all questions arising in respect of a contract or transaction entered into or carried out by an overseas company to which this Part of this Ordinance applies shall be governed by the law of the country where the contract is to be wholly or mainly performed, or where the transaction is wholly or mainly carried out.

#### **Registration of alterations in registered particulars.**

**312.(1)** If any alteration is made or occurs in -

- (a) the charter, statutes, or memorandum or articles of association, certificate or articles of association or incorporation or the other instrument which constitutes an overseas company or contains the regulations which govern it, being an overseas company to which this Part of this Ordinance applies; or
- (b) the directors, secretary, managing agent or agents or persons appointed to accept service on behalf of the overseas company, or the matters particulars of which have been delivered to the Registrar in respect of any of those persons;

the company shall, within fourteen days after the occurrence of the event giving rise to the alteration, deliver to the Registrar for registration a copy of the resolution, contract or declaration by which the alteration is made to the instrument mentioned in paragraph (a) of subsection (1), or in a case falling under paragraph (b), the same particulars as are required by section 310(3) in respect of any person who as a result of the alteration is appointed to be or ceases to be a director, secretary, managing agent or person appointed to accept service on behalf of the overseas company, or if any matter particulars of which have been delivered in respect of any such person have changed or been altered, particulars of the alteration.

(2) Sections 169(9) and 310(8) shall apply to notices and documents delivered to the Registrar under this section as they apply to notices and documents delivered under section 310.

(3) If an overseas company to which this Part of this Ordinance applies fails to comply with subsection (1), every director of the company who is in default and the managing agent of the company in Seychelles shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or by both such fine and such imprisonment.

#### **Managing agent.**

**313.(1)** No overseas company shall carry on business in Seychelles unless it has appointed a managing agent to represent it there and the appointment has not terminated by dismissal, resignation, expiration of the period of appointment, death or otherwise.

(2) A managing agent of an overseas company shall in respect of contracts and transactions entered into, acts done and defaults made in Seychelles, and in respect of the company having notice of any matter, be deemed to be a managing director or a director of the company (as the case may be) for the purposes of sections 34, 37, 38 and 39.

(3) The termination of the appointment of a managing agent shall not be effective as against any person

who deals with him or does any act in relation to him, unless at the time of such act or dealing notice of the termination of his appointment has been delivered by the company to the Registrar.

(4) An individual or two or more individuals resident in Seychelles or a company or body corporate formed or incorporated in Seychelles may be appointed to be the managing agent or agents of an overseas company, but an overseas company may not be appointed to be the managing agent of another overseas company.

(5) If an overseas company to which this Part of this Ordinance applies ceases both to have a place of business in Seychelles and to carry on business in Seychelles, the managing agent most recently appointed by it shall for the purpose of this Ordinance be deemed to continue to be the managing agent of the company notwithstanding the termination of his appointment, and all persons may act accordingly, but an overseas company shall not be considered as continuing to be one to which this Part of this Ordinance applies merely because of the deemed continuation under this subsection of the appointment of a managing agent.

(6) If at any time two or more individuals are the managing agents in Seychelles of an overseas company, this section shall apply as though each of them were the sole managing agent thereof.

#### **Annual accounts of overseas companies.**

**314.(1)** Every overseas company to which this Part of this Ordinance applies shall, in every calendar year and at intervals not exceeding fifteen months, make out a balance sheet and profit and loss account and, if the company is a holding company, group accounts, in such form, and containing such particulars and including such documents, as under the provisions of this Ordinance it would, if it had been a company within the meaning of this Ordinance, have been required to make out and lay before the company in general meeting, and deliver copies of those documents to the Registrar within twenty-eight days after they are made out.

(2) The annual accounts of an overseas company shall, in addition to setting out the matters specified in the Sixth Schedule to this Ordinance, comply with the following rules, namely -

- (a) the fixed assets and current assets of the company and its assets which are neither fixed nor current shall be separately identified and classified, and such assets situate in Seychelles shall be distinguished from such assets situate elsewhere;
- (b) the amount of the company's cash held by banks incorporated in Seychelles and branches of banks operating in Seychelles shall be distinguished from cash held by other banks;
- (c) the amount of bank loans and overdrafts made to the company by banks incorporated in Seychelles or branches of banks operating in Seychelles shall be distinguished from bank loans and overdrafts made by other banks;
- (d) the aggregate amount of the company's debts and liabilities to persons resident or carrying on business in Seychelles and to companies and bodies corporate formed or incorporated there shall be separately shown, and there shall also be shown the amount of such debts and liabilities which:-
  - (i) are already due or will or may become due within twelve months after the date as at which the annual accounts of the company are made out;
  - (ii) will become due between twelve and thirty-six months after that date; and
  - (iii) will become due more than thirty-six months after that date; and
- (e) the aggregate amount of the company's debts and liabilities which are secured by a hypothecation, mortgage or charge on assets situate in Seychelles shall be separately shown.



(3) For the purpose of subsection (2):-

- (a) a debt shall be deemed to be due on the earliest date on which the creditor could require payment of it to be made;
- (b) the whole of a debt shall be deemed to be due when any instalment of it falls due; and
- (c) an overseas company shall be deemed to be indebted to debenture stockholders and loan stockholders for the principal amount and any arrears of interest in respect of the debenture stock or loan stock held by them.

(4) The Governor in Council may by an order published in the *Gazette* exempt any overseas company from compliance with subsections (1) or (2) of this section, or from both those subsections, on such terms and conditions as he thinks fit if:-

- (a) he is satisfied that the overseas company has, and will maintain, in Seychelles sufficient cash and readily realisable assets (as defined by paragraph (c)(i) of section 206(1) to satisfy its debts as they fall due; or
- (b) a company (whether an overseas company or not) which is the holding company of the overseas company has delivered to the Registrar a written undertaking to pay all the present and future debts and liabilities of the company to persons resident or carrying on business in Seychelles and to companies and bodies corporate incorporated in Seychelles;

and while any exemption granted under this subsection continues in force, this section shall not apply to the overseas company.

(5) A written undertaking in respect of the debts and liabilities of an overseas company delivered under subsection (4) shall be enforceable by any creditor of the overseas company who was resident or carrying on business in Seychelles at the time the debt or liability to him is incurred, and by any company or body corporate incorporated in Seychelles, as though the undertaking were a written guarantee of the amount payable to the creditor by the overseas company given by the holding company to the creditor at the date when the debt or liability to him is incurred.

(6) The Governor in Council may at any time revoke an exemption granted under subsection (4), and thereupon any undertaking delivered by a holding company under that subsection shall cease to have effect, but without prejudice to the liability of the holding company in respect of debts and liabilities of the overseas company incurred before the revocation is advertised under subsection (7).

(7) The Registrar shall advertise the revocation of an exemption granted under this section in the *Gazette* as soon as conveniently after the revocation takes place.

(8) Upon the revocation of an exemption granted under subsection (4), subsections (1) and (2) of this section shall apply to the overseas company as though it were thereby required to deliver copies of its annual accounts to the Registrar as from the date of the revocation; the overseas company shall also deliver to the Registrar a copy of its annual accounts for its financial year ending last before that date within three months after that date, and the copy of the accounts so delivered shall comply with subsections (1) and (2).

(9) If any document delivered to the Registrar under this section is not written in the English language, there shall be annexed to it a certified translation thereof.

(10) Until sections 143 to 145 come into force, subsection (1) shall take effect as though the words “and if the company is a holding company, group accounts” were omitted therefrom.

(11) If an overseas company fails to make out or to deliver a copy of its annual accounts to the Registrar in compliance with this section, every director of the company who is in default and every managing agent of the company in Seychelles shall be guilty of an offence punishable by a fine not exceeding one hundred rupees for every day during the first month that default continues, two hundred and fifty rupees for every day during the next two months that default continues, and five hundred rupees for every day that default continues thereafter.

**(12)** In a prosecution under subsection (11) the fact that an overseas company has not delivered a copy of its annual accounts to the Registrar shall be presumptive evidence that it has not made out those accounts.

**Publication of name etc., of overseas companies.**

**315.(1)** Every overseas company to which this Part of this Ordinance applies shall -

- (a)* in every prospectus inviting subscriptions for or purchases of its shares or debentures issued in Seychelles state the country in which the company was formed or incorporated; and
- (b)* conspicuously exhibit on every place where it carries on business in Seychelles the name of the company and the country in which the company was formed or incorporated; and
- (c)* cause the name of the company and of the country in which the company was formed or incorporated to be stated in legible characters in all letters, business communications, notices, advertisements and other publications of the company, and in all bills of exchange, cheques, promissory notes, endorsements, cheques and orders for money or goods, purporting to be signed by or on behalf of the company, and in all invoices, receipts and letters of credit of the company; and
- (d)* if the liability of the members or shareholders of the company is limited, cause notice of that fact to be stated in the English language in legible characters in every such prospectus as aforesaid and in all letters, business communications, notices, advertisements and other publications of the company issued, delivered or published in Seychelles and to be affixed on every place where it carries on its business.

**(2)** If an overseas company fails to comply with any of the provisions of subsection (1), every director of the company who is in default and the managing agent of the company in Seychelles shall be guilty of an offence punishable by a fine not exceeding one thousand rupees.

**Service of process and notices on overseas companies.**

**316.(1)** Any process, notice or document required to be served on an overseas company shall be sufficiently served if -

- (a)* it is addressed to any of the persons who have been appointed by the company for that purpose and particulars of whom have been delivered to the Registrar under section 310; and
- (b)* it is left at or sent by post to the address notified to the Registrar in respect of that person which has been so delivered.

**(2)** Service under subsection (1) shall be effectual notwithstanding the termination of the appointment of the person who is so served, unless the overseas company has notified the Registrar of the termination and has delivered to the Registrar the particulars required by section 310 in respect of at least two other persons who have been appointed to accept service on behalf of the overseas company and whose appointments for that purpose have not terminated.

**(3)** If an overseas company to which this Part of this Ordinance applies neither has a place of business in Seychelles nor carries on business in Seychelles, the two persons most recently appointed by it to accept service on its behalf shall for the purposes of this Ordinance be deemed to continue to be authorised to accept service on its behalf notwithstanding the termination of their appointments, and all persons may act accordingly, but an overseas company shall not be considered as continuing to be one to which this Part of this Ordinance applies merely because of the deemed continuance under this subsection of the authority of persons appointed to accept

service on its behalf.

**Prospectuses and debentures of overseas companies.**

**317.(1)** Sections 40 to 50 inclusive shall apply to an overseas company as they apply to a company incorporated under this Ordinance, subject to the following modifications:-

- (a) in section 40(1) after the word “incorporated” there shall be added the words “or formed with corporate status or personality or with moral personality under the law of the company where it was formed or incorporated”;
- (b) references to “directors” in section 40(3) and (13), sections 41(10), 42(3), 43(4) and (8), section 44(3) and (8), section 46(1), (2) (except paragraph (a) thereof) and (4), section 47(1) and (5), and section 49(5) shall be construed to include references to the managing agent or agents of the overseas company, particulars of whom have been delivered to the Registrar; and
- (c) section 41(1) shall be deemed to require a prospectus issued by or on behalf of an overseas company to contain, in addition to the matters there mentioned, the following particulars and statement:-
  - (i) the names, descriptions and addresses of the directors and proposed directors of the company, and of the managing agent or agents of the company, particulars of whom have been delivered to the Registrar;
  - (ii) the date when, and the country under the law of which, the company was incorporated or formed with corporate status or personality or with moral personality;
  - (iii) an address in Seychelles where there will be available for inspection a copy of the charter, statutes, or memorandum and articles of association, certificate or articles of association or incorporation, or the other instrument which constitutes the overseas company or contains the regulations which govern it, and a copy of the legislation under which the company was incorporated or formed, together, if any such documents are not written in the English language, with certified translations thereof; and
  - (iv) a statement that any person may inspect the documents mentioned in sub-paragraph (iii) of this paragraph at the address specified in the prospectus at any reasonable hour between the date on which the prospectus is first issued and six months after the closing of the subscription lists for the shares or debentures offered thereby for subscription or purchase, and that any person may also obtain a copy of any such document at that address between those dates on payment of a fee not exceeding five rupees for each such document.

(2) If inspection of any document mentioned in paragraph (c)(iii) of subsection (1) is refused to any person who makes a request therefor in accordance with paragraph (c)(iv) of that subsection, or if a copy of any such document is not supplied within two days to any person who makes such a request therefor and tenders the proper fee for such a copy, every director of the company and its managing agent or each of its managing agents in Seychelles shall be guilty of an offence punishable by a fine not exceeding one thousand rupees.

(3) Sections 69 to 82 inclusive shall apply to an overseas company as they apply to a company incorporated under this Ordinance, and references therein to directors or officers of a company shall be construed as including references to the managing agent or agents of an overseas company, particulars of whom have been delivered to the Registrar.

### **Winding up of overseas companies.**

**318.(1)** Where a company formed or incorporated outside Seychelles has or has had a place of business in Seychelles, or carries on or has carried on business in Seychelles, it may be wound up as though it were a company incorporated under this Ordinance.

**(2)** This section shall apply notwithstanding that the company has been dissolved or has ceased to exist under the laws of the country in which it was incorporated or formed, and in that case the company shall for the purposes of this Ordinance be deemed to have continued in existence until it is dissolved by order of the court.

**(3)** This section shall also apply to an overseas company which has never had a place of business in Seychelles and has never carried on business there, if the company has assets in Seychelles, or if, upon the company being wound up by the court, assets in Seychelles would be recoverable by the liquidator or claims against any person resident or carrying on business in Seychelles would be enforceable by the liquidator or any creditor of the company.

### **Offences by directors etc, of overseas companies and investigations.**

**319.(1)** If an offence under this Part of this Ordinance is committed by a director or by a managing agent in Seychelles of an overseas company and any fine imposed on that person is not paid within seven days after the date of his conviction, the fine may be recovered out of the assets of the overseas company as though it had been convicted of the offence and the fine had been imposed on it, and it shall be immaterial that before or after the date of the commission or commencement of the offence the overseas company has ceased to be a company to which this Part of this Ordinance applies.

**(2)** Sections 183 to 195 inclusive and section 337 shall apply in respect of an overseas company as though it were a company incorporated under this Ordinance.

### **Orders to cease carrying on business.**

**320.(1)** If the Registrar considers that:-

- (a)* any director, officer, managing agent or other agent of an overseas company has in Seychelles or elsewhere in connection with the management or conduct of its affairs committed a criminal offence involving dishonesty, or has obtained credit or the transfer or delivery of assets or the performance of services by false representations made fraudulently or by the dishonest concealment of material facts; or
- (b)* any offence has been committed by any person in Seychelles in connection with a prospectus issued by or on behalf of the overseas company, or deemed by section 48 to be issued by it; or
- (c)* any business or affairs of the overseas company in Seychelles has been conducted illegally or for an illegal purpose; or
- (d)* any act has been done by or on behalf of an overseas company in Seychelles or elsewhere which has harmed or is likely to harm the economic welfare of Seychelles;

he may serve written notice on the overseas company of his intention to make an order requiring it to cease to carry on business in Seychelles, stating the grounds on which the order will be made and informing the company that it may within one month from the service of the notice make written representations to him which he will take into consideration.

**(2)** If within one month from the service of a notice under subsection (1) the overseas company does not make written representations to the Registrar, or if the Registrar, after considering any written representation

which the overseas company makes to him within that time, is satisfied that the ground which was specified in the notice for making an order under this section is made out, he may make an order requiring the overseas company forthwith or after a period limited by the order to cease to carry on business in Seychelles.

(3) A copy of an order made under subsection (2) shall be served on the overseas company and the order shall be published in the *Gazette*.

(4) Within one month after service on the overseas company of a copy of an order made under subsection (2), it may, if the order was made on any of the grounds mentioned in paragraphs (a), (b) or (c) of subsection (1), appeal to the court, and the court may annul the order if the overseas company satisfies it that the ground or grounds on which it was made do not exist.

(5) If an order has been made under subsection (2) in respect of an overseas company and any period limited by it has expired, and, in a case where the company has appealed to the court against the order, if its appeal has been rejected, the overseas company shall cease to carry on business in Seychelles and to have a place of business there, and shall give notice accordingly under section 310(5).

(6) If an overseas company carries on business in Seychelles or has a place of business there after it should have ceased to do so under subsection (5), the company and every director, officer, managing agent and agent of the company who is in default shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or, in the case of an individual defendant, by imprisonment for not more than two years, or by both such a fine and such imprisonment.

#### **Interpretation of Part VII.**

**321.** For the purpose of this Part of this Ordinance:-

- (a) a certified copy of a document means a copy which has been certified by a judge, magistrate, notary, barrister, attorney or prescribed person, whether holding office under the law of Seychelles or of any other country, to be a true and complete copy of the document; and
- (b) a certified translation of a document means a translation thereof which has been certified by an officer of an Embassy, High Commission, Consulate or Vice-Consulate or by a prescribed person.

#### **PART VIII - EXISTING COMPANIES**

##### **Application of Ordinance to existing companies.**

**322.(1)** Subject to the provisions of this Part of this Ordinance, Parts I to VI inclusive of this Ordinance shall apply to an existing company as though it had been incorporated on the date on which this Ordinance comes into operation by the Registrar issuing to it under section 11 a certificate of incorporation bearing that date.

(2) This Ordinance and all other rules of law shall apply to the regulations of an existing company as though such of them as would, in the case of a company incorporated under this Ordinance, be required to be set out in its memorandum, were set out in a registered memorandum of association of the existing company, and as though the remainder of the said regulations were contained in registered articles of association of the existing company.

(3) The name of an existing company shall, as from the date on which this Ordinance comes into force, be the name which it had immediately before that date with the addition of the word "Limited" as the last word thereof, unless that word was immediately before that date the last word of its name.

(4) The regulations of an existing company shall be deemed to provide that its registered office shall be situate in Seychelles, and the company shall within fourteen days after this Ordinance comes into operation deliver to the Registrar a statement of the address of its registered office signed by a director of the company.

(5) Any provisions of the regulations of an existing company which conflict or are inconsistent with the provisions of this Ordinance shall be void as from the date when this Ordinance comes into force.

(6) Section 8 shall apply to an existing company and to its regulations.

(7) In this Part of this Ordinance the regulations of an existing company mean the contract, statutes, notarial deed or other instrument by which it was formed and which were referred to in the proclamation sanctioning its formation issued by the Governor, subject to such alterations thereof and additions thereto as have been lawfully made since the date of the proclamation.

(8) If an existing company fails to comply with subsection (4) the company and every director thereof shall be guilty of an offence punishable by a fine of one thousand rupees and a further fine of one hundred rupees for each day that the default continues.

(9) Nothing in this section shall invalidate any contract or transaction entered into, or any shares or debentures issued by an existing company before this Ordinance comes into force, and if bearer share certificates have been issued in respect of such shares, the issue shall be as effectual as if they had been issued with the consent of the Financial Secretary under section 90.

#### **Adoption of memorandum and articles by existing companies.**

**323.(1)** An existing company may by an ordinary resolution passed by a general meeting adopt a memorandum and articles of association in place of the regulations which apply to it immediately before this Ordinance comes into operation, but the company may not alter or add to the provisions of its regulations unless it complies with section 18 or section 20 (whichever is applicable), and in that case sections 19 and 21 shall apply to the alteration or addition.

(2) Every shareholder of an existing company shall be entitled to vote upon any resolution proposed under subsection (1), whether it does or does not alter or add to the regulations of the company, and section 118(1) shall apply to the resolution.

(3) The adoption of any of the provisions contained in the forms of articles of association set out in Parts II or IV of the First Schedule to this Ordinance, shall not be considered to be an alteration of or addition to the regulations of an existing company for the purpose of this section.

#### **Registration of existing companies as proprietary companies.**

**324.(1)** An existing company may, within six months after the date when this Ordinance comes into operation and before holding its first annual general meeting after that date, declare itself to be a proprietary company. The declaration shall be made by all the shareholders of the company subscribing an instrument in the prescribed form and the declaration shall take effect only when the company delivers that instrument to the Registrar.

(2) An instrument under subsection (1) may be subscribed on behalf of a person who is a minor or who has been interdicted by his tutor, or if he has no tutor, by a person appointed by the court for that purpose.

(3) A declaration made under subsection (1) shall be effective only if, at the dates when the instrument containing it is signed by each subscriber and when that instrument is delivered to the Registrar, the company satisfies the conditions contained in section 24(1) and has not at any time before or after this Ordinance comes into operation issued a prospectus inviting the public to subscribe for its shares or debentures.

(4) Upon delivery of an instrument subscribed under subsection (1), the Registrar shall make enquiries to ensure that the conditions mentioned in subsection (3) have been fulfilled, and on being satisfied in that respect, the Registrar shall issue a certificate of incorporation to the company. The certificate of incorporation shall be conclusive evidence that the company is authorised to become, and is at the date of the certificate, a proprietary company, and that all proceedings leading to the issue of the certificate were duly and regularly taken.

(5) In satisfying himself that the conditions mentioned in subsection (3) have been fulfilled, the Registrar may rely to such extent as he thinks fit upon a signed declaration made by a notary, barrister or attorney in respect of any relevant facts.

(6) If a certificate is issued under this section the word “Proprietary” shall be added to the name of the company as the penultimate word thereof.

(7) If a certificate of incorporation is issued under this section, the company shall for all purposes be deemed to have been a proprietary company from the date on which this Ordinance comes into operation until the date of the certificate.

#### **Transitional provisions as to annual general meetings and directors.**

**325.(1)** Notwithstanding anything in the regulations of an existing company, the company shall hold its annual general meeting for the year in which this Ordinance comes into operation (in this section called its transitional annual general meeting) within six months after the date when this Ordinance comes into operation, and shall hold its annual general meetings for subsequent years in accordance with section 119.

(2) An existing company need not hold its transitional annual general meeting under subsection (1) if it has, in accordance with its regulations, held an annual general meeting for the year in which this Ordinance comes into operation before the date when it comes into operation, but if in reliance on this subsection a company does not hold its transitional annual general meeting under subsection (1), section 119(1) and (3) shall apply to it as though it had held an annual general meeting four months after this Ordinance comes into operation.

(3) All directors of an existing company holding office at the date when this Ordinance comes into operation shall, notwithstanding anything in the regulations of the company, retire at the end of the second annual general meeting of the company held after that date, but any such director may be re-elected at any annual general meeting of the company, and thereupon section 163(1) shall apply to him:

Provided that a director of an existing company shall cease to hold office before the second annual general meeting aforesaid if he becomes disqualified under this Ordinance or the regulations of the company from being or acting as a director of it, or if by or under the regulations of the company or any contract with him his appointment terminates.

(4) Subsection (3) shall not apply to an existing company after it delivers to the Registrar an instrument under section 324 if the Registrar issues a certificate of incorporation to it under that section.

#### **Managing directors.**

**326.(1)** A person who is a managing director of an existing company at the date when this Ordinance comes into operation shall cease to be a managing director thereof one month after that date, but without prejudice to the power of the directors at any time after that date to appoint him or any other person to be a managing director under section 178.

(2) In this section the expression “managing director” means a director, by whatsoever name called, whom the directors have appointed to exercise the powers necessary for carrying on the company’s business in the usual way, whether with or without other powers and whether subject to exceptions, conditions or restrictions or not.

(3) This section shall not apply to an existing company after it delivers to the Registrar an instrument under section 324 if the Registrar issues a certificate of incorporation to it under that section.

#### **Classes of shares.**

**327.(1)** If an existing company has before the date when this Ordinance comes into operation issued two or more classes of shares and the rights or obligations of any of those classes of shares are wholly or partly set out in a resolution, prospectus, contract or instrument (other than the regulations of the company) the rights and obligations so set out shall for the purposes of this Ordinance be deemed to be set out in the company's regulations.

(2) Section 118(3) shall apply to non-participating preference shares issued by an existing company before the date when this Ordinance comes into operation as it applies to such shares issued after that date.

#### **Transitional orders.**

**328.(1)** The Governor in Council may by order adapt, modify or add to the provisions of this Ordinance insofar as they apply to existing companies for the purpose of enabling existing companies to conform in an orderly manner to the requirements of this Ordinance applicable to companies incorporated thereunder.

(2) The Governor in Council may, by order made under this section, either conditionally or unconditionally exempt from any of the requirements of this Ordinance any particular existing company or class of existing companies.

(3) An order made under this section shall be published in the *Gazette*.

### **PART IX - REGISTRATION OFFICE AND FEES**

#### **Registrar of Companies, etc.**

**329.(1)** For the purpose of the registration of companies and the carrying out of the provisions of this Ordinance, the Governor shall appoint a Registrar of Companies, and may appoint such number of Assistant Registrars of Companies as the Governor shall think fit.

(2) Whenever any act is by this Ordinance directed to be done by or to the Registrar, it shall be sufficient for it to be done by or to an Assistant Registrar of Companies.

#### **Fees and delivery of documents.**

**330.(1)** In respect of the several matters mentioned in the first column of the table set out in the Seventh Schedule to this Ordinance, there shall be paid to the Registrar the several fees specified in the second column of that table.

(2) Where by this Ordinance and document is required to be delivered or sent to the Registrar, it shall be sufficient for it to be sent to him by pre-paid letter post or by a messenger or delivery service, and it shall not be necessary for the person by or on behalf of whom the document is delivered or sent or his agent to attend at the office of the Registrar in person.



### **Inspection of documents kept by Registrar.**

**331.(1)** Any person may inspect any of the records, documents and copies of documents kept by the Registrar on payment of the prescribed fee, and any person may require a copy or extract of any such record or document or any part thereof to be certified by the Registrar as being a true copy on presentation of the copy to the Registrar and payment of the prescribed fee.

**(2)** No process for compelling the production of any document kept by the Registrar shall issue from any court except with the leave of that court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the court.

**(3)** A copy of or extract from any document kept and registered at the office for the registration of companies, certified to be a true copy under the hand of the Registrar shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

**(4)** No document delivered or sent to the Registrar under this Ordinance and no record or document kept by the Registrar thereunder shall be removed from the office of the Registrar unless the court so orders.

### **Enforcement of duty of companies to deliver returns etc.**

**332.(1)** If a company having made default in complying with any provision of this Ordinance 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 fourteen days after the service of a notice on the company requiring it to do so, the court may, on an application made by any member, shareholder, creditor or debenture holder of the company or by the Registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

**(2)** Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

**(3)** Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

**(4)** This section shall apply to an overseas company as though it were a company incorporated under this Ordinance.

## **PART X - MISCELLANEOUS**

### *Prohibition of partnerships with more than ten members*

#### **Prohibition on partnerships of more than ten persons.**

**333.(1)** No company, association, or partnership consisting of more than ten persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Ordinance, or is formed by or under some other Ordinance or by letters patent.

**(2)** This section shall not apply to -

- (a)* a partnership for the purpose of carrying on practice as accountants;
- (b)* a partnership or association for the purpose of carrying on business as stock brokers or jobbers or as dealers in securities, consisting of persons each of whom is a member

of a stock exchange in Seychelles or of a recognised overseas stock exchange; or

- (c) a company, association of partnership formed for the purpose of carrying on a profession, vocation or business specified in regulations made by the Governor in Council and consisting of persons who satisfy any conditions imposed by those regulations; or
- (d) an overseas company.

### *Offences*

#### **Offences in connection with applications, returns, etc.**

**334.(1)** If any person in any application, return, report, certificate, annual accounts or other document, required by or for the purposes of any of the provisions of this Ordinance, knowingly makes a statement false in any material particular, or makes such a statement not believing it to be true, he shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or to imprisonment for not more than two years, or to both such fine and imprisonment.

**(2)** Nothing in this section shall affect the provisions of any other section of this Ordinance which creates an offence or offences, and the offences created by this section shall be in addition to such other offences.

#### **Improper use of the word “Limited”.**

**335.** If any person or persons trade or carry on business under any name or title of which “Limited”, or any contraction or imitation of that word, is the last word, that person or those persons shall, unless incorporated under this Ordinance or deemed to be so incorporated by section 322, be guilty of an offence punishable by a fine of one hundred rupees for every day upon which that name or title has been used.

#### **Meaning of “default fine” and “in default”.**

**336.(1)** Where by any provision of this Ordinance it is provided that a company, or a director or officer of a company, or any other person, who is in default shall be liable to a default fine, every such company, director, officer or other person shall, for every day during which the offence or contravention continues, be liable to a fine not exceeding such amount as is specified in the said provision, or, if the amount of the fine is not so specified, to a fine not exceeding one hundred rupees.

**(2)** For the purpose of any provision of this Ordinance which provides that a director or officer of a company, or any other person, who is in default shall be liable to a fine or penalty, the expression “in default” means committing, authorising, concurring in or permitting the offence or contravention mentioned in the provision, and it shall be presumed that every director or officer of the company in respect of which an offence is committed permitted the offence or contravention, unless he satisfies the court that he neither committed, authorised or concurred in the commission of the offence or contravention, nor could, by the exercise of reasonable diligence, have prevented its commission.

#### **Production and inspection of books where offence suspected.**

**337.(1)** If on an application made to the court by the Attorney-General, the Registrar or a police officer of or above the rank of Assistant Superintendent, there is shown to be reasonable cause to believe that any person has,

while a director or other officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made -

- (a) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or
- (b) requiring the secretary of the company or such other officer thereof as may be named in the order to produce the said books or papers or any of them to a person named in the order at a place so named.

(2) An auditor of a company shall for the purposes of this section be deemed to be an officer of the company.

### *Legal Proceedings*

#### **Costs in actions by limited companies.**

338. Where a company or an overseas company is a plaintiff in any action or other legal proceeding, and court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company or overseas 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.

#### **Saving for privileged communications.**

339. Where proceedings are instituted under this Ordinance against any person in any court nothing in this Ordinance shall be taken to require any person who has acted as barrister, attorney or notary for the defendant to disclose any privileged communication made to him in that capacity.

### *Regulations and Rules of Court*

#### **Rules of Court.**

340. The Chief Justice may make rules of court for regulating proceedings under this Ordinance (other than proceedings under Part VI thereof) and for specifying the fees payable in respect of such proceedings.

#### **Amendment of First and Seventh Schedules.**

341.(1) The Governor in Council may by order published in the *Gazette* -

- (a) alter, add to or rescind any Part of the First Schedule to this Ordinance; and
- (b) amend the Seventh Schedule to this Ordinance.

(2) No alteration or addition to, or rescission of, any Part of the First Schedule made under this section shall affect any company which was registered or which expressly or by implication was governed by any provisions of those Parts immediately before the alteration, addition or rescission came into force.

### **Regulations.**

**342.** The Governor in Council may make such regulations as appear to him to be necessary or expedient for carrying out the objects and provisions of this Ordinance, and in particular (but without prejudice to the generality of the foregoing) such regulations may -

- (a) prescribe forms for the purposes of any provision of this Ordinance, whether forms of application or otherwise;
- (b) prescribe anything which is to be or may be prescribed under this Ordinance;
- (c) make provision for any purpose for which regulations are authorised or required to be made by any provision of this Ordinance;
- (d) for the purpose of securing conformity with the provisions of this Ordinance or otherwise, amend, modify the application of, repeal, abolish or revoke any provision or rule of law in force immediately before the commencement of this Ordinance and which touches upon any matter in relation to which provision is made in this Ordinance.

### *Repeal and Modified Application of Enactments*

### **Repeals and savings.**

**343.(1)** The enactments specified in the Eighth Schedule to this Ordinance are hereby repealed to the extent stated in the second column of that Schedule.

**(2)** Where any offence, being an offence for the continuance of which a penalty was provided, has been committed under any former enactment relating to companies, proceedings may be taken under this Ordinance in respect of the continuance of the offence after the commencement of this Ordinance, in the same manner as if the offence had been committed under the corresponding provisions of this Ordinance.

### **Modified application of enactments.**

**344.(1)** After this Ordinance comes into operation Book III Title IX of the Civil Code and Book I Title III of the Commercial Code shall not apply to any company incorporated under this Ordinance or to any existing company, except so far as any provision of that Title is expressly included in the memorandum or articles or in the regulations of the company by being set out or referred to therein and is not inconsistent with the provisions of this Ordinance.

**(2)** After this Ordinance comes into operation the Civil and Commercial Pledges (Amendment) Ordinance, 1965 and the Security on Movables Ordinance, 1965 shall not apply to any pledge, mortgage or charge created by a company or an overseas company or affecting any assets of a company or an overseas company:

Provided that in connection with a pledge, mortgage or charge created before the date when this Ordinance comes into operation sections 9 to 12 inclusive of the Security on Movables Ordinance shall continue to apply after that date.

**(3)** The Mortgage and Registration Ordinance is hereby amended as follows -

- (a) by adding to section 75 thereof, next before the fullstop appearing at the end thereof,

the words and figures “and provided further that the provisions of this section do not apply in relation to any company formed after the commencement of the Companies Ordinance, 1972 and registered under that Ordinance”;

- (b) by inserting in section 90 thereof, next after paragraph (xx) thereof, the following new paragraph -

“(xxi) All documents and writings, judicial or extra-judicial acts and proceedings specified in any order made by the Governor in Council for the purposes of this paragraph :”

## SCHEDULES

### FIRST SCHEDULE

#### PART I - FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY (OTHER THAN A PROPRIETARY COMPANY)

*(Section 4)*

1. The name of the company is "Modern Metallic Compounds Limited".
2. The registered office of the company will be situate in Seychelles.
3. The objects for which the company is established are:-
  - (A) to purchase and carry on as a going concern the business of metallurgical engineers hitherto carried on by Victoria Metallic Compounds Limited at Victoria, Seychelles;
  - (B) to carry on the business of metallurgical engineers, manufacturers and processors of metallic alloys, manufacturers of metallic goods, dealers in and stockists of metals and metallic goods (including scrap metal), designers of metallic products and consultant metallurgists.
4. The liability of the members of the company is limited.
5. The share capital of the company consists of:-
  - (i) Fifty thousand preference shares with a nominal value of ten rupees each; and
  - (ii) Ten thousand ordinary shares with a nominal value of one hundred rupees each.

The nominal capital of the company is one million five hundred thousand rupees, consisting of five hundred thousand rupees nominal capital in respect of the said preference shares and one million rupees capital in respect of the said ordinary shares.
6. The said preference shares shall each carry the right:-
  - (i) to a fixed cumulative preference dividend of one rupee per annum;
  - (ii) to repayment of the capital paid up thereon and to payment of all accrued but unpaid preference dividend (whether declared or not) calculated to the date of repayment of capital in priority to any payment in respect of any other class of shares in the winding up of the company or on a reduction of capital; and
  - (iii) to an unrestricted vote at general meetings.
7. The company will purchase the business of metallurgical engineers hitherto carried on by Victoria Metallic Compounds Limited at Victoria, Seychelles (which is valued at eight hundred thousand rupees) in consideration of the allotment to that company or its nominees of eight thousand ordinary shares of one hundred rupees each credited as fully paid.

We, the several persons whose names and addresses are subscribed are desirous of being formed into a company to be governed by this memorandum of association.

*Number of shares to be taken by each subscriber*

- |   |   |
|---|---|
| 1. Henry Pereira of Victoria, Seychelles,<br>Engineer | 500 preference shares and<br>500 ordinary shares. |
|---|---|

- |    |  |                        |
|----|--|------------------------|
| 2. | John Pereira of Sans Souci, Mahe,<br>Seychelles, Engineer    | 100 ordinary shares.   |
| 3. | Peter Pereira of La Misere, Mahe,<br>Seychelles, Accountant  | 100 ordinary shares.   |
| 4. | Joshua Smith of Anse Boileau, Mahe,<br>Seychelles, Landowner | 100 preference shares. |
| 5. | Henry da Silva of Glacis, Mahe,<br>Seychelles, Landowner     | 100 preference shares. |
| 6. | James Fourneaux of Bel Ombre,<br>Mahe, Seychelles, Retired   | 100 preference shares, |
| 7. | Albert Henry Wilson of Victoria,<br>Seychelles, Bank Manager | 100 preference shares. |

Dated the            day of            19

Witness to the above signatures:

Isabelle Laforgue, Victoria, Seychelles, Secretary.

## **PART II - REGULATIONS FOR THE MANAGEMENT OF A COMPANY (OTHER THAN A PROPRIETARY COMPANY)**

*(Section 8)*

### *Interpretation*

1. In these regulations:

“the Ordinance” means the Companies Ordinance, 1972.

“secretary” means any person appointed to perform the duties of the secretary of the company.

Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Ordinance or any modification thereof in force at the date at which these regulations become binding on the company.

### *Share and Loan Capital*

2. Except as required by law, no person shall be recognised by the company as holding any share or debenture as a nominee for, or otherwise on behalf of, any other person, and the company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any usufruct, contingent, future or partial interest in any share or debenture, or any interest in any fractional part of a share or debenture, or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share or debenture except an absolute right to the entirety thereof in the registered holder. Provided that nothing in this paragraph shall prevent the company from issuing bearer certificates in respect of shares or debentures or shall affect the rights of the holders of such documents.

3. Every person whose name is entered as a member in the register of members or as a debenture holder in the register of debenture holders shall be entitled without payment to receive within one month after allotment or lodgement of a transfer one certificate for all his shares or debentures, or several certificates each for one or more of his shares or debentures upon payment of five rupees for every certificate after the first, or such less sum as the directors shall from time to time determine. Every certificate shall be signed by at least two directors and the secretary of the company and shall specify the shares or debentures to which it relates and the amount paid up thereon: Provided that in respect of shares or debentures held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for shares or debentures to one of several joint holders shall be sufficient delivery to all such holders.

4. If a share certificate, debenture, debenture stock certificate or loan stock certificate in respect of shares or debentures be defaced, lost or destroyed, it may be renewed on payment of a fee of five rupees or such less sum and on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investigating evidence as the directors think fit:

Provided that nothing in this paragraph shall authorise or require the directors to renew a bearer share certificate or a bearer debenture unless the court so orders.

5. The company shall not give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with a purchase or subscription made or to be made by any person of or for any shares or debentures of the company or of any company which belongs to the same group of companies as the company, nor shall the company make a loan for any purpose whatsoever on the security of its shares or debentures or those of any company which belongs to the same group of companies as the company, but nothing in this regulation shall prohibit any of the transactions mentioned in the proviso to section 53(1) of the Ordinance.

#### *Payment of issue price*

6. The directors may, if they think fit, receive from any person willing to advance the same, all or any part of the moneys not yet due upon any shares or debentures held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become payable) pay interest at such rate not exceeding (unless the company in general meeting shall otherwise direct) ten per cent per annum, as may be agreed upon between the directors and the person paying such sum in advance.

#### *Transfer of shares and debentures*

7. An instrument of transfer of shares or debentures shall name the transferee, shall state the number or nominal value of the shares transferred or the principal amount of the debentures transferred, and shall be signed by the transferor. As regards the company the transferor shall be deemed to remain the holder of the shares or debentures until the name of the transferee is entered in the register of members or debenture holders, except so far as the Ordinance otherwise provides or the court otherwise orders.

8. The directors may decline to register the transfer of a share (not being a fully paid share) to a person of whom they shall not approve, and they may also decline to register the transfer of a share on which calls or instalments of the issue price are due and unpaid.

9. The directors may also decline to recognise any instrument of transfer of shares or debentures unless:-

- (a) a fee of five rupees or such less sum as the directors may from time to time require is paid to the company in respect thereof;
- (b) the instrument of transfer has been certificated by or on behalf of the company, or is accompanied by the certificate of the shares or debentures to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and



(c) the instrument of transfer is in respect of only one class of shares or debentures.

10. If the directors refuse to register a transfer they shall within one month after the date on which the transfer was lodged with the company send notice of the refusal to the transferor and the transferee.

11. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine, provided always that such registration shall not be suspended for more than thirty days in any year.

12. The company shall be entitled to charge a fee not exceeding five rupees on registering the heir or other person entitled to shares or debentures on the death of a holder, and on the registration of every certificate of appointment of a trustee in bankruptcy, power of attorney, notice of interest, charging order, or other instrument.

#### *Transmission of shares and debentures*

13. In case of the death of a shareholder or debenture holder the survivor or survivors where the deceased was a joint holder, and the heir or other person entitled on the death of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to the deceased's shares or debentures; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which has been jointly held by him with other persons.

14. Any person becoming entitled to shares or debentures in consequence of the death or bankruptcy of a shareholder or debenture holder may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the shares or debentures or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the shares or debentures by that shareholder or debenture holder before his death or bankruptcy, as the case may be.

15. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company:

Provided always that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and, if the notice is not complied with within ninety days the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

16. Regulations 14 and 15 shall not apply to shares which are represented by bearer share certificate.

#### *Forfeiture and re-issue of shares*

17. A declaration in writing (signed by at least two directors and the secretary of the company) that a share in the company has been duly forfeited under section 56 of the Ordinance on a date stated in the declaration, shall be conclusive evidence of the facts therein stated in favour of the person to whom the share is re-issued and persons claiming under him as against all other persons claiming to be entitled to the share. The company may receive the consideration (if any) given for the share or debenture on the re-issue thereof and may issue a share certificate to the person to whom the share is re-issued, and unless the share is in bearer form, he shall thereupon be registered as a member of the company in respect of the share, and he shall not be bound to see to the application of the consideration (if any) nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

### *Conversion of shares into stock*

**18.** The company may by ordinary resolution convert any paid-up shares with a nominal value into stock, and reconvert any stock into paid-up shares with a nominal value of not less than ten rupees.

**19.** The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as and subject to which the shares from which the stock arose might, previously to conversion, have been transferred, or as near thereto as circumstances admit; and the directors may from time to time fix the minimum amount of stock transferable, but so that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

**20.** The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

**21.** Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words “share” and “shareholder” therein shall include “stock” and “stockholder”.

### *General Meetings*

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

Provided that so long as the company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the directors shall appoint.

**23.** The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 120(2) of the Ordinance. If at any time there are not within Seychelles sufficient directors capable of acting to form a quorum, any director or any two shareholders of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

### *Notice of general meetings*

**24.** An annual general meeting and an extraordinary general meeting called for the passing of a special resolution shall be called by twenty-one days’ notice in writing at the least, and a meeting of the company (other than an annual general meeting or a meeting for the passing of a special resolution) and a meeting of a class of shareholders shall be called by fourteen days’ notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and the exact wording of every resolution to be proposed at the meeting (except a procedural resolution and a resolution in respect of ordinary business at an annual general meeting). Notice of a meeting shall be given to such persons as are by section 127 of the Ordinance entitled to receive such notices from the company, in the manner prescribed by that section:

Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this regulation, be deemed to have been duly called if it is so agreed -

- (a) in the case of a meeting called as the annual general meeting, by all the shareholders entitled to attend and vote thereat; and
- (b) in the case of any other meeting, by a majority in number of the shareholders having

a right to attend and vote at the meeting, being a majority together holding not less than 95 per cent in nominal value of the shares giving that right.

**25.** Ordinary business at an annual general meeting shall consist of the declaration of dividend and the approval or rejection of the annual accounts and the directors' and auditors' reports,

**26.** Subject to section 127(6) of the Ordinance, the accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

**27.** No business shall be transacted at any general meeting unless a quorum of shareholders is present at the time when the meeting proceeds to business; save as herein otherwise provided, three shareholders present in person or by proxy shall be a quorum.

**28.** If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of shareholders, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the shareholders present or their proxy or proxies shall be a quorum.

**29.** The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting, or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

**30.** If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the shareholders present shall choose one of their number to be chairman of the meeting.

**31.** The chairman may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for eight days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

**32.** At any general meeting a resolution put to the vote of the meeting shall, subject to the provisions of the Ordinance, be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded -

- (a) by the chairman; or
- (b) by at least three shareholders present in person or by proxy; or
- (c) by any shareholder or shareholders present in person or by proxy and representing not less than one-tenth of the total voting rights of all the shareholders having the right to vote at the meeting.

Unless a poll be so demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company shall, subject to the provisions of the Ordinance, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

A demand for a poll may be withdrawn.

**33.** Except as provided in paragraph 34, if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

**34.** In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

**35.** A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

#### *Votes of Members*

**36.** Subject to any restrictions for the time being attached to any class or classes of shares by the memorandum of the company, on a show of hands every shareholder present in person or by proxy shall have one vote and on a poll, he shall have the number of votes to which he is entitled by section 118 of the Ordinance.

**37.** In the case of joint holders of shares which are registered in the register of members the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

**38.** A shareholder who is a minor or who has been interdicted may vote, whether on a show of hands or on a poll, by his tutor, or if he has no tutor, by some other person appointed for the purpose by the court, and any such tutor or other person may vote by proxy.

**39.** No votes shall be cast in respect of shares acquired by or transferred to the company unless they have been re-issued, and no votes shall be cast in respect of shares held by nominees for the company.

**40.** No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive, subject to any proceedings brought under section 136 of the Ordinance.

**41.** The instrument appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorised in writing, or, if the appointer is a corporation, either under seal, or under the hand of an officer or agent of the corporation who has been duly authorised.

**42.** The instrument appointing a proxy and the instrument containing the authority under which it is signed (if any), or a notarially certified copy of either or both of those instruments, shall be deposited at the registered office of the company, or at such other place within Seychelles as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

**43.** An instrument appointing a proxy shall be in the following form or a form as near thereto, as circumstances admit -

“Limited

I/We, of

, being a shareholder /shareholders of the above-named company,  
hereby appoint of, of  
, as my/our proxy to vote for me/us on my/our behalf at the annual *or* extraordinary, (as the case may be)  
general meeting of the company to be held on the

day of19and at any adjournment thereof.

Signed this                      day of                      19                      .”

44. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or interdiction of the shareholder, or the revocation of the proxy or of the authority under which the proxy was given, or the transfer of the share in respect of which the proxy is given, provided that no intimation in writing of such death, interdiction, revocation or transfer as aforesaid has been received by the company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

#### *Directors*

45. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them.

46. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all traveling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company, or in connection with the business of the company.

47. The shareholding qualification for directors may be fixed by the company in general meeting, and unless and until so fixed no such qualification shall be required.

48. Subject to the provisions of the Ordinance, a director of the company may be or become a director or other officer of, or otherwise interested in, any company promoted by the company or in which the company be interested as shareholder or otherwise, and no such director shall be accountable to the company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company unless the company otherwise directs.

#### *Borrowing Powers*

49. Subject to the provisions of the Ordinance, the directors may exercise all the powers of the company to borrow money, and to hypothecate, mortgage or charge its undertaking, assets and uncalled capital, or any part thereof, and to issue debentures, debenture stock, and other securities as security for any loan to, or debt, liability or obligation of the company or of any third party:

Provided that the amount for the time being remaining undischarged of moneys borrowed or secured by the directors as aforesaid (apart from temporary loans obtained from the company's bankers in the ordinary course of business) shall not at any time, without the previous sanction of the company in general meeting, exceed the amount paid up on the company's issued and outstanding shares plus the amount of the company's capital reserve for the time being, but nevertheless no lender or other person dealing with the company shall be concerned to see or inquire whether this limit is observed. No debt incurred or security given in excess of such limit shall be invalid or ineffectual, except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was thereby exceeded.

#### *Powers and Duties of Directors*

50. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Ordinance or by these regulations, required to be exercised by the company in general meeting, subject, nevertheless, to any of these regulations, to the provisions of the Ordinance and to such directions, being not inconsistent with the aforesaid regulations or provisions, as may be given by the company in general meeting; but no direction given by the company in general meeting shall invalidate any prior act of the directors which

would have been valid if that direction had not been given.

**51.** The directors may from time to time and at any time, by an instrument in writing signed by at least two of their number on behalf of them all, appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the general agent or agents of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these regulations) and for such period and subject to such conditions as they may think fit, and any such instrument may contain such provisions for the protection and convenience of persons dealing with any such general agent as the directors may think fit and may also authorise any such general agent to delegate all or any of the powers, authorities and discretions vested in him.

**52.(1)** A director who is in any way, whether directly or indirectly, interested, in a contract or proposed contract with the company shall declare the nature of his interest in accordance with paragraph (g) section 171(1) of the Ordinance as extended by section 171(4).

**(2)** At a meeting of the directors a director shall not vote in respect of any contract or arrangement in which he is interested, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting, but subject to the provisions of the Ordinance neither of these prohibitions shall apply to -

- (a) any arrangement for giving any director any security or indemnity in respect of money lent by him to, or obligations undertaken by him for the benefit of, the company; or
- (b) any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or
- (c) any contract by a director to subscribe for or underwrite shares or debentures of the company; or
- (d) any contract or arrangement with any other company in which he is interested only as an officer of the company or as the holder of shares or other securities of it;

and these prohibitions may, subject to the provisions of the Ordinance, at any time be suspended or relaxed to any extent, and either generally or in respect of any particular contract, arrangement or transaction, by the company in general meeting.

**(3)** Subject to the provisions of the Ordinance, a director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with his office of director for such period and on such terms (as to remuneration and otherwise) as the directors may determine, and no director or intending director shall be disqualified by his office from contracting with the company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, and subject to the provisions of the Ordinance, no such contract, or any contract or arrangement entered into by or on behalf of the company in which any director is in any way interested, shall be liable to be avoided, nor shall any director so contracting or being so interested be liable to account to the company for any profit realised by any such contract or arrangement, by reason of such director holding that office or of the fiduciary relation thereby established.

**(4)** A director, notwithstanding his interest, may be counted in the quorum present at any meeting of the directors whereat he or any other director is appointed to hold any such office or place of profit under the company, or whereat the terms of any such appointment are arranged, and he may vote on any such appointment or arrangement other than his own appointment or the arrangement of the terms thereof.

**(5)** Any director may act by himself or his firm in a professional capacity for the company, and he or his firm shall be entitled to remuneration for professional services as if he were not a director:

Provided that nothing herein contained shall authorise a director or his firm to act as auditor to the company.

**53.** All cheques, promissory notes, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed (as the case may be) in such manner as the directors shall from time to time by resolution determine.

**54.** The directors shall cause minutes to be made in books provided for the purpose -

- (a) of all appointments of officers made by the directors;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

**55.** Subject to the provisions of the Ordinance, the directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company, or to his widow or dependants, and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

#### *Rotation of Directors*

**56.** At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-fifth of the directors for the time being, or, if their number is not five or a multiple of five, then the number nearest one-fifth, shall retire from office.

**57.** The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.

**58.** A retiring director shall be eligible for re-election.

**59.** The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring director shall if offering himself for re-election be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office, or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

**60.** No person other than a director retiring at the meeting shall, unless recommended by the directors, be eligible for election to the office of director at any annual general meeting unless not less than one week before the date appointed for the meeting there shall have been left at the registered office of the company a notice in writing, signed by a shareholder duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected:

Provided that if an annual general meeting is called after such a notice is left as aforesaid, the notice shall be deemed to have been validly given notwithstanding that there is less than one week between the giving of the notice and the holding of the annual general meeting.

**61.** The company may from time to time by ordinary resolution increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

**62.** The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these regulations. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for

re-election, but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

**63.** The company may by ordinary resolution, in accordance with section 168 of the Ordinance, remove any director before the expiration of his period of office notwithstanding anything in these articles or in any agreement between the company and such director. Such removal shall, subject to the provisions of that section, be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.

**64.** The company may by ordinary resolution appoint another person in place of a director removed from office under regulation 63, and without prejudice to the powers of the directors under paragraph 62, the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. A person appointed in place of a director so removed or to fill such a vacancy shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected or re-elected a director.

#### *Proceedings of Directors*

**65.** The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Seychelles.

**66.** The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

**67.** The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

**68.** The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

**69.** The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any instructions that may be given to it by the directors.

**70.** A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

**71.** A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

**72.** All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

**73.** A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.



### *Managing Director*

**74.** Subject to the provisions of the Ordinance, the directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. A managing director whose appointment is approved by a general meeting passed not later than six months after his appointment shall not, whilst holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall be automatically determined if he ceases from any cause to be a director.

**75.** The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

### *Secretary*

**76.** The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

### *Dividends and Reserves*

**77.** A general meeting may by ordinary resolution dispose of the profits of the company by declaring dividends, carrying profits forward, transferring profits to capital or revenue reserves, or by using profits or revenue reserves to pay the issue price of bonus shares or debentures to be issued as fully paid shares or debentures to shareholders in the same proportions as a dividend would be paid to them.

**78.** The directors may from time to time pay to the shareholders such interim dividends as appear to the directors to be justified by the profits of the company.

**79.** Subject to the rights of persons (if any) entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of an instalment of the issue price becoming due shall be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.

**80.** The directors may deduct from any dividend payable to any shareholder all sums of money (if any) presently payable by him to the company on account of instalments of the issue price of shares held by him, or otherwise in relation to shares of the company.

**81.** If a general meeting resolves that fully paid bonus shares shall be issued credited as paid up out of profits or capital or revenue reserves, the directors shall make all requisite allotments and issues of fully-paid shares, and generally shall do all acts and things required to give effect thereto, and shall have full power to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit in the case of shares becoming distributable in fractions.

**82.** Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets of the company, and in particular of paid up shares, debentures or debenture stock of any other company, or in any one or more of such ways, and the directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof, and may determine that cash payments shall be made to

any shareholders upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees or agents as may seem expedient to the directors.

**83.** Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members, or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one or more joint holders may give effectual receipts for any dividends, bonuses or other moneys payable in respect of the shares held by them as joint holders.

**84.** No dividend shall bear interest against the company.

#### *Books and documents*

**85.** The books of account shall be kept at the registered office of the company, or, subject to the provisions of the Ordinance, at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

**86.** The directors shall from time to time determine whether and to what extent, and at what times and places and under what conditions or regulations, the accounts and books of the company or any of them shall be open to the inspection of shareholders not being directors, and no shareholder (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by the Ordinance or authorised by the directors or by the company in general meeting or directed by the court.

#### *Notices*

**87.** A notice may be given by the company to any member, shareholder or debenture holder either personally, or by sending it by post to him or to his registered address, or, if he has no registered address in Seychelles, to the address (if any) in Seychelles supplied by him to the company for the purpose of giving notices to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

**88.** A notice may be given by the company to the joint holders of a share or debenture by giving the notice to the joint holder first named in the register of members or debenture holders in respect of the share or debenture.

**89.** A notice may be given by the company to the persons entitled to a share or debenture in consequence of the death or bankruptcy of a shareholder or debenture holder by sending it through the post in a prepaid letter addressed to them by name, or by the title of heirs of the deceased, or trustee of the bankrupt, or by any like description, at the address (if any) in Seychelles supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

**90.** Notice may be given to the holders of shares or debentures represented by bearer certificates by the publication of the notice once in a daily newspaper circulating in Seychelles.

**91.** Notice of every general meeting shall be given in any manner hereinbefore authorised to -

- (a) every member of the company except those members who, having no registered address in Seychelles, have not supplied to the company an address in Seychelles for the giving of notices to them;
- (b) every person upon whom the ownership of a share devolves by reason of his being an

heir or a person entitled to the estate of a member, or a trustee in bankruptcy of a member, where the member but for his death or bankruptcy would be entitled to receive notice of the meeting; and

(c) the auditor for the time being of the company.

No other person shall be entitled to receive individual notices of general meetings. Notices of general meetings shall be given to the holders of shares represented by bearer shares certificates in the manner prescribed by section 127(4) of the Ordinance.

#### *Winding up*

**92.** If the company shall be wound up the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Ordinance, divide amongst the shareholders *in specie* or kind the whole or any part of the assets of the company (whether they shall consist of assets of the same kind or not) and may, for such purpose set such value as he deems fair upon any assets to be divided as aforesaid, and may determine how such division shall be carried out as between the shareholders or different classes of shareholders. The liquidator may, with the like sanction, vest the whole or any part of such assets in nominees or agents on behalf, or for the benefit, of shareholders as the liquidator, with the like sanction, shall think fit, but so that no shareholder shall be compelled to accept any shares or other securities whereon there is any liability or amount unpaid.

#### *Indemnity*

**93.** Every director, managing director, agent, auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, or in connection with any application under section 182 of the Ordinance in which relief is granted to him by the court.

1. Henry Pereira of Victoria, Seychelles, Engineer
2. John Pereira of Sans Souci, Mahe, Seychelles, Engineer
3. Peter Pereira of La Misere, Mahe, Seychelles, Accountant
4. Joshua Smith of Anse Boileau, Mahe, Seychelles, Landowner
5. Henry da Silva of Glacis, Mahe, Landowner
6. James Fourneaux of Bel Ombre, Mahe, Seychelles, Retired
7. Albert Henry Wilson of Victoria, Seychelles, Bank Manager.

Dated the            day of            19

Witness to the above signatures :

Isabelles Laforgue, Victoria, Seychelles, Secretary.

### PART III - FORM OF MEMORANDUM OF ASSOCIATION OF A PROPRIETARY COMPANY

(Section 4)

1. The name of the company is "Cascade Automobile Company (Proprietary) Limited".
2. The registered office of the company will be situate in Seychelles.
3. The objects for which the company is established are:-
  - (A) to construct, equip and carry on the business of a petrol station and of a garage providing facilities for servicing and repairing motor vehicles and for selling spare parts required for motor vehicles at Cascade, Seychelles;
  - (B) to carry on the business of petrol retailers, motor vehicle repairers and engineers, dealers in motor vehicle equipment and spares and dealers in new and second hand motor vehicles.
4. The liability of the members of the company is limited.
5. The share capital of the company consists of three hundred shares with a nominal value of fifty rupees each. The nominal capital of the company (being its nominal capital in respect of those shares) is fifteen thousand rupees.
6. The original directors of the company shall be Henri des Isles and Jean Faubert who shall hold office for the terms of their respective lives, but may resign at any time by giving three months' notice of their intention to do so to the company.

We the several persons whose names and addresses are subscribed are desirous of being formed into a company to be governed by this memorandum of association.

*Number of shares to be taken  
by each subscriber*

- |    |   |            |
|----|---|------------|
| 1. | Henri des Isles of Cascade, Mahe,<br>Seychelles, Motor Engineer | 150 shares |
| 2. | Jean Faubert of Cascade, Mahe,<br>Seychelles, Motor Engineer    | 150 shares |

Dated the                      day of                      19

Witness to the above signatures :

Francis Henry Mackintosh, Victoria, Seychelles, Notary.

### PART IV - REGULATIONS FOR THE MANAGEMENT OF A PROPRIETARY COMPANY

(Section 8)

1. The regulations set out in Part II of the First Schedule to the Companies Ordinance, 1972, with the exception of regulations 34, 46, 51, 56 to 71 inclusive, the words "or of a committee of directors" in regulation 72 and regulations 74 and 75, shall be deemed to be incorporated with these regulations and shall apply to the company.

2. Each of the original directors may respectively, by an instrument in writing or by will, nominate any person to succeed him as a director of the company in his place on his death or retirement. The person so nominated shall (if he signifies his willingness in writing within one month after the death or retirement of the person who nominates him) become a director of the company for the term of his life or until he retires by giving three months' written notice of his intention to do so to the company, and the right of the other shareholders to purchase the shares of the original director who dies or retires shall be exercisable only to the extent that the person so nominated does not acquire the shares held by that original director.

3. It shall be the duty of members of the company and all persons claiming under them to abstain from doing any act whereby the company may cease to be a proprietary company (except by voting for the conversion of the company into a company other than a proprietary company), and if for any reason the company ceases to be a proprietary company, every member and all persons claiming under him shall do all acts in his power to enable the company to become a proprietary company again.

1. Henri des Isles of Cascade, Mahe, Seychelles, Motor Engineer
2. Jean Faubert of Cascade, Mahe, Seychelles, Motor Engineer

Dated the                      day of                      19

Witness to the above signatures :

Francis Henry Mackintosh, Victoria, Seychelles, Notary.

## SECOND SCHEDULE

*(Section 11)*

### GOVERNMENT OF SEYCHELLES COMPANIES REGISTRY

This is to certify that name of company Proprietary (*where applicable*) Limited was this day incorporated under the Companies Ordinance 1972 and that the company is a proprietary company (*where applicable*).

Dated this                      day of                      19

Registrar of Companies.

### **THIRD SCHEDULE**

*(Section 34)*

#### **IMPLIED POWERS OF DIRECTORS, A MANAGING DIRECTOR AND A DIRECTOR OF A PROPRIETARY COMPANY**

- 1.** To enter into, agree to the modification or termination of, perform, and accept performance of contracts in the company's name or on its behalf for the purpose of carrying on the company's business or pursuing its objects.
- 2.** To bring or defend proceedings in any court in the name or on behalf of the company, to intervene in the company's name or on its behalf in any proceedings brought by other persons (including bankruptcy proceedings and proceedings for the winding up of any company or body corporate), and to agree to the submission of disputes to arbitration and to participate in any arbitration proceedings.
- 3.** To acquire, take on lease, hire or licence, hold, dispose of, lease, licence, let on hire and turn to account any assets of the company.
- 4.** To enter into partnership, consortium, profit sharing and other similar agreements in the name or on behalf of the company with any person, firm, company, overseas company or body corporate, and to promote companies and subsidiaries, manage the whole or any part of the undertaking of any other company or overseas company and amalgamate with any other company or overseas company.
- 5.** To lend money, to guarantee or give security for the debts and liabilities of other persons, and to take, hold and realise any form of security in connection with such transactions.
- 6.** To borrow and to give security in any form over any part of the company's assets, including the unpaid part of the issue price of its shares and debentures, whether due or not.
- 7.** To subscribe for, purchase, hold and dispose of shares, debentures and other securities, whether issued by other persons, companies, overseas companies or bodies corporate or by public authorities, and to acquire, hold and dispose of and enter into agreements (including lawful voting agreements) in relation to any such securities.
- 8.** To issue, make acquire, hold and negotiate bills of exchange, cheques and promissory notes and all other kinds of negotiable instruments, bills of lading, dock warrants, warehouse certificates and documents used in the course of trade as evidence of the ownership or the right to the possession of goods.
- 9.** To employ, remunerate and discharge employees and agents.
- 10.** To pay gratuities and bonuses to employees and agents of the company, to pay retirement gratuities, pensions or capital sums to employees of the company (including directors) and their dependants, and to establish any trust or scheme or effect any insurance requisite for providing retirement benefits, pensions or capital sums for employees (including directors) and their dependants.
- 11.** To make the company or any of its officers a member of any trade or other association whose activities are likely to assist or protect the interests of the company, and to pay any subscriptions or fees incidental to membership of such an association out of the company's funds.

## FOURTH SCHEDULE

(Sections 41 and 49)

### STATEMENTS, REPORTS AND ACCOUNTS TO BE CONTAINED IN A PROSPECTUS

#### PART I

*Matters to be contained in every prospectus*

1. The issue price of the shares or debentures for which subscriptions are invited including -
  - (a) if the issue price is payable in cash, the amounts payable on application and allotment, and the amounts of the remaining instalments and the dates on which they will respectively fall due; or
  - (b) if the issue price is to be satisfied by the transfer or surrender of other shares or debentures, the amount of such shares or debentures to be transferred or surrendered, the date when and the means by which the transfer or surrender must be made, whether the transfer or surrender of such shares or debentures will be *cum* or *ex* dividend or interest, and whether any (and if so) what supplementary payment in cash will be made by the company, or must be made by subscribers to the company, and the date or dates on which it will become due.
2. The rights attached to the shares or debentures offered for subscription and the rights attached to all classes of shares or debentures ranking in priority to them for dividend, interest or repayment of capital or principal (including redemption) in respect of -
  - (a) dividends or interests;
  - (b) repayment of capital or principal (include redemption premiums); and
  - (c) voting at general meetings of the company (in the case of shares) and at other meetings;and in the case of convertible debentures -
  - (d) the rate at which, and the terms and dates on which, the debentures may be exchanged for shares;
  - (e) the terms on which debenture holders may subscribe for shares otherwise than under paragraph (d); and
  - (f) the rights attached to shares which may be acquired by debenture holders under paragraphs (d) and (e).
3. If the prospectus offers debentures for subscription -
  - (a) the maximum amount which may be raised by the issue of debentures of the same class;
  - (b) whether debentures acquired by the company before the date for redemption may be re-issued ;
  - (c) the maximum discount which may be allowed on the issue or re-issue of any of the debentures, or a statement that no limit is imposed on the amount of such discount;
  - (d) the names and addresses of the trustees of the covering trust deed (if any); and



- (e) in the case of convertible debentures, whether any provision is made by the covering trust deed or by the debentures for an increase in the number of shares for which the debentures may be exchanged, or for which the debenture holders may subscribe, if the company makes a rights issue or a bonus issue of such shares, and if so, particulars of such provision.
- 4. The purpose for which any cash to be raised by the issue of shares or debentures under the prospectus will be applied.
- 5. Unless the prospectus is issued to the public, the names and addresses of the persons to whom it is to be issued, or if all or any of them belong to a class or classes of shareholders or debenture holders and the prospectus is to be issued to all the members of that class, a description of that class or those classes and the names and addresses of any other persons to whom the prospectus is to be issued.
- 6. The times and dates when the subscription lists will open and will be closed.
- 7. If the prospectus offers shares or debentures for subscription for cash, the amount of the minimum subscription, or if no minimum subscription is required because underwriting arrangements satisfying section 43 of this Ordinance have been made, a statement to that effect.
- 8. Short particulars of all underwriting agreements entered into in connection with the offer of the shares or debentures for subscription, including the names and addresses of the principal underwriters, the number of shares or debentures underwritten by them respectively, the number of shares or debentures underwritten firmly, and the total amount payable by the company as underwriting commission in connection with the issue.
- 9. A statement whether an application has been or will be made to a stock exchange for the shares or debentures offered for subscription by the prospectus to be quoted or dealt in thereon, and if so, the names of the stock exchanges to which applications have been or will be made.

## **PART II**

### *Matters to be contained in every prospectus issued to the public*

- 10. The number, description and amount of any shares in or debentures of the company and its subsidiaries for which any person has, or is entitled to be given, an option to subscribe, together with the following particulars of the option, that is to say -
  - (a) the period during which it is exercisable;
  - (b) the price to be paid for shares or debentures subscribed for under it;
  - (c) the consideration (if any) given or to be given for it, or for the right to it;
  - (d) the names and addresses of the persons to whom it, or the right to it, has been given or, if given to a class or classes of shareholders or debenture holders as such, particulars of the relevant class or classes of shares or debentures held by them.
- 11. The number and amount of shares and debentures of the company or its subsidiaries which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up for cash and for a consideration other than cash respectively, the extent to which they are paid up, or credited as paid up or agreed to be so credited, and in the case of shares or debentures issued or agreed to be issued for a consideration other than cash, the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.
- 12. The names, descriptions and addresses of the directors and any proposed directors of the company, and the particulars required by sections 111 and 169 to be entered in the registers of directors' holdings and of directors respectively in respect of each director, and the particulars which would be required to be so entered in

respect of each proposed director if he had been appointed a director immediately before the prospectus is issued:

Provided that until section 111 comes into operation it shall not be necessary to include in a prospectus the particulars which are or would be required to be entered in the register of directors' holdings.

**13.** The names and addresses and professional qualifications -

- (a) of the company's secretary;
- (b) of the auditors of the company;
- (c) of the registrar and transfer agent (if other than the company's secretary) who will keep the register in which the shares or debentures will be registered.

**14.** Particulars of the directors' existing service contracts and directors' and proposed directors' proposed service contracts with the company, its holding company and its subsidiaries, and with subsidiaries of its holding company. Without prejudice to the generality of the preceding sentence, particulars shall not be deemed sufficient unless they include particulars of all remuneration, pensions, retirement benefits and provisions within the meaning of section 146 payable or which may become payable to each director and proposed director and to their respective dependants.

**15.** Full particulars of the nature and extent of the interest (if any) of every promoter and director and proposed director of the company and of its holding company and subsidiaries (if any) in the promotion of, or in the assets acquired or proposed to be acquired by, the company, or, where the interest of such a promoter, director or proposed 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 a promoter or director, or to qualify him as a director, or otherwise for services rendered or to be rendered by him or by the firm in connection with the promotion or formation of the company.

**16.(1)** As respects any assets to which this paragraph applies –

- (a) the names and addresses of the vendors;
- (b) the amount payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor;
- (c) short particulars of any transaction relating to the property completed within the two preceding years in which any vendor of the assets to the company or any person who is, or was at the time of the transaction, a promoter, or a director or proposed director, of the company had any interest, direct or indirect.

**(2)** The amount (if any) paid or payable as purchase money in cash, shares or debentures for any assets to which this paragraph applies, specifying the amount (if any) payable for goodwill.

**(3)** The assets to which this paragraph applies are assets 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 of shares or debentures offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of the issue of the prospectus, other than assets -

- (a) the contract for the purchase or acquisition of which was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue, nor the issue in consequence of the contract; or
- (b) as respects which the amount of the purchase money is not material.

**(4)** Every person shall for the purposes of this paragraph, be deemed to be a vendor who has entered into

any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any assets to be acquired by the company, in any case where -

- (a) the purchase money is not fully paid at the date of the issue of the prospectus;
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;
- (c) the contract depends for its validity or fulfilment on the result of that issue.

(5) Where any assets to be acquired by the company are to be taken on lease or hire, this paragraph shall have effect as if the expression “vendor” included the lessor or letter on hire, and the expression “purchase money” included the consideration for the lease or hire, and the expression “sub-purchaser” included a sub-lessee or sub-hirer.

**17.(1)** A report by the auditors of the company with respect to -

- (a) profits and losses and assets and liabilities, in accordance with sub-paragraph (2) or (3) of this paragraph, as the case requires, and;
- (b) the rates of the dividends (if any) paid by the company in respect of each class of shares in the company in respect of each of the five financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years;

and, if no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

(2) If the company has no subsidiaries, the report shall -

- (a) so far as regards profits and losses, deal with the profits or losses of the company in respect of each of the five financial years immediately preceding the issue of the prospectus; and
- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the company at the last date to which the accounts of the company were made up.

(3) If the company has subsidiaries, the report shall -

- (a) so far as regards profits and losses, deal separately with the company’s profits and losses as provided by the last foregoing sub-paragraph, and in addition, deal either -
  - (i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern shareholders and debenture holders of the company; or
  - (ii) individually with the profits or losses of each subsidiary so far as they concern shareholders and debenture holders of the company;

or, instead of dealing separately with the company’s profits or losses, deal as a whole with the profits or losses of the company and, so far as they concern shareholders and debenture holders of the company, with the combined profits or losses of its subsidiaries; and

- (b) so far as regards assets and liabilities, deal separately with the company’s assets and liabilities as provided by the last foregoing subparagraph and, in addition, deal either -

- (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities; or
- (ii) individually with the assets and liabilities of each subsidiary;

and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than shareholders of the company.

(4) Until section 143 of this Ordinance comes into operation sub-paragraph (3) of this paragraph shall not take effect and for the purposes of sub-paragraph (2) a company which has subsidiaries shall be deemed not to have subsidiaries.

**18.** If the proceeds, or any part of the proceeds, of the issue of the shares or debentures, are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants (who shall be named in the prospectus and must be qualified under section 157 of this Ordinance to audit the accounts of any company) upon -

- (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the issue of the prospectus; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

**19.(1)** If -

- (a) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate or in an overseas company; and
- (b) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith that body corporate or overseas company will become a subsidiary of the company;

a report made by accountants (who shall be named in the prospectus and must be qualified under section 157 of this Ordinance to audit the accounts of any company) upon -

- (i) the profits or losses of the other body corporate or of the overseas company in respect of each of the five financial years immediately preceding the issue of the prospectus, and
- (ii) the assets and liabilities of the other body corporate or of the overseas company at the last date to which the accounts of the body corporate or overseas company were made up.

(2) The said report shall -

- (a) indicate how the profits or losses of the other body corporate or of the overseas company dealt with by the report would, in respect of the shares to be acquired, have concerned shareholders and debenture holders of the company, and what allowance would have fallen to be made in relation to assets and liabilities so dealt with for holders of other shares, if the company had at all material times held the shares to be acquired; and
- (b) where the other body corporate or the overseas company has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by paragraph 17(3) of this Schedule in relation to the company and its subsidiaries.

(3) Until section 143 of this Ordinance comes into operation paragraph (b) of sub-paragraph (2) of this

paragraph shall be treated as omitted therefrom.

**20.** If since the end of its last complete financial year the company or any of its subsidiaries has acquired, or agreed to acquire, or is proposing to acquire, a business or shares in another body corporate or in an overseas company which will by reason of such acquisition become a subsidiary of the company, a report made by accountants (who shall be named in the prospectus and must be qualified under section 157 of this Ordinance to audit the accounts of any company) in respect of the matters specified in paragraph 18 in respect of that business or in paragraph 19 in respect of that other body corporate or that overseas company.

**21.** If any of the information required by paragraphs 17 to 20 inclusive to be contained in an accountants' or auditors' report is based upon a valuation of assets, the reports shall so state, and if the amounts involved are significant, the prospectus shall -

- (a) state the names, qualifications and addresses of the persons by whom each such valuation was made; and
- (b) summarise the reports containing such valuations, setting out the dates and bases on which they were made.

**22.** A statement of -

- (a) the total amount owing by the company and its subsidiaries (if any) to banks for borrowing (whether on overdraft or otherwise);
- (b) the total amount of the secured indebtedness of the company and its subsidiaries (if any) registered and registrable under section 92 of the Ordinance;
- (c) the total cost (inclusive of tax) of one year's interest on the debentures issued by the company and its subsidiaries (if any) and the debentures (if any) offered for subscription by the prospectus; and
- (d) the total cost (inclusive of tax) of one year's fixed preference dividend on the preference shares issued by the company and its subsidiaries (if any) and the preference shares (if any) offered for subscription by the prospectus.

**23.** A statement by the directors that in their opinion the working capital of the company and its subsidiaries (if any) is sufficient, or, if they are not of that opinion, how it is proposed to provide the additional working capital which the directors consider to be necessary.

**24.** A statement as to the financial and trading prospects of the company and its subsidiaries (if any), together with any material information which is relevant thereto, including, if known to the directors, special trade factors or risks (if any) which are not mentioned elsewhere in the prospectus and are unlikely to be known by the general public, but which may materially affect the future profits of the company and its subsidiaries (if any).

**25.** The dates of, parties to and general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or a contract entered into more than two years before the date of issue of the prospectus.

**26.** The amount or estimated amount of preliminary expenses of forming the company (unless already written off out of the company's profits or revenue reserves) and the persons by whom any of those expenses (except so far as written off as aforesaid) have been paid or are payable, and the amount or estimated amount of the expenses of the issue of the shares or debentures offered for subscription by the prospectus and the persons by whom any of those expenses have been paid or are payable.

**27.** A statement whether there is pending against the company, its holding company, any of its subsidiaries, or any of the subsidiaries of its holding company, any litigation which may materially affect the interests of the company, and if so the parties to and the nature of that litigation.

### **PART III**

#### *Interpretation of Parts I and II of this Schedule*

- 28.** References in this Schedule to firm underwriting shall mean a contract or arrangement by which an underwriter applies for the whole or part of the shares or debentures which he underwrites to be allotted to him or to persons nominated by him, in any event.
- 29.** References in this Schedule to subscribing for shares or debentures shall include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale, and references to subscription shall be construed accordingly.
- 30.** In the case of a company or its subsidiary or prospective subsidiary which has carried on business for less than five complete financial years, or in the case of a business which has been carried on for less than five complete financial years, the references in paragraphs 17 to 20 inclusive to the five financial years immediately preceding the issue of the prospectus shall be construed as references to the number of complete financial years immediately preceding the issue of the prospectus during which the company or its subsidiary or prospective subsidiary has carried on business, or (as the case may be) during which the business has been carried on.
- 31.** The expression “financial year” in this Schedule means the year in respect of which the accounts of the company, body corporate or overseas company or of the business (as the case may be) are made up, and where by reason of any alteration of the date on which the financial year terminates the accounts of the company, body corporate or overseas company or of the business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of this Schedule be deemed to be a financial year.
- 32.** Any report required by this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary, or shall make those adjustments and indicate that adjustments have been made.

## FIFTH SCHEDULE

(Section 114)

### CONTENTS OF ANNUAL RETURN OF A COMPANY

1. The address of the registered office of the company.
2. The address at which the registers of members and debenture holders of the company are kept.
3. A summary, distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, specifying the following particulars -
  - (a) the nominal capital of the company, the nominal capital in respect of each class of shares into which it is divided and the nominal value of each share of that class;
  - (b) the number of each class of the company's shares which have been issued and are outstanding, and the company's issued capital;
  - (c) the amount paid up and credited as paid up in respect of the company's issued and outstanding shares;
  - (d) the amount of instalments due but unpaid in respect of the company's issued and outstanding shares;
  - (e) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures so far as not written off in the company's accounts;
  - (f) the total number of shares and debentures of each class which the company has -
    - (i) redeemed (including acquisitions before the redemption date if the shares or debentures have not been re-issued);
    - (ii) acquired by way of transfer or surrender;
    - (iii) forfeited; and
    - (iv) re-issued;
  - (g) the total amount of outstanding loans made, guaranteed or secured by the company under section 53;
  - (h) the number of shares and debentures of each class for which there are outstanding bearer share certificates and bearer debentures.
4. The total amount of the company's indebtedness secured by hypothecations, mortgages or charges which are required to be registered by the Registrar under section 92 and the total amount of such indebtedness secured by hypothecations, mortgages and charges falling within paragraphs (a) and (b) of section 92(2) respectively.
5. A list -
  - (a) containing the names and addresses of all persons who, on the fourteenth day after the company's annual general meeting for the year, are members of the company, and of persons who have ceased to be members since the date of the last return or, in the case of the first return, since the incorporation of the company;
  - (b) stating the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return (or, in the case of

the first return, since the incorporation of the company) by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers;

- (c) if the names aforesaid are not arranged in alphabetical order, having annexed thereto an index sufficient to enable the name of any person therein to be easily found:

Provided that it shall not be necessary for such a list to contain particulars of members and shares held by them if the shares are and have throughout the period since the fourteenth day following the annual general meeting for the last preceding year, or in the case of the company's first annual return, since the date of its incorporation, continuously been fully paid shares.

**6.** All such particulars with respect to the persons who at the date of the return are the directors of the company, and any person who at that date is the secretary of the company, as are by section 169 required to be contained with respect to directors and the secretary respectively in the register of the directors and secretaries of a company.



## SIXTH SCHEDULE

(Sections 142 and 144)

### CONTENTS OF ACCOUNTS

#### *Preliminary*

1. Paragraphs 2 to 14 of this Schedule apply to the balance sheet and 15 to 19 to the profit and loss account, and are subject to the exceptions and modifications provided for by Part II of this Schedule in the case of a holding or subsidiary company. This Schedule has effect in addition to the provisions of sections 146 to 151 inclusive of this Ordinance.

### PART I - GENERAL PROVISIONS AS TO BALANCE SHEET AND PROFIT AND LOSS ACCOUNT

#### *Balance Sheet*

2. The nominal capital, issued share capital, liabilities and assets shall be summarised, with such particulars as are necessary to disclose the general nature of the assets and liabilities, and there shall be specified -

- (a) any part of the issued capital that consists of redeemable shares, the earliest and latest dates on which the company has power to redeem those shares, whether those shares must be redeemed in any event or are liable to be redeemed at the option of the company and whether any (and, if so, what) premium is payable on redemption;
- (b) the amount of the capital reserve;
- (c) particulars of any forfeited, surrendered, acquired or redeemed shares or debentures which the company has power to re-issue.

3. There shall be stated under separate headings, so far as they are not written off -

- (a) the preliminary expenses of forming the company;
- (b) any expenses incurred in connection with any issue of share capital or debentures;
- (c) any sums paid by way of commission in respect of any shares or debentures;
- (d) any sums allowed by way of discount in respect of any debentures; and
- (e) the amount paid by the company for goodwill and industrial property rights.

4.(1) The reserves, provisions, liabilities and assets shall be classified under headings appropriate to the company's business:

Provided that -

- (a) where the amount of any class is not material, it may be included under the same heading as some other class; and
- (b) where any assets of one class are not separable from assets of another class, those assets may be included under the same heading.

(2) Fixed assets, current assets, investments and assets that are neither fixed nor current shall be separately identified.

**(3)** The method or methods used to arrive at the amount of the fixed assets under each heading shall be stated.

**5.(1)** The method of arriving at the amount of any fixed asset shall, subject to the next following sub-paragraph, be to take the difference between -

- (a) its cost or, if it stands in the company's books at a valuation, the amount of the valuation; and
- (b) the aggregate amount provided or written off since the date of acquisition or valuation, as the case may be, for depreciation or diminution in value;

and for the purposes of this paragraph the net amount at which any assets stand in the company's books when this Ordinance comes into operation (after deduction of the amount (if any) previously provided or written off for depreciation or diminution in value) shall, if the figures relating to the period before the coming into operation of this Ordinance cannot be obtained without unreasonable expense or delay, be treated as if it were the amount of a valuation of those assets made at the commencement of this Ordinance.

**(2)** The foregoing sub-paragraph shall not apply-

- (a) to assets the replacement of which is provided for wholly or partly –
  - (i) by making provision for renewals and charging the cost of replacement against the provision so made; or
  - (ii) by charging the cost of replacement direct to revenue; or
- (b) to any quoted or unquoted investments; or
- (c) to goodwill or industrial property rights.

**(3)** For the assets under each heading whose amounts is arrived at in accordance with sub-paragraph (1) of this paragraph, there shall be shown -

- (a) the aggregate of the amounts referred to in paragraph (a) of that sub-paragraph; and
- (b) the aggregate of the amounts referred to in sub-paragraph (b) thereof.

**(4)** As respects the assets under each heading whose amount is not arrived at in accordance with the said sub-paragraph (1) because their replacement is provided for as mentioned in sub-paragraph (2) (a) of this paragraph, there shall be stated -

- (a) the means by which their replacement is provided for; and
- (b) the aggregate amount of the provision (if any) made for renewals and not used.

**6.** In the case of unquoted investments consisting of ordinary shares of other companies, the matters referred to in the following heads shall, if not otherwise shown, be stated by way of note or in a statement or report annexed to the profit and loss account:-

- (a) the aggregate amount of the company's income for the financial year from those investments;
- (b) the amount of the company's share before taxation, and the amount of that share after taxation, of the net aggregate amount of the profits of the companies in which the investments are held, being profits for their respective financial years ending with or during the financial year of the company, after deducting those companies' losses for those respective financial years (or *vice versa*);

- (c) the amount of the company's share of the net aggregate amount of the undistributed profits and revenue reserves of the companies in which the investments are held since the time when the investments were acquired, after deducting the losses accumulated by them since that time (or *vice versa*);
- (d) the manner in which any losses incurred by the said companies have been dealt with in the company's accounts.

7. The aggregate amounts respectively of revenue reserves and provisions (other than provisions for depreciation, renewals or diminution in value of assets) shall be stated under separate headings.

8.(1) There shall also be shown (unless it is shown in the profit and loss account or a statement or report annexed thereto, or the amount involved is not material) -

- (a) where the amount of capital reserve or revenue reserves or of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) shows an increase as compared with the amount at the end of the immediately preceding financial year, the source from which the amount of the increase has been derived; and
- (b) where -
  - (i) the amount of capital reserve or revenue reserves shows a decrease as compared with the amount at the end of the immediately preceding financial year; or
  - (ii) the amount at the end of the immediately preceding financial year of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) exceeded the aggregate of the sums since applied and amounts still retained for the purposes thereof;

the application of the amounts derived from the difference.

(2) Where the heading showing the revenue reserves or any of the provisions aforesaid is divided into sub-headings, this paragraph shall apply to each of the separate amounts shown in the sub-headings instead of applying to the aggregate amount thereof.

9. If an amount is set aside for the purpose of its being used to prevent undue fluctuations in charges for taxation, it shall be identified as such and separately stated.

10.(1) There shall be shown under separate headings -

- (a) the aggregate amounts respectively of the company's quoted investments and unquoted investments;
- (b) if the amount of the goodwill and of any industrial property rights of the company, or part of that amount, is shown as a separate item in, or is otherwise ascertainable from, the books of the company, or from any contract for the sale or purchase of any assets acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the transfer of any such assets, the said amount so shown or ascertained so far as not written off, or (as the case may be) the said amount so far as it is so shown or ascertainable and as so shown or ascertained, as the case may be;
- (c) the aggregate amount of outstanding loans made, guaranteed or secured by the company under section 53 of the Ordinance;
- (d) the aggregate amount of bank loans and overdrafts advanced to the company and remaining outstanding;

- (e) the aggregate amount of loans made to the company which -
  - (i) are repayable otherwise than by instalments, and fall due for repayment after the expiration of the periods of one year and five years respectively beginning with the day next following the expiration of the financial year; or
  - (ii) are repayable by instalments any of which fall due for payment after the expiration of those respective periods;
 not being, in either case, bank loans or overdrafts;
- (f) the aggregate amount of debts of the company (other than debts falling under head (d) and (e) of this sub-paragraph) which -
  - (i) are payable otherwise than by instalments and fall due for payment after the expiration of one year beginning with the day next following the expiration of the financial year; or
  - (ii) are payable by instalments any of which fall due for payment after the expiration of that period.

(2) Nothing in head (b) of the foregoing sub-paragraph shall be taken as authorizing the amount of the goodwill, patents and trade marks to be stated as a single item.

(3) The heading showing the amount of the quoted investments shall be sub-divided, where necessary, to distinguish the investments as respects which there has, and those as respects which there has not, been granted a quotation or permission to deal on a stock exchange in Seychelles or on a recognised overseas stock exchange.

(4) In relation to each loan falling within head (d) and (e) of sub-paragraph (1) of this paragraph (other than a bank overdraft repayable on demand) there shall be stated by way of note (if not otherwise stated) the terms on which it is repayable and the rate at which interest is payable thereon:

Provided that if the number of loans is such that compliance with the foregoing requirement would result in a statement of excessive length, it shall be sufficient to give a general indication of the terms on which the loans are repayable and the rates at which interest is payable thereon.

11. Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the fact that that liability is so secured shall be stated, but it shall not be necessary to specify the assets on which the liability is secured.

12. Where any of the company's debentures are held by a nominee of or agent for the company, there shall be stated by way of note or in a statement annexed to the balance sheet:

- (a) the nominal amount of the debentures and the amount at which they are stated in the books of the company; and
- (b) whether the company has power to re-issue any of those debentures, and if so, which debentures or classes it may re-issue.

13.(1) The matters referred to in the following sub-paragraphs shall be stated by way of note, or in a statement or report annexed to the balance sheet, if not otherwise shown.

(2) The number, description and amount of any shares in the company which any person has an option to subscribe for, together with the following particulars of the option, that is to say -

- (a) the period during which it is exercisable;
- (b) the price to be paid for shares subscribed for under it;

but it shall not be necessary to state any of the foregoing matters in respect of convertible debentures whose issue has been authorised by a general meeting or is dealt with in the directors' report for the financial year.

(3) The amount of any arrears of fixed cumulative dividends on the company's shares and the period for which the dividends or, if there is more than one class, each class of them are in arrear, which amount shall be stated before deduction of income tax, except that, in the case of tax-free dividends, the amount shall be shown free of tax and the fact that it is so-shown shall also be stated.

(4) Particulars of any charge on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured.

(5) The general nature of any other contingent liabilities not provided for in the annual accounts and, where practicable, the aggregate amount or estimated amount of those liabilities, if it is material.

(6) Where practicable, the aggregate amount or estimated amount (if it is material) of contracts for capital expenditure, so far as not provided for and, where practicable, the aggregate amount or estimated amount (if it is material) of capital expenditure authorised by the directors which has not been contracted for.

(7) In the case of fixed assets under any heading whose amount is required to be arrived at in accordance with paragraph 5(1) of this Schedule and is so arrived at by reference to a valuation, the years (so far as they are known to the directors) in which the assets were severally valued and the several values, and, in the case of assets that have been valued during the financial year, the names of the persons who valued them and particulars of their qualifications for doing so and the bases of valuation used by them.

(8) If there are included amongst fixed assets under any heading (other than investments) assets that have been acquired during the financial year, the aggregate amount of the assets acquired as determined for the purpose of making up the balance sheet, and if during that year any fixed assets included under a heading in the balance sheet made up with respect to the immediately preceding financial year (other than investments) have been disposed of or destroyed, the aggregate amount thereof as determined for the purpose of making up that balance sheet.

(9) Of the amount of assets consisting of land, how much is attributable to land owned by the company and how much to land occupied or enjoyed by the company under leases or usufructs, and, of the latter, how much is attributable to land in which the company has interests which will or may continue for fifty years or more from the end of the financial year.

(10) The aggregate amounts paid by the company during the financial year for the acquisition of:-

(a) quoted investments; and

(b) unquoted investments;

and the aggregate amounts received by the company during the financial year on disposing of each of those classes of investments.

(11) The aggregate market value of the company's quoted investments where it differs from the amount of the investments as stated in the balance sheet, and the stock exchange value of any investments of which the market value is shown (whether separately or not) and is taken as being higher than their stock exchange value.

(12) The directors' estimate of the aggregate value of the company's unquoted investments and their estimate of the aggregate value of such investments held in companies which at the end of the financial year are associated companies of the company.

(13) If in the opinion of the directors any of the current assets do not have a value, on realisation in the ordinary course of the company's business, at least equal to the amount at which they are stated, the fact that the directors are of that opinion.

(14) If a sum set aside for the purpose of its being used to prevent undue fluctuations in charges for taxation has been used during the financial year for another purpose, the amount thereof and the fact that it has been so used.

(15) If the amount carried forward for stock in trade or work in progress is material for the appreciation of the company's state of affairs or of its profit or loss for the financial year, the manner in which that amount has been computed.

(16) The basis on which foreign currencies have been converted into the currency of Seychelles, where the amount of the assets or liabilities affected is material.

(17) The basis on which the amount (if any) set aside for income tax payable by the company in Seychelles is computed.

(18) Except in the case of the first balance sheet laid before the company after the coming into operation of this Ordinance, the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet.

14. In the fifth and subsequent balance sheets laid before the company after the coming into operation of this Ordinance, there shall be shown in tabular form in a note or in a statement or report annexed (unless it is otherwise shown in that form, or is so shown in, or in a note on, or statement or report annexed to, the profit and loss account) the following matters as at the end of the financial year and of each of the four immediately preceding financial years (or, if the number of financial years that have elapsed since the company was incorporated is less than five, as at the end of each financial year that has so elapsed) -

- (a) the amount of the issued share capital of the company;
- (b) the amount paid up on the issued and outstanding shares of the company;
- (c) the amount of the companies capital reserve, revenue reserves and profits carried forward respectively.

#### *Profit and Loss Account*

15.(1) There shall be shown -

- (a) the amount charged to revenue by way of provision for depreciation, renewals or diminution in value of fixed assets;
- (b) the amount of the interest on loans of the following kinds made to the company (whether on the security of debentures or not), namely, bank loans, overdrafts and loans which, not being bank loans or overdrafts -
  - (i) are repayable otherwise than by instalments and fall due for repayment before the expiration of the periods of one year and five years respectively beginning with the day next following the expiration of the financial year; or
  - (ii) are repayable by instalments the last of which falls due for payment before the expiration of each of those respective periods,and the amount of the interest on loans of other kinds so made (whether on the security of debentures or not);
- (c) the amount of the charge for income tax payable by the company in Seychelles and, if that amount would have been greater but for relief from double taxation, the amount which it would have been but for such relief;
- (d) the amounts respectively provided for redemption of share capital and for redemption of loans;
- (e) the amount (if material) set aside or proposed to be set aside to, or withdrawn from,

revenue reserves;

- (f) subject to sub-paragraph (2) of this paragraph, the amount (if material) set aside to provisions other than provisions for depreciation, renewals or diminution in value of assets or, as the case may be, the amount (if material) withdrawn from such provisions and not applied for the purposes thereof;
- (g) the amounts respectively of income from quoted investments and income from unquoted investments;
- (h) if a substantial part of the company's revenue for the financial year consists in rents from land, the amount thereof (after deduction of rents payable by the company, rates and other outgoings in respect of the same land);
- (i) the amount (if material) charged to revenue, in respect of payment of rents for, or in respect of, land (other than land falling within part (h) of this sub-paragraph) and the amount, if material, charged to revenue in respect of sums payable in respect of the hire of plant and machinery.

**(2)** If, in the case of any assets in whose case an amount is charged to revenue by way of depreciation or diminution in value, an amount is also so charged for renewal thereof, the last-mentioned amount shall be shown separately.

**(3)** If the amount charged to revenue for depreciation or diminution in value of any fixed assets (other than investments) has been calculated otherwise than by reference to the amount of those assets as determined for the purpose of making up the balance sheet, that fact shall be stated.

**16.** The amount of any charge arising in consequence of the occurrence of an event in a preceding financial year, and of any credit so arising, shall, if not included in a heading relating to other matters, be stated under a separate heading.

**17.** The amount of the remuneration of the auditors shall be shown under a separate heading, and for the purposes of this paragraph, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

**18.(1)** The matters referred to in the following sub-paragraphs shall be stated by way of note, if not otherwise shown.

**(2)** If depreciation or replacement of fixed assets is provided for by some method other than a depreciation charge or provision for renewals, or is not provided for, the method by which it is provided for or the fact that it is not provided for, as the case may be.

**(3)** The basis on which the charge for income tax payable in Seychelles is computed.

**(4)** Any special circumstances which affect liability in respect of taxation of profits or income for the financial year or liability in respect of taxation of profits or income for succeeding financial years.

**(5)** Except in the case of the first profit and loss account laid before the company after the commencement of this Ordinance, the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account.

**(6)** Any material respects in which any items shown in the profit and loss account are affected -

- (a) by transactions of a sort not usually undertaken by the company or otherwise by circumstances of an exceptional or non-recurrent nature; or
- (b) by any change in the basis of accounting.

**19.(1)** In the fifth and subsequent profit and loss accounts laid before the company after the coming into

operation of this Ordinance, there shall be shown in tabular form in a note or in a statement or report annexed (unless it is otherwise shown in that form, or it so shown in, or in a note on, or statement or report annexed to, the balance sheet) the following matters in respect of the financial year and of each of the four immediately preceding financial years (or, if the number of financial years that have elapsed since the company was incorporated is less than five, in respect of each financial year that has so elapsed) -

- (a) the amount of the profit or loss for the year before deduction of all charges for taxation of profits and income and the amount of the said profit or loss after deduction of all such charges; and
- (b) the aggregate amount of the dividends paid.

(2) In relation to the most recent financial year dealt with in pursuance of sub-paragraph (1), the reference to dividends paid shall include a reference to dividends (if any) recommended by the directors in their report.

## **PART II - SPECIAL PROVISIONS WHERE THE COMPANY IS A HOLDING OR SUBSIDIARY COMPANY**

### *Modifications of and additions to requirements as to Company's own accounts*

**20.(1)** This paragraph shall apply where the company is a holding company, whether or not it is itself a subsidiary of another body corporate.

(2) The aggregate amount of assets consisting of shares in, or amounts owing (whether on account of a loan or otherwise) from, the company's subsidiaries, distinguishing shares from indebtedness, shall be set out in the balance sheet separately from all the other assets of the company, and the aggregate amount of indebtedness (whether on account of a loan or otherwise) to the company's subsidiaries shall be so set out separately from all its other liabilities and -

- (a) the references in Part I of this Schedule to the company's investments (except those in paragraphs 13(8) and 15(3)) shall not include investments in its subsidiaries required by this paragraph to be separately set out; and
- (b) paragraphs 5, 15(1)(a) and 18(2) of this Schedule shall not apply in relation to fixed assets consisting of interests in the company's subsidiaries.

(3) There shall be shown by way of note on the balance sheet or in a statement or report annexed thereto the number, description and amount of the shares in and debentures of the company held by its subsidiaries or their nominees, but excluding any of those shares or debentures in respect of which the subsidiary is concerned only as an agent or nominee, or in respect of which neither the company nor any subsidiary thereof is beneficially interested, otherwise than by way of security for money lent, guaranteed, or secured by the company or any of its subsidiaries.

(4) Where group accounts are not submitted, there shall be annexed to the balance sheet a statement showing -

- (a) the reasons why subsidiaries are not dealt with in group accounts;
- (b) the net aggregate amount, so far as it concerns members of the holding company and is not dealt with in the company's accounts, of the subsidiaries' profits after deducting the subsidiaries' losses (or *vice versa*) -
  - (i) for the respective financial years of the subsidiaries ending with or during the financial year of the company; and



- (ii) for their previous financial years since the subsidiaries respectively became the holding company's subsidiaries;
- (c) the net aggregate amount of the subsidiaries' profits after deducting the subsidiaries' losses (or *vice versa*) –
  - (i) for the respective financial years of the subsidiaries ending with or during the financial year of the company; and
  - (ii) for their other financial years since the subsidiaries respectively became the holding company's subsidiaries;

so far as those profits are dealt with, or provision is made for those losses, in the company's accounts;
- (d) any qualifications contained in the report of the auditors of the subsidiaries on their accounts for their respective financial years ending as aforesaid, and any note or saving contained in those accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, in so far as the matter which is the subject of the qualification or note is not covered by the company's own accounts and is material from the point of view of its shareholders and debenture holders;

or, in so far as the information required by this sub-paragraph is not obtainable, a statement that it is not obtainable:

Provided that the Registrar may, on the application or with the consent of the company's directors, direct that in relation to any subsidiary this sub-paragraph shall not apply or shall apply only to such extent as may be provided by the direction.

**(5)** Paragraphs (b) and (c) of sub-paragraph (4) shall apply only to profits and losses of a subsidiary which may properly be treated in the holding company's accounts as revenue profits or losses.

**(6)** Where group accounts are not submitted, there shall be annexed to the balance sheet a statement showing, in relation to the subsidiaries (if any) whose financial years did not end with that of the company -

- (a) the reasons why the company's directors consider that the subsidiaries' financial years should not end with that of the company; and
- (b) the dates on which the subsidiaries' financial years ending last before that of the company respectively ended, or the earliest and latest of those dates.

**21.(1)** This paragraph shall apply where the company is the subsidiary of another body corporate, whether or not it is itself a holding company.

**(2)** The balance sheet shall show separately -

- (a) the aggregate amount of its indebtedness to all bodies corporate which belong to the same group of companies as the company, distinguishing between indebtedness in respect of debentures and other indebtedness;
- (b) the aggregate amount of the indebtedness of all such bodies corporate to it, distinguishing as aforesaid; and
- (c) the aggregate amount of assets of the company consisting of shares held in subsidiaries of its holding company.

### **PART III**

#### *Consolidated accounts of holding company and subsidiaries*

**22.** Subject to the following paragraphs of this Part of this Schedule, the consolidated balance sheet and profit and loss account shall combine the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiaries dealt with by the consolidated accounts, but with such adjustments (if any) as are necessary:-

- (a) to eliminate the effect of current transactions between any of the companies whose accounts are consolidated;
- (b) to eliminate shares in the company or its subsidiaries which are held by or by nominees for any of its subsidiaries, except shares which are held by a subsidiary as an agent or nominee for persons other than another subsidiary and shares which are held by or by nominees for a subsidiary by way of security for money lent, guaranteed or secured by it; and
- (c) to show the extent of the interests of persons other than shareholders and debenture holders of the holding company in the assets, net assets, capital reserves, revenue reserves and profits of the subsidiaries.

**23.** Subject as aforesaid, the consolidated accounts shall, in giving the said information comply, so far as practicable, with the requirements of this Ordinance as if they were the accounts of an actual company.

**24.** Sections 146 to 151 inclusive of this Ordinance shall not, by virtue of the two last foregoing paragraphs, apply for the purpose of the consolidated accounts.

**25.** Paragraph 8 of this Schedule shall not apply for the purpose of any consolidated accounts laid before a company with the first balance sheet so laid after the coming into operation of this Ordinance.

**26.** In relation to any subsidiaries of the holding company not dealt with by the consolidated accounts -

- (a) sub-paragraphs (2) and (3) of paragraph 20 of this Schedule shall apply for the purpose of those accounts as if those accounts were the accounts of an actual company of which they were subsidiaries; and
- (b) there shall be annexed the like statement as is required by sub-paragraph (4) of that paragraph where there are no group accounts, but as if references therein to the holding company's accounts were references to the consolidated accounts.

**27.** In relation to any subsidiaries (whether or not dealt with by the consolidated accounts), whose financial years did not end with that of the company, there shall be annexed the like statement as is required by sub-paragraph (6) of paragraph 20 of this Schedule where there are no group accounts.

### **PART IV - INTERPRETATION OF SCHEDULE**

**28.** For the purposes of this Schedule, unless the context otherwise requires -

- (a) the expression "provision" shall, subject to sub-paragraph (2) of this paragraph, mean any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy;
- (b) the expression "reserve" shall not, subject as aforesaid, include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, or retained by way of providing for any known liability, or any sum set

aside for the purpose of its being used to prevent undue fluctuations in charges for taxation;

and in this paragraph the expression “liability” shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.

**(2)** Where -

- (a)* any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, not being an amount written off in relation to fixed assets before the commencement of this Ordinance; or
- (b)* any amount retained by way of providing for any known liability;

is in excess of that which in the opinion of the directors is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision.

**29.** For the purposes aforesaid, the expression “quoted investment” means an investment as respects which there has been granted a quotation or permission to deal on a stock exchange in Seychelles or on a recognised overseas stock exchange, and the expression “unquoted investment” shall be construed accordingly.

**30.** For the purposes aforesaid, the expression “industrial property rights” means patents, trade marks, designs, concessions or grants having a similar operation to patents, trade marks and designs, and inventions, processes and applications of materials which, although not patented, are protected by contractual arrangements, confidential communication or otherwise.

**31.** For the purposes aforesaid, a loan shall be deemed to fall due for repayment, and an instalment of a loan shall be deemed to fall due for payment, on the earliest date on which the lender could require repayment or, as the case may be, payment, if he exercised all options and rights available to him.

## SEVENTH SCHEDULE

(Section 330)

### FEES TO BE PAID TO THE REGISTRAR OF COMPANIES

For registration of a company whose nominal capital does not exceed 25,000 rupees	The aggregate of one-half per centum of the amount of nominal capital and 250 rupees.
For registration of a company whose nominal capital exceeds 25,000 rupees, the aggregate of one-half per centum of the amount of nominal capital and 250 rupees with the following additions:-	
For every 15,000 rupees or part of 15,000 rupees of nominal capital in excess of 25,000 rupees, not being an excess greater than 45,000 rupees	15 rupees.
For every 15,000 rupees or part of 15,000 rupees of nominal capital in excess of 70,000 rupees, not being an excess greater than 1,500,000 rupees	5 rupees.
For every 15,000 rupees or part of 15,000 rupees of nominal capital in excess of 1,570,000 rupees	1 rupee.
For registration of any increase of nominal capital made after the first registration of the company, the same fees as would have been payable in relation to the amount of the increase if the increased share capital had formed part of the original share capital at the time of registration.	
For registering under Part IV of this Ordinance any hypothecation, mortgage or charge created by a company or particulars of a series of debentures:-	
Where the amount of the charge or the amount secured by the whole series does not exceed 10,000 rupees	50 rupees.
Where that amount exceeds 10,000 rupees	100 rupees.
For registering any document by this Ordinance required or authorised to be registered or required to be delivered, sent or forwarded to the Registrar, other than the memorandum, or the abstract required to be delivered to the Registrar by a receiver or manager, or the statement required to be sent to the Registrar by the liquidator	15 rupees.
For making a record of any fact by this Ordinance required or authorised to be recorded by the Registrar	15 rupees.
For inspecting the file of documents kept by the Registrar in respect of each company	1 rupee.
Copy of any document or part thereof per folio of 100 words	1 rupee.
Any certificate by the Registrar	5 rupees.

## EIGHTH SCHEDULE

(Section 343)

### REPEALS

#### *Short Title of Enactment*

The Commercial Code (Code de Commerce).

The Companies (Designation) Ordinance.

The Oversea Corporations Ordinance 1959

The Civil and Commercial Pledges (Amendment) Ordinance, 1965.

The Land Registration Ordinance, 1965.

The Companies (Debentures and Floating Charges) Ordinance, 1970.

#### *Extent of Repeal*

Articles 29 to 37 inclusive, 40 and 45

The whole Ordinance

The whole Ordinance

In section 5 the words “shares and debentures in a company or”, the words “shares or debentures or”, the words “shares, debentures or” and in the marginal note thereto the words “shares, debentures and”.

In section 73(1) the words “or order” wherever they appear.

Sections 4 to 11 inclusive, and sections 14, 17, 18, 19, 20(2) and 22.