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CHAPTER 89:01

COMPANIES ACT

29 of 1991

**AN ACT to revise and amend the law relating to Companies and
to provide for related and consequential matters.**

[25TH MAY, 1995]

PART I

PRELIMINARY

Short title. **1.** This Act may be cited as the Companies Act.

Interpretation. **2.** (1) In this Act—

“articles” means, unless qualified—

(i) the original or restated articles of incorporation, articles of amendment, articles of reorganisation and articles of continuation; and

(ii) any statute, letters patent, memorandum of association, certificate of incorporation, or other corporate instrument evidencing the existence of a body corporate continued as a company under this Act;

“company” means a body corporate that is incorporated or continued under this Act;

“Caribbean Community” means the community of states established by the Treaty signed on 4th July, 1973, at Chaguaramas;

“court” means the High Court;

“former-Act company” means a company described in section 25;

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“former Act” means the Companies Act immediately in force before the commencement of this Act;

“officer” in relation to a body corporate means—

- (i) the chairman, deputy chairman, president, or vice president of the board of directors;
- (ii) the managing director, the general manager, comptroller, the secretary or the treasurer; or
- (iii) any other individual who performs for the body corporate functions similar to those normally performed by the holder of any office specified in subparagraph (i) or (ii);

“public company” means a company any of whose issued shares or debentures are or were part of a distribution to the public within the meaning of section 531, or are intended for distribution to the public;

“Registrar” means the Registrar of Companies under this Act.

(2) Other words and expressions that are to be read or construed in this Act in a particular sense or in a particular manner are defined or construed for that purpose in Division G of Part VI and, in particular but without affecting the Interpretation and General Clauses Act in other circumstances, the manner in which the auxiliary words “shall”, “may” and “must” are used in this Act is set out in that Division.

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3. No association, partnership, society, body or other group consisting of more than twenty persons may be formed for the purpose of carrying on any trade or business for gain unless it is incorporated under this Act or formed under some other enactment. Prohibited association.

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PART II

FORMATION AND OPERATION OF COMPANIES

DIVISION A

INCORPORATION OF COMPANIES

Incorporation.

4. (1) Subject to subsection (2), one or more persons may incorporate a company by signing and sending articles of incorporation to the Registrar.

(2) No individual who—

- (a) is less than eighteen years of age;
- (b) is of unsound mind and has been so found by a tribunal in Guyana or elsewhere; or
- (c) is an undischarged bankrupt,

shall form or join in the formation of a company under this Act.

(3) If articles of incorporation submitted to the Registrar are accompanied with a statutory declaration by an attorney-at-law that to the best of his knowledge and belief no signatory to the articles is an individual described in subsection (2), the declaration shall, for the purposes of this Act, be conclusive of the facts therein declared.

Contents of
articles of
incorporation.

5. (1) Articles of incorporation must follow the prescribed form and must set out, in respect of the proposed company—

- (a) the proposed name of the company;
 - (b) that the registered office of the company is to be situated in Guyana;
 - (c) the classes and any maximum number of shares that the company is authorised to issue; and
- (i) if there will be two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares; and

- (ii) if a class of shares can be issued in series, the authority given to the directors to fix the number of shares in, or to determine the designation of, and the rights, privileges, restrictions and conditions attaching to, the shares of each series;
- (d) the minimum issue price in respect of shares or classes of shares;
- (e) if the right to transfer shares of the company is to be restricted, a statement that the right to transfer shares is restricted and the nature of those restrictions;
- (f) the number of directors or the minimum and maximum number of directors of the company;
- (g) if section 28 (5) and (6) applies, the matter required by those subsections to be stated in the articles; and
- (h) any restrictions on the business that the company may carry on.

(2) The articles may set out any provisions permitted by this Act or by law permitted to be set out in the by-laws of the company.

(3) Where the right to transfer any shares is restricted, a notification to that effect must be given on each share certificate issued in respect of those shares.

(4) Parts I and III of the Fourth Schedule shall apply with respect to the amendment and cancellation of the amendment of articles of a company respectively. Fourth Schedule.

(5) Part IV of the Fourth Schedule shall apply with respect to the right of a shareholder of a company to dissent where the articles of the company are to be amended in any manner mentioned in that Part.

6. (1) Subject to subsection (2), if the articles require a greater number of votes of directors or shareholders than that required by this Act to effect any action, the provisions of the articles shall prevail. Required votes.

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(2) The articles may not require a greater number of votes of shareholders to remove a director than the number supporting a resolution for his removal under section 71.

Documenta-
tion.

7. An incorporator must send to the Registrar with the articles of incorporation the documents required by the sections 67(1),188(1) and 479.

Certificate of Incorporation

Certificate of
incorporation.

8. (1) Upon receipt of articles of incorporation, the Registrar must issue a certificate of incorporation in accordance with section 479; and the certificate shall be conclusive proof of the incorporation of the company named in the certificate.

(2) A company shall come into existence on the date shown in its certificate of incorporation.

Corporate Name

Corporate
name.
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9. The word “incorporated” or the abbreviation “inc.” shall be part of the name of every company, incorporated under this Act, but a company may use and may be legally designated by either the full or the abbreviated form:

Provided that, notwithstanding anything in this Act, a former-Act company may continue the use of the word “limited” or the abbreviation “ltd.” as part of its name and may be legally designated by either the full or abbreviated form.

Reserved
name.

10. A company must not be incorporated with or have a name—

- (a) that is prohibited or refused under sections 491 to 494;
or
- (b) that is reserved for another company or intended company under section 490.

Change of
name.

11. Where, through inadvertence or otherwise, a company—

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- (a) comes into existence with a name that contravenes section 10; or
- (b) is, upon an application to change its name, granted a name that contravenes section 10,

the Registrar may direct the company to change its name in accordance with paragraph 1 (1) (a) of Part I of the Fourth Schedule.

Fourth
Schedule.

12. Notwithstanding sections 10 and 11, a company that is continued under this Act shall be entitled to be continued with the name it lawfully had before that continuance.

Continued
name.

13. Where a company has been directed under section 11 to change its name and has not, within sixty days from the service of the direction to that effect, changed its name to a name that complies with this Act, the Registrar may revoke the name of the company and assign to it a name; and, until changed in accordance with paragraph 1 (1) (a) of Part I of the Fourth Schedule, the name company shall thereafter be the name so assigned.

Revocation of
name.

Fourth
Schedule.

14. (1) When a company has had its name revoked and a name assigned to it under section 13, the Registrar must issue a certificate of amendment showing the new name of the company and must forthwith give notice of the change in the *Gazette*.

Assigned
name.

(2) Upon the issue of a certificate of amendment under subsection (1), the articles of the company to which the certificate refers shall be amended accordingly on the date shown in the certificate.

Pre-incorporation Contracts

15. (1) Except as provided in this section, a person who enters into a written contract in the name of or on behalf of a company before it comes into existence shall be personally bound by the contract and shall be entitled to the benefits of the contract.

Pre-
incorporation
contracts.

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(2) Within a reasonable time after a company comes into existence, it may, by any action or conduct signifying its intention to be bound thereby, adopt a written contract made, in its name or on its behalf, before it came into existence.

(3) When a company adopts a written contract under subsection (2)—

(a) the company shall be bound by the contract and shall be entitled to the benefits thereof as if the company had been in existence at the date of the contract and had been a party to it; and

(b) a person, who purported to act in the name of the company or on its behalf shall cease, except as provided in subsection (4), to be bound by or entitled to the benefits of the contract.

(4) Except as provided in subsection (5), whether or not a written contract made before the coming into existence of the company is adopted by the company, a party to the contract may apply to the court for an order fixing obligations under the contract as joint, or joint and several, or apportioning liability between or among the company and a person who purported to act in the name of the company or on its behalf, and the court may, upon the application, make any order it thinks fit.

(5) If expressly so provided in the written contract, a person who purported to act for or on behalf of a company before it came into existence shall not in any event be bound by the contract or entitled to the benefits of the contract.

DIVISION B

CAPACITY AND POWERS OF COMPANY

Capacity and
powers of
company.

16. (1) A company shall have the capacity and, subject to this Act, the rights, powers and privileges of an individual.

(2) A company shall have the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Guyana to the extent that the laws of Guyana and of that jurisdiction permit.

(3) It shall not be necessary for a by-law to be passed to confer any particular power on a company or its directors.

(4) This section shall not authorise any company to carry on any business or activity in breach of—

(a) any enactment prohibiting or restricting the carrying on of the business or activity; or

(b) any provision requiring any permission or licence for the carrying on of the business or activity.

17. A company shall not carry on any business or exercise any power that it is restricted by its articles from carrying on or exercising, nor shall a company exercise any of its powers in a manner contrary to its articles. Powers reduced.

18. For the avoidance of doubt, it is hereby declared that no act of a company, including any transfer of property to or by a company, shall be invalid by reason only that the act or transfer is contrary to its articles or this Act. Validity of acts.

19. No person shall be affected by or presumed to have notice or knowledge of the contents of a document concerning a company by reason only that the document has been filed with the Registrar or is available for inspection at any office of the company. Notice not presumed.

20. A company or a guarantor of an obligation of the company may not assert against a person dealing with the company or with any person who has acquired rights from the company that— No disclaimer allowed.

(a) any of the articles, or by-laws of the company has not been complied with;

(b) the persons named in the most recent notice to the Registrar under section 67 or 75 are not the directors of the company;

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(c) the place named in the most recent notice sent to the Registrar under section 188 is not the registered office of the company;

(d) a person held out by a company as a director, an officer or an agent of the company has not been duly appointed or has no authority to exercise the powers or perform the duties that are customary in the business of the company or usual for such a director, officer or agent;

(e) a document issued by any director, officer or agent of the company with actual or usual authority to issue the document is not valid or not genuine; or

(f) the financial assistance referred to in section 54 or the sale, lease, or exchange of property referred to in section 140 was not authorised,

except where that person has, or ought to have by virtue of his position with or relationship to the company, knowledge to the contrary.

Contracts of
company.

21. (1) A contract made according to this section on behalf of a company—

(a) shall be effective in law in point of form and shall bind the company and the other party to the contract; and

(b) may be varied or discharged in the like manner that it is authorised by this section to be made.

(2) A contract that, if made between individuals, would, by law, be required to be in writing or under seal may be made on behalf of a company in writing under seal.

(3) A contract that, if made between individuals, would, by law, be required to be in writing or to be evidenced in writing by the parties to be charged thereby may be made or evidenced in writing signed in the name or on behalf of the company.

(4) A contract that, if made between individuals, would, by law, be valid although made by parol only, and not reduced to writing, may be made by parol on behalf of the company.

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22. A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed, on behalf of the company, if made, accepted or endorsed in the name of the company or if expressed to be made, accepted or endorsed on behalf or on account of the company.

Bills of
exchange and
promissory
notes.

23. (1) A company may, by writing under seal, empower any person, either generally or in respect of any specified matter, as its attorney to execute deeds on its behalf in any place within or outside Guyana.

Power of
attorney.

(2) A deed signed by a person empowered as provided in subsection (1) shall bind the company and shall have the same effect as if it were under the company's seal.

24. (1) A company must have a common seal with its name engraved thereon in legible characters; but, except when required by any enactment to use its common seal, the company may, for the purpose of sealing any document, use its common seal or any other form of seal.

Common seal.

(2) If authorised by its by-laws, a company may have for use in any country other than Guyana or for use in any district or place not situated in Guyana, an official seal, which must be a facsimile of the common seal of the company with the addition on its face of the name of every country, district or place where it is to be used.

(3) Every document to which an official seal of the company is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

(4) A company may, by an instrument in writing under its common seal, authorise any person appointed for that purpose to affix the company's official seal to any document to which the company is party in the country, district or place where its official seal can be used.

(5) Any person dealing with an agent appointed pursuant to subsection (4) in reliance on the instrument conferring the authority may assume that the authority of the agent continues during the period, if any, mentioned in the instrument or, if no period is so mentioned, until that person has actual notice of the revocation or determination of the authority.

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(6) A person who affixes an official seal of a company to a document shall, by writing under his hand, certify on the document the date on which and the place at which the official seal is affixed.

DIVISION C

SHARE CAPITAL

Shares

Nature of shares.

25. (1) Shares in a company shall be movable property and shall not be of the nature of immovable property, and a share shall be transferable in the manner provided by this Act.

(2) Shares in a company shall be without nominal or par value.

(3) When a former-Act company is continued under this Act, a share with nominal or par value issued by the company before it was so continued shall, for the purposes of subsection (2), be deemed to be a share without nominal or par value.

(4) Subject to subsection (5), each share in a company must be distinguished by an appropriate designation.

(5) If at any time all the issued shares in a company, or all the issued shares in a company of a particular class, rank equally for all purposes, none of those shares need thereafter have a distinguishing designation so long as it ranks equally for all purposes with all shares for the time being issued or, as the case may be, all the shares for the time being issued of the particular class.

(6) For the purposes of this Act, a former-Act Company shall be a body corporate that was—

- (a) incorporated under Part I of the former-Act;
- (b) registered pursuant to section 16 of the former-Act; or
- (c) incorporated or registered under the Companies Ordinance, 1864 or 1898.

26. When a company has only one class of shares the rights of the holders shall be equal in all respects and shall include—
If only one class.

- (a) the right to vote at any meeting of shareholders;
- (b) the right to receive any dividend declared by the company;
- (c) the right to receive the remaining property of the company on dissolution.

27. (1) The articles of a company may provide for more than one class of shares, and if they so provide—
Share classes; class vote.

- (a) the rights, privileges, restrictions and conditions attaching to the shares of each class must be set out in the articles; and
- (b) the rights set out in section 26 must be attached to at least one class of shares but all of those rights need not be attached to the same class of shares.

(2) The holders of shares of a class or, subject to subsection (3), of a series shall be, unless the articles of a company otherwise provide in the case of an amendment described in paragraph 14 (1) (a) or (b) of Part IV of the Fourth Schedule, entitled to vote separately, as a class or series, upon a proposal to amend the articles for any of the purposes mentioned in paragraph 14 (1) of the said Schedule.
Fourth Schedule.

(3) The holders of a series of a class shall be entitled to vote separately as a series under subsection (2) only if the series is affected by an amendment in a manner different from other shares of the same class.

(4) Subsection (2) shall apply whether or not shares of a class or series otherwise carry the right to vote.

(5) A proposed amendment to the articles of a company referred to in subsection (2) shall be adopted when the holders of the shares of each class or series entitled to vote separately thereon as a class or series have approved the amendment by a special resolution.

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Issue of
shares.

28. (1) Subject to subsection (2), shares may be issued by a company when, and as often as, the directors of the company determine.

(2) The right of a company to issue shares shall be subject to any limitation in the articles of the company with respect to the number of shares which may be issued and to any rights stated in the articles of the company with regard to pre-emptive right in relation to the shares.

(3) Subject to this Act, the issue price of a share in a company shall be determined by the directors of the company.

(4) In the exercise of their power under subsection (3), the directors of a company shall not determine an issue price in respect of any share that is less than the minimum issue price stated in the articles of the company for the share, or the class of shares to which it belongs, unless they are authorised to do so by a resolution passed in general meeting of the company and they determine the issue price in accordance with that resolution.

(5) Where, by an arrangement made before its incorporation, any shares of a company are to be paid for by a consideration other than cash, the articles of the company shall state the nature of the consideration, the value of the consideration or its value in money terms, and the extent to which the shares to be issued in respect of it will be credited as paid up.

(6) Subject to subsection (7), in such a case as is referred to in subsection (5), a report of a qualified accountant, valuer or surveyor to the effect that the consideration is worth at least the amount to be credited as paid up on the shares to be issued in respect of it shall be lodged with the Registrar when the articles of the company are so lodged.

(7) Subsection (6) shall not apply when the consideration in question consists of services.

(8) No arrangement of a kind referred to in subsection (5) shall be implemented where the effect of implementing it would be to require the issue of any share in the company concerned at an issue price that is less than the minimum price stated in the articles of the company for the share or the class of shares to which it belongs.

(9) No company shall issue bearer shares or bearer share certificates.

29. (1) A share may not be issued until it is fully paid— Consideration.

- (a) in money; or
- (b) in property or past service.

Subject to this section and section 28, where the issue price of shares by a company to be paid for in cash is not fully paid such issue price shall be paid to the company within one year after they are allotted and may be paid by instalments if the company so agrees.

(2) If a shareholder fails to pay to a company an instalment of the issue price in respect of shares held by him within one month after the instalment becomes due, the company may serve a written notice on him stating—

- (a) the amount due in respect of the shares;
- (b) the date on which it became due; and
- (c) that unless the amount is paid within one month after the notice is served, the shares shall be forfeited, but without prejudice to the recovery after the forfeiture of any unpaid instalments,

and if the amount is not so paid—

- (d) the allotment of the shares shall become void and the shares shall be forfeited to the company;
- (e) the company may recover any instalments of the issue price which are due but unpaid at the date the allotment is avoided; and

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(f) the company shall not be accountable to the shareholder for instalments of the issue price which have been paid when the allotment of the shares is avoided.

(3) Nothing in subsections (1) and (2) shall affect the liability of a shareholder under section 349.

(4) No allotment by a company 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 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.

(5) Before passing a resolution pursuant to subsection 2 (a), the directors of the company shall—

(a) where the consideration consists of services, have a qualified accountant estimate the value to the company in money terms of the services; or

(b) in any other case have the consideration valued by a qualified accountant, valuer or surveyor.

(6) If shares are issued for a consideration other than cash, the shares shall not be allotted until—

(a) any services constituting the consideration have been performed; or

(b) any assets constituting the consideration have been transferred to the company.

(7) For the purposes of this section “property” shall not include a promissory note or a promise to pay.

30. (1) The stated capital of a company shall consist of the following items, namely—

Meaning of
“Stated
capital”.

(a) with respect to every issue of shares of any class—

- (i) the total proceeds where the issue is for cash, without any deductions for expenses or commissions; and
- (ii) the value of the consideration received where the issue is for a consideration other than cash; and

(b) the total of any amount referred to in subsection (2).

(2) A company may, by special resolution resolve to transfer any amount to stated capital from any surplus of the company.

31. (1) A company must maintain a separate stated capital account for each class and series of shares that it issues.

Stated capital
accounts.

(2) A company must add to the appropriate stated capital account the full amount of the consideration that it receives for any shares that it issues.

(3) A company may not reduce its stated capital or any stated capital account except in the manner provided by this Act.

(4) A company must not, in respect of a share that it issues, add to a stated capital account an amount greater than the amount of the consideration that it receives for the share.

(5) When a company proposes to add an amount to a stated capital account that it maintains in respect of a class or series of shares, that addition to the stated capital account must be approved by special resolution if—

- (a) the amount to be added was not received by the company as consideration for the issue of shares; and
- (b) the company has issued any outstanding shares of more than one class or series.

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(6) Notwithstanding section 29 and subsection (2)

(a) when, in exchange for property, a company issues shares—

(i) to a body corporate that was an affiliate of the company immediately before the exchange; or

(ii) to a person who controlled the company immediately before the exchange,

the company, subject to subsection (4), may, to the stated capital accounts that are maintained for the shares of the classes or series issued, add the amount agreed, by the company and the body corporate or person, to be the consideration for the shares so exchanged;

(b) when a company issues shares in exchange for shares of a body corporate that was an affiliate of the company immediately before the exchange, the company may, subject to subsection (4), add to the stated capital accounts that are maintained for the shares of the classes or series issued an amount that is not less than the amount set out, in respect of the acquired shares of the body corporate, in the stated capital or equivalent accounts of the body corporate immediately before the exchange; or

(c) when a company issues shares in exchange for shares of a body corporate that becomes, because of the exchange, an affiliate of the company, the company may, subject to subsection (4), add to the stated capital accounts that are maintained for the classes, or series issued an amount that is not less than the amount set out, in respect of the acquired shares of the body corporate, in the stated capital or equivalent accounts of the body corporate immediately before the exchange.

(7) When a former-Act company is continued under this Act—

(a) then, notwithstanding subsection (2), it shall not be required to add to a stated capital account any consideration received by it before it was so continued, unless the share in

respect of which the consideration is received is issued after the company is continued under this Act;

(b) an amount unpaid in respect of a share issued by the former-Act company before it was so continued must be added to the stated capital account that is maintained for the shares of that class or series; and

(c) its stated capital account for the purposes of—

(i) section 38(2);

(ii) section 43; and

(iii) section 54(2) (a) (ii), shall include the amount that would have been included in stated capital if the company had been incorporated under this Act.

32. (1) The articles of a company may authorise the issue of any class of shares in one or more series and may authorise the directors to fix the number of shares in and to determine the designation, rights, privileges, restrictions and conditions, attaching to the shares of each series, subject to the limitations set out in the articles. Series Share.

(2) If any cumulative dividends or amounts, payable on return of capital in respect of a series of shares are not paid in full, the shares of all series of the same class shall participate rateably in respect of accumulated dividends and return of capital.

(3) No rights, privileges, restrictions or conditions attached to a series of shares authorised under this section may confer upon the series a priority in respect of dividends or return of capital over any other series of shares of the same class that are then outstanding.

(4) Before the issues of shares of a series authorised under this section, the directors must send to the Registrar articles of amendment in the prescribed form to designate a series of shares.

(5) Upon receipt from a company of articles of amendment designating a series of shares, the Registrar must issue to the company a certificate of amendment in accordance with section 479.

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(6) The articles of a company shall be amended accordingly on the date shown in the certificate of amendment issued under subsection (5)

Pre-emptive rights.

33. (1) If the articles so provide, no shares of a class of shares may be issued unless the shares have first been offered to the shareholders of the company holding shares of that class, and those shareholders have a pre-emptive right to acquire the offered shares in proportion to their holdings of the shares of that class, at such price and on such terms as those shares are to be offered to others.

(2) Notwithstanding that the articles of a company provide the pre-emptive right referred to in subsection (1), the shareholders of the company have no pre-emptive right in respect of shares to be issued by the company—

- (a) for a consideration other than money;
- (b) as a share dividend; or
- (c) pursuant to the exercise of conversion privileges, options or rights previously granted by the company.

Conversion privileges.

34. (1) A company may grant conversion privileges, options or rights to acquire shares of the company but must set out the conditions thereof in any certificates or other instruments issued in respect thereof.

(2) Conversion privileges, options and rights to acquire shares of a company may be made transferable, or non-transferable, and options and rights to acquire shares may be made separable or inseparable from any debentures or shares to which they are attached.

Reserve shares.

35. Where a company—

(a) has granted privileges to convert any debentures or shares issued by the company into shares or into shares of another class or series of shares; or

(b) has issued or granted options or rights to acquire shares, if the articles of the company limit the number of authorised shares, the company must reserve and continue to reserve

sufficient authorised shares to meet the exercise of those conversion privileges, options and rights.

36. (1) This section shall apply in relation to a public company which at any time has offered shares in the company to the public.

(2) Any company in relation to which this section applies may by notice in writing require any member of the company, within such reasonable time as is specified in the notice—

(a) to indicate in writing he holds any relevant shares in the company; and

(b) if he holds them otherwise than as beneficial owner, to indicate in writing so far as it lies within his knowledge the persons who have an interest in them (either by name and address or by other particulars sufficient to enable those persons to be identified) and the nature of their interests.

(3) Where a company is informed in pursuance of a notice given to any person under subsection (2) or under this subsection that any other person has an interest in any relevant shares in the company, the company may, by notice in writing, require that other person within such reasonable time as is specified in the notice—

(a) to indicate in writing the capacity in which he holds that interest; and

(b) if he holds it otherwise than as beneficial owner, to indicate in writing, so far as it lies within his knowledge, the persons who have an interest in them (either by name and address or by other particulars sufficient to enable them to be identified) and the nature of their interest.

(4) Any company in relation to which this section applies may, by notice in writing, require any member of the company to indicate in writing, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any relevant shares in the company held by him are the subject of an agreement or arrangement under which

Power of
company to
require
disclosure of
beneficial
interests in its
voting shares.
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another person is entitled to control his exercise of those rights and, if so, to give so far as it lies within his knowledge written particulars of the agreement or arrangement and the parties to it.

(5) Where a company is informed in pursuance of a notice given to any person under subsection (4) or under this subsection that any other person is a party to any such agreement or arrangement as is mentioned in that subsection, the company may, by notice in writing, require that other person within such reasonable time as is specified in the notice to give so far as it lies within his knowledge written particulars of the agreement or arrangement and the parties to it.

(6) Whenever a company receives information from a person in pursuance of a requirement imposed on him under this section with respect to shares held by a member of the company, it shall be under an obligation to inscribe against the name of the member in the register of members—

- (a) the fact that the requirement was imposed and the date on which it was imposed; and
- (b) the information received in pursuance of the requirement.

(7) Subject to subsection (8), any person who—

- (a) fails to comply with a notice under this section; or
- (b) in purported compliance with such a notice 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 and shall be liable on summary conviction to a fine of nine thousand dollars.

(8) A person shall not be guilty of an offence under subsection (7)

- (a) if he proves that the information in question was already in the possession of the company or that the requirement to give it was for any other reason frivolous or vexatious.

(9) In this section, “relevant shares” in relation to a company, means shares which in all circumstances carry rights to vote at a general meeting of the company.

37. (1) A company may, in the capacity of a personal representative, hold shares in itself or in its holding company unless it, or the holding company, or a subsidiary of either of them, has a beneficial interest in the shares.

Company holding shares in capacity as personal representative, etc.

(2) A company may hold shares in itself or its holding company by way of security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.

(3) A company which holds shares in another company may continue to hold the shares if it becomes a subsidiary of that other company.

(4) A company holding shares in itself or in its holding company shall not vote on or permit the shares to be voted on unless the company holds the shares in the capacity of a personal representative.

(5) A holding company shall not, pursuant to section 50(6), issue shares to a subsidiary of the holding company unless the subsidiary is, and was before becoming such a subsidiary, a member of the holding company.

(6) A holding company shall not sell on behalf of a subsidiary any shares which would have been issued to the subsidiary if subsection (5) did not prohibit their being so issued.

38. (1) Subject to subsections (2), (3) and to its articles, a company may purchase or otherwise acquire shares issued by it.

Acquisition of own shares.

(2) A company shall not make any payment to purchase or otherwise acquire shares issued by it unless a statutory declaration is made by the directors of the company in accordance with this Act and filed with the Registrar to the effect that there are no reasonable grounds for believing that—

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- (a) the company is, or would after the payment be, unable to pay its liabilities as they become due; or
- (b) the realisable value of the company's assets would, after the payment, be less than the aggregate of its liabilities and stated capital of all classes.

(3) A company may not under this section purchase its shares if as a result of the purchase there would no longer be any member of the company holding shares other than redeemable shares.

Other acquisition.

39. (1) Notwithstanding section 44(2), but subject to subsection (3) and to its articles, a company may purchase or otherwise acquire its own issued shares—

- (a) to settle or compromise a debt or claim asserted by or against the company;
- (b) to eliminate fractional shares; or
- (c) to fulfil the terms of a non-assignable agreement under which the company has an option or is obliged to purchase shares owned by a director, an officer or an employee of the company.

(2) Notwithstanding section 38(2) a company may purchase or otherwise acquire its own issued shares—

- (a) to satisfy the claim of a shareholder who dissents under paragraph 14 of Part IV of the Fourth Schedule; or
- (b) to comply with an order under section 224.

(3) A company shall not make any payment to purchase or acquire under subsection (1) shares issued by it unless a statutory declaration is made by the directors of the company in accordance with this Act and filed with the Registrar to the effect that there are no reasonable grounds for believing that—

- (a) the company is, or would after the payment be unable to pay its liabilities as they become due; or
- (b) the realizable value of the company's assets would after the payment be less than the aggregate of its liabilities and the

amount required for payment on a redemption or in a liquidation of all shares the holders of which have the right to be paid before the holders of the shares to be purchased or acquired.

40. (1) Notwithstanding section 38(2) or section 39(3), but subject to this section and to its articles, a company may, at prices not exceeding the redemption price thereof stated in its articles or calculated according to a formula stated in its articles, purchase or redeem any redeemable shares issued by it.

Redeemable shares.

(2) Notwithstanding anything in the articles of incorporation of a company—

(a) no shares issued as provided in subsection (1) 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) the minimum premium (if any) payable on redemption shall be provided out of profits or revenue reserves of the company which would otherwise be available for the payment of dividends before the shares are redeemed.

(3) A company shall not make any payment to purchase or redeem any redeemable shares issued by it unless a statutory declaration is made by the directors of the company in accordance with this Act and filed with the Registrar to the effect that there are no reasonable grounds for believing that—

(a) the company is, or would after that payment be, unable to pay its liabilities as they become due; or

(b) the realisable value of the company's assets would, after that payment, be less than the aggregate of—

(i) its liabilities; and

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(ii) the amount that would be required to pay the holders of shares that have a right to be paid, on a redemption or in a liquidation, rateably with or before the holders of the shares to be purchased or redeemed.

Donated shares.

41. Subject to section 45, a company may accept from any shareholder a share of the company surrendered to it as a gift, but may not extinguish or reduce a liability in respect of any amount unpaid on any such share except in accordance with section 43.

Voting thereon.

42. A company holding shares in itself or in its holding body corporate shall not vote or permit those shares to be voted unless the company –

(a) holds the shares in the capacity of a legal representative; and

(b) has complied with section 150.

Stated capital reduction.

43. (1) Subject to subsection (3), a company may by special resolution reduce its stated capital by—

(a) extinguishing or reducing a liability in respect of an amount unpaid on any share;

(b) returning to its shareholders any of its assets which are in excess of the wants of the company; and

(c) declaring its stated capital to be reduced by an amount that is not represented by realisable assets.

(2) A special resolution under this section shall specify the stated capital account or accounts from which the reduction of stated capital effected by the special resolution will be deducted.

(3) A company shall not reduce its stated capital under paragraph (a) or (b) of subsection (1) unless a statutory declaration is made by the directors of the company in accordance with this Act to the effect that there are no reasonable grounds for believing that—

(a) the company shall or would, after that reduction, be unable to pay its liabilities as they become due; or

(b) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities.

(4) A company that reduces its stated capital under this section must not later than thirty days after the date of the passing of the resolution, serve notice of the resolution on all persons who on the date of the passing of the resolution were creditors of the company.

(5) A creditor may apply to the court for an order compelling a shareholder or other recipient—

- (a) to pay to the company an amount equal to any liability of the shareholder that was extinguished or reduced contrary to this section; or
- (b) to pay or deliver to the company any money or property that was paid or distributed to the shareholder or other recipient as a consequence of a reduction of capital made contrary to this section.

(6) An action to enforce a liability imposed by this section may not be commenced after two years from the date of the act complained of.

(7) This section shall not affect any liability that arises under section 84 or 85.

44. (1) Upon a purchase, redemption or other acquisition by a company under sections 38, 39, 40, 58, 224(5)(f) or paragraph 14 of Part IV of the Fourth Schedule of shares or fractions thereof issued by it, the company must deduct, from the stated capital account maintained for the class or series of shares purchased, redeemed or otherwise acquired, an amount equal to the result obtained by multiplying the stated capital of the shares or series or fractions thereof purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

Stated capital
adjustment.
Fourth
Schedule.

(2) A company must deduct the amount of a payment made by the company to a shareholder under section 224(5)(g) from the stated capital account maintained for the class or series of shares in respect of which the payment was made.

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Fourth
Schedule.

(3) A company must adjust its stated capital accounts in accordance with any special resolution referred to in section 43(2).

(4) Upon a conversion of issued shares of a class into shares of another class or upon a change under section 224 or paragraph 1 of Part I of the Fourth Schedule of issued shares of a company into shares of another class or series, the company must—

(a) deduct, from the stated capital account maintained for the class or series of shares changed or converted, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series changed or converted, divided by the number of issued shares of that class or series immediately before the change or conversion; and

(b) add the result obtained under paragraph (a), and any additional consideration received by the company pursuant to the change, to the stated capital account maintained or to be maintained for the class or series of shares into which the shares have been changed or converted.

(5) For the purposes of subsection (4), when a company issues two classes of shares and there is attached to each of the classes a right to convert a share of the one class into a share of the other class, then, if a share of one class is converted into a share of the other class, the amount of stated capital attributable to a share in either class is the aggregate of the stated capital of both classes divided by the number of issued shares of both classes immediately before the conversion.

Cancellation of
shares.

45. Shares or fractions of shares issued by a company and purchased, redeemed or otherwise acquired by the company must be cancelled or, if the articles of the company limit the number of authorised shares, the shares or fractions may be restored to the status of authorised but unissued shares.

Presumption
re own shares.

46. For the purposes of sections 44 and 45, a company holding shares in itself as permitted by section 37 shall be deemed not to have purchased, redeemed or otherwise acquired those shares.

47. (1) Shares issued by a company and converted or changed under section 224 or paragraph 1 of Part I of the Fourth Schedule into shares of another class or series become issued shares of the class or series of shares into which the shares have been converted or changed.

Changing share class.

(2) Where its articles limit the number of authorised shares of a class or series of shares of a company and issued shares of that class or series have become, pursuant to subsection (1), issued shares of another class or series, the number of unissued shares of the first-mentioned class or series must, unless the articles of amendment or reorganisation otherwise provide, be increased by the number of shares that, pursuant to subsection (1), became shares of another class or series.

48. (1) A contract with a company providing for the purchase of shares of the company shall be specifically enforceable against the company except to the extent that the company cannot perform the contract without thereby being in breach of section 38 or 39.

Effect of purchase contract.

(2) In any action brought on a contract referred to in subsection (1), the company shall have the burden of proving that performance of the contract is prevented by section 38 or 39.

(3) Until the company has fully performed a contract referred to in subsection (1), the other party retains the status of a claimant who shall be entitled—

- (a) to be paid as soon as the company is lawfully able to do so; or
- (b) to be ranked in a liquidation subordinate to the rights of creditors but in priority to the shareholders.

49. (1) The directors of a company acting honestly and in good faith with a view to the best interest of the company may, subject to subsection (2), authorise the company to pay a commission to any person in consideration of his purchasing or agreeing to purchase shares of the company from the company or from any other person, or procuring or agreeing to procure purchasers for any such shares.

Payment of commission.

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(2) No commission shall be paid by a company—

(a) unless a payment of that kind is authorised by the articles of incorporation of the company;

(b) of any amount that exceeds ten per cent of the price at which the shares are issued or the amount or rate authorised by the articles of incorporation, whichever is the less;

(c) unless the amount or rate of the commission is—

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

(ii) in the case of shares not so offered, disclosed in the statement in lieu of prospectus and, where a circular or notice (not being a prospectus) inviting subscription for the shares is issued, also disclosed in that circular or notice; and

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

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

Payment of
dividend.

50. (1) Subject to this section, a company may, in general meeting, declare dividends in respect of any year or other period.

(2) Where the recommendation of the directors of a company with respect to the declaration of a dividend is rejected or varied by the company in general meeting, a statement to that effect shall be included in the relevant directors' annual report and in the relevant annual return.

(3) No dividend shall be payable to the shareholders of a company except out of profits.

(4) Any resolution of a company lawfully declaring a dividend may, upon the recommendation of the directors, direct payment wholly or partly by the distribution of fully paid, but not partly paid shares in another company.

(5) A company shall not declare or pay a dividend if there are reasonable grounds for believing that—

- (a) the company is, or would be after the payment, unable to pay its liabilities as they became due; or
- (b) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities and stated capital.

(6) Where a company has passed a special resolution of a kind referred to in section 30 (2), the company may on the recommendation of the directors, by the same or any subsequent special resolution, resolve that unissued shares in the company be issued credited as fully paid to the members of the company who would have been entitled to receive the sum had it been lawfully distributed by way of dividend and in the same proportions and so that the sum so transferred to stated capital shall be deemed to be paid, otherwise than in cash, on those shares.

51. (1) No company shall be required to eliminate past revenue losses before dividends from profit of subsequent years are paid.

No elimination
of past
revenue losses
before
payment of
dividend.

(2) A company shall not be required to make good either realised or unrealised capital losses before a distribution of dividends.

52. (1) An unrealised capital surplus arising on the revaluation of unrealised fixed assets shall not be treated as a profit for the purpose of the declaration or payment of a dividend.

Other
provisions
with respect to
profits.

(2) A company may, by special resolution upon the recommendation of the directors—

- (a) apply an unrealised capital surplus (established as provided in subsection (3) in excess of the previous book

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value of its assets for the purpose of issuing shares by way of bonus; or

(b) re-organise its balance sheet by applying a surplus referred to in paragraph (a) in writing off past losses (both capital and revenue) provided that all reserves (other than capital redemption reserves) have previously been exhausted.

(3) An unrealised capital surplus shall be treated as established for the purposes of this section only—

(a) if the fixed assets in question have been revalued by an independent valuer; and

(b) if any capital surplus thereby arising has been certified by an independent accountant.

(4) A person shall not be an independent valuer or accountant for the purposes of this section if he is an officer of the company whose assets are revalued or of any company which belongs, or belonged when the assets were revalued, to the same group of companies as the company, or is an employee or partner of any such officer.

(5) Where a particular company becomes the subsidiary of another company, any dividend paid to the other company out of profits of the particular company, acquired before it became a subsidiary of the other company, shall be treated as capital, and not as profits of the other company.

Pre-acquisition profits.

53. Where a company acquires all or enough of the shares of another company to control all of the other company's activities, the pre-acquisition profits of the acquired company shall be treated as capital of the acquiring company.

Financial assistance to acquire shares.

54. (1) Subject to this section, a company or any company with which it is affiliated, shall not directly or indirectly, give financial assistance by means of a loan, guarantee or the provision of security or otherwise 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 in the first-mentioned company.

(2) Notwithstanding subsection (1), a company may give financial assistance by means of a loan, guarantee or the provision of security or otherwise for the purpose referred to in that subsection—

(a) where the transaction has been approved by a special resolution of the company and a statutory declaration is made by the directors of the company in accordance with this Act to the effect that there are no reasonable grounds for believing that—

(i) the company is, or would after giving the financial assistance be, unable to pay its liabilities as they become due; or

(ii) the realisable value of the company's assets, excluding the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee, would, after giving the financial assistance be less than the aggregate of the company's liabilities and stated capital;

(b) in the ordinary course of business, if the lending of money is part of the company's ordinary business;

(c) to employees (other than an employee who is also a director) of the company or any company with which it is affiliated—

(i) in accordance with a plan for the purchase of shares in the company or any company with which it is affiliated to be held by a trustee; or

(ii) to enable them to purchase shares in the company or in any company with which it is affiliated to be held by them by way of beneficial ownership.

(3) Unless it is unanimous, a special resolution of a kind referred to in subsection 2(a)—

(a) shall not take effect before the expiration of the period of twenty-eight days after it was passed; and

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(b) if during that period an application is made under Division L of Part II to the court with respect to the resolution—

- (i) it shall not take effect until the application is determined; and
- (ii) it shall take effect then only if, having regard to any order made on the determination, it may take effect.

(4) Subject to subsection (5), where a person, or two or more persons, acting jointly or in concert, gain control of a particular company, and within one year after the person or persons so gained control, the particular company or its subsidiary, purchases any assets—

(a) from that person, any company controlled by that person or any group of companies affiliated with the same group of companies as that person; or

- (b) from those persons, or any of them, or from—

- (i) any company controlled by them or any of them; or
- (ii) any group of companies affiliated with the same group of companies as any of them,

it shall be presumed, until the contrary is proved, that that person or those persons were given financial assistance, contrary to this section, by the particular company for the purpose of, or in connection with, a purchase of or a subscription for, shares in the particular company.

(5) Subsection (4) shall not apply to a purchase of assets, in the circumstances referred to in that subsection, by a particular company where it is proved, by the person wishing to establish that that subsection shall not apply that the purchase can, in all the circumstances, properly be regarded as a purchase made in the ordinary course of carrying on the business of the particular company.

(6) For the purposes of subsection (4), a particular company shall be controlled—

(a) by a person if shares in the particular company carrying voting rights sufficient to elect a majority of the directors of a particular company are held, directly or indirectly, other than by way of security, by or on behalf of that person; or

(b) by two or more persons—

(i) if the particular company is affiliated with the same group of companies as those persons; or

(ii) if shares in the particular company sufficient to elect a majority of the directors in the particular company, are held, directly or indirectly, other than by way of security, or by or on behalf of those persons—

(a) jointly;

(b) separately; or

(c) jointly in the case of some shares and separately in the case of other shares.

55. (1) Subject to this section, no company shall whether directly or indirectly, and whether by means of a loan guarantee or the provision of security or otherwise give financial assistance—

Prohibition of
loans to
directors of
public
company.

(a) to any officer of the company or of any company in the same group of companies as the company;

(b) to any company in which any director, or any of the directors collectively, hold, personally or by way of nominee, shares which entitle the director or, as the case may be, the directors to exercise at least fifty-one per cent of the unrestricted voting rights at any general meeting of that company;

(c) to any subsidiary of a company such as is referred to in paragraph (b); or

(d) to an officer of a company or subsidiary such as is referred to in paragraph (b) or (c).

(2) Nothing in subsection (1) shall be taken as prohibiting—

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(a) where section 54 applies, the giving of financial assistance to purchase or subscribe for shares when authorised to do so by that section;

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

(c) anything done to provide any person with funds to meet expenditure incurred or to be incurred by him for the purposes of the company so providing those funds; or

(d) the giving of financial assistance to employees of a company (other than directors) to enable or assist them to purchase or erect living accommodation for their own occupation.

(3) The prohibition in subsection (1) against giving financial assistance to an officer of a company shall extend to giving any such financial assistance to the family of an officer and, for that purpose—

(a) the family of an officer includes the wife or husband (or reputed wife or husband), the parents and any children (whether born in wedlock or out of wedlock), of the officer; and

(b) this section (with the necessary modifications) shall apply accordingly.

(4) Nothing in this section shall operate to prevent a company from recovering the amount of any financial assistance given contrary to this section.

Compensation
for loss of
office by a
director on
transfer of
company's
undertaking.

56. (1) A company shall not, in connection with the transfer of the whole or any part of the undertaking or property of the company, make any payment to a director or former director of the company by way of compensation for loss of his office, or of any office in connection with the management of the company's affairs, or of any office in connection with the management of any subsidiary of the company, or as consideration for or in connection with his retirement from any such 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 a general meeting.

(2) Where a payment which is prohibited by this section is made to a director or former director of a company, the amount received shall be deemed to have been received by the director or former director in trust for the company and may be recovered by it from the director as a debt immediately due and payable.

(3) Particulars of a proposed payment to a director or former 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.

57. The shareholders of a company shall not as shareholders, be liable for any liability, act or default of the company except under section 43(5). Immunity of shareholders.

58. (1) Subject to this Act, the articles of a company may provide that the company shall have a lien on a share registered in the name of a shareholder or his legal representative for a debt of that shareholder to the company including an amount unpaid in respect of a share issued by a company on the date it was continued under this Act. Lien on shares.

(2) A company may enforce a lien referred to in subsection (1) in accordance with its by-laws.

DIVISION D

MANAGEMENT OF COMPANIES

The Directors

59. (1) The directors of a company must—

(a) exercise the powers of the company directly or indirectly through the employees and agents of the company; and

Duty to manage company.

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(b) direct the management of the business and affairs of the company.

(2) The directors of a public company must take all reasonable steps to ensure that the secretary or each joint secretary of the company is a person who appears to the directors to have the requisite knowledge and experience to discharge the functions of a secretary of a public company.

(3) For the purposes, of this section, a person—

(a) who, on the commencement of this Act, held the office of secretary, assistant secretary, or deputy secretary of a public company;

(b) who, for at least three years of the five years immediately preceding his appointment as secretary, held the office of secretary of a public company;

(c) who is a member in good standing of the Institute of Chartered Accountants of Guyana, Chartered Institute of Secretaries and Administrators, or the Chartered Institute of Public Finance and Accountancy;

(d) who is an attorney-at-law; or

(e) who, by virtue of his holding or having held any other position or having been a member of any other body, appears to be capable of discharging the functions of a secretary of a public company,

may be assumed by a director of a public company to have the requisite knowledge and experience to discharge the functions of a secretary of the public company, if the director does not know otherwise.

Number of
directors.

60. A company must have at least one director, but a public company must have a minimum of two directors.

Restricted
powers.

61. If the powers of the directors of a company to manage the business and affairs of the company are in whole or in part restricted by the articles of the company, the directors shall have all the rights, powers

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and duties of the directors to the extent that the articles do not restrict those powers, but the directors shall thereby be relieved of their duties and liabilities to the extent that the articles restrict their powers.

62. (1) Unless the articles or by-laws otherwise provide, the directors of a company may by resolution make, amend, or repeal any by-laws for the regulation of the business or affairs of the company. By-law powers.

(2) The directors of a company must submit a by-law, or any amendment or repeal of a by-law, made under subsection (1) to the shareholders of the company at the next meeting of shareholders after the making, amendment or repeal of the by-law, and the shareholders may, by ordinary resolution, confirm, amend or reject the by-law, amendment or repeal.

(3) A by-law, or any amendment or repeal of a by-law, shall be effective from the date of the resolution of the directors making, amending or repealing the by-law until—

- (a) the by-law, amendment or repeal is confirmed, amended or rejected by the shareholders pursuant to subsection (2); or
- (b) the by-law, amendment or repeal ceases to be effective pursuant to subsection (4),

and, if the by-law, amendment or repeal is confirmed or amended by the shareholders, it shall continue in effect in the form in which it was confirmed or amended.

(4) When a by-law, or an amendment or repeal of a by-law is not submitted to the shareholders as required by subsection (2) or is rejected by the shareholders, the by-law, amendment or repeal shall cease to be effective, and no subsequent resolution of the directors to make, amend or repeal a by-law having substantially the same purpose or effect shall be effective until the resolution is confirmed, with or without amendment, by the shareholders.

(5) A shareholder who is entitled to vote at an annual meeting of shareholders may, in accordance with sections 114 to 122, make a proposal to make, amend or repeal a by-law.

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Third Schedule.

(6) A company may adopt all or any of the by-laws contained in the Third Schedule.

Fourth Schedule.

(7) Parts II and III of the Fourth Schedule shall apply with respect to the amendment and cancellation of amendment of by-laws of a company respectively.

Organisational meeting.

63. (1) After the issue of a certificate of incorporation of a company, a meeting of the directors of the company must be held at which the directors may—

- (a) make by-laws;
- (b) adopt forms of share certificates and corporate records;
- (c) authorise the issue of shares;
- (d) appoint officers;
- (e) appoint an auditor to hold office until the first annual meeting of shareholders;
- (f) make banking arrangements; and
- (g) transact any other business.

(2) An incorporator or a director may call the meeting of directors referred to in subsection (1) by giving by post not less than five days notice of the meeting to each director and stating in the notice the time and place of the meeting.

Disqualification for appointment as director.

64. (1) An individual who is prohibited by section 4(2) from forming or joining in the formation of a company, and a person which is not an individual shall not be a director of any company.

(2) When a person is disqualified under section 65 from being a director of a company, that person may not, during that period of disqualification, be a director of any company.

Court disqualification of directors.

65. (1) When, on the application of the Registrar, it is made to appear to the court that a person is unfit to be concerned in the management of a public company, the court may order that, without the prior leave of the court, he may not be a director of the company or, in any way, directly or indirectly, be concerned with the management of the company for such period—

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(a) beginning—

- (i) with the date of the order; or
- (ii) if the person is undergoing, or is to undergo a term of imprisonment and the court so directs, with the date on which he completes that term of imprisonment or is otherwise released from prison; and

(b) not exceeding five years,

as may be specified in the order.

(2) In determining whether or not to make an order under subsection (1), the court shall have regard to all the circumstances that it considers relevant including any previous convictions of the person in Guyana or elsewhere for an offence involving fraud or dishonesty or in connection with the promotion, formation or management of any body corporate.

(3) In the case of a person who has been persistently in default in relation to relevant requirements of this Act, only the Minister may make an application under this section.

(4) Before making an application under this section in relation to any person, the Registrar must give that person not less than ten days notice of the Registrar's intention to make the application.

(5) On the hearing of an application made by the Registrar or the Minister under this section or an application for leave under this section to be concerned with the management of a public company, the Registrar or the Minister concerned with the application may appear and call attention to any matters that are relevant, and may give evidence, call witnesses and be represented by an attorney-at law.

(6) The Minister shall notify in the *Gazette* the making of an order under subsection (1), but any failure to do so shall not affect the validity of an order or its effect.

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(7) Where, in relation to a person, a court in a country that is a Member State of the Caribbean Community makes, under an enactment relating to bodies corporate, an order of the kind referred to in subsection (1), then, for so long as the order has effect, section 64 shall have effect as if the order had been made by the court under that subsection.

(8) For the purposes of subsection (3) the fact that a person has been persistently in default in relation to relevant requirements of this Act may be conclusively established by proving to the satisfaction of the court that—

- (i) the person has failed to comply with relevant requirements of this Act in two successive years or on three occasions in a period of five years;
- (ii) on each occasion notice of the failure has been communicated to the registered office of the company in question;
- (iii) the person did not, consequent on the notice, rectify the failure; and
- (iv) in respect of the most recent failure to comply with relevant requirements of this Act, the person has been convicted of an offence for that failure.

(9) For the purposes of this section—

(a) the fact that a court in a country that is a Member State of the Caribbean Community has made an order may, without prejudice to its proof in any other way, be proved by the production of a copy of the *Official Gazette* of that country; and

(b) the fact that that order is an order of a kind referred to in subsection (1) may, without prejudice to its proof in any other way, be proved by a person having knowledge of the laws of that country and of the State so depositing.

Director's
share qualifica-
tion.

66. (1) Unless a company's by-laws otherwise provide, a director of the company need not be a member of the company or hold any shares in the company.

(2) Every director who is by the by-laws required to hold a specified share qualification and who is not already qualified shall obtain his qualification within two months after his appointment or such shorter period as is fixed by the by-laws.

(3) Unless otherwise provided by the by-laws of a company the qualification of any director of the company shall be held by him solely and not as one of several joint holders.

(4) A director shall vacate his office if he has not within the period referred to in subsection (2) obtained his qualification or if after so obtaining it he ceases at any time to hold his qualification.

(5) A person vacating his office under subsection (4) shall be incapable of being re-appointed as director until he has obtained his qualification.

67. (1) There shall be delivered to the Registrar as part of the application with respect to the formation of a company a statement in the prescribed form containing the names and relevant particulars of—

Statement in relation to first directors and secretary.

(a) the persons who are to be the first directors or, as the case may be, the person who is to be the first director of the company; and

(b) with respect to a person named as secretary or as one of the joint secretaries, the particulars which by section 189(6) are required to be contained in that register with respect to the secretary or, as the case may be, to each secretary.

(2) The statement required to be delivered by this section shall be signed by or on behalf of the subscribers of the articles of incorporation and shall contain a consent signed by the person, or each of the persons, named in it as a director, a secretary, or as one of the joint secretaries, to act in the relevant capacity.

(3) The persons named in the statement required by this section as the director or directors and secretary or joint secretaries of the company shall, on the incorporation of the company, be deemed to have

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Appointment
of directors of
public
company.

been respectively appointed as the first director or directors, secretary or joint secretaries, of the company and any appointment, by the articles of incorporation delivered to the Registrar, of a person as director or secretary shall be void unless he is named as a director or as a secretary, or one of the joint secretaries, in the statement.

68. (1) Subject to this section, a director of a company may be appointed only by ordinary resolution passed at a general meeting of the company and for a period not exceeding five years, but a director may be re-appointed in like manner on any number of occasions for a period not exceeding five years on each re-appointment.

(2) Subject to section 67, the articles of incorporation may make provision with respect to the appointment of the first directors of the company.

(3) The first directors of the company shall cease to hold office at the termination of the first annual general meeting of the company, but they shall be eligible for re-appointment under subsection (1) at that meeting.

(4) Subject to section 67 and to subsection (7), any provision in the articles of incorporation or by-laws of a company by which a director may be appointed in any other manner than the manner provided by this section shall be void.

(5) The articles of incorporation or by-laws of a company or any trust deed, debentures, agreement or instrument may provide for the appointment of one director, or two or more directors (not exceeding in number one-third of the number of directors for the time being holding office) by any class of shareholder or by the debenture holders of the company or by the trustee of the covering debenture trust deed.

(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.

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(7) The articles of incorporation of a Company may provide for the automatic re-appointment of a director at the expiration of his term of office if no other person is appointed by a general meeting in his place, but such a director shall not be automatically re-appointed if an ordinary resolution is 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.

69. A director of a company shall cease to hold office when—

Termination of office.

- (a) he dies or resigns;
- (b) he is removed in accordance with section 71;
- (c) he becomes disqualified under section 64 or 65.

70. The resignation of a director of a company shall become effective at the time his written resignation is sent to the company or at the time specified in the resignation, whichever is later.

Resignation of director.

71. (1) The shareholders of a company may, by ordinary resolution at an annual general meeting or at an extraordinary general meeting, remove any director from office.

Removal of director.

(2) Where the holders of any class or series of shares of a company have an exclusive right to elect one or more directors, a director so elected may only be removed by an ordinary resolution at a meeting of the shareholders of that class or series of shares.

(3) A vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed or, if the vacancy is not so filled, it may be filled pursuant to section 73.

72. (1) A director of a company shall be entitled to receive notice of, and to attend and be heard at, every meeting of share holders.

Right to notice.

(2) A director—

- (a) who resigns;

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(b) who receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office; or

(c) who receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of his resignation or removal or because his term of office has expired or is about to expire,

may submit to the company a written statement giving the reasons for his resignation or the reason why he opposes any proposed action or resolution.

(3) The company shall forthwith send a copy of the statement referred to in subsection (2) to the Registrar and to every shareholder entitled to receive notice of any meeting referred to in subsection (1).

(4) No company or person acting on its behalf shall incur any liability by reason only of circulating a director's statement in compliance with subsection (3).

Filling
vacancy.

73. (1) Subject to subsections (3) and (4), a quorum of directors of a company may fill a vacancy among the directors of the company, except a vacancy resulting from an increase in the number or minimum number of directors or from a failure to elect the number or minimum number of directors required by the articles of the company.

(2) If there is no quorum of directors, or if there has been a failure to elect the number or minimum number of directors required by the articles, the directors then in office must forthwith call a special meeting of shareholders to fill the vacancy; and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any shareholders.

(3) Where the holders of any class or series of shares of a company have an exclusive right to elect one or more directors and a vacancy occurs among those directors—

(a) then, subject to subsection (4), the remaining directors elected by that class or series may fill the vacancy except a vacancy resulting from an increase in the number or minimum number of directors for that class or series or from a failure to elect the number or minimum number of directors for that class or series; or

(b) if there are no such remaining directors, any holder of shares of that class or series may call a meeting of the holders thereof for the purpose of filling the vacancy.

(4) The articles of a company may provide that a vacancy among the directors be filled only—

(a) by a vote of the share holders; or

(b) by a vote of the holders of any class or series of shares having an exclusive right to elect one or more directors, if the vacancy occurs among the directors elected by that class or series.

(5) A director appointed or elected to fill a vacancy holds office for the unexpired term of his predecessor.

74. The shareholders of a company may amend the articles of the company to increase or to decrease the number of directors, or the minimum or maximum number of directors; but no decrease shortens the term of an incumbent director.

Numbers
changed.

75. (1) Within one month after a change is made among its directors, a company shall send to the Registrar a notice in the prescribed form setting out the change; and the Registrar shall file the notice.

Notice of
change.

(2) Any interested person, or the Registrar, may apply to the court for an order to require a company to comply with subsection (1); and the court may so order and make any further order it thinks fit.

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(3) A director in respect of whom an entry is required to be made in the register shall notify the company in writing within seven days after the matter occasioning the requirement of the entry occurs or arises, and shall include in the notification the particulars which the company is required to enter in the register in respect of that matter.

Directors' meetings.

76. (1) Unless the articles or by-laws of a company otherwise provide, the directors of a company may meet at any place, and upon such notice as the by-laws require.

(2) Subject to the articles or by-laws, a majority of the number of directors or minimum number of directors required by the articles shall constitute a quorum at any meeting of directors; and notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

Notice and waiver.

77. (1) A notice of a meeting of the directors of a company must specify any matter referred to in section 81(2) that is to be dealt with at the meeting; but, unless the by-laws of the company otherwise provide, the notice need not specify the purpose of or the business to be transacted at the meeting.

(2) A director may, in any manner, waive a notice of a meeting of directors; and attendance of a director at a meeting of directors shall be a waiver of notice of the meeting by the director except when he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

Adjourned meeting.

78. Notice of an adjourned meeting of directors need not be given if the time and place of the adjourned meeting is announced at the original meeting.

One director board.

79. Where a company has only one director that director may constitute a meeting.

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80. (1) Subject to the by-laws of a company, a director may, if all the directors of the company consent, participate in a meeting of directors of the company or of a committee of the directors by means of such telephone or other communication facilities as permit all persons participating in the meeting to hear each other.

Telephone participation.

(2) A director who participates in a meeting of directors by such means as are described in subsection (1), shall, for the purposes of this Act, be deemed to be present at the meeting.

81. (1) Directors of a company may appoint from their number a managing director or a committee of directors and delegate to the managing director or committee any of the powers of the directors.

Delegation of powers.

(2) Notwithstanding subsection (1), no managing director and no committee of directors of a company may—

- (a) submit to the shareholders any question or matter requiring the approval of the shareholders;
- (b) fill a vacancy among the directors or in the office of the auditor;
- (c) issue shares except in the manner and on the terms authorised by the directors;
- (d) declare dividends;
- (e) purchase, redeem or otherwise acquire shares issued by the company;
- (f) pay a commission referred to in section 49;
- (g) approve a management proxy circular referred to in Division F;
- (h) approve any financial statements referred to in section 153, or
- (i) adopt, amend or repeal by-laws.

82. An act of a director or officer shall be valid notwithstanding any irregularity in his election or appointment or any defect in his qualification.

Validity of acts.

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Resolution in writing.

83. (1) When a resolution in writing is signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors—

- (a) the resolution shall be as valid as if it had been passed at a meeting of directors or a committee of directors; and
- (b) the resolution shall satisfy all the requirements of this Act relating to meetings of directors or committees of directors.

(2) A copy of every resolution, referred to in subsection (1) must be kept with the minutes of the proceedings of the directors or committee of directors.

Liabilities of Directors

Liability for share issue.

84. Directors of a company who vote for or consent to a resolution authorising the issue of a share under section 28 for a consideration other than money shall be jointly and severally liable to the company to make good any amount by which the consideration received is less than the fair equivalent of the money that the company would have received if the share had been issued for money on the date of the resolution.

Liability for other acts.

85. Directors of a company who vote for or consent to a resolution authorising—

- (a) a purchase, redemption or other acquisition of shares contrary to section 38, 39 or 40;
- (b) a commission contrary to section 49;
- (c) a payment of a dividend contrary to section 50;
- (d) financial assistance contrary to section 54;
- (e) a payment of an indemnity contrary to any of the provisions of section 224 or paragraphs 14 to 38 of Part IV of the Fourth Schedule,

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shall be jointly and severally liable to restore to the company any amounts so distributed or paid and not otherwise recovered by the company.

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86. A director who has satisfied a judgment founded on a liability under section 84 or 85 shall be entitled to contribution from the other directors who voted for or consented to the unlawful act upon which the judgment was founded.

Contribution
for judgment.

87. (1) A director who is liable under section 85 may apply to the court for an order compelling a shareholder or other recipient to pay or deliver to the director any money or property that was paid or distributed to the shareholder or other recipient contrary to section 38, 39, 40, 49, 50 or 54.

Recovery by
action.

(2) In connection with an application under subsection (1), the court may, if it is satisfied that it is equitable to do so—

(a) order a shareholder or other recipient to pay or deliver to a director any money or property that was paid or distributed to the shareholder or other recipient contrary to any of the provisions of sections 38, 39, 40, 49, 50, 54, 99 to 103, 224 or paragraphs 14 to 38 of Part IV of the Fourth Schedule;

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Schedule.

(b) order a company to return or issue shares to a person from whom the company has purchased, redeemed or otherwise acquired shares; or

(c) make any further order it thinks fit.

88. A director of a company shall not be liable under section 84 if he did not know and could not reasonably have known that the share was issued for a consideration less than the fair equivalent of the money that the company would have received if the share had been issued for money.

Defence to
liability.

89. An action to enforce a liability imposed under section 84 or 85 may not be commenced after two years from the date of the resolution authorising the action complained of.

Time limit on
liability.

Contractual Interest

90. (1) A director or officer of a company—

Interests in
contracts.

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- (a) who is a party to a material contract or proposed material contract with the company; or
- (b) who is a director or an officer of anybody, or has a material interest in any body, that is a party to a material contract or proposed material contract with the company,

must disclose in writing to the company or request to have entered in the minutes of the meetings of directors the nature and extent of his interest.

(2) The disclosure required by subsection (1) must be made, in the case of a director of a company—

- (a) at the meeting at which a proposed contract is first considered;
- (b) if the director was not then interested in a proposed contract, at the first meeting after he becomes so interested;
- (c) if the director becomes interested after a contract is made, at the first meeting after he becomes so interested; or
- (d) if a person who is interested in a contract later becomes a director of the company, at the first meeting after he becomes a director.

(3) The disclosure required by subsection (1) must be made, in the case of an officer of a company who is not a director—

- (a) forthwith after he becomes aware that the contract or proposed contract is to be considered or has been considered at a meeting of directors of the company;
- (b) if the officer becomes interested after a contract is made, forthwith after he becomes so interested; or
- (c) if a person who is interested in a contract later becomes an officer of the company, forthwith after he becomes an officer.

(4) If a material contract or a proposed material contract is one that, in the ordinary course of the company's business, would not require approval by the directors or shareholders of the company, a director or officer of the company must disclose in writing to the company or

request to have entered in the minutes of meetings of directors the nature and extent of his interest forthwith after the director or officer becomes aware of the contract or proposed contract.

(5) A director of a company who is referred to in subsection (1) may vote on any resolution to approve a contract that he has an interest in, if the contract—

- (a) is an arrangement by way of security for money loaned to or obligations undertaken by him for the benefit of the company or an affiliate of the company;
- (b) is a contract that relates primarily to his remuneration as a director, officer, employee or agent of the company or affiliate of the company;
- (c) is a contract for indemnity or insurance under sections 99 to 103;
- (d) is a contract with an affiliate of the company; or
- (e) is a contract other than one referred to in paragraphs (a) to (d),

but, in the case of a contract described in paragraph (a), no resolution shall be valid unless it is approved by not less than two-thirds of the votes of the shareholders of the company to whom notice of the nature and extent of the director's interest in the contract is declared and disclosed in reasonable detail.

91. For the purposes of section 90, a general notice to the directors of a company by a director or an officer of the company declaring that he is a director or officer of or has a material interest in another body and is to be regarded as interested in any contract with that body shall be a sufficient declaration of interest in relation to any such contract.

Interest declaration.

92. A material contract between a company and one or more of its directors or officers, or between a company and another body of which a director or officer of the company is a director or officer or in which he has a material interest, shall be neither void nor voidable—

Avoidance of nullity.

- (a) by reason only of that relationship; or

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(b) by reason only that a director with an interest in the contract is present at or is counted to determine the presence of a quorum at a meeting of directors or a committee of directors that authorised the contract,

if the director or officer disclosed his interest in accordance with section 90(2), (3) or (4) or section 91, as the case may be, and the contract was approved by the directors or the shareholders and was reasonable and fair to the company at the time it was approved.

Setting aside
contract.

93. When a director or officer of a company fails to disclose, in accordance with section 90 or 91, his interest in a material contract made by the company, the court may, upon the application of the company or a shareholder of the company set aside the contract on such terms as the court thinks fit.

Officers of the Company

Designation of
offices, etc.

94. Subject to the articles or by-laws of a company—

- (a) the directors of the company may designate the offices of the company, appoint as officers persons of full capacity, specify their duties and delegate to them powers to manage the business and affairs of the company, except powers to do anything referred to in section 81(2);
- (b) a director may be appointed to any office of the company; and
- (c) two or more offices of the company may be held by the same person.

Borrowing Powers of Directors

Borrowing
powers.

95. (1) Unless the articles or by-laws of the company otherwise provide, the articles of a company shall be presumed to provide that the directors of the company may, without authorisation of the shareholders—

- (a) borrow money upon the credit of the company;

- (b) issue, re-issue, sell or pledge debentures of the company;
- (c) subject to section 54, give a guarantee on behalf of the company to secure performance of an obligation of any person; and
- (d) mortgage, charge, pledge, or otherwise create to secure any obligation of the company a security interest in all or any property of the company that is owned or subsequently acquired by the company.

(2) Notwithstanding section 81(2) and section 94(a), unless the articles or by-laws of a company otherwise provide, the directors of the company may by resolution delegate the powers mentioned in subsection (1) to a director, a committee of directors or an officer of the company.

(3) For the purposes of this Act “security interest” means any interest in or charge upon any property of a company, by way of mortgage, bond, lien, pledge or other means, that is created or taken to secure the payment of an obligation of the company.

Duty of Directors and Officers

96. (1) Every director and officer of a company in exercising his powers and discharging his duties must— Duty of care.

- (a) act honestly and in good faith with a view to the best interest of the company; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) In determining what are the best interest of a company, a director must have regard to the interests of the company’s employees in general as well as to the interests of its shareholders.

(3) The duty imposed by subsection (2) on the directors of a company is owed by them to the company alone; and the duty shall be enforceable in the same way as any other fiduciary duty owed to a company by its directors.

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(4) Every director and officer of a company must comply with this Act and the regulations and with the articles and by-laws of the company.

(5) No provision in a contract, the articles of a company, its by-laws or any resolution, shall relieve a director or officer of the company from the duty to act in accordance with this Act or the regulations, or shall relieve him from liability for a breach of this Act or the regulations.

Limitation on
exemption of
director from
liability.

97. The resignation of a director of a company shall not itself release him from his duties as an officer of the company unless, in all the circumstances of the case, it is reasonable for him to assume that, having notified the company of his resignation, the company will lodge with the Registrar the appropriate notice of change under section 75.

Dissenting
from resolu-
tion.

98. (1) A director who is present at a meeting of the directors or of a committee of directors consents to any resolution passed or action taken at that meeting, unless—

- (a) he requests that his dissent be or his dissent is entered in the minutes of the meeting;
- (b) he sends his written dissent to the secretary of the meeting before the meeting is adjourned; or
- (c) he sends his dissent by registered post or delivers it to the registered office of the company immediately after the meeting is adjourned.

(2) A director who votes for or consents to a resolution may not dissent under subsection (1).

(3) A director who was not present at a meeting at which a resolution was passed or action taken shall be presumed to have consented thereto unless, within seven days after he becomes aware of the resolution, he—

- (a) causes his dissent to be placed with the minutes of the meeting; or
- (b) sends his dissent by registered post or delivers it to the registered office of the company.

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(4) A director shall not be liable under section 84, 85 or 96 if he relies in good faith upon—

- (a) financial statements of the company represented to him by an officer of the company; or
- (b) a report of an attorney-at-law, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by him.

Indemnities

99. (1) Except in respect of an action by or on behalf of a company or body corporate to obtain a judgment in its favour, a company may indemnify—Indemnifying
directors, etc.

- (a) a director or officer of the company;
- (b) a former director or officer of the company; or
- (c) a person who acts or acted at the company's request as a director or officer of a body corporate of which the company is or was a shareholder or creditor,

and his legal representatives, against all costs, charges and expenses (including an amount paid to settle an action or satisfy a judgment) reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of that company or body corporate.

(2) Subsection (1) shall not apply unless the director or officer to be so indemnified—

- (a) acted honestly and in good faith with a view to the best interests of the company; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that his conduct was lawful.

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Indemnity of persons for action by or on behalf of Company.

100. A company may with the approval of the court indemnify a person referred to in section 99 in respect of an action—

- (a) by or on behalf of the company or body corporate to obtain a judgment in its favour; and
- (b) to which he is made a party by reason of being or having been a director or an officer of the company or body corporate,

against all costs, charges and expenses reasonably incurred by him in connection with the action, if he fulfils the conditions set out in section 99(2).

Right to indemnity.

101. Notwithstanding anything in section 99 or 100 a person described in section 99 shall be entitled to indemnity from the company in respect of all costs, charges and expenses reasonably incurred by him in connection with the defence of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of the company or body corporate, if the person seeking indemnity—

- (a) was substantially successful on the merits in his defence of the action or proceeding;
- (b) qualified in accordance with the standards set out in section 99 or 100; and
- (c) is fairly and reasonably entitled to indemnity.

Insurance of directors, etc.

102. A company may purchase and maintain insurance for the benefit of any person referred to in section 99 against any liability incurred by him under section 96(1) (b) in his capacity as a director or officer of the company.

Court approval of indemnity.

103. (1) A company or person referred to in section 99 may apply to the court for an order approving an indemnity under section 100, and the court may so order and make any further order it thinks fit.

(2) An applicant under subsection (1) must give the Registrar notice of the application, and the Registrar may appear and be heard in person or by an attorney-at-law.

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(3) Upon an application under subsection (1), the court may order notice to be given to any interested person, and that person may appear and be heard in person or by an attorney-at-law.

104. (1) Subject to subsection (2), no remuneration shall be paid to a director of a company unless the amount or rate thereof is specified in the articles of incorporation or by-laws 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 the company.

Directors' remuneration.

(2) If a written service agreement between a company and a director of the company is entered into without the authorization of a general meeting, remuneration may be paid under the agreement to the director for a period not exceeding six months until the remuneration is approved by a general meeting, but if such approval is refused no remuneration for a period prior to the refusal is recoverable by the company.

(3) No payment shall be made by a company—

- (a) to an officer or former officer of the company as a pension or retirement benefit;
- (b) to an officer or former officer of the company for loss of his office, or of any office in connection with the management of the company's affairs, or of any office in connection with the management of any subsidiary of the company, or as consideration for or in connection with his retirement from any such office;
- (c) to a dependent of, or to a person nominated by, an officer or former officer of the company by way of a pension or a provision; or
- (d) to any person in return for an undertaking to provide any benefit within the foregoing paragraphs,

unless the payment is previously authorised 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

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the officer or former officer 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 is entered into.

(4) 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 to or with any specified rate of income tax, except under a contract which was in force immediately before the commencement of this Act and which provides expressly, and not by reference to the articles of incorporation or by-laws of the company, for payment of any such remuneration and, except as aforesaid, the payment to be made shall be a gross sum subject to income tax equal to the net sum for which the articles of incorporation or by-laws of the company or any resolution or contract in respect of the payment, actually provides.

(5) In this section—

“dependant” includes any person (whether related to an officer or former officer 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 the person’s connection with the officer or former officer;

“income tax” means any tax imposed on, and calculated by reference to the amount of the income of, a person by the law of Guyana or any other country;

“pension” includes any superannuation allowance, superannuation gratuity or similar payment;

“provision” includes 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;

“remuneration” includes salary, fees, commission, share or percentage of profits, expenses allowance and any other form of emolument whether in cash or not, relating to services as a director of a company or any of its subsidiaries.

(6) Nothing in this section shall operate to enable a company or any other person to recover any premium paid by a company to secure the provision of any benefit falling within paragraph (a), (b) or (c) of subsection (3), but any sum paid or the value of any benefit conferred under any of those paragraphs by the person to whom the premium is paid shall be recoverable by the company from the recipient if subsection (3) has not been complied with.

DIVISION E

SHAREHOLDERS OF COMPANIES

Meetings

105. (1) Meetings of shareholders of a company must be held at the place within Guyana provided in the by-laws or, in the absence of any such provision, at the place within Guyana that the directors determine. Place of meetings.

(2) Notwithstanding subsection (1), a meeting of shareholders of a company may be held outside Guyana if all the shareholders entitled to vote at the meeting so agree.

(3) A shareholder who attends a meeting of shareholders held outside Guyana shall agree to its being so held unless he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

106. Notwithstanding section 105, if the articles of a company so provide meetings of shareholders of the company may be held outside Guyana at one or more places specified in the articles. Meeting outside Guyana.

107. (1) The directors of a company—

- (a) must call an annual general meeting of shareholders not later than eighteen months after the company comes into existence and subsequently, at least once in every calendar year and not later than fifteen months after holding the last preceding annual general meeting; and
(b) may at any time call a special meeting of shareholders.
- Calling meetings.
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(2) The Minister may, on application made by a company in accordance with a resolution of the directors and signed by a director or secretary, on payment of the prescribed fee and subject to such conditions and directions as the Minister thinks fit to impose or give—

- (a) extend the period of eighteen or fifteen months referred to in subsection (1); and
- (b) permit an annual general meeting to be held in a calendar year other than the calendar year in which it would otherwise be required by subsection (1) to be held,

and a company shall not be in default under subsection (1) if it holds an annual general meeting within the period so extended or in accordance with any such permission.

(3) An application by a company for an extension of a period or for permission under subsection (2) shall be made before the expiration of the period or of the calendar year in which the annual general meeting would otherwise be required to be held, as the case may be.

(4) Where in a calendar year (other than the year of its incorporation or the following year) a company does not hold an annual general meeting, an annual general meeting of the company shall, for the purposes of calculating the period within which the next annual general meeting is, under subsection (1), required to be held, be deemed to have been held on the thirty-first of December in that calendar year unless the Registrar otherwise directs or on such other date in that calendar year as the Registrar determines.

(5) If default is made in holding an annual general meeting under this section or in complying with any condition of the Minister under subsection (2)—

- (a) the company and every officer of the company in default shall be guilty of an offence and shall be liable on summary conviction to a fine of fifteen thousand dollars; and
- (b) the Minister may of his own motion or on the application of any member of the company order a general meeting to be held.

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(6) If default is made in complying with an order made under subsection (5)(b), the Court may, on the application of the Minister, order that company to be wound up.

108. (1) For the purpose of—

Record date of
shareholders.

(a) determining the shareholders of the company who are—

- (i) entitled to receive payment of a dividend; or
- (ii) entitled to participate in a liquidation distribution; or

(b) determining the shareholders of the company for any other purpose except the right to receive notice of or to vote at a meeting,

the directors may fix in advance a date as the record date for the determination of shareholders, but that record date must not precede by more than fifty days the particular action to be taken.

(2) For the purpose of determining shareholders who are entitled to receive notice of a meeting of shareholders of the company, the directors of the company may fix in advance a date as the record date for the determination of shareholders; but the record date must not precede by more than fifty days or by less than twenty-one days the date on which the meeting is to be held.

109. If no record date is fixed—

Statutory date.

(a) the record date for determining the shareholders who are entitled to receive a notice of meeting of the shareholders shall be—

- (i) the close of business on the date immediately preceding the day on which the notice is given; or
- (ii) if no notice is given, the day on which the meeting is held; and

(b) the record date for the determination of shareholders for any purpose other than the purpose specified in paragraph (a)

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shall be the close of business on the day on which the directors pass the resolution relating to that purpose.

Notice of record date.

110. If a record date is fixed under section 108, notice thereof must, not less than seven days before the date so fixed, be given by advertisement in a newspaper published in Guyana.

Persons to whom notice of meetings is to be given.

111. (1) Notice of all general meetings shall be given to every member of the company, whether he is entitled to attend and vote at the meeting or not.

(2) Notice shall be given to the Registrar of all meetings of a public company at which accounts are to be considered.

(3) Notice of all meetings of shareholders or debenture holders shall be given to all shareholders or debenture holders.

(4) A notice of a meeting and all relevant documents or copies thereof to be considered at the meeting shall be sent to a member, shareholder or debenture holder either by delivering to that person or sending to him by pre-paid post to his most recent address appearing in the register of members or, as the case may be, the register of debenture holders or to the most recent address supplied by him to the company for the giving of notices to him.

(5) Where the articles of incorporation or by-laws of a company, 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, any resolution passed at the meeting is voidable if notice was not given to so many persons that, if they had all voted at the meeting in support of the side which was defeated upon a vote taken upon the resolution, the result of the voting would have been different from the result declared by the person presiding at the meeting.

(6) This section applies notwithstanding anything contained in the articles of incorporation or by-laws of a company, or in a debenture trust deed or any debentures or in any other contract or instrument.

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112. (1) All business transacted at a special meeting of shareholders and all business transacted at an annual general meeting of shareholders shall be special business, except—

- (a) the consideration of the financial statements;
- (b) the auditor’s report;
- (c) the election of directors; and
- (d) the re-appointment of the incumbent auditor.

(2) Notice of a meeting of shareholders at which special business is to be transacted must state—

- (a) the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment thereon; and
- (b) the text of any special resolution to be submitted to the meeting.

113. A shareholder and any other person who is entitled to attend a meeting of shareholders may in any manner waive notice of the meeting; and the attendance of any person at a meeting of shareholders shall be a waiver of notice of the meeting by that person unless he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

Waiver of
notice.

Proposals and Proxies

114. A shareholder of a company who is entitled to vote at an annual meeting of the shareholders may—

“Proposals” of
shareholders.

- (a) submit to the company notice of any matter that he proposes to raise at the meeting, in this Division referred to as a “proposal”; and
- (b) discuss at the meeting any matter in respect of which he would have been entitled to submit a proposal.

115. (1) A company that solicits proxies must set the proposal out in the management proxy circular required by section 146 or attach the proposal to that circular.

Proxy circular.

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(2) If so requested by a shareholder who submits a proposal to a company, the company must include in the management proxy circular or attach to it a statement by the shareholder of not more than two hundred words in support of the proposal, and the name and address of the shareholder.

Nomination in proposal.

116. A proposal may include nominations for the election of directors if the proposal is signed by one or more holders of shares who represent in the aggregate not less than—

- (a) five per cent of the shares of the company; or
- (b) five per cent of the shares of a class of shares of the company,

entitled to vote at the meeting to which the proposal is to be presented; but this subsection shall not preclude nominations made at a meeting of shareholders of a company that is not required to solicit proxies under section 145.

Non-compliance with proxy solicitation.

117. A company shall not be required to comply with section 115 if—

(a) the proposal is not submitted to the company at least ninety days before the anniversary date of the previous annual meeting of shareholders of the company;

(b) it clearly appears that the proposal is submitted by the shareholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the company or its directors, officers, shareholders or debenture holders, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;

(c) the company, at the shareholder's request, included a proposal in a management proxy circular relating to a meeting of shareholders held within two years preceding the receipt of that request and the shareholder failed to present the proposal, in person or by proxy, at the meeting;

(d) substantially the same proposal was submitted to shareholders in a management proxy circular or a dissident's proxy circular relating to a meeting of shareholders held within two years preceding the receipt of the shareholder's

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request and the proposal was defeated; or

(e) the rights conferred by that subsection are being abused to secure publicity.

118. No company or person acting on its behalf shall incur any liability by reason only of circulating a proposal or statement in compliance with this Act. Publishing immunity.

119. When a company refuses to include a proposal in a management proxy circular, the company must, within ten days after receiving the proposal, notify the shareholder submitting the proposal of its intention to omit the proposal from the management proxy circular, and the company must send him a statement of the reasons for its refusal. Refusal notice.

120. Upon application to the court by a shareholder of a company who is claiming to be aggrieved by the company's refusal under section 119 to include a proposal in a management proxy circular, the court may restrain the holding of the meeting to which the proposal is sought to be presented and make any further order it thinks fit. Restraining meeting.

121. A company or any person claiming to be aggrieved by a proposal submitted to the company may apply to the court for an order permitting the company to omit the proposal from its management proxy circular, and the court may, if it is satisfied that section 117 applies, make such order as it thinks fit. Right to omit proposal.

122. An applicant under section 120 or 121 must give the Registrar notice of the application, and the Registrar may appear and be heard in person or by an attorney-at-law. Registrar's notice.

Shareholder Lists

123. (1) A company must—
List of shareholders.

- (a) not later than ten days after the record date is fixed under section 108(2), if a record date is so fixed; or
- (b) if no record date is fixed—

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- (i) at the close of business on the date immediately preceding the day on which the notice is given; or
- (ii) if no notice is given, as of the day on which the meeting is held,

prepare a list of its shareholders who are entitled to receive notice of a meeting, arranged in alphabetical order and showing the number of shares held by each shareholder.

(2) When a company fixes a record date under section 108(2), a person named in the list prepared under subsection (1)(a) shall, subject to subsection (3), be entitled, at the meeting to which the list relates to vote the shares shown opposite his name.

(3) Where a person has transferred the ownership of any of his shares in a company after the record date fixed by the company, if the transferee of those shares—

- (a) produces properly endorsed share certificates to the company or otherwise establishes to the company that he owns the shares; and
- (b) demands, not later than ten days before the meeting of the shareholders of the company that his name be included in the list of shareholders before the meeting,

the transferee may vote his shares at the meeting.

(4) When a company does not fix a record date under section 108(2), a person named in a list of shareholders prepared under subsection (1) (b) may, at the meeting to which the list relates, vote the shares shown opposite his name.

Examination of
list.

124. A shareholder of a company may examine the list of its shareholders—

- (a) during usual business hours at the registered office of the company or at the place where its register of shareholders is maintained; and

(b) at the meeting of shareholders for which the list was prepared.

125. (1) For the purposes of this Division, a person has a substantial share holding in a company if he holds, by himself or by his nominee, shares in the company which entitle him to exercise at least ten per cent of the unrestricted voting rights at any general meeting of the company.

(2) For the purposes of this Division, a person who has a substantial shareholding in a company shall be a substantial shareholder of the company.

126. (1) A person who is a substantial shareholder in a company shall give notice in writing to the company stating his name and address and giving full particulars of the shares held by him or his nominee (naming the nominee) by virtue of which he is a substantial shareholder.

(2) A person required to give a notice under subsection (1) shall do so within fourteen days after that person becomes aware that he is a substantial shareholder.

(3) The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of the period referred to in subsection (2).

(4) This section shall apply only to shareholders of a public company.

127. (1) A person who ceases to be a substantial shareholder in a company shall give notice in writing to the company stating his name and the date on which he ceased to be a substantial shareholder and giving full particulars of the circumstances by reason of which he ceased to be a substantial shareholder.

(2) A person required to give a notice under subsection (1) shall do so within fourteen days after he becomes aware that he has ceased to be a substantial shareholder.

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Quorum

Quorum.

128. (1) Unless the by-laws of a company otherwise provide and subject to subsection (2), two or more persons present at a meeting shall constitute a quorum.

(2) Where a company has—

- (a) only one shareholder; or
- (b) only one shareholder of any class of shares,

he shall constitute a quorum at any meeting or, as the case may be, at any meeting of shareholders of that class of shares.

(3) If a quorum is present at the opening of a meeting, the persons present may, unless the by-laws otherwise provide, proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

(4) If a quorum is not present at the opening of a meeting, the persons present may adjourn the meeting to a fixed time and place but may not transact any other business.

Voting the Shares

Right to vote share.

129. Unless the articles or by-laws of the company otherwise provide, on a show of hands a shareholder or proxy holder shall have one vote, and upon a poll a shareholder or proxy holder shall have one vote for every share held.

Representative of other body.

130. (1) When a body corporate or association is a shareholder of a company, the company must recognise any individual authorised by a resolution of the directors or governing body of the body corporate or association to represent it at meetings of shareholders of the company.

(2) An individual who is authorised as described in subsection (1) may exercise, on behalf of the body corporate or association that he represents, all the powers it could exercise if it were an individual shareholder.

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131. Unless the by-laws otherwise provide, if two or more persons hold shares jointly, one of those holders present at a meeting of shareholders may, in the absence of the other, vote the shares; but if two or more of those persons who are present, in person or by proxy, vote, they must vote as one on the shares jointly held by them.

Joint share-holders.

132. (1) Unless the by-laws otherwise provide, voting at a meeting of shareholders must be by a show of hands except when a ballot is demanded by a shareholder or proxy holder entitled to vote at the meeting.

Voting method at meetings.

(2) A shareholder or proxy holder may demand a ballot either before or after any vote by show of hands.

133. (1) If the by-laws of a company permit postal voting at meetings of the company, this section shall apply with respect to general meetings and meetings of all classes of shareholders or debenture holders of the company.

Postal voting.

(2) Any person entitled to attend and vote at a meeting referred to in subsection (1) or a proxy appointed by him 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, as the case may be, adjourned meeting is to commence, a written statement of the name of the person entitled to vote and his proxy (if any) and the manner in which he or his proxy wishes to vote on each or any of the resolutions set out in the notice calling the meeting.

(3) A postal vote given by a proxy shall be valid only if the proxy could have voted at the meeting if he had attended personally.

(4) A person or his proxy who gives a postal vote shall be counted toward a quorum, and his postal vote shall be dealt with, as if that person were personally present at the meeting and personally voted in the manner expressed in his postal vote.

134. (1) Except where a written statement is submitted by a director under section 72 or an auditor under section 180—

Resolution in writing.

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(a) a resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders shall be as valid as if it had been passed at a meeting of the shareholders; and

(b) a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders, and signed by all the shareholders entitled to vote at that meeting, shall satisfy all the requirements of this Act relating to meetings of shareholders.

(2) A copy of every resolution referred to in subsection (1) must be kept with the minutes of the meetings of shareholders.

Extraordinary General Meeting

Requisitioned
shareholders
meeting.

135. (1) The holders of not less than ten per cent of the issued shares of a company that carry the right to vote at a meeting sought to be held by them may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition.

(2) The trustee of a debenture trust deed, notwithstanding anything contained therein or in any debenture or in any 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 ten per cent of the total voting rights attached to all the issued and outstanding debentures of that class, forthwith proceed duly to convene a meeting of that class of debenture holders.

(3) The requisition referred to in subsection (1) or (2) which may consist of several documents of like form each signed by one or more requisitionists of the company, must state the business to be transacted at the meeting and must be sent to each director and to the registered office of the company.

(4) Upon receiving a requisition referred to in subsection (1), the directors must call a meeting of shareholders to transact the business stated in the requisition, unless—

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- (a) a record date has been fixed under section 108(2) and notice thereof has been given under section 110;
- (b) the directors have called a meeting of shareholders and have given notice thereof under section 111; or
- (c) the business of the meeting as stated in the requisition includes matters described in paragraphs (b) to (e) of section 117.

(5) If, after receiving a requisition referred to in subsection (1) or (2) the directors or trustee for debenture holders do not or does not within twenty-one days after receiving 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 requisitionist who signed the requisition may convene the meeting to transact the business specified in the requisition.

(6) A meeting called under this section must be called as nearly as possible in the manner in which meetings are to be called pursuant to the by-laws, this Division and Division F.

(7) Unless the requisitionists otherwise resolve at a meeting called under subsection (5), the company must re-imburse the requisitionists who requisitioned the meeting, the expenses reasonably incurred by them in requisitioning, convening and holding the meeting.

(8) The directors of a company, notwithstanding anything in its articles of incorporation or by-laws, shall, on the requisition of shareholders holding, at the date of the deposit of the requisition, not less than ten per cent of all the issued and outstanding shares of any class, forthwith proceed duly to convene a meeting of that class of shareholders.

136. (1) Upon the application to the court by a director of a company or a shareholder of the company who is entitled to vote at a meeting of the shareholders, or by the Registrar, the court may—

Court-called
meeting.

- (a) when for any reason it is impracticable—

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- (i) to call a meeting of shareholders in the manner in which meetings of shareholders can be called; or
- (ii) to conduct the meeting in the manner prescribed by the by-laws and this Act; or

(b) for any other reason thought fit by the court,

order a meeting of shareholders to be called, held and conducted in such manner as the court may direct.

(2) Without restricting the generality of subsection (1), the court may order that the quorum required by the by-laws or this Act be varied or dispensed with at a meeting called, held and conducted pursuant to this section.

(3) A meeting of the shareholders of a company called, held and conducted pursuant to this section shall be for all purposes a meeting of shareholders of the company duly called, held and conducted.

Controverted Affairs

Court review
controversy.

137. (1) A company or a shareholder or director thereof may apply to the court to determine any controversy with respect to an election or appointment of a director or auditor of the company.

(2) Upon an application made under this section, the court may make any order it thinks fit including—

- (a) an order restraining a director or auditor whose election or appointment is challenged from acting pending determination of the dispute;
- (b) an order declaring the result of the disputed election or appointment;
- (c) an order requiring a new election or appointment and including in the order directions for the management of the business and affairs of the company until a new election is held or appointment made; and
- (d) an order determining the voting rights of shareholders and of persons claiming to own shares.

138. (1) Within one month after a resolution has been declared 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 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.

Application to court to declare that resolution was not passed or was not defeated.

(2) Without prejudice to the generality of the expression “aggrieved person”, 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 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—

- (a) the meeting was not properly convened;
- (b) 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;
- (c) the chairman’s declaration of the number of votes cast in favour and against the resolution was incorrect, and in consequence the resolution was wrongly declared to have been passed or defeated;
- (d) the resolution passed at the meeting (not being a resolution authorised by this Act to alter the articles of incorporation or by-laws of a company or to alter or abrogate the rights of debenture holders) is inconsistent with the articles of incorporation or by-laws of a company or with the terms of a debenture trust deed or a debenture; or

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(e) the resolution passed at the meeting is voidable under any other provision of this Act.

Powers of
courts.

139. (1) On the hearing of an application under section 138 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 such a resolution not to have passed; or

(b) may declare a resolution which has been declared to have been defeated at a meeting to have been passed in whole or in part or may declare such a resolution to have been defeated.

(2) 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.

(3) If an application to the court is not made under section 138 within one month after the declaration by the chairman of the meeting that the resolution in question has been passed or defeated, or if the application made to the court is 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.

(4) This section shall not apply to procedural resolutions.

(5) For the purposes of this section a procedural resolution shall be a resolution—

(a) declaring a dividend;

(b) approving or rejecting the annual accounts of the company or the directors' or auditors' report; or

(c) to elect a chairman of a meeting, to adjourn or terminate a meeting, to terminate discussion on a proposed resolution or an amendment thereto, or to take a vote on any matter without further discussion.

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Shareholder Approvals

140. (1) A sale, lease or exchange of all or substantially all the property of a company other than in the ordinary course of business of the company shall require the approval of the shareholders in accordance with this section.

Extraordinary transaction.

(2) A notice of a meeting of shareholders complying with section 111 must be sent in accordance with that section to each shareholder and must—

(a) include or be accompanied by a copy or summary of the agreement of sale, lease or exchange; and

(b) state that a dissenting shareholder shall be entitled to be paid the fair value of his shares in accordance with paragraph 15 of Part IV of the Fourth Schedule,

Fourth Schedule.

but failure to make the statement referred to in paragraph (b) shall not invalidate a sale, lease or exchange referred to in subsection (1).

(3) At the meeting referred to in subsection (2) the shareholders may authorise the sale, lease or exchange of the property and may fix or authorise the directors to fix any of the terms and conditions of the sale, lease or exchange.

(4) Each share of the company shall carry the right to vote in respect of a sale, lease or exchange referred to in subsection (1) whether or not it otherwise carries the right to vote.

(5) The shareholders of a class or series of shares of the company shall be entitled to vote separately as a class or series in respect of a sale, lease or exchange referred to in subsection (1) only if the class or series is affected by the sale, lease or exchange in a manner different from the shares of another class or series.

(6) A sale, lease or exchange referred to in subsection (1) shall be adopted when the shareholders of each class or series of shares who are entitled to vote thereon have, by special resolution, approved of the sale, lease or exchange.

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(7) The directors of a company, if authorised by the shareholders approving a proposed sale, lease or exchange, may, subject to the rights of third parties, abandon the sale, lease or exchange without any further approval of the shareholders.

(8) Two or more companies may amalgamate and each share of an amalgamating company shall carry the right to vote in respect of the amalgamation whether or not the share otherwise carries the right to vote.

(9) The holders of shares of a class or series of shares of an amalgamating company shall be entitled to vote separately as a class or series in respect of an amalgamation when the amalgamation agreement contains a provision that, if contained in a proposed amendment to the articles would entitle those holders to vote as a class or series under section 27(2), (3), (4) and (5).

DIVISION F

PROXIES

Definitions.

141. (1) In this Part—

“form of proxy” means a written or printed form that, upon completion and signature by or on behalf of a shareholder, shall become a proxy;

“proxy” means a completed and signed form of proxy by means of which a shareholder appoints a proxy holder to attend and act on his behalf at a meeting of shareholders;

“registrant” means a broker or dealer required to be registered to trade or deal in shares or debentures under the law of any jurisdiction;

“solicit” or “solicitation” includes, subject to subsection (2)—

(i) a request for a proxy whether or not accompanied with or included in a form of proxy;

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- (ii) a request to execute or not to execute a form of proxy or to revoke a proxy;
- (iii) the sending of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy; and
- (iv) the sending of a form of proxy to a shareholder under section 145;

“solicitation by or on behalf of the management of a company” means a solicitation by any person pursuant to a resolution or instructions of, or with the acquiescence of, the directors or a committee of directors of the company concerned.

(2) The term “solicit” or “solicitation” shall not include—

- (a) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a shareholder;
- (b) the performance of administrative acts or professional services on behalf of a person soliciting a proxy;
- (c) the sending by a registrant of the documents referred to in section 150; or
- (d) a solicitation by a person in respect of shares of which he is beneficial owner.

PROXY HOLDERS

142. (1) A shareholder who is entitled to vote at a meeting of shareholders may by means of a proxy appoint a proxy holder, or one or more alternate proxy holders, none of whom need be shareholders, to attend and act at the meeting in the manner and to the extent authorised by the proxy and with the authority conferred by the proxy. Proxy appointment.

(2) A proxy must be executed in writing by the shareholder or his attorney authorised in writing.

(3) A proxy shall be valid only at the meeting in respect of which it is given or any adjournment of that meeting.

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Revocation of proxy.

143. A Shareholder of a company may revoke a proxy—

- (a) by depositing an instrument in writing executed by him or by his attorney authorised in writing—
 - (i) at the registered office of the company at any time up to and including the last business day preceding the day of the meeting, or any adjournment of that meeting, at which the proxy is to be used; or
 - (ii) with the chairman of the meeting on the day of the meeting or any adjournment of that meeting; or
- (b) in any other manner permitted by law.

Deposit of proxy.

144. (1) The directors of a company may specify in a notice calling a meeting of the shareholders of the company a time not exceeding forty-eight hours preceding the meeting or an adjournment of the meeting before which time proxies to be used at the meeting must be deposited with the company or its agent.

(2) In the calculation of time for the purposes of subsection (1), Saturdays and holidays shall be excluded.

Mandatory solicitation of proxy.

145. (1) Subject to subsection(2), the management of a company must, concurrently with the giving of notice of a meeting of shareholders, send a form of proxy in the prescribed form to each shareholder who is entitled to receive notice of the meeting.

(2) Where a company has fewer than fifteen shareholders, two or more joint shareholders being counted as one, the management of the company need not send a form of proxy under subsection (1).

Prohibited solicitation.

146. A person shall not solicit proxies unless there is sent to the auditor of the company, to each shareholder whose proxy is solicited and to the company if the solicitation is not by or on behalf of the management of the company—

- (a) a management proxy circular in the prescribed form either as an appendix to or as a separate document

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accompanying the notice of the meeting, when the solicitation is by or on behalf of the management of the company; or

(b) a dissident's proxy solicitation, in the prescribed form stating the purposes of the solicitation, when the solicitation is not by or on behalf of the management of the company.

147. A person required to send a management proxy circular or dissident's proxy circular must concurrently send a copy thereof to the Registrar together with a copy of the notice of the meeting, form of proxy and any other documents for use in connection with the meeting.

Documents for
Registrar.

148. Upon the application of an interested person, the Registrar may, on such terms as he thinks fit, exempt that person from any of the requirements of section 145 or 146, and the exemption may be given retroactive effect by the Registrar.

Exemption by
Registrar.

149. (1) A person who solicits a proxy and is appointed proxy holder must—

Proxy
attending
meeting.

(a) attend in person, or cause an alternate proxy holder to attend, the meeting in respect of which the proxy is given, and
(b) comply with the directions of the shareholder who appointed him.

(2) A proxy holder or an alternative proxy holder has the same rights as the shareholder who appointed him—

(a) to speak at the meeting of shareholders in respect of any matter;
(b) to vote by way of ballot at the meeting; and
(c) except when a proxy holder or an alternate proxy holder has conflicting instructions from more than one shareholder, to vote at the meeting in respect of any matter by way of any show of hands.

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Share Registrants

Registrant's
duty.

150. (1) Shares of a company that are registered in the name of a registrant or his nominee and not beneficially owned by the registrant may not be voted unless the registrant forthwith after receipt thereof sends to the beneficial owner—

(a) a copy of the notice of the meeting, financial statements, management proxy circular, dissident's proxy circular and any other documents sent to shareholders by or on behalf of any person for use in connection with the meeting, other than the form of proxy; and

(b) except where the registrant has received written voting instructions from the beneficial owner, a written request for voting instructions.

(2) A registrant may not vote or appoint a proxy holder to vote shares registered in his name or in the name of his nominee that he does not beneficially own unless he receives voting instructions from the beneficial owner of the shares.

(3) A person by or on behalf of whom a solicitation is made must, at the request of a registrant, forthwith furnish to the registrant at that person's expense the necessary number of copies of the documents referred to in paragraph (a) of subsection (1).

(4) A registrant must vote or appoint a proxy holder to vote any shares referred to in subsection (1) in accordance with any written voting instructions received from the beneficial owner.

(5) If requested by a beneficial owner of shares of a company, the registrant of those shares must appoint the beneficial owner or a nominee of the beneficial owner as proxy holder for those shares.

(6) The failure of a registrant to comply with this section shall not render void any meeting of shareholders or any action taken at the meeting.

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- 151.** Nothing in section 150 gives a registrant the right to vote shares that he is otherwise prohibited from voting Governing prohibition.

Remedial Powers

- 152.** (1) If a form of proxy, management proxy circular or dissident's proxy circular— Restraining order.

- (a) contains an untrue statement of a material fact; or
- (b) omits to state a material fact required therein or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made,

an interested person or the Registrar may apply to the court.

- (2) On an application under this section the court may make any order it thinks fit, including any or all of the following orders—

- (a) an order restraining the solicitation or the holding of the meeting or restraining any person from implementing or acting upon any resolution passed at the meeting to which the form of proxy, management proxy circular or dissident's proxy circular relates;
- (b) an order requiring correction of any form of proxy or proxy circular and a further solicitation; or
- (c) an order adjourning the meeting.

- (3) An applicant under this section other than the Registrar must give the Registrar notice of the application, and the Registrar may appear and be heard in person or by an attorney-at-law.

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DIVISION G

FINANCIAL DISCLOSURE

Annual Returns

Annual
return to
be
made
by
company.

Fifth Schedule.

Documents to
be annexed to
annual return.

153. (1) Subject to this section, every company shall, once at least in every year, make a return—

- (a) in the prescribed form;
- (b) made up to the date of the annual general meeting of the company;
- (c) containing the particulars referred to in the Fifth Schedule and, where a recommendation with respect to a dividend is rejected, the statement required by section 50(2).

(2) A company is not required to make a return pursuant to subsection (1)—

- (a) in the year of its incorporation; or
- (b) in the following year if in that year the company is not required by section 107 to hold an annual general meeting.

(3) The annual return signed by a director or the secretary of the company shall be lodged with the Registrar within forty-two days after the annual general meeting.

154. (1) Subject to this Act, there shall be annexed to 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, so certified, of the reports of the auditors on, and of the reports of 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 to be a correct translation.

(2) If any such account or document 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, 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 if the account or document were to comply with those requirements, and the fact that the copy has been so amended shall be stated thereon.

(3) A company which—

- (a) has not offered shares in, or debentures of, the company to the public; and
- (b) is not a subsidiary of a company which has done so,

may delete from any document or account annexed, pursuant to subsection (1)(a), to an annual return lodged with the Registrar—

- (i) any information about the emoluments of the directors of the company included in the document or account pursuant to section 163; and
- (ii) any particulars included in the document or account with respect to turnover and rents recoverable and payable,

but the fact that the document or account has been amended by any such deletion shall be stated in the document or account.

(4) For the purposes of section 153, the accounts and documents required by this section to be annexed to the annual return of a company shall be deemed to be part thereof.

155. Not less than twenty-one days before each annual general meeting of the shareholders of a company or before the signing of a resolution under section 134 (1)(b) in lieu of its annual meeting, the

Copies to
shareholders.

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company must send a copy of the documents referred to in section 153 to each shareholder, except to a shareholder who has informed the company in writing that he does not want a copy of these documents.

Registrar's
copies.

156. A company—

- (a) that is a public company; or
- (b) the gross revenues of which or the assets of which as shown in the most recent documents referred to in section 153 exceed such amount as the Minister may by regulations prescribe,

shall send a copy of the documents referred to in section 153 to the Registrar, not less than twenty-one days before each annual meeting of the shareholders or forthwith after the signing of a resolution under section 134 (l)(b) in lieu of the annual general meeting, and in any event not later than fifteen months after the last date when the last preceding annual general meeting should have been held or a resolution in lieu of the meeting should have been signed.

Accounts

Accounts to be
kept.
Sixth Schedule.

157. (1) Every company shall cause to be kept proper books of account in accordance with the Sixth Schedule, 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 relate;
- (b) all goods and purchases of goods of the company; and
- (c) the assets and liabilities of the company.

(2) For the purposes of subsection (1), proper books of account shall not be deemed to be kept with respect to the matters referred to in that subsection 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 of a company shall be kept at the registered office of the company or at such other places as the directors of the company think fit and shall at all times be open to inspection by the directors.

(4) Where books of account of a company are kept at a place outside Guyana there shall be sent to, and kept at a place in Guyana and be at all times open to inspection by the directors of the company 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 Act 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 Act and is allowed by this Act to be so given.

158. (1) Subject to subsection (2), the directors of a company shall cause to be made out and laid before the company at each annual general meeting a profit and loss account for the period since the date to which the last preceding meeting after the incorporation of the company, made up for a period ending on a date not earlier than six months before the date of the meeting and giving a true and fair view of the profit or loss of the company for that period.

Profit and loss account and balance sheet.

(2) Notwithstanding subsection (1), the Registrar may, on application made in accordance with a resolution of the directors of a company, and signed on behalf of the company by a director or secretary, extend, subject to such conditions as the Registrar thinks fit the period of six months referred to in subsection (1).

(3) The directors shall cause to be made out in every calendar year, and to be laid before an annual general meeting, a balance sheet as at the date to which the profit and loss account is made up.

159. (1) Subject to this section—

(a) 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

Provisions as to contents and form of annual accounts.

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(b) every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for its financial year.

Sixth Schedule. (2) Subject to this section, a company's balance sheet and profit and loss account shall comply with the requirements of the Sixth Schedule, so far as applicable thereto.

(3) Save as expressly provided in the following provisions of this section, the requirements of subsection (2) shall be without prejudice to the requirements of subsection (1) or to any other requirements of this Act.

(4) On the application or with the consent of the directors of a company, the Minister may modify, in relation to the company, the requirements of this Act as to the matters to be stated in any account of the company so as to adapt these requirements to the circumstances of the company, but without prejudice to the requirement of subsection (1).

(5) Subsections (1) and (2) shall not apply to a company's profit and loss account if—

(a) the company has subsidiaries; and
(b) the profit and loss account is framed as a consolidated profit and loss account dealing with all or any of the company's subsidiaries as well as the company and—

(i) complies with the requirements of this Act relating to consolidated profit and loss accounts; and
(ii) shows how much of the consolidated profit or loss for the financial year of the company is dealt with in the accounts of the company.

(6) A director of a company who fails to take all reasonable steps as respects any accounts, or accounts laid before the company in general meetings, to secure compliance with the provisions of this section and with the other requirements of this Act as to matters to be stated in accounts shall be guilty of an offence.

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160. (1) Subject to subsection (3), where at the end of its financial year a company has subsidiaries, accounts or statements dealing, as provided in this Act, with the state of affairs and profit and loss of the company and its subsidiaries shall be laid before the company in general meetings when the company's own balance sheet and profit and loss account are so laid.

(2) The accounts or statements mentioned in subsection (1) shall be referred to in this Act as "group accounts".

(3) Group accounts—

(a) shall not be required—

(i) in the case of a company which, at the end of its financial year, is a wholly owned subsidiary of another company; or

(ii) where, in any of the circumstances referred to in paragraph (b), the Minister gives such a consent as is so referred to in respect of all of the company's subsidiaries; and

(b) need not deal with a subsidiary of a company if the directors of the company are of the opinion that—

(i) it is impracticable, or would be of no real value to the members of the company, in view of the insignificant amounts involved, or would involve expenses or delay out of proportion to the value to the members of the company, to do so;

(ii) the result of doing so would be misleading or harmful to the business of the company or any of its subsidiaries; or

(iii) the business of the company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking,

and the Minister consents to the omission of the assets and liabilities and the profit or loss of the subsidiary from the company's group accounts.

Group
accounts.

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(4) If a company makes default in complying with this section, the company and every director of the company in default shall be guilty of an offence.

Form and
contents of
group
accounts.

161. (1) The group accounts of a holding company laid pursuant to section 160 before the company in general meeting—

(a) shall be consolidated accounts comprising—

(i) a consolidated balance sheet dealing with the state of affairs of the holding company and all its subsidiaries to be dealt with in group accounts; and

(ii) a consolidated profit and loss account dealing with the profit or loss of the holding company and those subsidiaries; and

(b) shall give a true and fair view of the state of affairs and profit or loss of the holding company and those subsidiaries, dealt with as a whole, so far as concerns members, shareholders and debenture holders of the holding company.

(2) If the financial year of a subsidiary does not coincide with that of its holding company the group accounts shall, unless the Minister otherwise directs, deal with the subsidiary's profit and loss for, and the state of affairs as at the end of, its financial year ending last before that of the holding company.

Sixth Schedule.

(3) Subject to subsection (4) and without prejudice to the requirements of subsection (1)(b), group accounts shall comply with the requirements of the Sixth Schedule, so far as applicable thereto.

(4) On the application or with the consent of the directors of a company, the Minister may modify, in relation to that company, the requirements of subsection (3) for the purpose of adapting them to the circumstances of the company, but without prejudice to the requirements of subsection (1)(b).

162. (1) A holding company's directors shall secure that the financial year of each of its subsidiaries shall coincide with the holding 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 Minister may permit such an arrangement to continue if the holding company satisfies him either—

Financial year
of holding
company and
subsidiary.

- (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 161 (I)(b) will be given by the group accounts even though the subsidiary's financial year does not coincide with that of the holding company.

(2) The Minister may at any time withdraw any permission given by him under subsection (1) if, after affording the holding company concerned an opportunity to submit representations to him in writing and considering any such representations submitted by it, he is of the opinion that subsection (1)(a) or (b) no longer applies in the circumstances of the particular case.

(3) Where it appears to the Minister 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 Minister may, on the application or with the consent of the directors of the company whose financial year is to be extended, direct that a general meeting shall not be required in the earlier of those calendar years.

163. (1) In the annual accounts of a company, or in a statement annexed thereto, there shall, subject to and in accordance with this section, be shown—

Particulars of
directors'
emoluments,
etc.

- (a) the amount of the emoluments of each director of the company;
- (b) the aggregate amount of the pensions paid to individuals in their capacities as the directors or former directors of the company; and

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(c) the aggregate amount of any compensation paid to or received by directors or former directors of the company in respect of loss of office.

(2) The amount to be shown under subsection (1)(a)—

(a) shall include emoluments paid to, or receivable by, a person in respect of his services as a director of a company or in respect of his services as a director of a company affiliated with the same group of companies as the company or otherwise in connection with the management of the affairs of the company or a company affiliated with the same group of companies as the company, (including emoluments in respect of services as chairman of any such company);

(b) shall distinguish between emoluments in respect of services as a director, whether of the company or of a company affiliated with the same group of companies as 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 affiliated with the same group of companies as the company, any sums paid by way of expenses or allowances, and contributions 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 subsection (1) (b)—

(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 a company as are mentioned in subsection (2), 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 affiliated with the same group of companies as 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 which pensions will or may become payable under the scheme.

(4) The amount to be shown under subsection (1)(c)—

(a) shall include any sums paid to or receivable by a director or past director of a company by way of compensation for 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 affiliated with 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 affiliated with 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 compensations,

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

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(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 to do so for the purposes of making any distinction required by this section in any amount to be shown thereunder, the directors of a company may apportion any payments between the matters in respect of which they have been paid or have yet to be paid in such manner as they think appropriate.

(7) In the annual accounts of a company, or in a statement annexed thereto, there shall be shown the number of directors who have waived rights to receive emoluments to which this section would otherwise apply, and the aggregate amount of those emoluments.

(8) Where any of the requirements of this section are not complied with in relation to any accounts, the auditors of the company shall include in their report, so far as they are reasonably able to do so, a statement giving the particulars necessary to meet those requirements.

(9) In this section, any reference to a company affiliated with 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
subsidiaries.

164. (1) This section shall apply in relation to a company which, at the end of its financial year, has subsidiaries.

(2) Subject to subsection (3), where this section applies in relation to a company, there shall be included in the annual accounts of the company, or in a statement annexed thereto, with respect to each of its subsidiaries—

(a) a statement of its name and, if incorporated outside Guyana, of the country of incorporation; and

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(b) in relation to shares of each class in the subsidiary held by the company, a statement of the identity of the class and the proportion of the issued and outstanding shares of that class held by the company.

(3) The information required to be disclosed under subsection 2(b) need not be disclosed in relation to a subsidiary which carries on business outside Guyana if the directors of the holding company consider that the disclosure would be harmful to the business of the holding company, and the Minister consents to the information not being disclosed.

(4) Subject to subsection (3), section 163(8) shall apply in relation to matters required by this section to be included in accounts as it applies in relation to matters required by section 163 to be included in accounts.

165. (1) This section shall apply in relation to a company which at the end of its financial year, is the associated company of a body corporate that is not the company's subsidiary.

Particulars of associated companies in which company holds shares.

(2) Where this section applies in relation to a particular company there shall be included in the annual accounts of the particular company, or in a statement annexed thereto, with respect to each associated company—

(a) a statement of its name and, if incorporated outside Guyana, the country of incorporation; and

(b) in relation to shares of each class in the associated company held by the particular company or its nominee, a statement of the identity of the class and the aggregate proportion of the issued and outstanding shares of that class held by the particular company and its nominee.

(3) Section 163(8) shall apply in relation to matters required by this section to be included in accounts as it applies in relation to matters required by section 163 to be included in accounts.

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Particulars of
company's
holding
company.

166. (1) This section shall apply in relation to a particular company which, at the end of its financial year, is the subsidiary of a body corporate.

(2) Subject to subsection (3), where this section applies in relation to a particular company, there shall be included in the annual accounts of the particular company, or in a statement annexed thereto—

(a) a statement of the name of the body corporate regarded by the directors of the particular company as the company's ultimate holding company or the most senior holding company known to them; and

(b) if known to the directors of the particular company, a statement of the country of incorporation of the ultimate or most senior holding company.

(3) Where the directors of a company are unable to give the information required by subsection (2) or some of that information, the annual accounts shall contain a statement to that effect.

(4) Section 163 (8) shall apply in relation to matters required by this section to be included in accounts as it applies in relation to matters required by section 163 to be included in accounts.

Duty to give
particulars for
purposes of
sections 163 to
167.

167. (1) A company which is the subsidiary, holding company or subsidiary of the holding company, of another company shall notify the other company in writing, within one month of the expiration of the financial year of the other company, or all the matters relating to the affairs of the company which are required by sections 163 to 167 to be included in the annual accounts of the other company or in a statement annexed to those accounts, giving in the notice particulars of those matters.

(2) Every director of a company which, by subsection (1), is required to notify another company shall, within one month of the end of the financial year of the other company, notify the company in writing of all matters relating to him personally which are required by sections

163 to 167 to be included in the accounts of the company or in a statement annexed to those accounts, giving in the notice particulars of those matters.

(3) A company in which another company holds shares in circumstances which make it necessary under section 166 for the other company to include particulars of its shareholding in its annual accounts or in a statement annexed to those accounts shall give that other company, within one month after that company makes a written request in that behalf, the particulars referred to in section 165(2)(b).

(4) Any reference in this section to matters required to be included in the annual accounts of a company, or in a statement annexed thereto, shall be shown separately therein and to matters which are required to be, or which may be, shown in combination with other matters.

Directors' Annual Report

168. (1) The directors of a company—

Duty to lay
directors'
annual report.

(a) shall lay before every annual general meeting of the company a report (in this Act called "the directors' annual report") with respect to—

- (i) the affairs of the company; and
- (ii) if the company is a holding company, the affairs of its subsidiaries, unless the company is itself a wholly owned subsidiary.

(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 also—

(a) if significant changes in the fixed assets of the company or of any of its subsidiaries have occurred in that year, give particulars of the changes and, if (in the case of those assets)

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the market or saleable value thereof (as at the end of the year) differs substantially from the amount thereof as shown in the balance sheet, give 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, the number 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; and

(v) an indication of the nature of the director's interest in the contract;

(d) if, at the end of that year, there are arrangements to which the company is a party, being arrangements whose objects are, or one of whose objects is, to enable the directors of the company or of a company affiliated with 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 body corporate, or there have, at any time in that year subsisted any such arrangements 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 that year was affiliated with 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 in, or debentures of, the company or any other 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 was affiliated with 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 189 to be made in the register of directors' holdings kept by the company;

(f) contain any statement required by section 50(2);

(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; and

(h) 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 members, shareholders or debenture holders, being matters which will not be harmful to the business of the company or of any company which is affiliated with the same group of companies as the company.

(3) Where a company is a holding company (other than a wholly owned subsidiary of another company), the directors' annual report shall also deal with the matters specified in subsection (2) in relation to each of the company's subsidiaries.

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(4) If the directors of a company 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 is affiliated with the same group of companies as the company, they may, with the consent of the Minister, omit that matter from the report.

(5) If the directors' annual report does not contain a statement required by this section to be included in it or contains a statement which is false, deceptive, misleading or incomplete, the auditors of the company shall, so far as they are reasonably able to do so, include in their report on the accounts of the company under section 185 a statement or correction giving the information required by this section.

Particulars of
different
classes of
business of
company and
its directors.

169. (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; and

(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 168(5) shall apply to 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 section 168.

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(3) This section shall apply to such companies or companies of such class or classes as the Minister may from time to time prescribe by reference to its having any of its shares or debentures quoted or dealt in on a stock exchange in Guyana or in a country which is a Member State of the Caribbean Community, or by reference to any other matter.

Company Auditor

170. (1) Subject to section 171 individuals only who qualify under subsection (2) are qualified for appointment as auditors of a company. Auditor's qualifications.

(2) An individual qualifies for appointment as auditor, if—

- (a) he is a member of the Institute of Chartered Accountants of Guyana, in this section called the “Institute”, and holds a practising certificate of the Institute; or
- (b) he is for the time being authorised to be appointed as an auditor of companies under subsection (3).

(3) The Minister may, after consultation with the Institute, authorise, by instrument in writing, any person to be appointed as an auditor of companies; if that person—

- (a) is in the opinion of the Minister suitably qualified for such an appointment by reason of his knowledge and experience; and
- (b) was in practice in Guyana as an auditor on the commencement of this Act.

(4) An application for an authorisation, to be appointed as an auditor of companies under subsection (3) must be made to the Minister not later than twelve months after the commencement of this Act.

171. (1) Subject to subsection (7), an individual shall not be qualified to be an auditor of a company if he is not independent of the company, its affiliated companies, and of the directors and officers of the company and its affiliated companies.

Disqualifica-
tion of auditor.

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(2) For the purposes of this section, whether or not an individual is independent is a question of fact to be determined having regard to all the circumstances.

(3) An individual shall be presumed not to be independent of a company if he or his business partner—

(a) is a business partner, a director, an officer or an employee of the company or any of its affiliates, or a business partner of any director, officer or employee of any such company or its affiliates;

(b) beneficially owns or controls, directly or indirectly, a material interest in the shares or debentures of the company or any of its affiliates; or

(c) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the company or any of its affiliates within two years of his proposed appointment as auditor of the company.

(4) The provision of secretarial services by or on behalf of an individual or his business partner shall not by itself deprive an individual or his business partner of his independence for the purposes of this section.

(5) An auditor who becomes disqualified under this section must, subject to subsection (7), resign forthwith after he becomes aware of his disqualification.

(6) An interested person may apply to a court for an order declaring an auditor disqualified under this section and the office of auditor vacant.

(7) An interested person may apply to the court for an order exempting an auditor from disqualification under this section, and the court may, if it is satisfied that an exemption would not adversely affect the shareholders, make an exemption order on such terms as it thinks fit, and the order may be given retroactive effect.

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172. (1) Subject to section 173, the shareholders of a company must, by ordinary resolution, at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

Appointment
of auditor.

(2) An auditor appointed under section 63 shall be eligible for appointment under subsection (1)

(3) Notwithstanding subsection (1), if an auditor is not appointed at a meeting of shareholders, the incumbent auditor shall continue in office until his successor is appointed.

(4) The remuneration of an auditor may be fixed by ordinary resolution of the shareholders or, if not so fixed, it may be fixed by the directors.

173. (1) The shareholders of a company other than a company mentioned in section 156(1) may resolve not to appoint an auditor.

Dispensing
with auditor.

(2) A resolution under subsection (1) shall be valid only until the next succeeding annual meeting of shareholders.

(3) A resolution under subsection (1) shall not be valid unless it is consented to by all the shareholders, including shareholders not otherwise entitled to vote.

174. (1) An auditor of a company shall cease to hold office when—

Cessation of
office.

- (a) he dies or resigns; or
- (b) he is removed pursuant to section 175.

(2) A resignation of an auditor shall become effective at the time a written resignation is sent to the company or at the time specified in the resignation, whichever is the later date.

175. (1) The shareholders of a company may by ordinary resolution at a special meeting remove an auditor other than an auditor appointed by a court order under section 177.

Removal of
auditor.

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(2) A vacancy created by the removal of an auditor may be filled at the meeting at which the auditor is removed or, if the vacancy is not so filled, it may be filled under section 176.

Filling auditor
vacancy.

176. (1) Subject to subsection (3), the directors must forthwith fill a vacancy in the office of auditor.

(2) If there is not a quorum of directors, the directors then in office must, within twenty-one days after a vacancy in the office of auditor occurs, call a special meeting of shareholders to fill the vacancy, and if they fail to call a meeting or if there are no directors, the meeting may be called by any shareholder.

(3) The articles of a company may provide that a vacancy in the office of auditor be filled only by vote of the shareholders.

(4) An auditor appointed to fill a vacancy shall hold office for the unexpired term of his predecessor.

Court
appointed
auditor.

177. (1) If a company does not have an auditor, the court may, upon the application of a shareholder or the Registrar, appoint and fix the remuneration of an auditor, and the auditor shall hold office until an auditor is appointed by the shareholders.

(2) Subsection (1) shall not apply if the shareholders have resolved under section 173 not to appoint an auditor.

Auditor rights
to notices.

178. The auditor of a company shall be entitled to receive notice of every meeting of the shareholders of the company and, at the expense of the company, to attend and be heard at the meeting on matters relating to his duties as auditor.

Required
attendance.

179. (1) If a shareholder of a company, whether or not he is entitled to vote at the meeting, or a director of a company gives written notice to the auditor of the company, not less than ten days before a meeting of the shareholders of the company, to attend the meeting, the auditor shall attend the meeting at the expense of the company and answer questions relating to his duties as auditor or former auditor of the company.

(2) A shareholder or director who sends a notice referred to in subsection (1) shall, concurrently, send a copy of the notice to the company.

(3) Subsection (1) shall apply *mutatis mutandis* to any former auditor of the company.

180. (1) An auditor who—

Right to comment.

- (a) resigns;
- (b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office;
- (c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed to fill the office of auditor, whether because of the resignation or removal of the incumbent auditor or because his term of office has expired or is about to expire; or
- (d) receives a notice or otherwise learns of a meeting of shareholders at which a resolution referred to in section 173 is to be proposed;

may submit to the company a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.

(2) When it receives a statement referred to in subsection (1), the company must forthwith send a copy of the statement to every shareholder entitled to receive notice of any meeting referred to in section 178 and to the Registrar, unless the statement is included in or attached to a management proxy circular required by section 146.

(3) No individual may accept appointment, consent to be appointed or be appointed as auditor of a company if he is replacing an auditor who has resigned, been removed or whose term of office has expired or is about to expire, until the individual has requested and received from the former auditor a written statement of the circumstances and the reasons why, in that auditor's opinion, he is to be replaced.

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(4) Notwithstanding subsection (3), an individual otherwise qualified may accept appointment or consent to be appointed as auditor of a company if, within fourteen days after making the request referred to in that subsection, he does not receive a reply to it.

Examination
by auditor.

181. (1) An auditor of a company must make the examination that is in his opinion necessary to enable him to report on the financial statements required by this Act to be placed before the shareholders.

(2) Notwithstanding section 182, an auditor of a company may reasonably rely upon the report of an auditor of a body corporate or an unincorporated business the accounts of which are included in whole or in part in the financial statements of the company.

(3) For the purpose of subsection (2), reasonableness is a question of fact.

(4) Subsection (2) shall apply whether or not the financial statements of the holding company reported upon by the auditor are in consolidated form.

Right to
inspect.

182. (1) Upon the demand of an auditor of a company, the present or former directors, officers, employees or agents of the company must furnish to the auditor—

- (a) such information and explanations; and
- (b) such access to records, documents, books, accounts and vouchers of the company or any of its subsidiaries,

as are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 181 and that the directors, officers, employees or agents are reasonably able to furnish.

(2) Upon the demand of an auditor of a company, the directors of the company must—

- (a) obtain from the present or former directors, officers, employees or agents of any subsidiary of the company the information and explanations that the directors, officers,

employees and agents are reasonably able to furnish and that are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 181; and

(b) furnish the information and explanations so obtained to the auditor.

183. (1) A director or an officer of a company shall forthwith notify the company's auditor of any error or mis-statement of which the director or officer becomes aware in a financial statement that the auditor or a former auditor of the company has reported upon.

Detected error.

(2) When the auditor or a former auditor of a company is notified or becomes aware of an error or mis-statement in a financial statement upon which he has reported to the company and, in his opinion, the error or mis-statement is material, he shall inform each director of the company accordingly.

(3) When under subsection (2) the auditor or a former auditor of a company informs the directors of an error or mis-statement in a financial statement of the company, the directors shall—

(a) prepare and issue revised financial statements; or
(b) otherwise inform the shareholders of the error or mis-statement;

and, if the company is a public company or one that is required to comply with section 156, inform the Registrar of the error or mis-statement in the same manner as the directors inform the shareholders of the error or mis-statement.

184. Where a company ("the holding company") has a subsidiary, then—

Power of auditors in relation to subsidiaries.

(a) if the subsidiary is a company incorporated in Guyana, it shall be the duty of the subsidiary and its auditors to give to the auditors of the holding company such information and explanation as those auditors may reasonably require for the purposes of their duties as auditors of the holding company; and

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(b) in any other case, it shall be the duty of the holding company, if required by its auditors to do so, to take all such steps as are reasonably open to it to obtain from the subsidiary such information and explanation as aforesaid.

Auditors' report.

185. (1) The auditors of a company shall make a report to the members on the accounts examined by them and on every balance sheet, every profit and loss account and all group accounts laid before the company in general meeting during their tenure of office.

(2) The auditors' report shall be read before the company in general meeting and shall be open to inspection by any member.

(3) The report shall state whether in the auditors' opinion the company's balance sheet and profit and loss account and (if it is a holding company submitting group accounts) the group accounts have been properly prepared in accordance with the provisions of this Act, and whether in their opinion a true and fair view is given—

(a) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year;

(b) in the case of 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; and

(c) in the case of group accounts submitted by a holding company, of the state of affairs and profit or loss of the company and its subsidiaries dealt with thereby, so far as concerns members 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

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(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 accounts and returns,

and if the auditors are of the opinion that proper books of accounts 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 accounts and returns, the auditors shall state that fact in their report.

(5) 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.

186. An auditor shall not be liable to any person in an action for defamatory based on any act done or not done or any statement made by him in good faith in connection with any matter he is authorised or required to do under this Act. Privilege of auditor.

DIVISION H

CORPORATE RECORDS

Registered Office of Company

187. (1) A company must at all times have a registered office in Guyana. Registered office.

(2) The directors of the company may change the address of the registered office.

188. (1) At the time of sending articles of incorporation the incorporators must send to the Registrar, in the prescribed form, notice of the address of the registered office of the company, and the Registrar must file the notice. Notice of address.

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(2) A company shall, within fifteen days of any change of the address of its registered office, send to the Registrar a notice in the prescribed form of the change, which the Registrar must file.

Company Registers and Records

Records of
company.

189. (1) A company shall prepare and maintain at its registered office records containing—

- (a) the articles and the by-laws, and all amendments thereto;
- (b) minutes of meeting and resolutions of shareholders; and
- (c) copies of all notices required by section 67, 75 or 188.

(2) A company shall maintain a register of shareholders showing the following particulars not later than five weeks after such particulars are available to the company but the validity of any entry shall not be affected by reason only that it was made at a later date—

- (a) the name and the latest known address of each person who is a shareholder;
- (b) a statement of the shares held by each shareholder;
- (c) the date on which each person was entered on the register as a shareholder and the date on which any person ceased to be a shareholder.

(3) A company that issues debentures shall maintain a register of debenture holders with an index of the names of the debenture-holders and showing the following particulars—

- (a) the name and the latest known address of each debenture-holder;
- (b) the principal of the debentures held by each holder;
- (c) the amount or the highest amount of any premium payable on redemption of the debentures;
- (d) the issue price of the debentures and the amount paid up on the issue price;
- (e) the date on which the name of each person was entered on the register as a debenture-holder; and

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(f) the date on which each person ceased to be a debenture-holder.

(4) A company that grants conversion privileges, options, or rights to acquire shares of the company shall maintain a register showing the name and the latest known address of each person to whom the privileges, options or rights have been granted and such other particulars in respect thereof as are prescribed.

(5) A company shall maintain a register showing in relation to each director—

- (a) a statement of his present forename and surname, any former forename or surname, his usual residential address and his business occupation (if any);
- (b) particulars of other directorships held by the director; and
- (c) who is, or who is to perform the functions of, a managing director, a statement to that effect.

(6) A company shall maintain a register of its secretary showing—

- (a) in the case of an individual, a statement of his present forename and surname, any former forename or surname, and his usual residential address;
- (b) in the case of a body corporate, a statement of its corporate name and registered or principal office; and
- (c) in the case of a firm, all of whose partners are joint secretaries, a statement of the name and principal office of the firm.

(7) A company shall maintain a register showing the required particulars with respect to any interest in shares in, or debentures of—

- (a) the company;
- (b) any company affiliated with the same group of companies as the company; or
- (c) any associated company of the company,

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which is vested in a director of the company or of any company affiliated with the same group of companies as the company.

(8) For the purposes of subsection (7)—

(i) a director in respect of whom any entry is required to be made in the register shall notify the company in writing within seven days after the matter occasioning the requirement of the entry occurs or arises, and shall include in the notification the particulars which the company is required to enter in the register in respect of that matter;

(ii) an interest of the wife or husband of a director of a company (not being himself or herself a director thereof) in shares or debentures shall be treated as being the director's interest, and so shall an interest of an infant son or infant daughter of a director of a company (not being himself or herself a director thereof) in shares or debentures.

(9) In subsection (8) "son or daughter" includes a son or daughter born out of wedlock and "wife" or "husband" includes a reputed wife or reputed husband.

(10) This section shall extend to interest in shares and debentures vested in a director at the time when he becomes a director, and subsection 8(1) 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 the requirement of an entry occurs or arises.

(11) A company may appoint an agent to maintain the registers required by this section to be maintained by the company; but the registers must be maintained at the registered office of the company or at some other place in Guyana designated by the directors of the company.

Records of Trusts

Trust notices.

190. (1) Except as provided in this section, notice of a trust, express, implied or constructive, must not be—

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- (a) entered by a company in any of the registers maintained by it pursuant to section 189; or
(b) received by the Registrar.

(2) No liabilities shall be affected by anything done in pursuance of subsection (3), (4) or (5), and the company concerned shall not be affected with notice of any trust by reason of anything so done.

(3) A personal representative of the estate of a deceased individual who was registered in a register of a company as a shareholder or debenture-holder may become registered as the holder of that share or debenture as personal representative of that estate.

(4) A personal representative of the estate of a deceased individual who was beneficially entitled to a share or debenture of the company that is registered in a register of the company may, with the consent of the company and of the registered shareholder or debenture-holder, become the registered shareholder or debenture-holder as the personal representative of the estate.

(5) When a personal representative of an estate of a deceased individual is registered pursuant to subsection (3) or (4) as a holder of a share or debenture of a company, the personal representative shall, in respect of that share or debenture, be subject to the same liabilities and no more than he would be subject to had the share or debenture remained registered in the name of the deceased individual.

Minutes and Other Records

191. (1) In addition to the records described in section 189, a company shall prepare and maintain adequate records containing minutes of meetings and resolutions of the directors and any committees of the directors. Other records.

(2) The records required under subsection (1) shall be kept at the registered office of the company or at some other place in Guyana designated by the directors; and those records must at all reasonable times be available for inspection by the directors.

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(3) For the purposes of section 189(1) (b) and of this section, when a former-Act company is continued under this Act, “records” includes similar registers and other records required by law to be maintained by the company before it was continued under this Act.

Form of Records

Records form. **192.** All records required by this Act to be prepared and maintained—

- (a) may be in a bound or loose-leaf form or in a photographic film form; or
- (b) may be entered or recorded—
 - (i) by any system of mechanical or electronic data processing; or
 - (ii) by any other information storage device,

that is capable of reproducing any required information in intelligible written form within a reasonable time.

Care of Records

Duty of care for records. **193.** A company and its agents shall take reasonable precautions—

- (a) to prevent loss or destruction of;
- (b) to prevent falsification of entries in; and
- (c) to facilitate detection and correction of inaccuracies in,

the records required by this Act to be prepared and maintained in respect of the company.

Access to Records

Access to records.

194. (1) The directors and shareholders of a company and their agents and legal representatives may, during the usual business hours of the company, examine the records of the company referred to in section 189 free of charge.

(2) A shareholder of a company or other person may request the company to furnish him with a copy of the register of members or any part thereof upon the payment in advance of a reasonable fee.

(3) The creditors of a company and their agents and legal representatives may, during the usual business hours of the company and upon payment of a reasonable fee, examine the records referred to in section 189(1)(a) and (c), (2), (3) and (4) and make copies of those records or take extracts therefrom.

(4) Any person may, during the usual business hours of the company and upon payment of a reasonable fee, examine the records of the company referred to in section 189(1)(c), (2), (3) and (4) and make copies of those records or take extracts therefrom.

(5) Where a request is made to a company pursuant to subsection (2) the company shall cause any copy required by the person concerned to be sent to the person within a period of ten days commencing on the day next after the day on which the request is received by the company.

Shareholders' Lists

195. (1) Upon payment of a reasonable fee and sending to a public company or its transfer agent the affidavit referred to in subsection (4), any person may upon application require the company or its transfer agent to furnish him, within fourteen days from the receipt of the affidavit, a list of shareholders of the company, (in this section referred to as the "basic list"), made up to a date not more than thirty days before the date of receipt of the affidavit, which must set out—

Basic list of
shareholders.

- (a) the names of the shareholders of the company;
- (b) the number of shares held by each shareholder; and
- (c) the address of each shareholder as shown on the records of the company.

(2) When a person requiring a basic list from a public company states in the affidavit referred to in subsection (4) that he requires supplemental lists from the company, he may, upon payment of a

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reasonable fee, require the company or its transfer agent to furnish him with supplemental lists of the shareholders, which must set out any changes from the basic list—

- (a) in the names or addresses of the shareholders; and
- (b) in the number of shares held by each shareholder,
for each business day following the date to which the basic list
is made up.

(3) When a supplemental list has been required from a public company under subsection (2) by any person, the company or its transfer agent must furnish that person with a supplemental list—

- (a) on the date the basic list is furnished, if the information relates to changes that took place before that date; and
- (b) on the business day following the day to which the supplemental list relates, if the information relates to changes that take place on or after the date the basic list is furnished.

(4) The affidavit required under subsection (1) must state—

- (a) the name and address of the applicant;
- (b) the name and address for service of the body corporate, if the applicant is a body corporate; and
- (c) that the basic list and any supplemental list obtained pursuant to subsection (2) will not be used except as permitted under section 197.

(5) If the applicant is a body corporate, the affidavit must be made by a director or officer of the body corporate.

Options list.

196. A person requiring under section 195 that a company supply a basic list or a supplemental list may also require the company to include in any such list the name and address of any known holder of an option or right to acquire shares of the company.

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197. A list of shareholders obtained under section 195 from a company shall not be used by any person except in connection with—

- (a) an effort to influence the voting of shareholders of the company;
- (b) an offer to acquire shares in the company; or
- (c) any other matter relating to the affairs of the company.

Restricted use
of lists.

198. (1) A company shall keep a register in which it shall enter—

- (a) in alphabetical order the names of persons from whom it has received a notice under section 126; and
- (b) against each name so entered, the information given in the notice and, where it receives a notice under section 127, the information given in that notice.

Company to
keep register
of substantial
shareholders.

(2) The register shall be kept at the registered office of the company, but if the work of making it up is done at another office, within Guyana, it may be kept at that office.

(3) The register shall be open for inspection by a member of the company without charge and by any other person on payment for each inspection of a reasonable fee.

(4) A person may request the company to furnish him with a copy of the register or any part of the register on payment in advance of a reasonable fee and the company shall send the copy to that person within fourteen days after the day on which the request is received by the company.

(5) The Registrar may at any time in writing require the company to furnish him with a copy of the register or any part of the register and the company shall furnish the copy within fourteen days after the day on which the requirement is received by the company.

(6) A company shall not, by reason of anything done under this section—

- (a) be taken for any purpose to have notice of; or

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(b) be put upon inquiry as to,

a right of a person to or in relation to a share in the company.

DIVISION I

TRANSFER OF SHARES AND DEBENTURES

Transfer of
shares or
debentures.

199. (1) The shares or debentures of a company may be transferred by a written instrument of transfer signed by the transferor and naming the transferee.

(2) Where an instrument of transfer is prescribed in the by-laws of a company, that instrument must be used to transfer the shares or debentures of the company.

(3) Subject to subsection (2) and to any enactment, no particular form of words shall be necessary to transfer shares or debentures, if words are used that show with reasonable certainty that the person signing the transfer intends to vest the title to the shares or debentures in the transferee.

(4) Subject to subsection (5) and to any enactment, the beneficial ownership of the shares or debentures of a company shall pass to a transferee—

(a) on the delivery to him of the instrument of transfer signed by the transferor and of the transferor's share certificate or debenture, as the case may be; or

(b) on the delivery to him of an instrument of transfer signed by the transferor that has been certified by or on behalf of the company or by or on behalf of a stock or securities exchange in Guyana.

(5) If the transferor concerned is not registered with the company in respect of the shares or, as the case may be, the debentures, subsection (4) shall have effect as if references to the transfer signed

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by the transferor included a reference to transfers signed by the person so registered and all holders of the shares or debentures intermediate between the person so registered and the transferor.

(6) Notwithstanding subsection (4) or (5), a company and, in the case of debentures, the trustee 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 or until the court orders the registration of 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.

(7) This section shall apply notwithstanding anything contained in the articles or by-laws of a company and notwithstanding anything contained in any debenture trust deed or debentures or any contract or instrument.

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

Restrictions on
transfers.

(2) A transfer of the shares or debentures of a shareholder or debenture-holder of a company made by—

- (a) his personal representative;
- (b) a trustee in bankruptcy;
- (c) a receiver appointed by or for the benefit of debenture-holders;
- (d) a receiver or other person appointed by the court to administer the estate of a person of unsound mind;
- (e) the guardian of a minor; or
- (f) a person appointed by the court to execute the transfer,

shall, although the person executing the transfer is not himself registered with the company as the holder of the shares or debentures, as the case may be, be valid as if he had been so registered at the time of the execution of the instrument of transfer.

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(3) A restriction on the right of a shareholder to transfer his shares in a company contained in the articles of incorporation or by-laws of the 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.

(4) This section shall apply in respect of a company notwithstanding anything contained in the articles or by-laws of the company, and notwithstanding anything contained in any trust deed or debentures or any contract or instrument relating to the shares or debentures of the company.

Duty to issue certifications of transfers.

201. (1) A company must issue a certification of the transfer of a share or debenture on the presentation to the company of a transfer that is signed by the holder of the share or debenture and accompanied by delivery to the company of the share certificate or debenture.

(2) A certification shall consist of a statement signed on behalf of the company and written or endorsed 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.

(3) The certification by a company of any transfer of a share in or debenture of the company—

(a) 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 share or debenture in the transferor named in the transfer; but

(b) shall not be taken as a representation that the transferor has any title to the share or debenture.

(4) 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 incurs in consequence of his so acting.

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(5) A company that has issued a certification of a transfer of a share or debenture of the company shall be liable to compensate any person for loss that he incurs in consequence of the company subsequently releasing, otherwise than on surrender of the certification of the transfer of the share or debenture, possession of the share certificate or debenture in respect of which the certification was issued.

(6) For the purposes of this section—

(a) the certification of a transfer shall be deemed to be made by a company if—

(i) the person issuing the certification is a person authorised to issue certifications of transfers on the company's behalf; and

(ii) the certification is signed by a person authorised to issue certifications of transfers on the company's behalf, or by any other officer or employee either of the company or of a body corporate so authorised;

and

(b) a certification shall be deemed to be signed by a person if it purports to be authenticated by his signature or initials, whether handwritten or not, unless the signature or initials were placed on the certification neither by that person nor any person authorised to use the signature or initials for the purpose of issuing certifications of transfers on the company's behalf.

202. (1) A company must, within five weeks after the allotment of any of its shares or debentures, and within two months after the date on which a transfer of any of its 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 any share or debenture allotted or transferred to him.

Transfer
certificate.

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(2) When a company on which a notice is served requiring the company to make good any default in complying with subsection (1) 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 the order may provide that all costs incidental to the application be borne by the company and any officer of the company responsible for the default.

(3) For the purposes of this section “transfer” means a transfer in proper form duly signed by the transferor and transferee and otherwise valid, and shall not include a transfer that the company is for any reason entitled to refuse to register and does not register.

Registration of transfers.

203. (1) Notwithstanding anything in the articles or by-laws of a company or in any debenture, trust deed or other contract or instrument, the company shall not register a transfer of any share or debenture of the company unless a transfer in proper form and duly signed by the transferor and transferee has been delivered to the company, but nothing in this section shall affect any duty of the company to register as a shareholder or debenture-holder of the company any person to whom the ownership of any share or debenture of the company has been transmitted by operation of law.

(2) On the application of the transferor of any share or debenture of a company, the company must enter in its register of shareholders or debenture-holders, as the case requires, the name of the transferee in the same manner and subject to the same conditions as if the application for the entry had been made by the transferee.

(3) If a company refuses to register a transfer of any shares or debentures, the company must, within five weeks after the date on which the transfer was lodged with the company, send to the transferor and the transferee notice of the refusal setting out in the notice the facts which it considers justify the refusal.

(4) Notwithstanding anything in the articles or by-laws of a company or in any debenture, trust deed or other contract or instrument, a company must register the trustee in bankruptcy or the personal representative of a shareholder or debenture-holder as a shareholder in respect of the shares or as holder of the debentures of the bankrupt or, as the case may be, the deceased person, in its register of shareholders 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 shareholder or debenture-holder.

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

(2) The registration of a person as a shareholder 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 may not 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 money's worth.

(3) It shall be no defence for a company to show for the purposes of subsection (2) that a registration or the issue of a share certificate or other document was procured by fraud or by the presentation to it of a forged document.

(4) Subsections (2) and (3) shall not apply in respect of certificates issued by a former-Act company before the commencement of this Act.

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DIVISION J

TAKE-OVER BIDS

Definitions.

205. In this Division—

“dissenting offeree”, if a take-over bid is made for all the shares of a class of shares—

- (i) means a shareholder of that class of share who does not accept the take-over bid; and
- (ii) includes a subsequent holder of that share who acquired it from the person mentioned in subparagraph (i);

“offer” includes an invitation to make an offer;

“offeree” means a person to whom a take-over bid is made;

“offeree company” means a company whose shares are the object of a take-over bid;

“offeror” means a person who makes a take-over bid otherwise than as an agent and includes two or more persons who, directly or indirectly—

- (i) make take-over bids jointly or in concert; or
- (ii) intend to exercise, jointly or in concert, voting rights attached to shares for which a take-over bid is made;

“share” means a share with voting rights, and includes—

- (i) a debenture currently convertible into such a share; and
- (ii) currently exercisable options and rights to acquire a share or such a convertible debenture;

“take-over bid” means an offer made by an offeror to shareholders of an offeree company to acquire all the shares of any class of issued shares of the offeree-company, and includes every offer by an issuer to repurchase its own shares.

206. If, within one hundred and twenty days after the date of a take-over bid, the bid is accepted by the holders of not less than ninety per cent of the shares of any class of shares to which the take-over bid relates, other than shares held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror, the offeror may, upon complying with this Division, acquire the shares held by the dissenting offerees.

Offeror rights.

207. An offeror may acquire shares held by a dissenting offeree by sending, by registered post, within sixty days after the date of termination of the take-over bid and in any event within one hundred and eighty days after the date of the take-over bid, an offeror’s notice to each dissenting offeree and to the Registrar stating—

Notice to dissenting shareholders.

- (a) that offerees who are holding ninety per cent or more of the shares to which the bid relates accepted the take-over bid;
- (b) that the offeror is bound to take up and pay for or has taken up and paid for the shares of the offerees who accepted the take-over bid;
- (c) that a dissenting offeree is required to elect—
 - (i) to transfer his shares to the offeror on the terms on which the offeror acquired the shares of the offerees who accepted the take-over bid; or
 - (ii) to demand payment of the fair value of his shares in accordance with sections 213 to 216 by notifying the offeror within twenty days after the dissenting offeree receives the offeror’s notice;
- (d) that a dissenting offeree who does not notify the offeror in accordance with subparagraph (ii) of paragraph (c) shall be presumed to have elected to transfer his shares to the offeror on the same terms as the offeror acquired the shares from the offerees who accepted the take-over bid; and

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(e) that a dissenting offeree must send those shares of his to which the take-over bid relates to the offeree-company within twenty days after he receives the offeror's notice.

Adverse claims.

208. Concurrently with sending the offeror's notice under section 207, the offeror must send to the offeree-company a notice of adverse claim with respect to each share held by a dissenting offeree.

Delivery of certificates.

209. A dissenting offeree to whom an offeror's notice is sent under section 207 must, within twenty days after he receives that notice, send the share certificate of his for the class of shares to which the take-over bid relates to the offeree-company.

Payment for shares.

210. Within twenty days after the offeror sends an offeror's notice under section 207, the offeror must pay or transfer to the offeree-company the amount of money or other consideration that the offeror would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected, under section 207(c)(i) to accept the take-over bid.

Money in trust.

211. The offeree-company shall hold in trust for the dissenting shareholders the money or other consideration it receives under section 210, and the offeree-company must deposit the money in a separate account in a bank and must place the other consideration in the custody of a bank.

Duty of offeree-company

212. Within thirty days after the offeror sends an offeror's notice under section 207, the offeree-company must—

(a) issue the offeror a share certificate in respect of the shares that were held by dissenting offerees;
(b) give to each dissenting offeree who—

(i) under section 207(c)(i) elects to accept the take-over bid; and
(ii) sends his share certificates as required under section 209,

the money or other consideration to which he is entitled, disregarding fractional shares, which may be paid for in money; and

(c) send to each dissenting shareholder who has not sent his share certificates as required under section 209 a notice stating that—

- (i) his shares have been cancelled;
- (ii) the offeree-company or some designated person holds in trust for him the money or other consideration to which he is entitled as payment for or in exchange for his shares; and
- (iii) the offeree-company will, subject to sections 213 to 215, send that money or other consideration to him forthwith after receiving his shares.

213. (1) If a dissenting offeree has, under section 207(c)(ii), elected to demand payment of the fair value of his shares, the offeror may, within twenty days after it has paid the money or transferred the other consideration under section 210, apply to the court to fix the fair value of the shares of that dissenting offeree.

Application to court.

(2) If an offeror fails to apply to the court under subsection (1), a dissenting offeree may, within a further period of twenty days, apply to the court to fix the fair value of the shares of the dissenting shareholder.

(3) If no application is made to the court under subsection (2) within the time provided therefor in that subsection, a dissenting offeree shall thereby elect to transfer his shares to the offeror on the same terms as the offeror acquired the shares from the offerees who accepted the take-over bid.

214. Upon an application under section 213—

Joined parties.

- (a) all dissenting offerees referred to in section 207(c)(ii) whose shares have not been acquired by the offeror shall be joined as parties and shall be bound by the decision of the court; and

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(b) the offeror must notify each affected dissenting offeree of the date, place and consequences of the application and of the offeree's right to appear and be heard in person or by attorney-at-law.

Powers and
order of court.

215. (1) Upon an application to the court under section 213, the court may determine whether any other person is a dissenting offeree who should be joined as a party, and the court must then fix a fair value for the shares of all dissenting offerees.

(2) The court may appoint one or more appraisers to assist the court to fix a fair value for the shares of a dissenting offeree.

(3) The final order of the court must be made in favour of each dissenting offeree against the offeror and be for the amount of the offeree's shares as fixed by the court.

Additional
orders.

216. In connection with proceedings under this Division, the court may make any order it thinks fit and, in particular, it may—

(a) fix the amount of money or other consideration that is required to be held in trust under section 211 ;

(b) order that the money or other consideration be held in trust by a person other than the offeree company;

(c) allow to each dissenting offeree, from the date he sends or delivers his share certificates under section 209 until the date of payment, a reasonable rate of interest on the amount payable to him; or

(d) order that any money payable to a shareholder who cannot be found be paid into the Consolidated Fund.

DIVISION K

ARRANGEMENTS AND RECONSTRUCTION

Power to
compromise
with creditors
and members.

217. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application of the company or of any creditor or member of the company, or, in the

case of a company being wound up of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors or the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) shall have no effect until a copy of the order has been lodged with the Registrar for registration, and a copy of every such order shall be annexed to every copy of the articles of incorporation of the company issued after the order has been made or, in the case of a company not having articles of incorporation, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) In this section and in section 218, “company” means any company liable to be wound up under this Act, and the expression “arrangement” includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both of those methods.

218. (1) Where a meeting is summoned under section 217 there shall—

(a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon, of the

Information as
to compro-
mises with
creditors and
members.

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compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and

(b) in every notice summoning the meeting which is given by advertisement, be included either such a statement or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement shall give the like explanation with respect to the trustee of any deed for securing the issue of the debentures as, under subsection (1), a statement is required to give with respect to the directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(4) Each director and each trustee for debenture holders shall give notice to the company of such matters relating to the company as may be necessary for the purposes of this section.

Provisions for facilitating reconstruction and amalgamation of companies.

219. (1) Where an application is made to the court under section 217 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as “a transferor company”) is to be transferred to another company (in this section referred to as “the transferee company”), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters, namely—

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- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
 - (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
 - (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
 - (d) the dissolution, without winding up, of any transferor company;
 - (e) the provision to be made for any persons, who within such time and in such manner as the court directs, dissent from the compromise or arrangement; or
 - (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order made under this section for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, free from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a copy thereof to be lodged with the Registrar for registration within seven days after the making of the order.

(4) In this section the expression "property" includes property, rights and powers of every description, and the expression "liabilities" includes duties.

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

220. (1) Where a scheme or contract (not being a take-over bid under Division J) involving the transfer of shares or any class of shares in a company (in this section referred to as “the transferor company”) to another company (in this section referred to as “the transferee company”), has, within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than ninety per cent in number of the shares whose transfer is involved (other than shares held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within two months after the expiration of that four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and when such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.

(2) Where shares in the transferor company of the same class or classes as the shares whose transfer is involved are already held as provided in subsection (1) to a number greater than ten per cent of the aggregate of their number and that of the shares (other than those already so held) whose transfer is involved the provisions of subsection (1) shall not apply unless—

(a) the transferee company offers the same terms to all holders of the shares (other than those already so held) whose transfer is involved, or, where those shares include shares of different classes, of each class of them; and

(b) the holders who approve the scheme or contract besides holding not less than ninety per cent in number of the shares (other than those already so held) whose transfer is involved, are not less than three-fourths in number of the holders of those shares.

(3) Where, in pursuance of any such scheme or contract, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first-mentioned

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company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include ninety per cent in number of the shares in the first-mentioned company or of any class of those shares, then—

- (a) the transferee company shall, within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement), give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and
- (b) any such holder may within three months from the giving of the notice to him require the transferee company to acquire the shares in question,

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

(4) Where a notice has been given by the transferee company under subsection (1) and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

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(5) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(6) In this section, “dissenting shareholder” includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

(7) In relation to an offer made by the transferee company to shareholders of the transferor company before the commencement of this Act, this section shall have effect—

(a) with the substitution, in subsection (1), for the words “the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary)”, of the words “the shares affected”;

(b) with the omission of subsections (2) and (3); and

(c) with the omission, in subsection (4) of the words “together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company”.

(8) Where the shares in a company are not divided into two or more classes, those shares shall, for the purposes of this section, be deemed to constitute a class.

DIVISION L

CIVIL REMEDIES

Definitions.

221. In this Part—

“action” means an action under this Act;

“complainant” means—

- (i) a shareholder or debenture-holder, or a former holder of a share or debenture of a company or any of its affiliates;
- (ii) a director or an officer or former director or officer of a company or any of its affiliates;
- (iii) the Registrar; or
- (iv) any other person who, in the discretion of the court, is a proper person to make an application under this part.

Derivative Actions

222. (1) Subject to subsection (2), a complainant may, for the purpose of prosecuting, defending or discontinuing an action on behalf of a company, apply to the court for leave to bring an action in the name and on behalf of the company or any of its subsidiaries, or intervene in an action to which any such company or any of its subsidiaries is a party.

Derivative actions.

(2) No action may be brought and no intervention in an action may be made under subsection (1) unless the court is satisfied—

- (a) that the complainant has given reasonable notice to the directors of the company or its subsidiary of his intention to apply to the court under subsection (1) if the directors of the company or its subsidiary do not bring, diligently prosecute or defend or discontinue the action;
- (b) that the complainant is acting in good faith; and
- (c) that it appears to be in the interest of the company or its subsidiary that the action be brought, prosecuted, defended or discontinued.

223. In connection with an action brought or intervened in under section 222, the court may at any time make any order it thinks fit, including—

- (a) an order authorising the complainant, the Registrar or any other person to control the conduct of the action;
- (b) an order giving directions for the conduct of the action;
- (c) an order directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former and present shareholders or debenture-

Power of court.

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holders of the company or its subsidiary instead of to the company or its subsidiary; or

(d) an order requiring the company or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

Restraining Oppression

Oppression
restraining.

224. (1) This Division shall apply in relation to any external company carrying on business within Guyana as it applies in relation to a company.

(2) A complainant may apply to the court for an order under this section.

(3) If, upon an application under subsection (2), the court is satisfied that in respect of a company or any of its affiliates—

(a) any act or omission of the company or any of its affiliates effects a result;

(b) the business or affairs of the company or any of its affiliates are or have been carried on or conducted in a manner; or

(c) the powers of the directors of the company or any of its affiliates are or have been exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any shareholder or debenture-holder, creditor, director or officer of the company, the court may make an order to rectify the matters complained of.

(4) It is not necessary to establish a course of conduct by a company or any of its affiliates in order to establish under subsection 3(a) or (c) that the affairs of a company are being conducted in a manner oppressive to the complainant.

(5) In connection with an application under this section, the court may make any interim or final order it thinks fit, including—

(a) an order restraining the conduct complained of;

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- (b) an order appointing a receiver or receiver-manager;
- (c) an order to regulate a company's affairs by amending its articles or by-laws;
- (d) an order directing an issue or exchange of shares or debentures;
- (e) an order appointing directors in place of or in addition to all or any of the directors then in office;
- (f) an order directing a company, subject to subsection (8), or any person, to purchase shares or debentures of a holder thereof;
- (g) an order directing a company, subject to subsection (8), or any other person, to pay to a shareholder or debenture-holder any part of the moneys paid by him for his shares or debentures;
- (h) an order varying or setting aside a transaction or contract to which a company is a party and compensating the company or any other party to the transaction or contract;
- (i) an order requiring a company, within a time specified by the court, to produce to the court or an interested person financial statements in the form required by section 153 or an accounting in such other form as the court may determine;
- (j) an order compensating an aggrieved person;
- (k) an order directing rectification of the registers or other records of a company under section 227;
- (l) an order that the company be wound up;
- (m) an order directing an investigation under Division B of Part VI to be made; or
- (n) an order requiring the trial of any issue.

(6) If an order made under this section directs the amendment of the articles or by-laws of a company—

- (a) the company concerned shall not have power without the leave of the court to make any further alteration in or addition to the articles of incorporation of the company inconsistent with the provisions of the order; and
- (b) subject to paragraph (a), any amendment made by the order shall be of the same effect as if duly made by resolution of the company.

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Fourth
Schedule.

(7) A shareholder shall not be entitled under paragraph 14 of the Fourth Schedule to dissent if an amendment to the articles is effected under this section.

(8) A company shall not make a payment to a shareholder under paragraph (f) or (g) of subsection (5) if there are reasonable grounds for believing that—

- (a) the company is unable or would, after that payment, be unable to pay its liabilities as they become due; or
- (b) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities.

(9) Where an order that the company be wound up is made pursuant to subsection 5(1), the provisions of this Act relating to the winding up of a company shall, with such adaptations as are necessary, apply as if the order had been made in proceedings in the court commenced by the company.

Staying action.

225. (1) An application made or an action brought or intervened in under this Part may not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the company or its subsidiary has been or might be approved by the shareholders of the company or its subsidiary; but evidence of approval by the shareholders may be taken into account by the court in making an order under section 223 or 224.

(2) An application made or an action brought or intervened in under this Part may not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit; and, if the court determines that the interests of any complainant could be substantially affected by the stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the complainant.

226. (1) In an application made or an action brought or intervened in under this Part, the court may at any time order the company or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be held accountable for those interim costs upon the final disposition of the application or action. Interim costs.

(2) A complainant shall not be required to give security for costs in any application made, or an action brought or intervened in, under or pursuant to any provision in this Division.

227. (1) If the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a company, the company, a shareholder or debenture-holder of the company or any aggrieved person may apply to the court for an order that the registers or records of the company be rectified. Rectification of records.

(2) An applicant under this section must give the Registrar notice of the application, and the Registrar shall be entitled to appear and be heard in person or by an attorney-at-law.

(3) In connection with an application under this section, the court may make any order it thinks fit including—

- (a) an order requiring the registers or other records of the company to be rectified;
- (b) an order restraining the company from calling or holding a meeting of shareholders or paying a dividend before that rectification;
- (c) an order determining the right of a party to the proceedings to have his name entered or retained in, or deleted or omitted from the registers or records of the company, whether the issue arises between two or more shareholders or debenture-holders or alleged shareholders or alleged debenture-holders, or between the company and any shareholders or debenture-holders or alleged shareholders or alleged debenture-holders; and
- (d) an order compensating a party who has incurred a loss.

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Other Remedial Actions

Directions for Registrar.

228. The Registrar may apply to the court for directions in respect of any matter concerning his duties under this Act, and on the application the court may give such directions and make such further order as it thinks fit.

Refusal by Registrar.

229. (1) When the Registrar refuses to file any articles or other document required by this Act to be filed by him before the articles or other document become effective, the Registrar must—

- (a) within sixty days after the receipt thereof by him or sixty days after he receives any approval required under any other Act, whichever is the later date; and
- (b) after giving the person who sent the articles or document an opportunity to be heard,

give written notice of the refusal to that person together with the reasons for the refusal.

(2) If the Registrar does not file or give written notice of his refusal to file any articles or document within the time limited therefor in subsection (1), then, for the purposes of section 230, the Registrar has refused to file the articles or document.

Appeal from Registrar.

230. A person who feels aggrieved by a decision of the Registrar—

- (a) to refuse to file in the form submitted to him any articles or other document required by this Act to be filed by him;
- (b) to give a name, to change, or revoke a name, or to refuse to reserve, accept, change or revoke a name under sections 10 to 13;
- (c) to refuse to grant an exemption under section 148; or
- (d) to refuse under section 340(2) to permit a continued reference to shares having a nominal or par value;

may apply to the court for an order requiring the Registrar to change his decision, and upon the application the court may so order and make any further order it thinks fit.

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231. If a company or any director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of a company does not comply with this Act, the regulations, articles or by-laws of the company, a complainant or creditor of the company may, in addition to any other right he has, apply to the court for an order directing any such person to comply with, or restraining any such person from acting in breach of, any provisions of this Act, the regulations, articles or by-laws, as the case may be.

Restraining
order, etc.

232. Where this Act states that a person may apply to the court, the application may be made in a summary manner by summons, originating notice of motion, or otherwise as the rules of the court provide, but subject to any order respecting notice to interested parties or costs, or any other order the court thinks fit.

Summary
application.

PART III

PROTECTION OF CREDITORS AND INVESTORS

DIVISION A

REGISTRATION OF CHARGES

Charges

233. (1) Subject to this Division, where a charge to which this section applies is created by a company, the company must, within twenty-eight days after the creation of the charge, lodge with the Registrar a statement of the charge and—

Registration
with Registrar.

- (a) any instrument by which the charge is created or evidenced; or
- (b) a copy of the instrument together with a statutory declaration verifying the execution of the charge and also verifying the copy as being a true copy of the instrument,

and if this provision is not complied with in relation to the charge, the charge shall be void so far as any security interest it thereby purported to create.

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(2) Nothing in subsection (I) shall affect any contract or obligation for repayment of the sum secured by a charge that is void under that subsection; and the money received under the charge shall immediately become payable.

(3) This section shall apply to every charge created by a company including a charge created by the company on shares in a subsidiary of the company and held by the company, except—

- (a) any pledge of, or possessory lien on, goods; and
- (b) any charge by way of pledge, deposit, letter of hypothecation or trust receipt, or bills of lading, dock warrants or other documents of title to goods, or of bills of exchange, promissory notes, or other negotiable securities for money.

Registered debenture to rank as mortgage.

234. A debenture not secured by a separate mortgage or charge but which has been duly registered after a notice of the intended registration has been published in the Gazette and one local newspaper not less than seven days previous to the registration, shall be valid and shall rank as a mortgage notwithstanding that it has not been secured by any separate mortgage or charge.

Contents of charge statements.

235. (1) Subject to subsections (2) and (3), the statement referred to in section 233 must contain the following particulars—

- (a) the date of the creation of the charge;
- (b) the nature of the charge;
- (c) the amount secured by the charge or the maximum sum deemed to be secured by the charge in accordance with section 239;
- (d) short particulars of the property charged;
- (e) the persons entitled to the charge; and
- (f) in the case of a floating charge, the nature of any restriction on the power of the company to grant further charges ranking in priority to, or equally with, the charge thereby created.

(2) Where a company creates a series of debentures containing or giving by reference to any other instrument any charge to the benefit of which the debenture-holders of that series are entitled equally, it shall be sufficient if there is lodged with the Registrar for registration, within twenty-eight days after the execution of the instrument containing the charges or, if there is no such instrument, after the execution of the first debenture of the series, a statement containing the following—

- (a) the total amount secured by the whole series;
- (b) the dates of the resolution authorising the issue of the series and the date of any covering instrument by which the security interest is created or defined;
- (c) the name of any trustee for the debenture-holders; and
- (d) the particulars specified in paragraphs (b), (d) and (f) of subsection (1).

(3) The statement referred to in subsection (2) must be accompanied by the instrument containing the charge or a copy of that instrument and a statutory declaration verifying the execution of the instrument and verifying the copy to be a true copy, but if there is no such instrument, the statement must be accompanied by a copy of one of the debentures of the series and a statutory declaration verifying the copy to be a true copy.

236. For the purposes of section 233(1) and section 235(3), a certified copy of an instrument or debenture shall be a copy of the instrument or debenture that has endorsed on it a certificate—

Certified copy
of instrument.

- (a) that states that the instrument or debenture is a true and complete copy of the original; and
- (b) that is under the seal of the company or under the hand of some person interested in the instrument or debenture otherwise than on behalf of the company.

237. When a charge requiring registration under sections 233 to 236— Later charges.

- (a) is created before the lapse of thirty days after the creation of a prior unregistered charge that comprises all or any part of the property comprised in the prior charge; and

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(b) is given as security for the same debt that is secured by the prior charge or any part of that debt,

then, to the extent to which the subsequent charge is a security for the same debt or part thereof and so far as respects the property comprised in the prior charge, the subsequent charge shall not operate nor shall be valid unless it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purpose of avoiding or evading the provisions of this Division.

Effect on
enactments.

238. Sections 233 to 237 shall not affect any other enactment relating to the registration of charges.

Fluctuating
charges.

239. (1) When a charge the particulars of which require registration under section 233 is expressed to secure all sums due or to become due or some other fluctuating amount, the particulars required under section 235(1)(c) must state the maximum sum that is deemed to be secured by the charge, which must be the maximum covered by the stamp duty paid thereon, and the charge shall, subject to subsection (2), be void, so far as any security interest is created by the charge, as respects any excess over the stated maximum.

(2) Where, in respect of a charge on the property of a company of a kind referred to in subsection (1)—

(a) any additional stamp duty is later paid on the charge; and
(b) at any time after that but before the commencement of the liquidation of the company, amended particulars of the charge stating the increased maximum sum deemed to be secured by the charge, together with the original instrument by which the charge was created or evidenced, are lodged with the Registrar for registration,

then, as from the date on which it is lodged, the charge, if otherwise valid, shall be effective to the extent of the increased maximum sum except as regards any person who, before the date on which the charge was so lodged, had acquired any proprietary rights in, or a fixed or floating charge on, the property that is subject to the charge.

240. (1) Where a company acquires any property that is subject to a charge of any kind that would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Division, the company must, within twenty-eight days after the date on which the acquisition is completed, lodge with the Registrar for registration—

Charge on
acquisition of
property.

- (a) a statement of the particulars required by section 235 and of the date of the acquisition of the property; and
- (b) the instrument by which the charge was created or is evidenced or a copy thereof,

accompanied by a statutory declaration as required by section 233 and certified as provided in section 236.

(2) Failure to comply with subsection (1) shall not affect the validity of the charge concerned.

Registration of Charges

241. (1) Documents and particulars required to be lodged for registration may—

Duty to
register.

- (a) in the case of a requirement under section 233, be lodged by the company concerned or by any person interested in the documents; and
- (b) in the case of a requirement under section 240, be lodged by the company concerned.

(2) A person not being the company concerned who lodges documents or particulars for registration pursuant to paragraph (a) of subsection (1) may recover from the company concerned the amount of any fees properly payable on the registration if he meets the requirements of sections 233 to 237.

242. (1) The Registrar must keep a register of all the charges lodged for registration under this Division and enter in the register with respect to those charges the following particulars—

Register of
charges.

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(a) in any case to which section 235(2) applies, such particulars as are required to be contained in a statement lodged under that subsection;

(b) in any case to which section 240 applies, such particulars as are required to be contained in a statement lodged under paragraph (a) of subsection (1) of that section; and

(c) in any other case, such particulars as are required by section 235 to be contained in a statement lodged under that section.

(2) The Registrar must issue a certificate of every registration stating, if applicable, the amount secured by the charge or, in a case referred to in section 239, the maximum amount secured by the charge, and the certificate shall be conclusive proof that the requirements as to registration have been complied with.

Endorsement
on debenture.

243. (1) A company shall endorse on every debenture issued by it—

(a) a copy of the certificate of registration of any charge related to the debenture; or

(b) a statement that the registration of a charge related to the debenture has been effected and the date of the registration.

(2) Subsection (1) shall not apply to a debenture issued by a company before the charge was created in relation to the debenture.

Satisfaction
and payment.

244. (1) Where, with respect to any registered charge—

(a) the debt for which the charge was given has been paid or satisfied in whole or in part; or

(b) the property or undertaking charged, or any part thereof, has been released from the charge or has ceased to form part of the company's property or undertaking,

the company may lodge with the Registrar in the prescribed form a memorandum of satisfaction in whole or in part, or a memorandum of the fact that the property or undertaking or any part thereof has been

released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, and the Registrar must enter particulars of that memorandum in the register.

(2) The memorandum must be supported by evidence sufficient to satisfy the Registrar of the payment, satisfaction, release or cessation referred to in subsection (1).

245. On being satisfied that the omission to register a charge within the time required or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum— Rectification of error.

- (a) was accidental or due to inadvertence or to some other sufficient cause;
- (b) is not of a nature to affect adversely the position of creditors or shareholders; or
- (c) that, on other grounds, it is just and equitable to grant relief, the court may, on the application of the company or any person interested and on such terms and conditions as seem to the court to be just and expedient, order that that time for registration be extended or that the omission or mis-statement be rectified.

246. (1) A company must retain, at the registered office of the company, a copy of every instrument creating any charge that requires registration under this Division, but, in the case of a series of debentures, the retention of a copy of one debenture of the series shall be sufficient for the purposes of this subsection. Retention of copy.

(2) A company must record all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge and the names of the persons entitled thereto.

247. The copies of instruments retained by the company pursuant to section 246 must be kept open for the inspection of creditors and shareholders of the company, free of charge. Inspection of copies.

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Registration of
receiver.

248. (1) Where any person—

- (a) obtains an order for the appointment of a receiver of any of the property of a company; or
- (b) appoints a receiver of any of the property of a company or enters into possession of any property of a company under any powers contained in any charge,

he must give, within ten days from the date of the order, appointment or entry into possession, notice thereof to the Registrar, who must enter the fact in the register of the particulars of charges relating to the company.

(2) When—

- (a) a person who has been appointed a receiver of the property of a company ceases to act as receiver; or
- (b) a person who had entered into possession of any property of a company goes out of possession of that property,

he must, within ten days of his having done so, give notice of his so doing in the prescribed form to the Registrar, who must enter the notice in the register of the particulars of charges relating to that company.

Application of Division

External
company.

249. (1) This Division shall apply to charges created or acquired, after the commencement of this Act, by an external company, on property in Guyana, in like manner and with like consequences as if the external company were a company as defined in subsection (2), whether or not the external company is registered under this Act pursuant to Division A of Part IV.

(2) An external company is a firm or other body of persons, whether incorporated or unincorporated, that is formed under the laws of a country other than Guyana.

DIVISION B

TRUST DEEDS AND DEBENTURES

250. In this Division—

Definitions.

“event of default” means an event specified in a trust deed on the occurrence of which—

- (i) a security interest constituted by the trust deed becomes enforceable; or
- (ii) the principal, interest and other moneys payable thereunder become or can be declared to be payable before maturity,

but the event shall not be an event of default until all conditions prescribed in the trust deed in connection with that event for the giving of notice or the lapse of time or otherwise have been satisfied;

“trustee” means any person appointed as trustee under the terms of a trust deed to which a company is a party and includes any successor trustee;

“trust deed” means any deed, indenture or other instrument, including any supplement or amendment thereto, made by a company after its incorporation or continuance under this Act under which the company issues debentures and in which a person is appointed as trustee for the holders of the debentures issued thereunder.

251. This Division shall apply to a trust deed if the debentures issued or to be issued under the trust deed are part of a distribution to the public.

Application of
Division.

TRUSTEES

252. (1) No person may be appointed as trustee if there is a material conflict of interest between his role as trustee and his role in any other capacity.

Conflict of
interest.

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(2) There shall be a material conflict of interest for the purpose of subsection (1) where a person is an officer or employee, or a shareholder of the company issuing the debentures.

(3) Within ninety days after a trustee becomes aware that a material conflict of interest exists in his case, the trustee must—

- (a) eliminate the conflict of interest; or
- (b) resign from office.

(4) A trust deed, any debentures issued thereunder and a security interest effected thereby shall be valid notwithstanding a material conflict of interest of the trustee.

(5) If a trustee is appointed contrary to subsection (1) or continues as a trustee contrary to subsection (3), any interested person may apply to the court for an order that the trustee be replaced, and the court may make an order on such terms as it thinks fit.

List of
debenture-
holders.

253. (1) A holder of debentures issued under a trust deed may, upon payment to the trustee of a reasonable fee, require the trustee to furnish, within fourteen days after delivering to the trustee the statutory declaration referred to in subsection (4), a list setting out—

- (a) the names and addresses of the registered holders of the outstanding debentures of the issuer;
- (b) the principal amount of outstanding debentures owned by each such holder; and
- (c) the aggregate principal amount of debentures outstanding,

as shown on the records maintained by the trustee on the day that the statutory declaration is delivered to him.

(2) Upon the demand of a trustee, the issuer of debentures must furnish the trustee with the information required to enable the trustee to comply with subsection (1).

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(3) If the person requiring the trustee to furnish a list under subsection (1) is a body corporate, the statutory declaration required under that subsection must be made by a director or officer of the body corporate.

(4) The statutory declaration required under subsection (1) must state—

- (a) the name and address of the persons requiring the trustee to furnish the list and, if the person is a body corporate, its address for service; and
- (b) that the list will not be used except as permitted under subsection (5).

(5) A list obtained under this section shall not be used by any person except in connection with—

- (a) an effort to influence the voting of the debenture-holders;
- (b) an offer to acquire debentures; or
- (c) any other matter relating to the debentures or the affairs of the issuer or guarantor thereof.

254. (1) An issuer or a guarantor of debentures issued or to be issued under a trust deed must, before doing any act that is described in paragraph (a), (b) or (c) of this subsection, furnish the trustee with evidence of compliance with the conditions in the trust deed relating to—

- (a) the issue, certification and delivery of debentures under the trust deed;
- (b) the release, or release and substitution, of property that is subject to a security interest constituted by the trust deed; or
- (c) the satisfaction and discharge of the trust deed.

(2) Upon the demand of a trustee, the issuer or guarantor of debentures issued or to be issued under a trust deed must furnish the trustee with evidence of compliance with the trust deed by the issuer or guarantor in respect of any act to be done by the trustee at the request of the issuer or guarantor.

Evidence of
compliance.

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Contents of evidence.

255. Evidence of compliance as required by section 254 must consist of—

- (a) a statutory declaration or certificate made by a director or an officer of the issuer or guarantor stating that the conditions referred to in that section have been complied with;
- (b) if the trust deed requires compliance with conditions that are subject to review by an attorney-at-law, his opinion that those conditions have been complied with; and
- (c) if the trust deed requires compliance with conditions that are subject to review by an auditor or accountant, an opinion or report of the auditor of the issuer or guarantor, or such other accountant as the trustee may select, that those conditions have been complied with.

Further evidence.

256. The evidence of compliance referred to in section 255 must include a statement by the person giving the evidence—

- (a) declaring that he has read and understands the conditions of the trust deed described in section 254;
- (b) describing the nature and scope of the examination or investigation upon which he based the certificate, statement or opinion; and
- (c) declaring that he has made such examination or investigation as he believes necessary to enable him to make the statements or give the opinion contained or expressed therein.

Evidence relating to conditions.

257. Upon the demand of a trustee, the issuer or guarantor of debentures issued under a trust deed must furnish the trustee with evidence in such form as the trustee may require as to compliance with any condition of the trust deed relating to any action required or permitted to be taken by the issuer or guarantor under the trust deed.

Certificate of compliance.

258. At least once in each twelve-month period beginning on the date of the trust deed and at any other time upon the demand of a trustee, the issuer or guarantor of debentures issued under the trust deed must furnish the trustee with a certificate that the issuer or guarantor has complied with all requirements contained in the trust deed that, if not

complied with, would, with the giving of notice, lapse of time or otherwise, constitute an event of default, or if there has been failure to so comply, giving particulars of that failure.

259. Within thirty days after a trustee under a trust deed becomes aware of an event of default thereunder, the trustee must give to the holder of any debentures issued under the trust deed notice of the event of default arising under the trust deed and continuing at the time the notice is given, unless the trustee reasonably believes that it is in the best interest of the debenture holders to withhold that notice and in writing so informs the issuer and guarantor.

Notice of default.

260. (1) Debentures issued, pledged or deposited by a company shall not be redeemed by reason only that the amount in respect of which the debentures are issued, pledged or deposited is repaid.

Redemption of debenture.

(2) Debentures issued by a company and purchased, redeemed or otherwise acquired by it may be cancelled or, subject to any applicable trust deed or other agreement, may be reissued, pledged or deposited to secure any obligation of the company then existing or thereafter incurred, and any such acquisition and reissue, pledge or deposit shall not be a cancellation of the debenture.

261. A trustee under a trust deed in exercising his powers and discharging his duties must—

Duty of care.

- (a) act honestly and in good faith with a view to the best interests of the holders of the debentures issued under the trust deed; and
- (b) exercise the care, diligence and skill of a reasonably prudent trustee.

262. Notwithstanding section 261, a trustee shall not be liable if he relies in good faith upon statements contained in a statutory declaration, certificate, opinion or report that complies with this Act or the trust deed.

Reliance on statements.

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No exculpa-
tion.

263. No term of a trust deed or of any agreement between a trustee and the holders of debentures issued thereunder or between the trustee and the issuer or guarantor shall operate to relieve a trustee from the duties imposed upon him by section 261.

Rights of
trustees.

264. (1) The trustee under a trust deed shall hold all contracts, stipulations and undertakings given to him and all mortgages, charges and securities vested in him in connection with the debentures covered by the trust deed, or some of those debentures, exclusively for the benefit of the debenture-holders concerned, except in so far as the trust deed otherwise provides.

(2) A debenture-holder may—

- (a) sue the company that issued the debentures he holds for payment of any amount payable to him in respect of the debentures; or
- (b) sue the trustee of the trust deed covering the debentures he holds for compensation for any breach of the duties that the trustee owes him,

and in any such 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 trustee under the covering trust deed to be joined as a party.

(3) This section shall apply notwithstanding anything contained in a debenture, trust deed or other instrument, but a provision in a debenture or trust deed shall be valid and binding on all the debenture-holders of the class concerned to the extent that, 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, the provision enables a meeting of the debenture-holders—

- (a) to release any trustee from liability for any breach of his duties to the debenture-holders that he has already committed, or generally from liability for all such breaches, without necessarily specifying them, upon his ceasing to be a trustee;

(b) to consent to the alteration or abrogation of any of the rights, powers or remedies of the debenture-holders and the trustee under the trust deed covering their debentures, except the powers and remedies under section 271; or

(c) to consent to the substitution of debentures of a different class issued by the company or any other company or body corporate for the debentures of the debenture-holders, or to consent to 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 body corporate.

Trust Deeds

265. (1) A public company must, before issuing any of its debentures, execute a trust deed in respect of the debentures and procure the execution thereof by a trustee.

Need for trust deed.

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

(3) Where a trust deed is required by this section to be executed in respect of any debentures issued by a public company but a trust deed has not been executed, the court may, on the application of a holder of any debenture issued by the company—

- (a) order the company to execute a trust deed in respect of those debentures;
- (b) direct that a person nominated by the court be appointed a trustee of the trust deed; and
- (c) give such consequential directions as the court thinks fit regarding the contents of the trust deed and its execution by the trustee.

266. (1) Debentures belong to different classes if different rights attach to them in respect of—

Kinds of debentures.

- (a) the rate of interest or the dates for payment of interest;
- (b) the dates when, or the instalments by which, the principal of the debentures will be repaid, unless the difference is solely

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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;

(c) any right to subscribe for or convert the debentures into other shares or other debentures of the company or any other body corporate; or

(d) the powers of the debenture-holders to realise any security interest.

(2) Debentures belong to different classes if they do not rank equally for payment when—

- (a) any security interest is realised; or
- (b) the company is liquidated,

that is to say, if, in those circumstances, the security interest or the proceeds thereof, or any assets available to satisfy the debentures, is or 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.

Cover of trust deed.

267. A debenture shall be covered by a trust deed if the debenture holder is entitled to participate in any money payable by the company under the trust deed, or is entitled by the trust deed to the benefit of any security interest, whether alone or together with other persons.

Exception.

268. Sections 265 to 267 shall not apply to debentures issued before the commencement of his Act or to debentures forming part of a class of debentures some of which were issued before the commencement of this Act.

Contents of trust deed.

269. (1) Every trust deed, whether required by section 265 or not, must state—

- (a) the maximum sum that the company can raise by issuing debentures of the same class;
- (b) the maximum discount that can be allowed on the issue or re-issue of the debentures, and the maximum premium at which the debentures can be made redeemable;

-
- (c) the nature of any assets over which a security interest is created by the trust deed in favour of the trustee for the benefit of the debenture-holders equally, and, except where such an interest is a floating charge or a general floating charge, the identity of the assets subject to it;
 - (d) the nature of any assets over which a security interest has been or will be created in favour of any person other than the trustee for the benefit of the debenture-holders equally, and, except where such an interest is a floating charge or a general floating charge, the identity of the assets subject to it;
 - (e) whether the company has created or will have to create any security interest for the benefit of some, but not all, of the holders of debentures issued under the trust deed;
 - (f) any prohibition or restriction on the power of the company to issue debentures or to create any security interest on any of its assets ranking in priority to, or equally with, the debentures issued under the trust deed;
 - (g) whether the company will have power to acquire debentures issued under the trust deed before the date for their redemption and to re-issue the debentures;
 - (h) 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;
 - (i) the 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;
 - (j) in the case of convertible debentures, the dates and terms on which the debentures can be converted into shares and the amounts that will be credited as paid upon those shares, and the dates and terms on which the debenture-holders can exercise any right to subscribe for shares in right of the debentures held by them;
 - (k) the circumstances in which the debenture-holders will be entitled to realise any security interest vested in the trustee

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or any other person for their benefit, other than the circumstances in which they are entitled to do so by this Act;

(l) the power of the company and the trustee to call meetings of the debenture-holders, and the rights of debenture-holders to require the company or the trustee to call meetings of the debenture-holders;

(m) whether the rights of debenture-holders can be altered or abrogated and, if so, the conditions that are to be fulfilled, and the procedures that are to be followed, to effect an alteration or an abrogation; and

(n) the amount or rate of remuneration to be paid to the trustee 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 debentures are issued without a covering trust deed being executed, the statements required by subsection (1) must be included in each debenture or in a note forming part of the same document or endorsed thereon, and in applying that subsection references therein to the trust deed shall be construed as references to all or any of the debentures of the same class.

(3) Subsection (2) shall not apply if—

(a) the debenture is the only debenture of the class to which it belongs that has been or that can be issued; and

(b) the rights of the debenture-holder cannot be altered or abrogated without his consent.

(4) This section shall not apply to a trust deed executed or to debentures issued before the commencement of this Act.

Contents of
debentures.

270. (1) Every debenture that is covered by a trust deed must state either in the body of the debenture or in a note forming part of the same document or endorsed thereon—

(a) the matters required to be stated in a trust deed by paragraphs (a), (b), (f), (h), (i), (j), (l) and (m) of subsection (1) of section 269;

- (b) whether the trustee of the covering trust deed holds the security interest vested in him 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 trustee of the covering trust deed or in the debenture-holders.

(2) A debenture issued by a company must state on its face in clearly legible print that it is unsecured if no security interest is vested in the holder of the debenture or in any other person for his benefit as security for payment of principal and interest.

(3) This section shall not apply to debentures issued before the commencement of this Act.

Realisation of Security

271. (1) Debenture-holders are entitled to realise any security interest vested in them or in any other person for their benefit, if—

Realisation of
debenture-
holder's
security.

(a) the company fails, within one month after it becomes due, to pay—

- (i) any instalment of interest;
- (ii) the whole or part of the principal; or
- (iii) any premium,

owing under the debentures or the trust deed covering the debentures;

(b) the company fails to fulfil any of the obligations imposed on it by the debentures or the trust deed;

(c) any circumstances occur that by the terms of the debentures or trust deed entitle the holders of the debentures to realise their security interest; or

(d) the company is liquidated.

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(2) Debenture-holders whose debentures are secured by a general floating charge vested in themselves or the trustee of the covering trust deed or any other person shall be additionally entitled to realise their security interest, if—

(a) any creditor of the company issues a process of execution against any of its assets or commences proceedings for liquidation of the company by order of any court of competent jurisdiction;

(b) the company ceases to pay its debts as they fall due;

(c) the company ceases to carry on business;

(d) the company incurs, after the issue of debentures of the class concerned, losses or diminution in the value of its assets that in the aggregate amount to more than one half of the total amount owing in respect of—

(i) debentures of the class held by the debenture-holders who seek to enforce their security interest; and

(ii) debentures whose holders rank before them for payment of principal or interest; or

(e) any circumstances occur that 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 interest.

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

(a) by the trustee;

(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 debentures of the same class; or

(c) by the court on the application of any trustee or debenture-holder of the class concerned.

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(4) A receiver appointed pursuant to subsection (3) shall have, subject to any order made by the court, power—

- (a) to take possession of the assets that are subject to the security interest and to sell those assets; and
- (b) if the security interest extends to that property,
 - (i) to collect debts owed to the company;
 - (ii) to enforce claims vested in the company;
 - (iii) to compromise, settle and enter into arrangements in respect of claims by or against the company;
 - (iv) to carry on the company's business with a view to selling it on the most favourable terms;
 - (v) to grant or accept leases of land and licences in respect of patents, designs, copyright, or trade, service or collective marks; and
 - (vi) to 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 trustee under the trust deed or on the debenture-holders by the debentures or the trust deed, and any power or remedy that is expressed in any instrument to be exercisable if the debenture-holders become entitled to realise their security interest 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), but 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 as well as after the commencement of this Act.

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

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DIVISION C

RECEIVERS AND RECEIVER-MANAGERS

Disqualified receivers.

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

- (a) is a body corporate;
- (b) is an undischarged bankrupt; or
- (c) is disqualified from being a trustee under a trust deed executed by the company or would be so disqualified if a trust deed had been executed by the company.

(2) If a person who was appointed to be a receiver or receiver-manager becomes disqualified under subsection (1) or under any provision contained in a debenture or 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 be terminated or interrupted by the occurrence of the disqualification.

(3) This section shall apply to a person appointed to be a receiver or receiver-manager whether so appointed before or after the commencement of this Act.

Functions of receivers.

273. A receiver of any property of a company may, subject to the rights of secured creditors, receive the income from the property, pay the liabilities connected with the property, and realise the security interest of those on behalf of whom he is appointed, but, except to the extent permitted by the court, he may not carry on the business of the company.

Functions of receiver-managers.

274. A receiver of a company may, if he is also appointed manager of the company, carry on any business of the company to protect the security interest of those on behalf of whom he is appointed.

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| <p>275. When a receiver-manager of a company is appointed by the court or under an instrument, the powers of the directors of the company that the receiver-manager is authorised to exercise may not be exercised by the directors until the receiver-manager is discharged.</p> <p>276. A receiver or receiver-manager of a company appointed by the court must act in accordance with the directions of the court.</p> <p>277. A receiver or receiver-manager of a company appointed under an instrument must act in accordance with that instrument and any directions of the court made under section 279.</p> <p>278. A receiver or receiver-manager of a company appointed under an instrument must—</p> <p class="list-item-l1">(a) act honestly and in good faith; and</p> <p class="list-item-l1">(b) deal with any property of the company in his possession or control in a commercially reasonable manner.</p> <p>279. Upon an application by a receiver or receiver-manager of a company, whether appointed by the court or under an instrument, or upon an application by any interested person, the court may make any order it thinks fit, including—</p> <p class="list-item-l1">(a) an order appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;</p> <p class="list-item-l1">(b) an order determining the notice to be given to any person, or dispensing with notice to any person;</p> <p class="list-item-l1">(c) an order declaring the rights of persons before the court or otherwise, or directing any person to do or abstain from doing anything;</p> <p class="list-item-l1">(d) an order fixing the remuneration of the receiver or receiver-manager;</p> <p class="list-item-l1">(e) an order requiring the receiver or receiver-manager, or a person by or on behalf of whom he is appointed—</p> <p class="list-item-l2">(i) to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the company;</p> | <p>Directors' powers stopped.</p> <p>Duty under court direction.</p> <p>Duty under instrument.</p> <p>Duty of care.</p> <p>Directions by court.</p> |
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- (ii) to relieve any such person from any default on such terms as the court thinks fit; and
- (iii) to confirm any act of the receiver or receiver-manager; and
- (f) an order giving direction on any matter relating to the duties of the receiver or receiver-manager.

Duties of
receivers, etc.

280. A receiver or receiver-manager of a company must—

- (a) immediately give notice of his appointment to the Registrar, and of his discharge;
- (b) take into his custody and control the property of the company in accordance with the court order or instrument under which he is appointed;
- (c) open and maintain a bank account in his name as receiver or receiver-manager of the company for the moneys of the company coming under his control;
- (d) keep detailed accounts of all transactions carried out by him as receiver or receiver-manager;
- (e) keep accounts of his administration, which must be available during usual business hours for inspection by the directors of the company;
- (f) prepare financial statements of his administration at such intervals and in such form as may be prescribed;
- (g) upon completion of his duties, render a final account of his administration, in the form adopted for interim accounts under paragraph (f); and
- (h) file with the Registrar a copy of any financial statement mentioned in paragraph (f) and any final account mentioned in paragraph (g) within fourteen days of the preparation of the financial statement or rendering of the final account, as the circumstances require.

Liability of
receivers, etc.

281. (1) A receiver of assets of a company appointed under section 271(3) or under the powers contained in any instrument—

- (a) shall be personally liable on any contract entered into by him in the performance of his functions, except to the extent

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that the contract otherwise provides; and

(b) shall be entitled in respect of that liability to an indemnity out of the assets of which he was appointed to be receiver,

but nothing in this subsection shall limit any right to an indemnity that he would have, apart from this subsection, or shall limit his liability on contracts entered into without authority, or confers any right to indemnity in respect of that liability.

(2) When the purported appointment of a receiver out of court is invalid because the charge under which the appointment purported to be made is invalid or because, in the circumstances of the case, the power of appointment under the charge was not exercisable or not wholly exercisable, the court may, on application being made to it—

(a) wholly or to such extent as it thinks fit, exempt the receiver from personal liability in respect of anything done or omitted to be done by him that, if the appointment had been valid, would have been properly done or omitted to be done; and

(b) order that the person by whom the purported appointment was made, be personally liable to the extent to which that relief has been granted.

(3) Subsection (1) shall apply to a receiver appointed before or after the commencement of this Act, but shall not apply to contracts entered into before the commencement of this Act.

282. Where a receiver or a receiver-manager of any assets of a company has been appointed for the benefit of debenture-holders, every invoice, order of goods or business letter issued by or on behalf of the company or the receiver, being a document on or in which the name of the company appears, must contain a notice that a receiver or a receiver-manager has been appointed.

Notice of
receivership.

283. (1) Where a receiver of the whole or substantially the whole, of the assets of a company, in this section and section 284 referred to as the “receiver”, is appointed under section 271 (3), or under the powers

Statement of
affairs.

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contained in any trust deed, for the benefit of the holders of any debentures of the company secured by a general floating charge, then subject to this section and section 284—

(a) the receiver shall forthwith send notice to the company of his appointment;

(b) within fourteen days after receipt of the notice by the company, or such longer period as may be allowed by the receiver, there shall be made out by the company and submitted to the receiver a statement in accordance with section 284 as to the affairs of the company;

(c) the receiver shall, within two months after receipt of the statement, send—

(i) to the Registrar and, if the receiver was appointed by the court, to the court, a copy of the statement and of any comments he sees fit to make thereon;

(ii) to the company, a copy of those comments or, if the receiver does not see fit to make any comments, a notice to that effect;

(iii) to the trustee of the trust deed, a copy of the statement and those comments, if any; 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 that summary.

(2) The receiver shall—

(a) 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 after every subsequent period of twelve months; and

(b) 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 trustee of the trust deed, and to the holders of all debentures belonging to the same class as the debentures in respect of which the receiver was appointed, an abstract in a form approved by the Registrar.

(3) The abstract must show—

- (a) the receiver's receipts and payments during the period of twelve months or, if the receiver ceases so to act, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing to act; and
- (b) the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.

(4) Subsection (1) shall not apply in relation to the appointment of a receiver to act with an existing receiver, or in place of a receiver who dies or ceases to act, except that, where that subsection applies to a receiver who dies or ceases to act before the subsection has been fully complied with, the references in paragraphs (b) and (c) of that subsection to the receiver shall include, subject to subsection (5), references to his successor and to any continuing receiver.

(5) If the company is being liquidated, this section and section 284 shall apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(6) Nothing in subsection (2) shall affect the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times that, he is required to do so apart from that subsection.

284. (1) The statement as to the affairs of a company required by section 283 to be submitted to the receiver or his successor must show, as at the date of the receiver's appointment—

Contents of statement.

- (a) the particulars of the company's assets, debts and liabilities;

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- (b) the names, addresses and occupations of the company's creditors;
- (c) the security interests held by the company's creditors respectively;
- (d) the dates when the security interests were respectively created; and
- (e) such further or other information as may be prescribed.

(2) The state of affairs of the company must be submitted by, and be verified by, the signed declaration of at least one person who is, at the date of the receiver's appointment, a director, and by the secretary of the company at that date, 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, namely, persons who—

- (a) are or have been officers of the company;
- (b) have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;
- (c) are in the employment of the company, or have been in the employment of the company within that year and, in the opinion of the receiver, are capable of giving the information required; or
- (d) are or have been within that year officers of or in the employment of an affiliated company.

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

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DIVISION D

PROSPECTUSES

Interpretation

285. In this Division—

Definitions.

“issue” includes circulate or distribute;

“notice” includes circular or advertisement;

“prospectus” includes, in relation to any company, any notice, prospectus, or other document that—

- (i) invites applications from the public, or invites offers from the public, to subscribe for or purchase; or
- (ii) offers to the public for subscription or purchase, directly or through other persons,

any shares or debentures of the company or any units of any such shares or debentures of the company.

286. This Division shall apply whether any shares or debentures of a company are offered to the public on or with reference to the promotion of a company or at any time after the company has come into existence.

Application of
Division.

Prospectus Requirements

287. (1) Subject to subsection (2), no person shall issue any form of application for shares or debentures unless—

Prohibition re
public issue.

- (a) a prospectus, as required by this Division, has been registered with the Registrar; and
- (b) a copy of the prospectus is issued with the form of application or the form specifies a place in Guyana where a copy of the prospectus can be obtained.

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(2) Subsection (1) shall not apply if the form of application referred to is issued in connection with shares or debentures that are not offered to the public or intended for the public.

Contents of
prospectus.

288. The following requirements shall apply to a prospectus—

(a) the prospectus must be dated; and that date, unless there is proof to the contrary, shall be taken as the date of issue of the prospectus;

(b) one copy of the prospectus must be lodged with the Registrar, and the prospectus must set out that a copy of the prospectus has been so lodged and immediately state thereafter that the Registrar takes no responsibility as to the validity or veracity of its contents;

(c) the prospectus must contain a statement that no shares and debentures or either are to be allotted on the basis of the prospectus later than three months after the date of issue of the prospectus;

(d) the prospectus must, if it contains any statement by an expert made or contained in what purports to be a copy of or extract from a report, memorandum or valuation, of an expert, state the date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for incorporation in the prospectus;

(e) the prospectus must disclose any commission payable by virtue of section 49; and

(f) the prospectus must subject to the provisions contained in Part III of the First Schedule, state the matters specified in Part I of that Schedule and set out the reports specified in Part II of that Schedule.

First Schedule.

Professional
names.

289. A prospectus must not contain the name of any person as a trustee for holders of debentures or as an auditor, a banker, an attorney-at-law, a stockbroker or sharebroker, of the company or proposed company or for or in relation to the issue or proposed issue of shares or debentures, unless that person has consented in writing, before the issue of the prospectus, to act in that capacity in relation to the prospectus and a copy of the consent, verified as prescribed in section 482(2), has been lodged with the Registrar.

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290. A condition shall be void that—

No waivers.

- (a) purports to require or bind an applicant for shares or debentures of a company to waive compliance with any requirement of this Division; or
- (b) purports to affect the applicant with notice of any contract, document or matter not specifically referred to in the prospectus.

291. (1) Subject to this section, no person—

Certain notice required.

- (a) shall issue any notice that offers for subscription or purchase, shares or debentures of a company, or invites subscription for, or purchase of, any such shares or debentures;
- (b) shall issue any notice that calls attention to—
 - (i) an offer, or intended offer, for subscription or purchase, of shares or debentures of a company;
 - (ii) an invitation, or intended invitation to subscribe for or purchase any such shares or debentures; or
 - (iii) a prospectus.

(2) This section shall not apply to—

- (a) a notice that relates to an offer or invitation not made or issued to the public, directly or indirectly;
- (b) a registered prospectus within the meaning of this Division;
- (c) a notice—
 - (i) that calls attention to a registered prospectus;
 - (ii) that states that allotments of, or contracts with respect to, the shares or debentures will be made only on the basis of one of the forms of applications referred to in, and attached to, a copy of the prospectus; and
 - (iii) that contains no other information except that permitted pursuant to subsection (3); or

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(d) a notice—

(i) that accompanies a notice referred to in paragraph (c) or would but for the inclusion therein of a statement referred to in subparagraph (iii) or (iv) of this paragraph, be a notice so referred to;

(ii) that is issued by a person whose ordinary business is or includes advising clients in connection with their investments and is issued only to clients so advised in the course of that business;

(iii) that contains a statement that the investment to which it or the accompanying document relates is recommended by that person; and

(iv) that, if the person is an underwriter or sub-underwriter of an issue of shares or debentures to which the notice or accompanying document relates, contains a statement that the person making the recommendation is interested in the success of the issue as an underwriter or sub-underwriter, as the case may be.

(3) All or any of the following information shall be permitted for the purposes of subsection (2) (c) (iii)—

(a) the number and description of the shares or debentures of the company to which the prospectus relates;

(b) the name of the company, the date of its incorporation and the number of the company's issued shares and the amount paid on its issued shares;

(c) the general nature of the company's main business, or its proposed main business;

(d) the names, addresses and occupations of the directors of the company;

(e) the names and addresses of the brokers or underwriters, if any, to the issue of shares or debentures or both, and, if the prospectus relates to debentures, the name and address of the trustee for the debenture holders;

(f) the name of any stock or securities exchange of which the brokers or underwriters to the issue are members;

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(g) the particulars of the period during which the offer is effective;

(h) the particulars of the time and place at which copies of the registered prospectus and form of application for the shares or debentures to which it relates can be obtained.

(4) This section shall apply to any notice issued in Guyana by newspapers, or by radio or television broadcasting, or by cinematograph or any other means.

292. (1) Where a person issues a notice in contravention of section 291 and before doing so obtains a certificate that— Responsibility recertificate.

(a) is signed by two directors of the company or two directors of the proposed company to which, or to the shares or debentures of which, the notice relates;

(b) specifies the names of those directors and of that company or of those proposed directors of that proposed company; and

(c) is to the effect that, by the operation of section 291(2), this section shall not apply to the notice,

each person who signed the certificate shall be deemed to have issued the notice and the person who obtained the certificate shall be deemed not to have done so.

(2) A person who has obtained a certificate referred to in subsection (1) shall deliver the certificate to the Registrar on being required to do so by the Registrar.

293. In proceedings for a contravention of section 291 or 292, a certificate that purports to be a certificate under section 292 shall be *prima facie* proof— Evidence.

(a) that, at the time the certificate was given, the persons named as such in the certificate were directors of the company so named or proposed directors of the proposed company so named, as the case may be;

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- (b) that the signatures in the certificate purporting to be the signatures of those persons are their signatures; and
- (c) that publication of the notice to which the certificate relates was authorised by those persons.

Registration of Prospectus

Registration of
prospectus.

294. (1) No person shall issue a prospectus unless a copy thereof has first been registered by the Registrar and the prospectus states on its face the fact of the registration and the date on which it was effected.

(2) The Registrar may not register a copy of a prospectus unless—

(a) a copy of the prospectus is lodged with the Registrar on or before the date of its issue and it is signed by every director and by every person who is named in the prospectus as a proposed director of the company or by his agent authorised in writing;

(b) the prospectus appears to comply with the requirements of this Act;

(c) there are also lodged with the Registrar copies of any consents required by section 296 to the issue of the prospectus and of all material contracts referred to in the prospectus or, in the case of any such contract that is not reduced to writing, a memorandum giving full particulars of the contract; and

(d) the Registrar is of the opinion that the prospectus does not contain any statement or matter that is misleading in the form or context in which it is included.

(3) If the Registrar refuses to register a prospectus, he must give notice of that fact to the person who lodged the prospectus and give in the notice the reasons for his refusal, and if the Registrar registers a prospectus he must give notice of that fact to the person who lodged the prospectus and give in the notice the date on which the registration was effected.

(4) A person who lodged a prospectus with the Registrar may, within thirty days after he is notified of a refusal to register pursuant to subsection (3) require in writing that the Registrar refer the matter to the court, and the Registrar must then refer the matter to the court for its determination.

(5) Where a refusal to register is referred to the court under subsection (4), the court, after hearing the person who lodged the prospectus and, if the court so wishes, may order the Registrar to register the prospectus or it may uphold his decision to refuse registration.

(6) On a hearing under subsection (5), a party may be heard in person or by an attorney-at-law.

Other Requirements

295. (1) When a company allots or agrees to allot to any person shares or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, the document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses or otherwise relating to prospectuses, shall apply and have effect accordingly as if the shares or debentures had been offered to the public and as if the persons accepting the offer in respect of the shares or debentures were subscribers for them, but without affecting the liability, if any, of the person by whom the offer is made, in respect of statements or non-disclosures in the document or otherwise.

Prospectus
presumed.

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

(a) the offer for sale of the shares or debentures, or of any of them, to the public was made within six months after the allotment or agreement to allot; or

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(b) at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) The requirements of this Division as to prospectuses shall have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of a company.

(4) In addition to complying with the other requirements of this Division, the document making the offer must set out—

(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 shares or debentures have been or are to be allotted can be inspected.

(5) Where an offer to which this section relates is made by a company or firm, it shall be sufficient if the document making the offer is signed on behalf of the company or firm by two directors of the company or not less than half the members of the firm, as the case may be, and a director or member may sign by his agent authorised in writing to do so.

Expert's
consent.

296. (1) A prospectus that invites subscription for or the purchase of shares or debentures of a company and that includes a statement purporting to be made by an expert shall not be issued unless—

(a) that expert has given, and has not before delivery of a copy of the prospectus for registration withdrawn, his written consent to the inclusion of the statement in the form and context in which it is included in the prospectus; and

(b) there appears in the prospectus a statement that the expert has given and has not withdrawn his consent.

(2) A person shall not be deemed to have authorised or caused the issue of a prospectus by reason only of his having given the consent required by this Division to the inclusion in the prospectus of a statement purporting to be made by him as an expert.

Liability for Prospectus Claims

297. (1) Subject to this section, each of the following designated persons shall, for any loss or damage sustained by other persons who, on the faith of a prospectus, subscribe for or purchase any shares or debentures, be liable for any loss or damage sustained by those other persons by reason of any untrue statement in the prospectus, or by reason of the wilful non-disclosure in the prospectus of any matter of which the designated person had knowledge and that he knew to be material, namely—

Liability on
prospectus.

- (a) a person who is a director of the company at the time of the issue of the prospectus;
- (b) a person who authorised or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
- (c) an incorporator of the company; or
- (d) a person who authorised or caused the issue of the prospectus.

(2) Notwithstanding subsection (1), where the consent of an expert is required to the issue of a prospectus and he has given that consent, he shall not, by reason only of the consent, be liable as a person who has authorised or caused the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert, and the inclusion in the prospectus of a name of a person as a trustee for debenture-holders, auditor, banker, attorney-at-law, transfer agent or stockbroker or sharebroker may not, for that reason alone, be taken as an authorisation by him of the issue of the prospectus.

(3) No person shall be liable under subsection (1)—

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(a) who, having consented to become a director of the company, withdrew his consent before the issue of the prospectus and the prospectus was issued without his authority or consent;

(b) who, when the prospectus was issued without his knowledge or consent, gave reasonable public notice of that fact forthwith after he became aware of its issue;

(c) who, after the issue of the prospectus and before allotment or sale under it, became aware of an untrue statement in it and withdrew his consent and gave reasonable public notice of the withdrawal of his consent and the reasons for it; or

(d) who, as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, had reasonable ground to believe and did, up to the time of the allotment or sale of the shares or debentures, believe that the statement was true,

(4) No person shall be liable under subsection (1)—

(a) if, as regards every untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation and that person had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the expert making the statement was competent to make it and had given his consent as required under section 296 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration nor had the expert, to that person's knowledge, withdrawn that consent before allotment or sale under the prospectus, or

(b) if, as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of, or extract from, the document.

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(5) Subsections (3) and (4) shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 296, as a person who authorised or caused the issue of the prospectus in respect of an untrue statement purporting to have been made by him as an expert.

(6) A person who, apart from this subsection, would be liable under subsection (1), by reason of his having given a consent required of him by section 296 as a person who has authorised or caused the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert shall not be liable—

(a) if, having given his consent under that section to the issue of the prospectus, he withdrew his consent in writing before a copy of the prospectus was lodged with the Registrar;

(b) if, after a copy of the prospectus was lodged with the Registrar and before allotment or sale under the prospectus, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reasons for the withdrawal; or

(c) if he was competent to make the statement and had reasonable ground to believe and did, up to the time of the allotment or sale of the shares or debentures, believe that the statement was true.

(7) When—

(a) a prospectus contains the name of a person as a director of the company, or as having agreed to become a director, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus and has not authorised or consented to its issue; or

(b) the consent of a person is required under section 296 to the issue of a prospectus and he either has not given the consent or has withdrawn it before the issue of the prospectus,

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any person who authorised or caused the issue of the prospectus and the directors of the company, other than those directors without whose knowledge or consent the prospectus was issued, shall be liable to indemnify the person so named or whose consent was so required against all damages, costs and expenses to which he might be liable by reason of his name having been inserted in the prospectus, or of the inclusion therein of a statement purporting to be made by him as an expert, or in defending himself against any action or legal proceedings brought against him in respect thereof.

Subscription List and Minimum Subscription

Subscription lists.

298. (1) No allotment may be made of any shares or debentures of a company in pursuance of a prospectus and no proceedings may be taken on applications made in pursuance of a prospectus until the beginning of the fifth day after that on which the prospectus is first issued, or any such later time as is specified in the prospectus, and the beginning of that fifth day or specified later time is referred to in this section as the “time of the opening of the subscription lists”.

(2) An application for shares or debentures of a company made in pursuance of a prospectus shall not be revocable until after the expiration of the fifth day from the time of the opening of the subscription lists, or the giving before the expiration of that fifth day, by some person responsible under this Act for the prospectus, of a public notice having the effect of excluding or limiting the responsibility of the person giving it.

(3) Although an allotment made in contravention of this section shall be void, it shall not affect any allotment of the same shares or debentures later made to the same applicant.

(4) In reckoning for the purposes of this section the fifth day from another day, and intervening day that is a public holiday must be disregarded; and if the fifth day as so reckoned falls on a Saturday, Sunday or public holiday, the first day thereafter that is not a Saturday, Sunday or public holiday shall be deemed to be the fifth day for those purposes.

299. (1) Unless all the shares or debentures offered for subscription by a prospectus issued to the public are underwritten, the prospectus must state the minimum amount of money required to be raised by the company by issuing the shares or debentures, in this Division, referred to as the “minimum subscription”. Minimum subscription.

(2) No allotment may be made of any shares or debentures of a company that are offered to the public unless—

- (a) the minimum subscription has been subscribed; and
- (b) the sum payable on application for the shares or debentures has been received by the company,

and, if a cheque for the sum payable has been received by the company, the sum shall be deemed not to have been received by the company until the cheque is paid by the bank on which it is drawn.

(3) If the conditions referred to in subsection (2) have not been complied with on the expiration of forty days after the first issue of the prospectus, all moneys received from the applicant for any shares or debentures must be forthwith repaid to them without interest and, if any such moneys are not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall, subject to subsection (4), be jointly and severally liable to repay that money with interest at the rate of six per cent per annum from the expiration of the forty-eighth day.

(4) A director shall not be liable to repay moneys under subsection (3) if the default in any repayment of moneys was not due to any default or negligence on his part.

(5) A condition shall be void that purports to require or bind any applicant for shares or debentures to waive compliance with a requirement of this section.

(6) This section shall not apply to an allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

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Escrow of
subscription
money.

300. All application money and other moneys paid prior to an allotment by an applicant on account of shares or debentures offered to the public must, until the allotment of the shares or debentures, be held by the company or, in the case of an intended company, by the persons named in the prospectus as proposed directors and by the incorporators, upon trust for the applicant, but there shall be no obligation or duty on any bank or third person with whom any such moneys have been deposited to inquire into or see to the proper application of those moneys so long as the bank or person acts in good faith.

Remedial Actions

Rescission of
contract.

301. (1) A shareholder or a debenture holder may bring, against a company that has allotted shares or debentures under a prospectus, an action for the rescission of all allotments and the repayment to the shareholders or debenture-holders of the whole or part of the issue price that has been paid in respect of the shares or debentures if—

- (a) the prospectus contained a material statement, promise or forecast that was false, deceptive or misleading; or
- (b) the prospectus did not contain a material statement, report or account required under this Act to be contained in it.

(2) In this section—

- (a) “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;
- (b) “shareholder” means a holder of any of the shares allotted under the prospectus, whether the original allottee or a person deriving title under him.

(3) For the purposes of this section, a prospectus shall contain 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 omitted from a

prospectus if it is omitted entirely, or if it does not contain all the information required by this Act to be given in the statement, report or account.

(4) In an action brought under this section, the plaintiff need not 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 that 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.

(5) No action may be brought under this section more than two years after the first issue of the prospectus under which shares or debentures were allotted to the plaintiff or the person under whom the plaintiff derives title.

(6) 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 under whom he derives title or to other persons, shall be void, and judgment must be entered in favour of all such persons for the payment by the company to them severally of the amount paid in respect of the shares or debentures that they respectively hold, but if any shareholder or debenture-holder at the date judgment is so entered 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 that he holds, he shall be deemed not to be included among the persons in whose favour judgment is entered.

(7) The operation of this section shall not be affected by the company being liquidated or ceasing to pay its debts as they fall due, and in the liquidation of the company a repayment due under subsection (6) must 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, before repayment of the capital paid up on shares of the same class, and before any accumulated or unpaid dividends or any

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premiums in respect of those 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, before the repayment of the principal of the debentures of the same class, and before any unpaid interest or any premiums in respect of those debentures, but after the payment of all debts or liabilities of the company that this Act requires to be paid before those debentures, and after the satisfaction of all rights in respect of prior ranking class of debentures.

(8) Subject to subsection (9), it shall be a defence to an action under this section for the company to prove that—

(a) the plaintiff was the allottee of the shares or debentures in right 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 from the prospectus of the matter of which he complains; or

(b) the plaintiff has received a dividend or payment of interest or has voted at a meeting of shareholders or debenture-holders since he discovered that the statement, promise or forecast of which he complains was false, deceptive or misleading, or since he discovered the omission from the prospectus of the matter of which he complains.

(9) An action may not be dismissed if there are several plaintiffs, when the company proves that it has a defence under subsection (8) 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 the plaintiff.

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

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(11) Subsections (8) and (10) shall apply also in the case of shares and debentures of the same class as those in right of which a plaintiff obtains and enters judgment against the company under subsection (6)—

- (a) with the substitution in subsection (8) of references to the shareholder or debenture-holder for references to the plaintiff; and
- (b) with the substitution in subsections (8) and (10) 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.

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

(13) This section shall apply to shares or debentures issued under a prospectus that 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 by the company.

(14) The rights conferred on shareholders and debenture-holders by this section shall be in substitution for all rights to rescission and restitution in equity and all rights to sue the company at common law for deceit or for false statements made negligently, and those common law and equitable rights are hereby abolished in connection with prospectuses, but without prejudice to claims for damages or compensation against persons other than the company.

(15) An allotment made by a company to an applicant in contravention of the provisions of sections 299 and 303 shall be voidable at the instance of the applicant within one month after the date of the allotment.

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Time limit on allotment.

302. No allotment may be made, on the basis of a prospectus, of any shares or debentures of a company that are offered to the public later than three months after the issue of the prospectus.

Statement in Lieu of Prospectus

Restriction on allotment.

303. A public company that does not issue a prospectus on or with reference to its formation may not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been lodged with the Registrar for registration a statement in lieu of prospectus that complies with the requirements of this Division.

Statement in lieu of prospectus.

304. (1) To comply with the requirements of this Division a statement in lieu of prospectus lodged by or on behalf of a company—

(a) must be signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing;

(b) must disclose any commission payable by virtue of section 49; and

(c) must subject to the provisions contained in Part III of the Second Schedule, be in the form of and state the matters specified in Part I of that Schedule and set out the reports specified in Part II of that Schedule.

Second Schedule.

(2) The Registrar may not accept for registration any statement in lieu of prospectus unless it appears to the Registrar to comply with the requirements of this Act.

(3) Subsections (3) to (6) of section 294 shall apply in relation to the registration of or refusal to register a statement in lieu of prospectus as they apply in relation to the registration of or refusal to register a prospectus.

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DIVISION E

INSIDER TRADING

305. (1) In this Division—

Definitions.

“business combination” means an acquisition of all, or substantially all, of the property of one body corporate by another body corporate or an amalgamation of two or more bodies corporate.

“share” means a share in a company carrying voting rights in all circumstances or by reason of the occurrence of any event that has occurred and that is continuing, and includes—

- (i) a share currently convertible into a share carrying those rights; and
- (ii) a right to acquire a share carrying those rights or a share of a kind mentioned in paragraph (i).

(2) For the purposes of this Division, a body corporate shall be deemed to be controlled by a person if shares in the body corporate carrying voting rights sufficient to elect a majority of the directors of the body corporate are held, directly or indirectly, otherwise than by way of security only, by or on behalf of that person.

306. (1) In this section and section 307—

Interpretation
for the
purpose of
section 307.

“call” means an option, transferable by delivery, to demand delivery of a specified number or amount of shares at a fixed price within a specified time but shall not include an option or right to acquire shares of the company that granted the option or right to acquire;

“distributing company” means a company—

- (i) any of the shares in, or debentures of, which are or were offered to the public and remain outstanding; and
- (ii) which has more than one shareholder or debenture-holder;

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“insider” means—

- (i) an officer of a distributing company;
- (ii) a distributing company that purchases or otherwise acquires, except under section 40, shares issued by it or a company in the same group of companies as it; or
- (iii) a person who beneficially owns more than ten per cent of the shares in a distributing company, or who exercises control or direction over more than ten per cent of the votes, attached to shares in a distributing company, excluding shares owned by an underwriter under an underwriting agreement while those shares are in the course of being offered to the public;

“put” means an option, transferable by delivery, to deliver a specified number or amount of shares at a fixed price within a specified time.

(2) For the purposes of this section and section 307—

- (a) an officer of a body corporate that is an insider of a distributing company shall be deemed to be an insider of the distributing company;
- (b) an officer of a body corporate that is a subsidiary of a distributing company shall be deemed to be an insider of the distributing company;
- (c) a person shall be deemed to own beneficially shares beneficially owned by a body corporate controlled by him directly or indirectly;
- (d) a body corporate shall be deemed to own beneficially shares beneficially owned by a company in the same group of companies as the body corporate; and
- (e) the acquisition by an insider of an option or a right to acquire a share shall be deemed to be a change in the beneficial ownership of the share to which the option or right to acquire relates.

(3) For the purposes of this section and section 307—

(a) if a body corporate becomes an insider of a distributing company, or enters into a business combination with a distributing company, an officer of the body corporate shall be deemed to have been an insider of the distributing company for the previous six months or for such shorter period as he was an officer of the body corporate; and

(b) if a distributing company becomes the insider of a body corporate or enters into a business combination with a body corporate an officer of the body corporate shall be deemed to have been an insider of the distributing company for the previous six months or for such shorter period as he was an officer of the body corporate.

307. (1) An insider shall not knowingly sell, directly or indirectly, a share in a distributing company or in any company in the same group of companies as a distributing company if the insider selling the share does not own, or has not fully paid for, the share to be sold.

Prohibition of short sale, etc.

(2) An insider shall not, directly or indirectly, buy a call or put in respect of a share in a distributing company or in any company in the same group of companies as a distributing company.

(3) Notwithstanding subsection (1), an insider may sell a share he does not own if he owns another share convertible into the share sold or an option or right to acquire the share sold and, within ten days after the sale, he—

- (a) exercises the conversion privilege, option or right and delivers the share so acquired to the purchaser; or
- (b) transfers the convertible share, option or right to the purchaser.

308. (1) In this section and section 309, “insider” means—

- (a) an officer of a company;
- (b) a company that purchases or otherwise acquires shares issued by it or by any company in the same group of companies as it;

Interpretation for the purpose of section 309.

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(c) a person who beneficially owns more than ten per cent of the shares in a company or who exercises control or direction over more than ten per cent of the votes attached to the shares in a company;

(d) a person employed or retained by a company, including professional, technical or commercial advisers;

(e) an associate of, or a company in the same group of companies as, a person mentioned in paragraphs (a) to (d); and

(f) a person who receives specific confidential information from a person described in this subsection, including a person described in this paragraph, and who has knowledge that the person giving the information is a person described in this subsection, including a person described in this paragraph.

(2) For the purposes of this section and section 309—

(a) an officer of a body corporate that is an insider of a company shall be deemed to be an insider of the company;

(b) an officer of a body corporate that is a subsidiary shall be deemed to be an insider of its holding company;

(c) a person shall be deemed to own beneficially shares beneficially owned by a body corporate controlled by him directly or indirectly; and

(d) a body corporate shall be deemed to own beneficially shares beneficially owned by a company in the same group of companies as the body corporate.

(3) For the purposes of this section and section 309—

(a) if a body corporate becomes an insider of a company, or enters into a business combination with a company, an officer of the body corporate shall be deemed to have been an insider of the company for the previous six months or for such shorter period as he was an officer of the body corporate; and

(b) if a company becomes an insider of a body corporate, or enters into a business combination with a body corporate, an officer of the body corporate shall be deemed to have been an insider of the company for the previous six months or for

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such shorter period as he was an officer of the body corporate.

309. (1) An insider who, in connection with a transaction in a share in, or debenture of, a company or any company in the same group of companies as the company, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of the share or debenture—

Liability of
insider.

(a) shall be liable to compensate any person for any direct loss suffered by that person as a result of the transaction unless the information was known or in the exercise of reasonable diligence could have been known to that person at the time of the transaction; and

(b) shall be accountable to the company for any direct benefit or advantage received or receivable by the insider as a result of the transaction.

(2) An action to enforce a right created by subsection (1) may be commenced only within two years after the date of completion of the transaction that gave rise to the cause of action.

PART IV

OTHER REGISTERED COMPANIES

DIVISION A

EXTERNAL COMPANIES

310. (1) In this Division—

Definitions.

“external company” means any incorporated or unincorporated body formed under the laws of a country other than Guyana;

“undertaking” means, in relation to an external company, any business or undertaking carried on by the external company.

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(2) An external company shall be carrying on an undertaking in Guyana if—

(a) business of the company is regularly transacted from an office in Guyana established or used for the purpose;

(b) the company establishes or uses a share transfer or share registration office in Guyana;

(c) the company enters into two or more contracts with persons resident in Guyana, or with companies incorporated under this Act, being contracts which—

(i) are entered into in connection with the business of the company; and

(ii) by their express or implied terms are to be wholly or substantially performed in Guyana, or may be so performed at the option of any party to the contract;

(d) the company appoints an agent who resides or has a place of business in Guyana to represent the company in connection with the making or performance of two or more contracts of a kind referred to in paragraph (c), or in connection with the transactions in Guyana of the company generally, whether the appointment is made for a fixed period of time or not; or

(e) the company owns, possesses or uses assets situated in Guyana for the purpose of carrying on or pursuing its business if it obtains or seeks to obtain from those assets, directly or indirectly, profit or gain, whether realised in Guyana or not.

(3) For the purposes of subsection (2), where an external company is listed with a telephone number in Guyana under the name of the external company in a telephone directory published for use in Guyana, the external company shall be presumed, in the absence of evidence to the contrary, to be carrying on an undertaking in Guyana.

Exceptions.

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311. This Division shall not apply to an external company that carries on its undertaking on a co-operative basis within the meaning of the Co-operative Societies Act or that is exempted from this Division by an order published in the *Gazette*, which may be made by the Minister.

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312. (1) No external company shall begin or carry on any undertaking in Guyana until it is registered under this Act. Prohibition.

(2) Every external company that was carrying on an undertaking in Guyana immediately before the commencement of this Act must, within twelve months after the commencement of this Act, apply to the Registrar for registration under this Act.

(3) An external company whose name appears on the register maintained by the Registrar pursuant to section 470 shall be presumed to be registered under this Act, and an external company whose name does not appear on that register shall be presumed not to be registered under this Act.

(4) Until the expiration of twelve months from the commencement of this Act, subsection (1) shall not apply to an external company that was carrying on an undertaking in Guyana on the commencement of this Act.

313. (1) Subject to subsection (2) and to sections 491 and 492, an external company, upon payment of the prescribed fee, shall be entitled to be registered under this Act for any lawful undertaking. Registration required.

(2) An application for registration under this Act by an external company may be referred by the Registrar to the Minister, who may order the Registrar to refuse registration.

314. (1) In the prescribed circumstances, the Registrar may restrict the powers or activities that an external company can exercise or carry on in Guyana. Restrictions on activities.

(2) When any powers or activities of an external company are restricted under subsection (1), the company shall not exercise those powers or carry on those activities in Guyana.

(3) Where any powers or activities of an external company are to be restricted pursuant to subsection (1)—

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(a) the Registrar must notify the company of what he intends to do;

(b) the company may appeal to the Minister within twenty-eight days from the date on which the notification from the Registrar was received by the company; and

(c) the Minister may confirm, vary or overrule the decision of the Registrar.

External
amalgamated
company.

315. An external company that has been continued from the amalgamation of two or more external companies must comply with section 318 as though it were a new registration of an external company, irrespective of the fact that one or more of the external companies that were continued by the amalgamated company had been registered under this Act at the date of the amalgamation or thereafter.

Registering
external
companies.

316. (1) In order to register under this Act, an external company shall within one month after it commences to carry on business in Guyana, file with the Registrar a statement in duplicate in the prescribed form setting out—

(a) the name of the company;

(b) the jurisdiction within which the company was incorporated;

(c) the date of its incorporation;

(d) the manner in which it was incorporated;

(e) the particulars of its corporate instruments;

(f) the period, if any, fixed by its corporate instruments for the duration of the company;

(g) the extent, if any, to which the liability of the shareholders or members of the company is limited;

(h) the undertaking that the company will carry on in Guyana;

(i) the date on which the company intends to commence any of its undertakings in Guyana;

(j) the authorised, subscribed and paid-up or stated capital of the company and the shares that the company is authorised to issue and their nominal or par value, if any;

(k) the full address of the registered or head office of the company outside Guyana;

(l) the full address of the principal office of the company in Guyana; and

(m) the full names, addresses and occupations of the directors of the company.

(2) The statement under subsection (1) must be accompanied with—

- (a) a statutory declaration by two directors of the company that verifies on behalf of the company the particulars set out in the statement;
- (b) a copy of the corporate instruments of the company;
- (c) a statutory declaration by an attorney-at-law that this section has been complied with;
- (d) the prescribed fees; and
- (e) a power of attorney in accordance with section 318.

(3) The Registrar may accept the declaration referred to in subsection (2) (c) as sufficient evidence of compliance with the requirements of this section.

317. When a document that is required to be filed under section 316 is not in the English language, a notarially certified translation of that document must be provided unless the Registrar otherwise directs. Language.

318. (1) An external company must file with the Registrar a fully executed power of attorney in the prescribed form that will empower some person named in the power and resident in Guyana to act as the attorney of the company for the purpose of receiving service of process in all suits and proceedings by or against the company in Guyana and of receiving all lawful notices. Attorney of company.

(2) A power of attorney under subsection (1) must declare that service of process in respect of suits and proceedings by or against the company and of lawful notices on the attorney will be binding on the company for all purposes.

(3) An external company may, by another power of attorney executed and deposited in accordance with this section—

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- (a) appoint another attorney in Guyana for the purposes set forth in the power; and
- (b) replace the attorney previously appointed pursuant to this section.

Failure of power.

319. If an attorney named in a power of attorney executed by an external company under section 318 ceases to reside in Guyana or if the power of attorney becomes invalid or ineffectual for any other reason, the company must file another power of attorney pursuant to section 318.

Capacity of attorney.

320. (1) Service of process and notices on an attorney for an external company appointed under a power of attorney registered under section 318 shall be legal and binding service on the company.

(2) Any process or notice required to be served on an external company shall be sufficiently served if addressed to the attorney whose name has been filed with the Registrar under this Division and left at or sent by post to the address which has been so filed, but where any such company makes default in filing with the Registrar the name and address of the attorney resident in Guyana who is authorised to accept on behalf of the company service or process or notices, a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Guyana.

(3) Where—

- (a) subsection (2) applies; and
- (b) the company concerned has no place of business in Guyana,

any process or notice required to be served on the company shall be sufficiently served if addressed to the company and left at or sent by post to any place of business of the company in the country of its incorporation.

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(4) When an attorney for an external company appointed under a power registered under section 318 signs a deed on behalf of the company, the deed shall be binding on the company in Guyana if the company has empowered the attorney to execute deeds and he executes it with the attorney's own seal.

(5) A deed that is binding under subsection (4) on an external company shall have the same effect as if it were under the seal of the external company.

321. (1) When the Registrar has, in respect of an external company, received the statements and other documents required under this Act together with the prescribed fees, the Registrar must—

Certificate of registration.

- (a) issue a certificate showing that the company has been registered as an external company under this Act; and
- (b) publish in the Gazette a notice of the registration of the company as an external company,

but subject to his discretionary powers under this Division.

(2) A certificate of registration issued under this section to an external company shall be conclusive proof of the registration of the company on the date shown in the certificate and of any other facts that the certificate purports to certify.

322. Subject to this Division and any other laws of Guyana, an external company that is registered under this Act may carry on its undertaking in Guyana in accordance with its certificate of registration and may exercise its corporate powers within Guyana.

Effect of registration.

323. (1) Subject to such regulations as the Minister may make in that behalf, the Minister may suspend or revoke the registration of any external company for failing to comply with any requirements of this Division or for any other prescribed cause, and the Minister may, subject to those regulations, remove a suspension or cancel a revocation.

Suspension of registration.

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(2) The rights of the creditors of an external company shall not be affected by the suspension or revocation of its registration under this Act.

(3) The Registrar must publish forthwith in the *Gazette* a notice of any suspension or revocation of the registration of an external company under this Act.

Cancellation of registration.

324. (1) When an external company ceases to carry on its undertaking in Guyana, the company shall, within twenty-eight days file a notice to that effect with the Registrar, who must thereupon cancel the registration of the company under this Act.

(2) If an external company ceases to exist and the Registrar is made aware of that circumstance by evidence satisfactory to him, the Registrar may cancel the registration of the company under this Act.

(3) If the Minister is of the opinion that the public convenience will be served thereby, the Minister may, by publishing in the *Gazette* a notice to that effect, cancel the registration of an external company under this Act.

Revival of registration.

325. (1) Subject to subsection (4), where the registration of an external company has been cancelled under section 324, the Registrar may revive the registration of the external company under this Act if the company files with him such documents as he may require and pays the prescribed fee.

(2) A registration of an external company shall be revived when the Registrar issues a new certificate of registration to the company.

(3) The Registrar may require the external company to whom he has issued a new certificate under this section to publish in the *Gazette* at its own expense a notice of the revival of its registration.

(4) The Registrar may not revive the registration of a company the registration of which was cancelled by the Minister pursuant to section 324(3).

326. Registration or revival of registration under this Act of an external company shall retroactively authorise all previous acts of the company as though the company had been registered at the time of those acts, except for the purposes of a prosecution for any offence under this Division.

Previous activities.

327. (1) An external company carrying on any undertaking in Guyana shall paint or affix its name and place of business in the English language in a conspicuous place in easily legible letters, and keep that information so painted and affixed, on the outside of its head office in Guyana and every other office or place in Guyana in which it carries on its undertaking in Guyana.

Name display.

(2) An external company carrying on any undertaking in Guyana shall, in the transaction of its undertaking within Guyana have its name mentioned in legible characters in—

- (a) all notices, advertisements and other official publications of the company;
- (b) all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company; and
- (c) all bills of parcels, invoices, receipts and letters of credit of the company.

328. (1) Where, in the case of an external company registered under this Act—

Fundamental changes.

- (a) the name of the company has been changed;
- (b) the corporate instruments of the company have been altered to reflect a change within the meaning of the Fourth Schedule;
- (c) the objects of the company have been altered or its business has been restricted; or
- (d) any change is made among its directors,

Fourth Schedule.

the company shall, within twenty-eight days after the change has been made, file with the Registrar duly certified copies of the instruments by which the change has been made or ordered to be made.

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(2) Upon receipt of the duly certified copies referred to in subsection (1) and the prescribed fee, the Registrar must enter the change of name in the register and, with the approval of the Minister, enter a record of such other changes in the register as he considers to be in the public interest.

(3) The registration of an external company under this Act shall cease to be valid sixty days after a change described in subsection (1) is made or ordered unless within that period the change is filed with the Registrar pursuant to subsection (1).

(4) Upon the registration under this section of a change in respect of an external company, the Registrar must—

- (a) issue to the company a certificate of the change under his hand in a form adapted to the circumstances; and
- (b) if the change involves a change of name, publish notice of the change in the *Gazette* as soon as conveniently possible.

(5) A certificate issued under subsection (4) and a notice published in the *Gazette* under that subsection shall be admissible in evidence as conclusive proof of the change therein set out.

Accounts of
company
carrying on
business in
Guyana.

329. (1) Subject to this section, every external company shall in every calendar year 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 Act it would, if it had been a public company incorporated under this Act, have been required to make out and lay before the company in general meeting and lodge a copy of those documents with the Registrar for registration.

Sixth Schedule. (2) The annual accounts of an external company shall, in addition to the matters specified in the Sixth Schedule, contain the following particulars, 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 any such assets

situate in Guyana shall be distinguished from any such assets situate elsewhere;

(b) the amount of the company's cash held by banks, and any amount held by banks licensed to carry on business of banking under any law in force in Guyana relating to banking shall be distinguished from cash held by other banks;

(c) the amount of bank loans and overdrafts made or extended to the company, and any such amount so made or extended, by banks so licensed 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 in Guyana or to companies incorporated under this Act shall be shown, and there shall also be shown the amount of such debts and liabilities which—

(i) are already due or will 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 months 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 mortgage, charge, or lien on movable or immovable property situate in Guyana.

(3) For the purposes of subsection (2)—

(a) a debt shall be deemed to be due on the earliest date on which the creditor could require payment 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 external company shall be deemed to be indebted to debenture stockholders and loan stockholders for the principal amount and any arrears or interest in respect of the debenture stock or loan stock held by them.

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(4) The Minister may by order exempt any external company from compliance with subsection (1) or (2), or from both those subsections, on such terms and conditions as he thinks fit if—

(a) he is satisfied that the company has, and will maintain, in Guyana sufficient cash and readily realisable assets to satisfy its debts as they fall due; or

(b) a company (whether an external company or not) which is the holding company of the external 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 companies incorporated in Guyana.

(5) A written undertaking in respect of the debts and liabilities of an external company delivered under subsection (4) shall be enforceable—

(a) by any creditor of the external company who was resident in Guyana at the time that the debt or liability to him was incurred, or which is a company incorporated in Guyana, as though the undertaking were a written guarantee of the amount payable to the creditor and given to him by the holding company for valuable consideration; and

(b) in the winding up of the external company as though the company were an unlimited company and the holding company were its only member, but without prejudice to the liability (if any) of the other members, shareholders, or contributories of the external company under this Act.

(6) The Minister may at any time revoke an exemption granted by him 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 external company incurred to persons acting in good faith without notice of the revocation before it is advertised under subsection (7).

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(7) The Minister shall advertise the revocation of an exemption granted under this section in the *Gazette* and in at least one daily newspaper circulating in Guyana as soon as conveniently possible after the revocation takes place.

(8) Upon the advertisement of revocation under subsection (7), subsections (1) and (2) shall apply to the external company as though it were thereby required to deliver copies of its annual accounts to the Registrar as from the date of the advertisement of the revocation, and it shall deliver copies of its annual accounts for its financial year ending last before that date within three months after that date.

(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.

330. (1) An external company that is not registered under this Act may not maintain any action, suit or other proceeding in any court in Guyana in respect of any contract made in whole or in part within Guyana in the course of or in connection with the carrying on of any undertaking by the company in Guyana.

Incapacity of
company.

(2) Notwithstanding subsection (1), when an external company described in that subsection becomes registered under this Act or has its registration restored, as the case may be, the company may then maintain an action, suit or other proceeding in respect of the contract described in subsection (1) as though the company had never been disabled under that subsection, whether or not the contract was made or proceeding instituted by the company before the date the company was registered or had its registration restored.

(3) In the case of an external company whose registration has been restored, subsection (2) shall be subject to the terms of any conditions imposed upon the company or to the terms of any order of the court in respect of the restoration of the company's registration.

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(4) Where an assignment of a debt or any chose in action is made by an external company described in subsection (1) to an individual or to a body corporate having the capacity to maintain any action, suit or other proceeding in a court in Guyana—

- (a) that individual or body corporate; or
- (b) any person claiming under the individual or body corporate,

may not maintain, in any court in Guyana, any action, suit or other proceeding that is based on the subject of the assignment unless the external company is registered under this Act during the time the action, suit or other proceeding is being proceeded with.

(5) Subsection (4) shall not apply in respect of an external company that is a judgment creditor applying to have a judgment registered in the High Court under the Foreign Judgments (Reciprocal Enforcement) Act or the Judgments Extension Ordinance.

c. 7:04
Cap. 27 1953
Ed.

Resumption of action.

331. Where an action, suit or proceeding has been dismissed or otherwise decided against an external company on the ground that an act or transaction of the company was invalid or prohibited by reason of the company's not being registered under this Act, the company may, when it becomes registered under this Act and upon such terms as to costs as the court may order, maintain a new action, suit or other proceeding as if no judgment had been given or entered therein.

Other provisions.
First Schedule.

332. (1) The provisions of sections 17 to 22, the provisions of Divisions B to E of Part III, sections 491 and 492, Division B of Part VI, and the First Schedule shall apply *mutatis mutandis* to external companies.

(2) For the purposes of its application pursuant to subsection (1) to an external company, incorporated or formed or to be incorporated or formed—

- (a) section 288 shall have effect as if it included a requirement, in relation to a prospectus, that it contains particulars with respect to—

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- (i) the instrument constituting or defining the constitution of the company;
- (ii) the enactments or provisions having the force of an enactment by or under which the incorporation or formation was or is to be effected;
- (iii) an address in Guyana where such instruments, enactments or provisions or certified copies thereof may be inspected;
- (iv) the date on which and the place where the company was or is to be incorporated or formed; and
- (v) whether the company has established a place of business in Guyana and, if so, the address of its principal office in Guyana;

(b) paragraph 2 of Part I of the First Schedule shall, for the purposes of section 288, have effect as if a reference to the constitution of the company were substituted for a reference to the by-laws;

(c) section 294(2) shall have effect as if, immediately after the word “Act” in paragraph (b), the following occurred—

First Schedule.

“or the Registrar is satisfied, if the company is an external company incorporated or formed in a country which is a Member State of the Caribbean Community that—

- (i) the prospectus has been registered or is acceptable for registration by the person who exercises under a law in force in that country that corresponds to this section, functions similar to those exercised by the Registrar under this section; and
 - (ii) the prospectus complies with the requirements referred to in subsection (2)(a); and
- (d) section 294(2) shall have effect as if, immediately after the word “included” in paragraph (d), the following occurred—

“(except where, in the case of a prospectus of a company which is an external company incorporated or formed or to be incorporated or formed in a country which is a Member

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State of the Caribbean Community, the prospectus has been registered or is acceptable for registration by the person in that country who performs, under a law in force in that country that corresponds to this section, functions similar to those exercised by the Registrar under this section).”

Holding of
land by
external
company.

333. An external company registered under this Division shall have the power to hold land in Guyana as may be authorised by licence of the President.

DIVISION B

FORMER-ACT COMPANIES

Former-Act
company.

334. (1) Upon the commencement of this Act—

- (a) all corporate instruments of a former-Act company; and
- (b) all cancellations, suspensions, proceedings, acts, registrations and things,

lawfully done under any provision of the former Act shall be presumed to have been lawfully done under this Act and continue in effect under this Act as though they had been lawfully done under this Act.

(2) For the purposes of this section “lawfully done” means to have been lawfully granted, issued, imposed, taken, done, commenced, filed, or passed as the circumstances require.

Effect of
corporate
instrument.

335. (1) Notwithstanding any other provision of this Act but subject to subsection (3), if any provision of a corporate instrument of a former-Act company lawfully in force immediately before the commencement of this Act is inconsistent with, repugnant to, or not in compliance with this Act, that provision shall not be illegal or invalid only by reason of that inconsistency, repugnancy or non-compliance.

(2) Any act, matter or proceeding or thing done or taken by the former-Act company or any director, shareholder, member or officer of the company under a provision mentioned in subsection (1) shall not be

illegal or invalid by reason only of the inconsistency, repugnancy or non-compliance mentioned in that subsection or by reason of being prohibited or not authorised by the law as it is after the commencement of this Act.

(3) Section 96 shall apply to a former-Act company immediately upon the commencement of this Act.

336. (1) Every former-Act company shall within two years after the commencement of this Act—

Continuation
as company.
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- (a) apply to the Registrar for a certificate of continuance under this Act; and
- (b) comply with the requirement of section 9.

(2) No fee in excess of one thousand five hundred dollars to defray administration costs may be prescribed in respect of an application and certificate of continuance under this Division.

337. Within the period referred to in section 336 any amendments to or replacement of the corporate instruments of a former-Act company shall be made as nearly as possible in accordance with this Act.

Amending
instrument.

338. (1) Articles of continuation may, without so stating in the articles, effect any amendment to the corporate instruments of a former-Act company if the amendment is an amendment that a company incorporated under this Act can make in its articles.

Articles of
continuation.

(2) Articles of continuation in the prescribed form must be sent to the Registrar together with the documents required by sections 67 and 188.

(3) A shareholder or member may not dissent under paragraph 14 of Part IV of the Fourth Schedule in respect of an amendment made under subsection (1).

Fourth
Schedule.

339. (1) Upon receipt of an application under this Part, the Registrar may, and, if the applicant complies with all reasonable requirements of the Registrar to have the continued company accord with the

Certificate of
continuation.

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requirements of this Act, the Registrar must, issue a certificate of continuation to the former-Act company, in accordance with section 479.

(2) On the date shown in the certificate of continuation—

- (a) the former-Act company shall become a company to which this Act applies as if it had been incorporated under this Act;
- (b) The articles of continuation shall be the. articles of incorporation of the continued company; and
- (c) except for the purposes of section 63(1), the certificate of continuance shall be the certificate of incorporation of the continued company.

Preservation of
company.

340. (1) When a former-Act company is continued as a company under this Act—

- (a) the property of the former-Act company shall continue to be the property of the company;
- (b) the company shall continue to be liable for the obligations of the former-Act company;
- (c) an existing cause of action, claim or liability to prosecute shall be unaffected;
- (d) a civil, criminal or administrative action or proceeding pending by or against the former-Act company may be continued by or against the company; and
- (e) a conviction against, or ruling, order or judgment in favour of or against, the former-Act company may be enforced by or against the company.

(2) When the Registrar determines, on the application of a former-Act company, that it is not practicable to change a reference to the nominal or par value of shares of a class or series that the former-Act company was authorised to issue before it was continued as a company under this Act, the Registrar may, notwithstanding section 27, permit the company to continue to refer in its articles to those shares, whether issued or non-issued as shares having a nominal or par value.

(3) A company must set out in its articles the maximum number of shares of a class or series referred to in subsection (2), and it may not amend its articles to increase that maximum number of shares or to change the nominal or par value of the shares.

341. (1) A share of a former-Act company issued before the company was continued under this Act shall be presumed to have been issued in compliance with this Act and with the provisions of the articles of continuation irrespective of whether the share is fully paid and irrespective of any designation, rights, privileges, restrictions or conditions attached to the share, or set out on, or referred to in, the certificate representing the share, and continuance under this Act shall not deprive a shareholder of any right or privilege that he claims under an issued share of the company, nor shall it relieve him of any liability in respect of an issued share of the company.

Various shares.

(2) For the purposes of this section, “share” includes an instrument issued pursuant to section 34(1).

342. When a former-Act company fails to apply to the Registrar for a certificate of continuation within the time limited therefor under section 336, then, after the expiration of that period—

Non-continuance disability.
[6 of 1997]

- (a) the former-Act company may not, without leave, sue in any court but may be made a defendant to a suit;
- (b) no dividend shall be paid to any shareholder of the former-Act company; and
- (c) every director or manager of the former-Act company shall be liable to a penalty of six hundred dollars a day for each day during which the former-Act company carries on its undertaking thereafter.

343. (1) A reference in any corporate instrument of any body corporate to the former Act or any procedure under the former Act shall, in relation to any former-Act company continued under this Act, be construed as a reference to the provisions of this Act or procedure thereunder that is the equivalent provision or procedure under this Act.

Effect of earlier references.

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c. 2:01

(2) Without affecting the operation of the Interpretation and General Clauses Act when there is no equivalent provision in this Act to the provision or procedure in or under the former Act referred to in the corporate instrument of a body corporate, the provision or proceeding of the former Act shall be applied and shall stand unrepealed to the extent necessary to give effect to that reference in the corporate instrument.

DIVISION C

APPLICATION OF ACT TO GOVERNMENT COMPANIES

Definition of
“Government
company”.

344. For the purposes of this Act “Government company” means any company in which not less than fifty-one per cent of the paid up share capital is held by the Government and includes a company which is a subsidiary of a Government company.

Accounts and
audit.
c. 19:05

345. The provisions of sections 48 and 49 of Part VII of the Public Corporations Act relating to accounts and audit shall apply *mutatis mutandis* to Government companies.

Annual report
on Govern-
ment com-
pany.

346. (1) A Government company shall not later than six months after the end of each calendar year submit to the Minister a report containing—

- (a) an account of its transactions throughout the preceding calendar year in such detail as the Minister may direct;
- (b) a statement of the accounts of the company audited in accordance with section 345.

(2) A copy of the report together with a copy of the auditor’s report shall be printed and laid before the National Assembly not later than nine months after each calendar year.

Power to
modify Act in
relation to
Government
companies.

347. Subject to negative resolution of the National Assembly, the Minister may, by order, direct that any of the provisions of this Act, other than sections 345 and 346, specified in the order—

- (a) shall not apply to any Government company; or

(b) shall apply to any Government company only with such modifications, adaptations, qualifications and exceptions as may be specified in the order.

PART V

WINDING UP

DIVISION A

PRELIMINARY

348. (1) The winding up of a company may be either—

Modes of winding up.

- (a) by the court; or
- (b) voluntary.

(2) The provisions of this Act with respect to winding up shall apply, unless the contrary appears, to the winding up of a company in either of those modes.

349. (1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and expenses of the winding up and for the adjustment of the rights of the members and past members among themselves.

Liability as contributors of present and past members.

(2) Subsection (1) shall be subject to the following limitations, namely—

- (a) a past member shall not be liable to contribute if he has ceased to be a member for a period of one year or upwards before the commencement of the winding up;
- (b) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this section;
- (c) no contribution shall be required from any member or past member exceeding the amount, if any, unpaid on the

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shares in respect of which he is liable as a present or past member; and

(d) any sum due from the company to a member or past member, in his character of member, by way of dividend or otherwise, shall not be set-off against the amounts for which he is liable to contribute in accordance with this section, but any such sum shall be taken into account for the purposes of final adjustment of the rights of the members and past members amongst themselves.

(3) For the purposes of subsections (1) and (2), “past members” includes the estate of a deceased member and, where any person dies after becoming liable as a member or past member, the liability shall be enforceable against his estate.

(4) Except as provided in subsections (1) to (3), a member or past member of a company shall not be liable as such for any of the debts or liabilities of the company.

(5) In the event of a company being wound up, any instalment of the issue price of a share remaining to be paid shall, with effect from the commencement of the winding up, be treated as an amount unpaid on the share whether or not the due date for the payment of the instalment has occurred.

(6) Nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract.

Definition of contributory.

350. The term “contributory” means every person liable to contribute to the assets of a company in the event of it 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.

351. The liability of a contributory shall create a debt in the nature of a specialty accruing due from the contributory at the time when his liability commenced, but shall be payable at the times when calls are made for enforcing the liability.

Nature of liability of contributory.

352. (1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representative 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 a contributory accordingly.

Contributories in case of death of member.

(2) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment thereout of the money due.

353. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories—

Contributories in case of bankruptcy of member.

(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 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.

DIVISION B WINDING

UP BY THE COURT

Preliminary

354. A company may be wound up by the court if—

Circumstances in which company may be wound up by court.

(a) the company has by special resolution resolved that the company be wound up by the court;

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- (b) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- (c) the company is unable to pay its debts;
- (d) an inspector appointed under Division B of Part VI has reported that he is of the opinion—
 - (i) that the company cannot pay its debts and should be wound up; or
 - (ii) that it is in the interests of the public or of the shareholders or of the creditors that the company should be wound up; or
- (e) the court is of the opinion that it is just and equitable that the company should be wound up.

Definition of
inability to
pay debts.

355. A company shall be deemed to be unable to pay its debts if—

- (a) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred dollars then due, has served on the company, by leaving it at the registered office of the company, a demand under his hand or under the hand of his agent lawfully authorised 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;
- (b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) it is proved to the satisfaction of the court that the company is unable to pay its debts and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

Petition for
winding up.

356. (1) An application to the court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by—

- (a) the company;
- (b) a creditor, including a contingent or prospective creditor, of the company;
- (c) a contributory;
- (d) the trustee in bankruptcy to, or personal representative of, a creditor or contributory; or
- (e) the Minister pursuant to section 505, or any two or more of those parties.

(2) Notwithstanding anything in subsection (1)—

- (a) a contributory shall not be entitled to present a winding up petition unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and
- (b) the court shall not hear a winding up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the court.

(3) 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.

(4) A contributory shall be entitled to present a winding up petition notwithstanding that there may not be assets available on the winding up for distribution to contributories.

357. (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

Powers of
court on
hearing
petition.

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to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court if it is of the opinion—

(a) that the petitioners are 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 that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

Power to stay
or restrain
proceedings
against
company.

358. At any time after the presentation of a winding up petition, and before a winding up order has been made, the company, or any creditor or contributory, may, where any action or proceeding is pending against the company, apply to the court to stay or restrain further proceedings, and the court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

Avoidance of
dispositions of
property, etc.,
after com-
mencement of
winding up.

359. In a winding up by the court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

Avoidance of
attachment,
etc.

360. Where any company is being wound up by the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void.

Commence-
ment of
winding up by
the court.

361. (1) Where before the presentation of a petition for the winding up of a company by the court a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and

unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

362. On the making of a winding up order, a copy of the order shall forthwith be lodged by the company, or otherwise as may be prescribed, with the Registrar, who shall make an entry thereof in his records relating to the company.

Copy of order
to be for-
warded to
Registrar.

363. 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.

Actions
stayedor
winding-up
order.

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

Effect of
winding-up
order.

Official Receiver

365. For the purposes of this Act, “Official Receiver” means the Official Receiver referred to in the Insolvency Act.

Meaning of
Official
Receiver.
c. 12.21

366. (1) Where the court has made a winding up order or appointed a provisional liquidator, there shall, unless the court otherwise orders, be made out and submitted to the Official Receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names, residences, and occupation of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the Official Receiver may require.

Statement of
company’s
affairs.

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(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is, or the persons who are, at the date the secretary or joint secretaries 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 officers, other than employees, 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 that year, and are in the opinion of the Official Receiver capable of giving the information required; and
- (d) who are or have been within that year officers of or in the employment of a company, which is, or within that year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the relevant date, or within such extended time as the Official Receiver or the court may for special reasons allow.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the Official Receiver or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Official Receiver considers reasonable, subject to an appeal to the court.

(5) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(6) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall, on the application of the liquidator or of the Official Receiver, be punishable accordingly.

(7) In this section, “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.

367. (1) In a case where a winding up order is made the Official Receiver shall, as soon as practicable after receipt of the statement to be submitted under section 366 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—

Report by
Official
Receiver.

- (a) as to the amount of capital issued, and subscribed, and the estimated amount of assets and liabilities;
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company, or the conduct of the business thereof.

(2) The Official Receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

Liquidators

368. For the purposes of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose the court may appoint a liquidator or liquidators.

Power of court
to appoint
liquidators.

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Appointment
and powers of
provisional
liquidator.

369. (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 previously appointed by the court, the court may limit and restrict his powers by the order appointing him.

Appointment,
style, etc., of
liquidators.

370. Subject to section 369 (2), the following provisions with respect to liquidators shall have effect on a winding up order made, namely—

(a) the Official Receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;

(b) the Official Receiver shall summon separate meetings of the creditors and contributories of the company for the purposes of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the Official Receiver;

(c) the court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any such matter, 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; and

(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.

371. Where in the winding up of a company by the court a person other than the Official Receiver is appointed liquidator, that person—

- (a) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in such manner as the court may direct; and
- (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 Act.

Provisions where person other than Official Receiver is appointed liquidator.

372. (1) A liquidator appointed by the court may resign or, on cause shown be removed by the court.

General provisions as to liquidators.

(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 there are other such appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) Subject to this Act, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

373. Where a winding up order has been made or a provisional liquidator has been appointed, the liquidator, or the provisional liquidator, as the case may be, shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.

Custody of company's property.

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Vesting of
property of
company in
liquidator.

374. Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its assets.

Powers of
liquidator.

375. (1) The liquidator in a winding up by the court may with the sanction either of the court or of the committee of inspection—

- (a) bring or defend any action or other legal proceeding in the name and on behalf of the company;
- (b) carry on the business of the company, so far as may be necessary, for the beneficial winding up thereof;
- (c) appoint an attorney-at-law or other agent to assist him in the performance of his duties;
- (d) pay any classes of 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) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
- (f) compromise any calls and liabilities to calls, debts, and liabilities capable or 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 are 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 may—

- (a) sell the movable and immovable property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or to sell the same in parcels;
- (b) do all acts and execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;
- (c) prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his estate, and receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;
- (d) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or endorsed by or on behalf of the company in the course of its business;
- (e) raise on the security of the assets of the company any money requisite;
- (f) take out in his official name letters of administration to any deceased contributory, and do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be done to the liquidator himself;
- (g) appoint an agent to do any business which the liquidator is unable to do himself; and
- (h) do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

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Exercise and
control of
liquidator's
powers.

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

376. (1) Subject to this Part, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions so given by the creditors or contributories shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and he shall summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, direct, or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories.

(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 this Part, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order as it thinks fit.

Books to be
kept by
liquidator.

377. Every liquidator of a company which is being wound up by the court shall keep, in the prescribed manner, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or

contributory may, subject to the control of the court, personally or by his agent inspect any such books and make copies thereof or extracts therefrom.

378. (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.

Payments of
liquidator into
bank.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding five hundred dollars, 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.

379. (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 Registrar an account of his receipts and payments as liquidator.

Audit of
liquidator's
accounts.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by an affidavit or a statutory declaration in the prescribed form.

(3) The Registrar shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the Registrar with such vouchers and information as the Registrar may require, and the Registrar may at any time require the production of and inspect any books or accounts kept by the liquidator.

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(4) When the account has been audited, one copy thereof shall be filed and kept by the Registrar, and the other copy shall be delivered to the court for filing, and each copy shall be open to the inspection of any creditor or of any person interested.

(5) The Registrar shall cause the account when audited or a summary thereof to be printed and shall send a printed copy of the account or summary by post to every creditor and contributory.

Control of
Registrar over
liquidators.

380. (1) The Registrar shall take cognizance of the conduct of liquidators of companies which are being wound up by the court, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Registrar by any creditor or contributory in regard thereto, the Registrar shall inquire into the matter, and take such action thereon as he may think expedient.

(2) The Registrar 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 Registrar thinks fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The Registrar may also direct an investigation to be made of the books and vouchers of the liquidator.

Release of
liquidator.

381. (1) When the 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 return, if any, to the contributories, or has resigned, or has been removed from his office, the Registrar shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Registrar, shall take into consideration the report, and any objection which may be urged by any creditor or

contributory or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the court.

(2) Where the release of a liquidator is withheld, the court may, on application of any creditor or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the 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.

Committees of Inspection

382. (1) When a winding up order has been made by the court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator other than 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.

Meetings of creditors and contributories to determine whether committee of inspection shall be 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 determination of the meetings of the creditors and contributories the court shall decide the difference and make such order as the court thinks fit.

383. (1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in

Constitution and proceedings of committee of inspection.

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such proportions as is agreed on by the meetings of the creditors and contributories, or as, in the case of a difference, may be determined by the court.

(2) The committee shall meet at such time as they from time to time appoint, and, failing such appointment, at least once a month and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee is present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another creditor or contributory to fill the vacancy; but if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled he may apply to the court and the court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

384. Where in the case of a winding up there is no committee of inspection, the Minister, may on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the Committee.

Powers of
Minister
where no
committee of
inspection.

General Powers of the Court

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

Power to stay
winding up,
etc.

(2) The court may, at any time after an order for winding up, on the application either of the liquidator or a creditor, and after having regard to the wishes of the creditors and contributories, make an order directing that the winding up, ordered by the court, shall be conducted as a creditors' voluntary winding up, and if the court does so the winding up shall be so conducted.

(3) On any application under subsection (1) the court may, before making an order, require the Official Receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

(4) A copy of every order made under this section shall forthwith be lodged by the company, or otherwise as may be prescribed, with the Registrar, who shall make an entry of the order in his records relating to the company.

386. (1) As soon as may be after making a winding up order, the court shall settle a list of contributories, and may rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

Settlement of
list of
contributories
and applica-
tion of assets.

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(2) Notwithstanding subsection (1), where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(3) 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.

(4) The list of contributories when settled shall be *prima facie* evidence of the liabilities of the persons named therein as contributories.

Delivery of
property to
liquidator.

387. The court may, at any time after making a winding up order, require any contributory for the time being on the list of contributors, and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any assets or books and papers in his hands to which the company is *prima facie* entitled.

Payment of
debts due by
contributory
to company
and extent to
which set-off
allowed.

388. (1) The court may, at any time after making a winding up order, make an order directing any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) In the case of any company, when all the creditors are paid in full, any money due on account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of court
to make calls.

389. (1) The court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges,

and expenses of winding up and for the adjustment of the rights of the contributories, among themselves, and make an order for payment of any calls so made.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

390. (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 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.

Payment into
bank of
moneys due to
company.

(2) All moneys and securities paid or delivered into such bank in the event of a winding up by the court shall be subject in all respects to the orders of the court.

391. An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due, and all other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

Order on
contributory is
conclusive
evidence.

392. (1) Where in any proceedings the Official Receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court, and the court may on the application appoint a special manager of the estate or business to act during such time as the court directs, with such powers, including any of the powers of a receiver or manager, as are entrusted to him by the court.

Appointment
of special
manager.

(2) The special manager shall give such security and account in such manner as the court directs.

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Power to exclude creditors not proving in time.

Adjustment of rights of contributories.

Inspection of books by creditors or contributories.

Power to order costs of winding up to be paid out of assets.

Power to summon persons suspected of having property of company.

(3) The special manager shall receive such remuneration as may be fixed by the court.

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

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

395. (1) The court may, at any time after making a winding up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors and contributories accordingly, but not further or otherwise.

(2) Nothing in this section shall be taken as excluding or restricting any statutory rights of a Ministry, Government Department, or, a person under the authority of a Ministry, Government Department or a Minister.

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

397. (1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company, or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade dealings, affairs, or property of the company.

(2) The court may examine him on oath concerning the matters mentioned in subsection (1), either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them, and any writing so signed may be used in evidence in any legal proceedings against him.

(3) The court may require him to produce any books, and papers in his custody or power relating to the company, but where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

398. (1) Where an order has been made for winding up a company by the court, and the Official Receiver has made a further report under this Act stating that in his opinion a fraud or improper conduct has been committed, or engaged in, by any person in the promotion or formation of the company, or by any officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that the person or officer or any other person who was previously an officer of the company, including any banker, attorney-at-law or auditor, or who is known or suspected to have in his possession any property of the company or is supposed to be indebted to the company or any person who the court deems capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company, shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or in the case of an officer or former officer as to his conduct and dealings as officer thereof.

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

(2) The Official Receiver shall take part in the examination, and for that purpose may, if specially authorised by the court in that behalf, employ an attorney-at-law.

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(3) The liquidator, where the Official Receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by attorney-at-law.

(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 not be excused from answering any questions put to him on the ground that the answer might tend to incriminate him but, where he claims before answering the question, that the answer might tend to incriminate him, neither the question nor the answer shall be admissible in evidence against him in criminal proceedings or in relation to a charge of perjury in respect of the answer.

(6) A person ordered to be examined shall at his own cost, before his examination, be furnished with a copy of the Official Receiver's report, and may at his own cost employ an attorney-at-law 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.

(7) When a person directed to attend before the court under subsection (1) applies to the court to be exculpated from any charges made or suggested against him, the Official Receiver shall 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.

(8) Notices of the examination shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(9) The court may, if it thinks fit, adjourn the examination from time to time.

(10) For the purposes of this section, conduct shall be improper if it is of such a nature as to render a person unfit to be concerned in the management of a company.

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

Power to arrest absconding contributory.

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

Powers of court cumulative.

401. Provision may be made by rules under section 462 for enabling or requiring all or any of the powers and duties conferred and imposed on the court by this Act in respect of the following matters—

Delegation to liquidator of certain powers of court.

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;
- (c) the paying, delivering, conveyance, surrender or transfer of any money, property, books or papers to the liquidator;
- (d) the making of calls and the adjusting of the rights of contributors; and
- (e) the fixing of a time within which debts and claims must be proved,

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to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court but the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

Dissolution of
company.
[6 of 1997]

402. (1) When the affairs of a company have been completely wound up, the court, if the liquidator makes an application in that behalf, 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 lodged by the liquidator with the Registrar who 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 guilty of an offence and shall, on summary conviction, be liable to a fine of one thousand five hundred dollars.

Power to
enforce orders
and appeals
from orders.

403. (1) Orders made by the court under this Act may be enforced in the same manner as orders made in any action pending therein.

(2) Subject to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court.

DIVISION C

VOLUNTARY WINDING UP

Introductory

Winding up
resolutions.

404. (1) A company shall be wound up voluntarily if—

- (a) a general meeting so resolves by a special resolution; or
- (b) a general meeting so resolves by an ordinary resolution which states that the company is unable to pay its debts.

(2) In this Act, “a resolution for voluntary winding up” means a resolution passed under subsection (1).

405. When a company has passed a resolution for voluntary winding up, it shall, within fourteen days after the passing of the resolution, give notice of the resolution by advertisement in the *Gazette* and in writing to the Registrar.

Notice of
resolution to
wind up
voluntarily.

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

Commence-
ment of
voluntary
winding up.

407. 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 is in the opinion of the liquidator required for the beneficial winding up thereof but the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles of incorporation, continue until it is dissolved.

Effect of
voluntary
winding up on
business and
status of
company.

408. 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.

Avoidance of
transfers, etc.
after com-
mencement of
voluntary
winding up.

409. (1) Where it is proposed to wind up a company voluntarily, the director 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 statutory declaration 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.

Statutory
declaration of
solvency in
case of
proposal of
winding up
voluntarily.
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(2) A declaration made under subsection (1) shall have no effect for the purposes of this Act unless—

(a) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the

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company and is lodged with 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.

(3) Any director of a company who makes 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 guilty of an offence and shall be liable on summary conviction to a fine of thirty thousand dollars.

(4) If the company is wound up in pursuance of a resolution passed within the 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.

(5) A winding up in the case of which a declaration has been made and delivered in accordance with this section shall, in this Act be referred to as "a members' voluntary winding up", and a winding up in the case of which a declaration has not been so made and delivered shall, in this Act, be referred to as "a creditors' voluntary winding up".

Provisions Applicable Only to Members' Voluntary Winding Up

Power of
company to
appoint and fix
remuneration
of liquidators.

410. (1) The company in general meeting shall appoint one, or more than one liquidator 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) Subject to subsections (3) and (4), the company may, by special resolution remove a liquidator and appoint another liquidator, but the removal or appointment shall not have effect—

(a) until after the expiration of the period of fourteen days after the date on which the resolution is passed; or

(b) if, within that period an application is made to the court under subsection (3), unless the court dismisses the application or the application is withdrawn.

(3) In addition to the other requirements of this Act with respect to the giving of notice of meetings, the company shall give to all creditors and contributories of the company notice of any meeting at which a resolution under subsection (2) will be proposed, giving in the notice particulars of the proposals.

(4) A creditor or contributory of the company may, within the period of fourteen days after the date on which a resolution under subsection (2) is passed, apply to the court for an order cancelling the resolution and the court may, if it is satisfied that it is fair and reasonable to do so, allow the application, but if not so satisfied shall dismiss the application.

(5) 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.

411. (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.

Power to fill
vacancy in
office of
liquidator.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in the manner provided by this Act or by the by-laws or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

412. (1) Where a company is proposed to be, or is in the course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to a body corporate (in this section call “the transferee company”) the liquidator of the first-mentioned company (in this section called “the transferor

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

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property of
company.

company") may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation for the transfer or sale, shares, policies, or other like interests, in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company, and where the whole or part of the compensation or benefit accruing to the members of the transferor company in respect of any such sale or arrangement consists of fully paid shares in the transferee company each such member shall be deemed to have agreed with the transferee company for the acceptance of the fully paid shares to which he is entitled under the distribution referred to in subsection (1).

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(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in the manner provided by the Arbitration Act.

(4) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but, if an order is made within a year for winding up the company by the court, the special resolution shall not be valid unless sanctioned by the court.

413. (1) If, in the case of a winding up commenced after the commencement of this Act, the liquidator is at any time of the opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 409, he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company.

Duty of liquidator to call creditors' meeting in case of insolvency.

(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 meeting of creditors held under section 419.

414. Subject to section 416, 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, at the first convenient date within three months (or such longer period as the Minister may allow) from the end of the year, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

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

415. (1) Subject to section 416, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and shall cause the account to be audited and when that has been done shall call a general meeting of the company for the purpose of laying before it the audited account and giving any necessary explanation thereof

Final meeting and dissolution.

(2) The meeting shall be called by advertisement in the *Gazette* and in one daily newspaper printed and circulating in Guyana, 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 lodge with the Registrar a copy of the audited account, and shall make a return to him of the holding of the meeting and of its date.

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(4) Notwithstanding anything in subsection (3), if a quorum is not present at the meeting, the liquidator shall, in lieu of the return referred to in subsection (3), make a return that the meeting was duly summoned and that no quorum was present at the meeting, 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.

(5) The Registrar on receiving the account and either of the returns mentioned in subsection (3) or (4) 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 but the court may, on 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.

(6) The person on whose application an order of the court under this section is made shall, within seven days after the making of the order, lodge with the Registrar a copy of the order for registration.

Alternative provisions as to annual and final meetings in case of insolvency.

416. Where section 412 has effect, sections 423 and 424 shall apply to the winding up to the exclusion of sections 414 and 415, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up, but the liquidator shall not be required to summon a meeting of creditors under section 423 at the end of the first year from the commencement of the winding up, unless the meeting held under section 413 is held more than three months before the end of that year.

Provisions Applicable to a Creditors' Voluntary Winding Up

Meeting of creditors.

417. (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the 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 printed and circulating in Guyana.

(3) The directors of the company shall—

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors; and

(b) appoint one of their number to preside at the meeting.

(4) The director appointed to preside at the meeting of creditors shall attend and preside at the meeting.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

418. (1) The creditors and the company at their respective meetings mentioned in section 417 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator.

Appointment
of liquidator.

(2) Notwithstanding the provisions of subsection (1), when different persons are nominated any director, member, or creditor 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 company shall be liquidator or appointing some other person to be liquidator instead of or jointly with the person nominated by the creditors, or the person appointed by the creditors.

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Appointment
of committee
of inspection.

419. (1) The creditors at the meeting to be held in pursuance of section 416 or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting appoint such number of persons as they think fit to act as members of the committee not exceeding five in number.

(2) Notwithstanding the provisions of subsection (1), the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(3) Subject to the provisions of this section and to rules made under section 462, the provisions of section 381 (except subsection (1)) 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.

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

420. (1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

Power to fill
vacancy in
office of
liquidator.

421. 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.

422. The provisions of section 412 shall apply in case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under that section shall not be exercised except with the sanction either of the court or of the committee of inspection.

Application of
section 412 to
a creditors'
winding up.

423. 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 at the first convenient date within three months (or such longer period as the Minister may allow) from the end of the year, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

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

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

Final meeting
and dissolu-
tion.

(2) Each such meeting shall be called by advertisement in the *Gazette* and in one daily newspaper printed and circulating in Guyana 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.

(4) Notwithstanding anything in subsection (2), if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return referred to in subsection (3), make a return that the meeting was duly summoned and that no quorum was present at the meeting, and upon

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such a return being made the provisions of this subsection as to the making of the return shall, in respect of the meeting, be deemed to have been complied with.

(5) The Registrar on receiving the account and in respect of each such meeting either of the returns mentioned in subsection (3) or (4) shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved, but the court may, on the application of the liquidator or of any 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 from such time as the court thinks fit.

(6) The person on whose application an order of the court under this section is made, shall, within seven days after the making of the order, lodge with the Registrar a copy of the order for registration.

Provisions Applicable to Every Voluntary Winding Up

Distribution of
property of
company.

425. Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities equally, and subject to that application, shall, unless the articles of incorporation of the company otherwise provide, be distributed among the members according to their rights and interests in the company.

Powers and
duties of
liquidator in
voluntary
winding up.

426. (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 375(1) to a liquidator in a winding up by the court;

(b) exercise any of the other powers by this Act given to the liquidator in the winding up by the court;

(c) exercise the power of the court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;

(d) exercise the power of the court of making calls; and

(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the right of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

(4) Unless the committee of inspection or, as the case may be, the members determines or determine, section 379 shall apply in the case of a liquidator in a voluntary winding up as it applies in the case of a liquidator of a company being wound up by the court.

427. (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.

Power of court to appoint and remove liquidator in voluntary winding up.

428. The liquidator shall, within twenty-one days after his appointment, publish in the *Gazette* and in one daily newspaper printed and circulating in Guyana, and deliver to the Registrar for registration a notice of his appointment in the prescribed form.

Notice by liquidator of his appointment.

429. (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

Arrangement when binding on creditors.

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Power to apply to court to have questions determined or powers exercised.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement appeal to the court against it and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

Costs of voluntary winding up.

430. (1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or the exercise as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of 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) A copy of an order may by virtue of this section staying the proceedings in the winding up shall forthwith be lodged by the company, or otherwise as may be prescribed, with the Registrar, who shall enter a minute of the order in his records relating to the company.

Saving for rights of creditors and contributories.

431. All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, must be paid out of the assets of the company in priority to all other claims.

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

DIVISION D PROVISIONS
APPLICABLE TO EVERY MODE OF
WINDING UP

Proof and Ranking of Claims

433. (1) In every winding up, subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible of the value of such debts or claims as are subject to any contingency or sound only in damages or for some other reason do not bear a certain value.

Debts of all descriptions to be proved.

(2) Subject to section 434, 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 and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

434. (1) In a winding up of a company there shall be paid in priority to all other debts— Preferential payments.

(a) all local government rates and all public taxes of every description due from the company within the period of twelve months before the relevant date and not exceeding in the whole one year's rates and taxes;

(b) all wages and salary of any employee in respect of services rendered to the company during the period of four months before the relevant date;

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(c) all wages of any employee, whether payable for time or piece work, in respect of services rendered to the company during the period of four months before the relevant date; or
(d) contributions payable under the National Insurance and Social Security Act.

(2) The debts and claims to which priority is given by subsection (1) shall—

(a) rank equally among themselves and be paid in full, unless the assets are insufficient, to meet them, in which case they shall abate in equal proportions; and

(b) as far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of such sums as are necessary for the costs and expenses of the winding up, the debts and claims to which priority shall be given by subsection (1) shall be discharged forthwith so far as the assets are sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority shall be given by subsection (1) shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof, but 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.

(5) In this section, “the relevant date” means—

(a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order; and

(b) in any other case, the date of the commencement of the winding up.

*Effect of Winding Up on
Antecedent and Other Transactions*

435. (1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, or a fraudulent conveyance, assignment, transfer, sale or disposition, shall, if made or done by or against a company, be deemed in the event of its being wound up, a fraudulent preference of its creditors, or a fraudulent conveyance, assignment, transfer, sale or disposition, as the case may be, and be invalid accordingly.

Fraudulent preference.

(2) For the purposes of this section, the commencement of the winding up shall be deemed to correspond with the presentation of the bankruptcy petition in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

436. (1) Where, in the case of a company wound up in Guyana, anything made or done after the commencement of this Act shall be void under section 435 as a fraudulent preference of a person interested in property mortgage or charged to secure the company's debts, 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 surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.

Liabilities and rights of certain fraudulently preferred persons.

(2) The value of the interests of a person referred to in subsection (1) 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 incumbrances other than those to which the charge for the company's debt was then subject.

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(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 or guarantor, the court shall have jurisdiction to determine any questions with respect to whom the payment was made and the surety or guarantor 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 or guarantor as a third party as in the case of an action for the recovery of the sum paid.

(4) 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.

Effect of floating charge.

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

Disclaimer of onerous property.

438. (1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in bodies corporate, or unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the property; but where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up,

the power under this section of disclaiming the property may be exercised at any time within 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 rights, interest, and liabilities of the company and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any person interested in the property 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, 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 a company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting

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of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability, or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose.

(7) Notwithstanding anything in subsection (6), where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or a mortgagee by demise, except upon terms of making that person—

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or
- (b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event, if the case so required, as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court may vest the estate and interest of the company in the property in any person liable 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 incumbrances and interests created therein by the company.

(8) 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.

Interpretation.

439. In sections 440 and 441—

“bailiff” includes any officer charged with the execution of a writ or other process;

“goods” include all chattels personal.

440. (1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up but—

Restriction of rights of creditor as to execution or attachment.

(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 provisions be substituted for the date of the commencement of the winding up;

(b) a person who purchases in good faith under a sale by a bailiff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator; and

(c) the rights conferred by this subsection on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.

(2) For the purposes of this section—

(a) an execution against goods shall be taken to be completed by seizure and sale;

(b) an attachment of a debt shall be deemed to be completed by receipt of the debt; and

(c) an execution against land shall be deemed to be completed from the date of the order for sale or by seizure as the case may be, and, in the case of an equitable interest by the appointment of a receiver.

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Duties of
bailiff as to
goods taken in
execution.

441. (1) Subject to subsection (3), where any goods of a company are taken in execution and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding up has been passed, the bailiff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Subject to subsection (3), where under an execution in respect of a judgment for a sum exceeding one hundred dollars the goods of a company are sold or money is paid in order to avoid sale, the bailiff must 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 bailiff must pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

Offences

Offences by
officers of
companies in
liquidation.
[6 of 1997]

442. (1) Any person (being a past or present 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), who—

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, movable and

immovable, of the company, and how and whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;

(b) does not deliver up to the liquidator, or as he directs, all such part of the movable and immovable property of the company as is in his custody or under his control, and which he is required by law to deliver up;

(c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;

(d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of one hundred dollars or upwards, or conceals any debt due to or from the company;

(e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of one hundred dollars or upwards;

(f) makes any material omission in any statement relating to the affairs of the company;

(g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of one month to inform the liquidator thereof;

(h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company;

(i) within 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;

(j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;

(k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts

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with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;

(l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses;

(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 property for or on behalf of the company on credit which the company does not subsequently pay for;

(n) within twelve months next before the commencement of the winding up or any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for;

(o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of the business of the company; or

(p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

shall be guilty of an offence and shall, in the case of the offences mentioned respectively in paragraphs (m), (n) and (o), be liable on summary conviction to a fine of thirty thousand dollars and to imprisonment for six months and, in the case of any other offence to a fine of fifteen thousand dollars.

(2) It shall be a sufficient defence in proceedings for an offence under paragraph (a), (b), (c), (d), (f), (n), or (o) of subsection (1) if the accused proves that he had no intent to defraud, and in proceedings for

an offence under paragraph (h), (i) or (j) of subsection (1) if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(o), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances shall be guilty of an offence.

(4) For the purposes of this section, “officer” includes any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

443. Any officer or contributory of a company being wound up who destroys, mutilates, alters or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, shall be guilty of an offence.

Penalty for
falsification of
books.

444. Any person who, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up—

Frauds by
officers of
companies
which have
gone into
liquidation.

- (a) has by false pretences or by means of any other fraud induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company,

shall be guilty of an offence.

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Liability where
proper
accounts not
kept.

445. (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, or the period between the incorporation of the company and the commencement of the winding up, whichever is the shorter, every officer of the company who was knowingly a party to the default of the company, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the fault was excusable, shall be guilty of an offence.

(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.

446. (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;
- (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 or contributory of the company may, if it thinks proper so to do, declare that any of the officers whether past or present, of the company or any other persons who were knowingly parties to the carrying on of the business in that manner are personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company, as far as the court may direct.

(2) Where the court makes any declaration referred to in subsection (1) it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make any provision for making the liability of a person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any 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 person liable to any person acting on his behalf, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

(3) For the purposes of subsection (2), “assignee” includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but shall not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business in that manner shall be guilty of an offence.

447. (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 officer or liquidator of the company, has misapplied or retained or become liable or accountable for any money or property of the company or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the Official Receiver or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just.

Power of court
to assess
damages
against
delinquent
directors, etc.

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(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

Prosecution of
delinquent
officers and
members of a
company;
penalties.
[6 of 1997]

448. (1) If it appears to the court in the course of a winding up by the court, that any past or present officer, or any member, of the company has been guilty of an offence in relation to the company for which he is criminally liable the court may, either on the application of any person interested in the winding up or on its own motion, direct the liquidator to refer the matter to the Director of Public Prosecutions.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of a company has been guilty of an offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Director of Public Prosecutions and shall furnish to the Director 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 Director may require.

(3) Where any report is made under subsection (2) to the Director of Public Prosecutions, he may, if he thinks fit, refer the matter to the Minister for further enquiry, and the Minister may appoint an inspector under Division B of Part VI to investigate the matter.

(4) If it appears to the court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, and that no report with respect to the matter has been made by the liquidator to the Director of Public Prosecutions under subsection (2), the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of subsection (2).

(5) If, where any matter is reported or referred to the Director of Public Prosecutions under this section, he considers that the case is one in which a prosecution ought to be instituted, the liquidator and every officer and agent of the company past and present (other than the defendant in the proceedings) shall give him all assistance in connection with the prosecution which he is reasonably able to give.

(6) For the purposes of subsection (5), “agent”, in relation to a company, shall be deemed to include any banker or attorney-at-law of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(7) If any person fails or neglects to give assistance in the manner required by subsection (5), the court may, on the application of the Director of Public Prosecutions, direct that person to comply with the requirements of that subsection, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

(8) A person guilty of an offence under section 442(3), 443, 444, 445 or 446 shall on summary conviction be liable to a fine of thirty thousand dollars and imprisonment for six months.

Supplementary Provisions as to Winding Up

449. A body corporate or an undischarged bankrupt 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—

Disqualifica-
tion for
appointment
as liquidator.

- (a) any appointment made in contravention of this provision shall be void; and
- (b) any body corporate which or an undischarged bankrupt who, acts as liquidator of a company shall be guilty of an offence.

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Notification
that a
company is in
liquidation.

450. 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.

Failure to
comply with
section 450.

451. If default is made in complying with section 450, the company and every officer of the company, and every liquidator of the company and every receiver or manager, who knowingly authorises or permits the default, shall be guilty of an offence.

Exemption of
certain
documents
from stamp
duty on
winding up of
companies.

452. (1) In the case of a winding up by the court, or of a creditors' voluntary winding up, of a company—

- (a) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other incumbrance on, or any right or interest in, any movable or immovable property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains, part of the assets of the company; and
- (b) every power of attorney, proxy, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up or to any proceeding under any such winding up,

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shall be exempt from duties chargeable under the Tax Act.

(2) In subsection (1), "assurance" includes deed, conveyance, assignment, transfer and surrender.

Books of
company to be
evidence.

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

Disposal of
books and
papers of
company.

454. (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, namely—

(a) in the case of a winding up by the court in such manner 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 manner as the committee of inspection or, if there is no such committee, as a meeting of the creditors of the company, by resolution directs.

(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 rules made under section 462 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 creditor or contributory of the company to make representations to the court.

(4) If any person acts in contravention of any rules made under section 462 for the purposes of this section or of any direction of the court thereunder, he shall be guilty of an offence.

455. (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 liquidator.

Information as
to pending
liquidations;
penalties.
[6 of 1997]

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom.

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(3) If a liquidator fails to comply with this section, he shall be guilty of an offence and any person untruthfully stating himself as provided in subsection (2) to be a creditor or contributory shall be guilty of a contempt of court, and shall, on the application of the liquidator or of the Official Receiver, be punishable accordingly.

(4) A person guilty of an offence under this section, except the offence of a contempt of court, or under sections 449, 451 and 453 shall on summary conviction be liable to a fine of fifteen thousand dollars.

Unclaimed assets.

456. (1) If it appears either from any statement sent to the Registrar under section 455 or otherwise that a liquidator had in his hands 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 receipt or any money held by the company in trust in respect of dividends or other sums due to any person as a member of the company, the liquidator shall forthwith pay that 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 Court

Meetings to ascertain wishes of creditors or contributories.

457. The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and may appoint a person to act as Chairman of any such meeting and to report the result thereof to the court.

458. (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in Guyana or elsewhere before any court, judge, or person lawfully authorised to take and receive affidavits.

Affidavits, etc.

(2) All courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge or person attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

Provisions as to Dissolution

459. (1) Where a company has been dissolved (otherwise than pursuant to section 487) the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

Power of court
to declare
dissolution of
company void.
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(2) The person on whose application the order was made shall, within seven days after the making of the order, or such further time as the court allows, lodge with the Registrar a copy of the order, and if that person fails so to do he shall be guilty of an offence and shall on summary conviction be liable to a fine of three thousand dollars.

460. (1) Where, after a company has been dissolved, there remains any outstanding property, movable and immovable, including things in action and whether within or outside Guyana which was vested in the company or to which it was entitled, or over which it had a disposing power at the time it was dissolved, but which has not been realised or otherwise disposed of or dealt with by the company or its liquidator, such property shall, for the purposes of this section and section 461 and notwithstanding any enactment or rule of law to the contrary, by the operation of this section be and become vested in the Registrar for all

Outstanding
assets of
defunct
company to
vest in
Registrar.

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the interest therein legal or equitable of the company or its liquidator at the date the company was dissolved, together with all claims, rights and remedies which the company or its liquidator then had in respect thereof.

(2) Where any claim, right or remedy of the liquidator may under this Act be made, exercised or availed of only with the approval or concurrence of the court or some other person, the Registrar may for the purposes of this section make, exercise or avail himself of that claim, right or remedy without such approval or concurrence.

(3) Property vested in the Registrar by operation of this section shall be liable and subject to all charges, claims and liabilities imposed thereon or affecting such property by reason of any statutory provision as to rates, taxes, charges or any other matter or thing to which such property would have been liable or subject had such property continued in the possession, ownership or occupation of the company; but there shall not be imposed on the Registrar or the State any duty, obligation or liability whatsoever to do or suffer any act or thing required by any such statutory provision to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims or liabilities out of the assets of the company so far as they are in the opinion of the Registrar properly available for and applicable to such payment.

Disposal of
moneys.

461. (1) Upon proof to the satisfaction of the Registrar that there is vested in the Registrar by operation of section 460 or of an enactment of a proclaimed State (as declared by order of the Minister, under section 467(3)) containing provisions similar to provisions of section 467, any interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the Registrar may get in, sell or otherwise dispose of or deal with the interest or any part thereof as the Registrar sees fit.

(2) The Registrar may sell or otherwise dispose of or deal with any such property either solely or in concurrence with any other person in such manner for such consideration, by public auction, public tender or private contract upon such terms and conditions as the Registrar thinks expedient, and may make, execute and give such contracts, instruments and documents as the Registrar thinks necessary.

(3) The Registrar shall be remunerated by such commission, whether by way of percentage or otherwise as is prescribed in respect of the exercise of powers conferred by subsection (1).

(4) The moneys received by the Registrar in the exercise of any of the powers conferred on the Registrar by this section shall be applied in defraying all costs, expenses, commission and fees incidental thereto and thereafter to any payment authorised by section 460 or this section and the surplus, if any, shall be paid into such account as is prescribed, and the same shall, subject to the rules made under section 462, be dealt with according to orders of the court.

(5) Any claim, suit, or action for or in respect of any moneys paid into the prescribed account shall be presented, made, or instituted within twenty years next after the dissolution of the company, after the expiration of which period of time all moneys then or at any time thereafter standing to the credit of the prescribed account shall, if there be no such claim, suit, or action pending, or any order of the court to the contrary, be paid into the Consolidated Fund.

Rules

462. (1) The Minister may make rules for any purpose for which rules may be made under this Part, for carrying this Part into effect and for making provision for or with respect to the winding up and dissolution of companies and costs and fees in connection therewith. Rules.

(2) The Minister may make rules with respect to the recognition of and the giving effect to, in Guyana, any order in the nature of a winding-up order made in a designated state in relation to an external company incorporated or formed in the designated state.

(3) Without limiting the generality of the power of the Minister under subsection (2), rules made under that subsection may provide—

(a) for the exercise in Guyana of the powers of a liquidator under this Act by a person appointed as liquidator in a designated state;

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(b) for the application, with or without modification, of any of the provisions of this Act relating to the winding up of companies; and

(c) for the dissolution of an external company and the disposal of its assets in the country.

(4) Rules made under this section shall have effect notwithstanding anything to the contrary in this Act.

(5) For the purposes of this section, “designated state” means—

(a) any country which is a Member State of the Caribbean Community; and

(b) any country designated under subsection (6).

(6) Where it appears to the Minister that an enactment in force in any country contains provisions similar to the provisions of this section, he may, by order published in the *Gazette*, designate the country for the purposes of this section.

DIVISION E

Winding Up of Unregistered Companies

Unregistered company.

463. (1) For the purposes of this Division “unregistered company” includes—

(a) an external company;

(b) any partnership, whether limited or not, or association consisting of not less than eight members; or

(c) any company not registered under this Act or any corresponding previous enactment,

but shall not include,

(i) a company incorporated under this Act or any corresponding previous enactment; or

(ii) any society or association established under any enactment designated by the Minister by order published in the *Gazette*.

(2) The provisions of this Division shall be in addition to and not in restriction of any provisions contained in this or any other Act with respect to winding up of companies by the court and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up of companies.

(3) The Minister may, from time to time, make an order for the purpose of subsection (1) (c) (ii).

464. (1) Subject to this Division, any unregistered company may be wound up under this Part, which Part shall apply to an unregistered company with the following adaptations—

Winding up of unregistered companies.

(a) the principal place of business of the company in Guyana shall for all the purposes of the winding up be the registered office of the company;
(b) no such company shall be wound up voluntarily;
(c) the circumstances in which the company may be wound up are—

(i) if the company is dissolved or has ceased to have a place of business in Guyana or has a place of business in Guyana only for the purpose of winding up its affairs or has ceased to carry on business in Guyana;
(ii) if the company is unable to pay its debts;
(iii) if the court is of the opinion that it is just and equitable that the company should be wound up; or
(iv) in the case of an external company, in such a case as is referred to in section 354(d).

(2) An unregistered company shall be deemed to be unable to pay its debts if—

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(a) a creditor to whom the company is indebted in a sum exceeding five hundred dollars then due has served on the company, by leaving at its principal place of business in Guyana or by delivering to the secretary or some director, manager or principal officer of the company, or on a person authorised by an external company to accept service of process, or by otherwise serving in such manner as the court approves or directs, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(b) any action or other proceeding has been instituted against any member for any debt or demand due or claimed to be due from the company or from him in his character of member, and, notice in writing of the institution of the action or proceeding having been served on the company by leaving it at its principal place of business in Guyana or by delivering it to the secretary or some director, manager or principal officer of the company, or on a person authorised by an external company to accept service of process, or by otherwise serving it in such manner as the court approves or directs, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by him by reason thereof;

(c) execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against a company or any member thereof as such or any person authorised to be sued as nominal defendant on behalf of the company is returned unsatisfied;

(d) it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

(3) A company incorporated outside Guyana may be wound up as an unregistered company under this Division notwithstanding that it is being wound up or has been dissolved or has otherwise ceased to exist as a company under or by virtue of the laws of the place under which it was incorporated.

465. (1) On an unregistered company being wound up every person shall be a contributory—

Contributories
in winding up
of unregistered
company.

(a) who is liable to pay or contribute to the payment of—

- (i) any debt or liability of the company;
- (ii) any sum for the adjustment of the rights of the members among themselves; or
- (iii) the costs and expenses of winding up; or

(b) where the company has been dissolved in the place in which it is formed or incorporated, who immediately before the dissolution was so liable,

and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability.

(2) On the death or bankruptcy of any contributory the provisions of this Act with respect to the personal representatives of deceased contributors and the trustees of bankrupt contributors respectively apply.

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

Power of court
to stay or
restrain
proceedings.

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Outstanding assets of defunct unregistered company.

(2) Where an order has been made for winding up an unregistered company no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company except by leave of the court and subject to such terms as the court may impose.

467. (1) Where an unregistered company, the place of incorporation or origin of which is in a proclaimed State, has been dissolved and there remains in Guyana any outstanding property which was vested in the company or to which it was entitled or over which it had a disposing power at the time it was dissolved, but which was not got in, realised, or otherwise disposed of or dealt with, by the company or its liquidator before the dissolution, the property shall, by the operation of this section be and become vested for all the estate and interest therein legal or equitable of the company or its liquidator at the date the company was dissolved, in such person as is entitled thereto according to the law of the place of incorporation or origin of the company.

(2) Where the place of origin of an unregistered company is Guyana, the provisions of sections 460 and 461 shall apply with such adaptations as may be necessary in respect of that company.

(3) Where it appears to the Minister that an enactment in force in any Member State of the Caribbean Community contains provisions similar to the provisions of this section, he may, by order published in the *Gazette*, declare that State to be a proclaimed State for the purposes of this section.

PART VI ADMINISTRATION AND GENERAL

DIVISION A FUNCTIONS OF THE REGISTRAR

Registrar of Companies

Responsibility.

468. (1) The Registrar of Companies shall under the general supervision of the Minister, be responsible for the administration of this Act.

(2) A seal may be prescribed by the Minister for use by the Registrar in the performance of his duties.

469. A document may be served upon the Registrar by leaving it at the office of the Registrar or by sending it by telex or by prepaid post or cable addressed to the Registrar at his office. Service upon the Registrar.

Register of Companies

470. The Registrar must maintain a Register of Companies in which to keep the name of every body corporate— Register of companies

(a) that is—

- (i) incorporated under this Act;
- (ii) continued as a company under this Act;
- (iii) registered under this Act; or
- (iv) restored to the register pursuant to this Act; and

(b) that has not been subsequently struck off that Register.

471. (1) A person who has paid the prescribed fee shall be entitled, during normal business hours, to examine, and to make copies of or extracts from, a document required by this Act or the regulations to be sent to the Registrar, except a report sent to him under section 507(2). Inspection of register.

(2) The Registrar must, upon request and payment of the prescribed fee, furnish any person with a copy or certified copy of any document received by the Registrar under this Act, except a report received by him pursuant to section 507(2).

(3) If the records maintained by the Registrar are prepared and maintained in other than a written form—

- (a) the Registrar must furnish any copy required to be furnished under this Act in an intelligible written form; and
- (b) a report reproduced from those records, if it is certified by the Registrar, shall be admissible in evidence to the same extent as the original written records would be.

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Notices and Documents

Notice to
directors, etc.

472. (1) A notice or document required by this Act, the regulations, articles or the by-laws to be sent to a shareholder or director of a company may be sent by telex or by prepaid post or cable addressed to, or may be delivered personally to—

- (a) the shareholder at his latest address as shown in the records of the company or its transfer agent; and
- (b) the director at his latest address as shown in the records of the company or in the latest notice filed under section 67 or 75.

(2) A director named in a notice sent by a company to the Registrar under section 67 or 75 and filed by the Registrar shall be, for the purposes of this Act, a director of the company referred to in the notice.

Presumption
of receipt.

473. A notice or document sent in accordance with section 472 to a shareholder or director of a company shall, for the purpose of this Act, be presumed to be received by him at the time it would be delivered in the ordinary course of mail.

Undelivered
documents.

474. If a company sends a notice or document to a shareholder in accordance with section 472 and the notice or document is returned on three consecutive occasions because the shareholder cannot be found, the company need not send any further notices or documents to the shareholder until he informs the company in writing of his new address.

Notice waiver.

475. Where a notice or document is required to be sent pursuant to this Act, the sending of the notice or document may be waived or the time for the notice or document may be waived or abridged at any time with the consent in writing of the person entitled to the notice or document.

Certificate by
company.

476. A certificate issued on behalf of a company stating any fact that is set out in the articles, the by-laws, the minutes of the meetings of the directors, a committee of directors or the shareholders, or in a trust deed or other contract to which the company is a party, may be signed by a director, an officer or a transfer agent of the company.

477. When introduced as evidence in any civil, criminal or administrative action or proceeding—Evidentiary value.

- (a) a fact stated in a certificate referred to in section 476;
- (b) a certified extract from a register of shareholders or debenture-holders of a company; or
- (c) a certified copy of minutes or extracts from minutes of a meeting of shareholders, directors or a committee of directors of a company,

shall, in the absence of evidence to the contrary, be proof of the fact so certified without proof of the signature or official character of the person appearing to have signed the certificate.

478. Where a notice or document is required by this Act to be sent to the Registrar, he may accept a photostatic or photographic copy of the notice or document.Copies.

479. (1) Where this Act requires that articles relating to a company be sent to the Registrar, unless otherwise specifically provided—Filed articles.

- (a) two copies, in this section called “duplicate originals”, of the articles must be signed by a director or an officer of the company or, in the case of articles of incorporation, by the incorporator; and
- (b) upon receiving duplicate originals of any articles and any other required documents and the prescribed fees, the Registrar must—
 - (i) endorse on each of the duplicate originals the word “registered” and the date of the registration;
 - (ii) issue in duplicate the appropriate certificate and attach to each certificate one of the duplicate originals of the articles;
 - (iii) file a copy of the certificate and attached articles;
 - (iv) send to the company or its representative the original certificate and attached articles; and
 - (v) publish in the *Gazette* notice of the issue of the certificate.

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(2) A certificate referred to in subsection (I) and issued by the Registrar may be dated as of the day he receives the articles pursuant to which the certificate is issued.

(3) A signature required on a certificate referred to in subsection (1) may be printed or otherwise mechanically reproduced on the certificate.

Alteration of documents.

480. The Registrar may alter a notice or document, other than an affidavit or statutory declaration, if so authorised by the person who sent him the notice or document or by the representative of that person.

Correction of documents.

481. (1) If a certificate that contains an error is issued to a company by the Registrar, the directors or shareholders of the company must, upon the request of the Registrar, pass the resolutions and send to the Registrar the documents required to comply with this Act, and take such other steps as the Registrar may reasonably require, and the Registrar may demand the surrender of the certificate and issue a corrected certificate.

(2) A certificate corrected under subsection (1) must bear the date of the certificate it replaces.

(3) If a corrected certificate issued under subsection (1) materially amends the terms of the original certificate, the Registrar must forthwith give notice of the correction in the *Gazette*.

Proof of documents.

482. (1) The Registrar may require that a document or a fact stated in a document required or sent to him pursuant to this Act be verified in accordance with subsection (2).

(2) A document or fact required by this Act or by the Registrar to be verified may be verified by affidavit or affirmation.

(3) The Registrar may require of a body corporate the authentication of a document; and the authentication may be signed by the secretary, or any director or authorised person or by the attorney-at-law for the body corporate.

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483. The Registrar need not produce any document of a prescribed class after five years from the date he received it. Retention of documents.

484. (1) The Registrar may furnish any person with a certificate stating— Registrar's certificate.

- (a) that a body corporate has or has not sent to the Registrar a document required to be sent to him pursuant to this Act;
- (b) that a name, whether that of a company or not, is or is not on the register; or
- (c) that a name, whether that of a company or not, was or was not on the register on a stated date.

(2) Where this Act requires or authorises the Registrar to issue a certificate or to certify any fact, the certificate or the certification must be signed by the Registrar or by his deputy.

485. (1) The Registrar may refuse to receive, file or register a document submitted to him, if he is of the opinion that the document— Refusal power.

- (a) contains matter contrary to law;
- (b) by reason of any omission or error in description, has not been duly completed;
- (c) does not comply with the requirements of this Act;
- (d) contains an error, alteration or erasure;
- (e) is not sufficiently legible; or
- (f) is not sufficiently permanent for his records.

(2) The Registrar may request that a document under subsection (1) be amended or completed and re-submitted, or that a new document be submitted in its place.

(3) If a document that is submitted to the Registrar is accompanied with a statutory declaration by an attorney-at-law that the document contains no matter contrary to law and has been duly completed in accordance with the requirements of this Act, the Registrar may accept the declaration as sufficient proof of the facts therein declared.

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Filing form.

486. Every document sent to the Registrar must be typed or printed on durable paper.

Removal from Register

Striking off register.

487. (1) The Registrar may strike off the register a company or other body corporate, if—

- (a) the company or other body corporate fails to send any return, notice, document or prescribed fee to the Registrar as required pursuant to this Act;
- (b) the company is dissolved;
- (c) the company or other body corporate is amalgamated with one or more other companies or bodies corporate;
- (d) the company does not carry out an undertaking given under section 491(a) (i); or
- (e) the registration of the body corporate is revoked pursuant to this Act.

(2) Where the Registrar is of the opinion that a company or other body corporate is in default under subsection (1)(a), he must send it a notice advising it of the default and stating that, unless the default is remedied within twenty-eight days after the date of the notice, the company or other body corporate will be struck off the register.

(3) Section 489 shall apply *mutatis mutandis* to the notice mentioned in subsection (2).

(4) After the expiration of the time mentioned in the notice, the Registrar may strike the company or other body corporate off the register and publish a notice thereof in the *Gazette*.

(5) Where a company or other body corporate is struck off the register, the Registrar may, upon receipt of an application in the prescribed form and upon payment of the prescribed fee, restore it to the register and issue a certificate in a form adapted to the circumstances.

488. Where a body corporate is struck off the register, the liability of the body corporate and of every director, officer or shareholder of the body corporate shall continue and may be enforced as if it had not been struck off the register.

Liability continues.

Service

489. A notice or document may be served on a company—

Service on company.

- (a) by leaving it at, or sending it by telex or by prepaid post or cable addressed to, the registered office of the company; or
- (b) by personally serving any director, officer, receiver, receiver-manager or liquidator of the company.

Company Names

490. The Registrar may, upon request and upon payment of the prescribed fee, reserve for twelve months a name for an intended company or for a company about to change its name.

Reservation of name.

491. The name of a company—

Prohibited name.

(a) must not be the same as or similar to the name or business name of any other person or of any association, partnership or firm, if the use of that name would be likely to confuse or mislead, unless the person, association, partnership or firm consents in writing to the use of that name in whole or in part; and

(i) if required by the Registrar in the case of any person, undertakes to dissolve or change his or its name to a dissimilar name within six months after the filing of the articles by which the name is acquired; or

(ii) if required by the Registrar in the case of an association, partnership or firm, undertakes to cease to carry on its business or activities, or undertakes to change its name to a dissimilar name, within six months after the filing of the articles by which the name is acquired;

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- (b) must not be identical to the name of a body corporate incorporated under the laws of Guyana before the commencement of this Act;
- (c) must not suggest or imply a connection with the State, or the Government or of any Ministry, department, branch, bureau, service, agency or activity of the Government, unless consent in writing to the proposed name is duly obtained from the appropriate Minister;
- (d) must not suggest or imply a connection with a political party or a leader of a political party;
- (e) must not suggest or imply a connection with a university or a professional association recognised by the laws of Guyana unless the university or professional association concerned consents in writing to the use of the proposed name; and
- (f) must not be a name that is prohibited by the regulations.

Refusal of
articles.

492. The Registrar may refuse to accept articles of incorporation or continuation for a company or to register articles amending the name of a company if—

- (a) the name is not distinctive because—
 - (i) it is too general;
 - (ii) it is descriptive only of the quality, function or other characteristic of the goods or services in which the company deals or intends to deal; or
 - (iii) primarily it is only a geographic name used alone, unless the applicant establishes that the name has through use acquired and continues to have a secondary meaning;
- (b) the name is deceptively inaccurate in describing—
 - (i) the business, goods or services in association with which it is proposed to be used;
 - (ii) the conditions under which the goods or services will be produced or supplied;
 - (iii) the persons to be employed in the production or supply of those goods or services; or

- (iv) the place of origin of those goods and services;
- (c) it is likely to be confusing with that of a company that was dissolved;
- (d) it contains the word or words “credit union”, “co-operative”, or “co-op”, when it connotes a co-operative venture; or
- (e) it is, in the opinion of the Registrar, for any reason, objectionable.

493. If two or more companies amalgamate, the amalgamated company may have—

Amalgamation companies.

- (a) the name of one of the amalgamating companies;
- (b) a distinctive combination, that is not confusing, of the names of the amalgamating companies; or
- (c) a distinctive new name that is not confusing.

494. Where a company has been revived under this Act, if, between the date of its dissolution and the date of its revival, another company has been granted a name that is likely to be confused with the name of the revived company, the Registrar may require as a condition of its revival that the revived company shall not carry on business or, if it seeks to carry on business, that it changes its name immediately after it is revived.

Revival name.

DIVISION B

INSPECTIONS AND INVESTIGATIONS OF COMPANIES

General

495. (1) In this Division—

Interpretation.

“company”, includes an external company carrying on business within Guyana;

“interested person”, in relation to a company, means—

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- (i) a person who is or was an officer of a company as defined in section 2 of this Act;
- (ii) a person who acts or has at any time acted as banker, attorney-at-law, auditor or in any other capacity for the company;
- (iii) a person who—
 - (a) has, or has at any time had, in his possession any property of the company;
 - (b) is indebted to the company; or
 - (c) is capable of giving information concerning the affairs of the company; and
- (iv) where an inspector has reasonable grounds for suspecting or believing that a person is a person of a kind referred to in paragraph (iii), that person.

(2) Where an inspector is appointed to investigate a company he shall have power to investigate any other company which belongs or has, at any time, belonged to the same group of companies as the company if he considers it necessary to do so for the purpose of investigating the company in relation to which he was appointed.

Inspection

Appointment
of inspector
by Minister.

496. (1) An application for the appointment of one or more inspectors to investigate—

- (a) affairs of a company;
- (b) shareholding in, or trading in the shares of, a company;
- (c) compliance or non-compliance with the requirements of this Act relating to disclosure of shareholding in a company; or
- (d) such of the affairs of a company as are specified in the application,

may be made to the Minister by instrument in writing.

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(2) Where an application is made under this section the applicant shall furnish such information in connection with the application as the Minister reasonably requires to enable him to determine whether there are reasonable grounds for appointing one or more inspectors.

(3) Where it appears to the Minister whether on his own motion or as a result of an application made under subsection (1) that—

- (a) it is desirable for the protection of the public or members or creditors of a company or of holders of debentures of a company;
- (b) it is in the public interest because fraud, misfeasance or other misconduct by a person who is or has been concerned with the affairs of a company is alleged; or
- (c) in any case it is in the public interest,

to appoint one or more inspectors to make an investigation of a company, he may by instrument in writing appoint one or more inspectors.

(4) The Minister shall, in the instrument appointing any inspector, specify full particulars of the appointment, including—

- (a) the matters in which the investigation is to be made;
- (b) the period in respect of which the investigation is to be made; and
- (c) the terms and conditions of the appointment including terms and conditions relating to remuneration.

(5) The Minister may by notice in writing given to an inspector terminate his appointment at any time.

497. Notice of the appointment, and notice of the termination of the appointment, of an inspector shall be published in the *Gazette*. Notice of appointment, etc., to be published.

498. (1) An inspector may require an interested person in relation to a company being investigated by notice in writing in accordance with the prescribed form given in the prescribed manner— Powers of inspectors.

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- (a) to produce to the inspector such books of the company and other books relating to the affairs of the company as are in the custody or under the control of the interested person;
- (b) to give to the inspector all reasonable assistance in connection with the investigation; and
- (c) to appear before the inspector for examination on oath.

(2) An inspector may administer the oath referred to in subsection (1)(c).

(3) Where books are produced to an inspector under this Division, the inspector may take possession of the books for such period as he considers necessary for the purposes of the investigation, and during that period he shall permit a person who would be entitled to inspect any one or more of those books, if they were not in the possession of the inspector, to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

Examination of
interested
persons.
[6 of 1997]

499. (1) Where a company is being investigated under this Division, an interested person in relation to the company who—

- (a) refuses or fails to comply with a requirement under section 498 to the extent to which he is able to comply with it;
- (b) in purported compliance with such a requirement knowingly or recklessly furnishes information that is false or misleading in a material particular; or
- (c) when appearing before an inspector for examination in pursuance of such a requirement—
 - (i) makes a statement that is false or misleading in a material particular; or
 - (ii) refuses or fails to take an oath,

shall be guilty of an offence and shall on summary conviction be liable to a fine of fifteen thousand dollars.

(2) An attorney-at-law acting for an interested person in relation to a company—

- (a) may attend the examination; and
- (b) may, to the extent that the inspector permits—
 - (i) address the inspector; and
 - (ii) examine the officer,

in relation to matters in respect of which the inspector has questioned the interested person.

(3) An interested person is not excused from answering a question put to him by the inspector on the ground that the answer might tend to incriminate him but, where the interested person claims, before answering the question, that the answer might tend to incriminate him, neither the question nor the answer shall be admissible in evidence against him in criminal proceedings other than proceedings under subsection (1) or in relation to a charge of perjury in respect of the answer.

(4) A person who complies with the requirements of an inspector under section 498 shall not incur any liability to any person by reason only of that compliance.

(5) A person required to attend for examination under this Division shall be entitled to such allowances and expenses as are from time to time prescribed.

(6) Regulations for the purposes of subsection (5) may be made by reference to a scale of expenses for witnesses who attend before the court.

500. (1) Where an interested person in relation to a company fails to comply with a requirement of an inspector appointed to investigate the company, the inspector may, unless the interested person proves that he had lawful excuse for his failure, apply to the court for an order under subsection (2).

Interested person failing to comply with requirements of this Division.

(2) Where an inspector applies to the court under subsection (1), the court may inquire into the case and—

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(a) order the interested person concerned to comply with the requirement of the inspector within such period as if fixed by the court; or

(b) if the court is satisfied that the interested person failed without lawful excuse to comply with the requirement of the inspector, punish him in like manner as if he had been guilty of contempt of court and, if it sees fit, also make an order pursuant to paragraph (a).

Inspectors' reports.

501. (1) An inspector may, and if so directed by the Minister shall, make interim reports to the Minister, and on the conclusion of the investigation shall make a final report to the Minister.

(2) Any such report shall be written or printed, as the Minister directs.

(3) The Minister shall cause—

(a) a copy of any final report made by an inspector to be forwarded to the registered office of the company concerned; and

(b) a copy of the report to be furnished, on request and on payment of the prescribed fee to any person who is a member, shareholder, debenture-holder or creditor to the company or of any other company dealt with in the report by virtue of section 495(2),

and may also cause the report to be printed and published.

Proceedings on inspectors' report.

502. If from any report made under section 501 it appears to the Minister that an offence may have been committed by any person and that the case is one in which a prosecution ought to be instituted, the Minister shall refer the matter to the Director of Public Prosecutions for consideration of the question whether a prosecution should be instituted.

Expenses of investigation.

503. (1) Subject to subsection (2), the expenses of an investigation shall be borne by the State.

(2) Where, following on a reference under section 502, a person is prosecuted for and convicted of an offence, the court before which that person is convicted may, on the application of the prosecutor, order that person to reimburse the State, pursuant to subsection (1), in respect of the investigations which led to the report giving rise to that reference.

504. (1) Where an investigation into a company is being made under this Division and it appears to the Minister that facts concerning shares in, or debentures of, the company or rights relating to the issue of shares by the company cannot be ascertained because an interested person in relation to the company has failed or refused to comply with a requirement of an inspector under section 502, the Minister may, by order published in the *Gazette*, make one, or more than one, of the following orders, namely—

- (a) an order restraining a person from disposing of any interest in shares in, or debentures of, the company;
- (b) an order restraining a person from acquiring shares in, or debentures, of, the company;
- (c) an order restraining the exercise of any voting or other rights attached to shares in the company;
- (d) an order directing a person who is registered as the holder of shares in respect of which an order under this section is in force to give notice in writing of that order to any person whom he knows to be entitled to exercise a right to vote attached to those shares;
- (e) an order directing the company not to make payment, except in the course of winding up, of any sum due from the company in respect of shares in, or debentures of, the company;
- (f) an order directing the company not to register the transfer or transmission of shares in, or debentures of, the company; or
- (g) an order directing the company not to issue shares to a person who holds shares in the company by reason of his holding shares in the company nor in pursuance of an offer made to such a person by reason of his holding shares in the company.

Orders may be
made by the
Minister.
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(2) A copy of an order under subsection (1) and of any order by which it is rescinded, revoked, altered or varied shall be served on the company to which it refers.

(3) Where an order under subsection (1) is in force a person aggrieved by the order may apply to the court for revocation or variation of the order and the court may, if it is satisfied that it is reasonable to do so, revoke or vary the order and any order by which it has been altered or varied.

(4) A person who contravenes an order made under subsection (1) shall be guilty of an offence.

(5) Where an offence under subsection (4) is committed by a company, every officer (as defined in section 2) of the company in default shall be guilty of an offence.

(6) A person shall on summary conviction for an offence under subsection (4) or (5) be liable to a fine of fifteen thousand dollars.

Application
for winding
up.

505. (1) Where a report of an investigation under this Division has been made by an inspector in respect of a company, application may be made to the court by the Minister for the winding up of the company under Part V.

(2) Upon the making of the application, the provisions of this Act shall, with such adaptations as are necessary, apply as if—

(a) in the case of a company not being an external company carrying on business within Guyana, proceedings for the winding up have been commenced by the company; and

(b) in the case of an external company carrying on business within Guyana, proceedings for an order for the affairs of the company so far as its assets in Guyana are concerned to be wound up in Guyana had been commenced in the court by a creditor of the company in the place in which it is incorporated or formed.

Investigation

506. (1) A shareholder or debenture-holder of a company, or the Registrar, may apply, *ex parte* or upon such notice as the court may require, to the court for an order directing that an investigation be made of the company and any of its affiliated companies.

Investigation order.

(2) If, upon an application under subsection (1) in respect of a company, it appears to the court that—

- (a) the business of the company or any of its affiliates is or has been carried on with intent to defraud any person;
- (b) the business or affairs of the company or any of its affiliates are or have been carried on in a manner, or the powers of the directors are or have been exercised in a manner, that is oppressive or unfairly prejudicial to or that unfairly disregards the interest of a shareholder or debenture-holder;
- (c) the company or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
- (d) persons concerned with the formation, business or affairs of the company or any of its affiliates have in connection therewith acted fraudulently or dishonestly,

the court may order that an investigation be made of the company and any of its affiliated companies.

(3) If a shareholder or debenture-holder makes an application under subsection (1), he must give the Registrar reasonable notice thereof, and the Registrar shall be entitled to appear and be heard in person or by an attorney-at-law.

(4) An *ex parte* application under this section must be heard in camera.

(5) No person shall publish anything relating to an *ex parte* proceeding except with the authorization of the court or the written consent of the company that is being or to be investigated.

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Court powers.

507. (1) In connection with an investigation under this Division in respect of a company, the court may make any order it thinks fit, including—

- (a) an order to investigate;
- (b) an order appointing an inspector, who may be the Registrar, and fixing the remuneration of the inspector and replacing the inspector;
- (c) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
- (d) an order authorising an inspector to enter any premises in which the court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;
- (e) an order requiring any person to produce documents or records to the inspector;
- (f) an order authorising an inspector to conduct a hearing, administer oaths and examine any person upon oath, and prescribing rules for the conduct of the hearing;
- (g) an order requiring any person to attend a hearing conducted by an inspector and to give evidence upon oath;
- (h) an order giving directions to an inspector or any interested person on any matter arising in the investigation;
- (i) an order requiring an inspector to make an interim or final report to the court;
- (j) an order determining whether a report of an inspector should be published and, if so, ordering the Registrar to publish the report in whole or in part or to send copies to any person the court designates;
- (k) an order requiring an inspector to discontinue an investigation; or
- (l) an order requiring the company to pay the costs of the investigation.

(2) An inspector must send to the Registrar a copy of every report made by the inspector under this Division.

Inspector's
powers.

508. (1) An inspector under this Division has the powers set out in the order appointing him.

(2) An inspector must upon request produce to an interested person a copy of any order made under section 507(1).

509. (1) An interested person may apply to the court for an order that a hearing conducted by an inspector under this Division be heard in camera and for directions on any matter arising in the investigation. In camera hearing.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Division may appear and be heard in person or by an attorney-at-law.

510. No person shall be excused from attending and giving evidence and producing documents and records to an inspector under this Division by reason only that the evidence tends to incriminate that person or subject him to any proceeding or penalty; but the evidence may not be used or received against him in any proceeding thereafter instituted against him, other than a prosecution for perjury in giving the evidence. Incriminating evidence.

511. An oral or written statement or report made by an inspector or any other person in an investigation under this Division shall have absolute privilege. Privilege absolute.

Inquiries

512. (1) If the Registrar is satisfied that, for the purposes of Division F of Part II or Division E of Part III, there is reason to inquire into the ownership or control of a share or debenture of a company or any of its affiliates, the Registrar may require any person that he reasonably believes has or has had an interest in the share or debenture or acts or has acted on behalf of a person with such an interest, to furnish to the Registrar, or to any person the Registrar appoints— Ownership interest.

(a) information that the person has or can reasonably be expected to obtain as to present and past interests in the share or debenture; and

(b) the names and addresses of the persons so interested and of any person who acts or has acted in relation to the share or debenture on behalf of the person so interested.

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(2) For the purposes of subsection (1), a person shall have an interest in a share or debenture, if—

- (a) he has a right to vote or to acquire or dispose of the share or debenture or any interest therein; or
- (b) his consent is necessary for the exercise of the rights or privileges of any other person interested in the share or debenture; or
- (c) any other person interested in the share or debenture can be required or is accustomed to exercise rights or privileges attached to the share or debenture in accordance with his instructions.

Client
privileges.

513. Nothing in this Division shall affect the privileges that exist in respect of an attorney-at-law and his client.

Inquiries.

514. The registrar may make of any person any inquiries that relate to compliance with this Act by any persons.

DIVISION C

Regulations

Regulations.

515. The Minister may make such regulations as are required for the better administration of this Act and, in particular, the Minister may make regulations—

- (a) prescribing any matter required or authorised by this Act to be prescribed, otherwise than by rules;
- (b) requiring the payment of a fee in respect of the filing, examination or copying of any documents or in respect of any action that the Registrar is required or authorised to take under this Act, and prescribing the amount thereof;
- (c) prescribing forms for the purposes of this Act;
- (d) respecting the preservation of registers, records or documents and their destruction and the presumptions which may or shall be made with respect to entries in registers;
- (e) respecting the names of companies or classes thereof;
- (f) respecting the authorised capital of companies;

- (g) respecting the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to shares or classes or series of shares of companies;
- (h) respecting the designation of classes of shares; and
- (i) respecting any other matter required for the efficient administration of this Act.

DIVISION D

Offences and Penalties

516. A company that contravenes section 9 shall be guilty of an offence and shall be liable on summary conviction to a fine of fifteen thousand dollars. Name offence.
[6 of 1997]

517. Each of the individuals who carry on business under a name part of which is “incorporated” or the abbreviation “inc.” shall be guilty of an offence and shall be liable on summary conviction to a fine of three thousand dollars. Abuse of corporate status.
[6 of 1997]

518. (1) A person who makes or assists in making a report, return, notice or other document— Reports.
[6 of 1997]

(a) that is required by this Act or the regulations to be sent to the Registrar or to any other person; and

(b) that—

(i) contains an untrue statement of a material fact; or
(ii) omits to state a material fact required in the report, return, notice or other document or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made,

shall be guilty of an offence and shall be liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for six months.

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(2) A person shall not be guilty of an offence under subsection (1) if the making of the untrue statement or the omission of the material fact was unknown to him and with the exercise of reasonable diligence could not have been known to him.

(3) When an offence under subsection (1) is committed by a body corporate and a director or officer of that body corporate knowingly authorised, permitted or acquiesced in the commission of the offence, the director or officer shall also be guilty of the offence and liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for six months.

Prohibition
against offering
shares or
debentures to
the public.
[6 of 1997]

519. (1) This section shall commence on a date to be appointed by the Minister by order published in the *Gazette*, which date shall not be earlier than the date on which a stock exchange is established in Guyana.

(2) Any person, other than an exempted person, who offers to the public for purchase shares in, or debentures of, a body corporate shall be guilty of an offence and shall be liable on summary conviction to a fine of fifteen thousand dollars.

(3) For the purposes of subsection (2), an “exempted person” shall be—

(a) a member of the stock exchange established in Guyana, or of any stock exchange established in a country which is a Member State of the Caribbean Community and designated by the Minister;

(b) a person, firm, body corporate or institution designated by the Minister as an institutional investor; or

(c) a person acting on behalf of any such member, person, firm, body corporate or institution.

(4) The Minister may make an order—

(a) appointing a date for the purposes of subsection (1);

(b) designating any stock exchange for the purposes of subsection (3)(a); or

(c) designating a person, firm, body corporate or institution for the purposes of subsection (3)(b).

520. (1) A person shall be guilty of an offence and liable on summary conviction to a fine of thirty thousand dollars and to imprisonment for six months—

Specific
offences.
[6 of 1997]

- (a) who without reasonable cause contravenes section 193;
- (b) who without reasonable cause contravenes section 197;
- (c) who wilfully contravenes sections 287, 294, 296 or 300;
- (d) who without reasonable cause contravenes section 253(5);
- (e) who wilfully contravenes section 146 or 147;
- (f) who without reasonable cause fails to comply with a requirement of the Registrar under section 512 to report to the Registrar any information or any names or addresses of persons sought by the Registrar under that section;
- (g) who, being a proxy holder or alternate proxy holder, fails without reasonable cause to comply with the directions of a shareholder under section 149(1);
- (h) who, being a registrant within the meaning of this Act, knowingly contravenes section 150;
- (i) who, being an auditor or former auditor of a company, contravenes section 179(1) without reasonable cause; or
- (j) who, being a director or officer of a company knowingly contravenes section 183.

(2) Where the person who is guilty of an offence under subsection (1) is a body corporate then, whether the body corporate has been prosecuted or convicted, any director or officer of the body corporate who knowingly authorised, permitted or acquiesced in the act or omission that constituted the offence shall also be guilty of an offence and liable on summary conviction to a fine of thirty thousand dollars and to imprisonment for six months.

521. (1) A company shall be guilty of an offence and liable on summary conviction to a fine of thirty thousand dollars, if—

Company
offences.
[6 of 1997]

- (a) the company contravenes sections 298, 299, 301 or 303;

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- (b) the management of the company without reasonable cause fails to comply with section 145(1); or
(c) the company without reasonable cause contravenes section 155.

(2) When a company is guilty of an offence under this section, any director or officer of the company who knowingly authorised, acquiesced in or permitted the contravention shall also be guilty of an offence and liable on summary conviction to a fine of thirty thousand dollars and to imprisonment for six months.

General offence.
[6 of 1997]

522. Every person who, without reasonable cause contravenes, within the meaning of section 532, a provision of this Act or the regulations shall be guilty of an offence and, if no punishment is elsewhere in this Act provided for that offence shall be liable on summary conviction to a fine of thirty thousand dollars.

Defence re prospectuses.

523. In a prosecution for an offence under this Act arising out of an untrue statement or wilful non-disclosure in a prospectus, it shall be a defence for the person charged to prove that the statement or non-disclosure was immaterial or that he had reasonable grounds to believe and did, up to the time of the issue of the prospectus, believe that the statement was true or non-disclosure was immaterial.

Order to comply.

524. When a person is convicted of an offence under this Act or the regulations, the court or a court of summary jurisdiction in which proceedings in respect of the offence are taken, may, in addition to any punishment it may impose, order that person to comply with the provision of this Act or the regulations for the contravention of which he has been convicted.

Limitation.

525. A prosecution for an offence under this Act or the regulations may be instituted at any time within two years from the time when the subject matter of the prosecution arose.

Civil remedies unaffected.

526. No civil remedy for any act or omission shall be affected by reason that the act or omission is an offence under this Act.

DIVISION E

CONSTRUCTION AND INTERPRETATION OF ACT

Corporate Relationships

527. For the purposes of this Act—

- (a) one body corporate shall be affiliated with another body corporate if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person; and
(b) if two bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other.

Affiliated bodies corporate.

528. For the purposes of this Act, a body corporate shall be controlled by a person if any shares of the body corporate carrying voting rights sufficient to elect a majority of the directors of the body corporate are, except by way of security only, held, directly or indirectly, by or on behalf of that person.

“Control” of body corporate.

529. For the purposes of this Act—

“Holding” and “subsidiary”.

- (a) a body corporate shall be the holding body corporate of another if that other body corporate is its subsidiary; and
(b) a body corporate shall be a subsidiary of another body corporate if it is controlled by that other body corporate.

Public Distribution of Corporate Securities

530. (1) For the purposes of this Act—

“Distribution” to public.

- (a) a share or debenture of a body corporate shall be part of a distribution to the public, when, in respect of the share or debenture—

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(i) there has been, under the laws of Guyana or any other jurisdiction, a filing of a prospectus, statement in lieu of prospectus, registration statement, stock exchange, takeover bid circular or similar instrument; or

(ii) the share or debenture is listed for trading on any stock exchange wherever situated; and

(b) a share or debenture of a body corporate shall be deemed to be part of a distribution to the public where the share or debenture has been issued and a filing referred to in paragraph (a)(i) would be required if the share or debenture were being issued currently.

(2) For the purposes of this Act, the shares or debentures of a company that are issued upon a conversion of other shares or debentures of a company, or in exchange for other shares or debentures, shall be part of a distribution to the public if any of those others were part of a distribution to the public.

(3) For the purposes of this Act—

(a) a statement shall be included in a prospectus or in a statement in lieu of a prospectus if it is included in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith;

(b) a statement included in a prospectus or statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(c) a reference to an offer or offering of shares or debentures for subscription or purchase shall be deemed to include an offer of shares or debentures by way of barter or otherwise.

“Offer” to the public.

531. (1) Any reference in this Act to offering shares or debentures to the public must include, unless the contrary intention appears, a reference to offering them to any section of the public, whether selected as clients of the person issuing the prospectus or in any other manner;

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and references in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures must, unless the contrary intention appears, be similarly construed.

(2) Subsection (1) shall not require that any offer or invitation be treated as being made to the public if the offer or invitation can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving the offer or invitation.

(3) A provision in the articles or by-laws of a company that prohibits invitations to the public to subscribe for shares or debentures shall not prohibit the making of an invitation to the shareholders, debenture-holders or employees of the company.

Legislative Expression

532. (1) Where the auxiliary “shall” is used in a provision of this Act— “Shall”, use of.

- (a) to require a person to do or refrain from doing some act, matter or thing; or
- (b) to require that some act, matter or thing be done or not be done by some specific means, or manner, or in some specific form or at or within some specific time,

the provision is imperative and default in complying with it constitutes a contravention of this Act.

(2) Unless otherwise expressly provided, default in complying with an imperative provision referred to in subsection (1) shall not invalidate any act, matter or thing done in contravention of the provision nor prevent the latter doing of that act, matter or thing in accordance with the provision.

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(3) Compliance with a provision referred to in subsection (1) shall be enforceable in any court of competent jurisdiction notwithstanding that the contravention of the provision is punishable or has been punished pursuant to statute.

“May”, use of

533. (1) The auxiliary “may” is permissive, empowering and enabling, and when used in the negative form it negatives any permission, power or capacity to do the act, matter or thing in respect of which the auxiliary is used so that, unless the contrary is expressly provided, the act, matter or thing shall be construed, so far as it can be done without allowing the statute to be made an instrument of fraud, as not being capable of being done in law, or in fact.

(2) When the exercise of a power is subject to any qualification or condition, the power shall not be exercised unless the qualification or condition is met or complied with.

(3) Unless otherwise expressly provided, the doing of any act, matter or thing pursuant to a permission or power shall be within the sole and absolute discretion of the person to whom the permission or power is given..

“Must”, use of

534. (1) Where the auxiliary “must” is used in a provision of this Act—

- (a) to require a person to do or refrain from doing some act, matter or thing;
- (b) to require that an act, matter or thing be done or not be done by some specific means, or manner, or in some specific form, or at or within some specific time; or
- (c) to prescribe a qualification or condition for some purpose, office or status,

the provision shall impose a duty or obligation upon the person required to comply with it.

(2) Default in complying with the duty or obligation referred to in subsection (1) shall not constitute an offence under this Act unless the default is made an offence by a provision of this Act expressly mentioning the act, matter or thing or the duty or obligation or the provision imposing the duty or obligation.

(3) Compliance with any duty or obligation shall be enforceable in any court of competent jurisdiction.

(4) A person aggrieved by a breach of a duty or obligation referred to in subsection (1) may recover, by action in the court, any damages suffered by him as a direct result of the breach; but this subsection shall not apply if the breach is an act or omission—

- (a) in the performance of a function of a legislative nature or of a judicial nature; or
- (b) in the performance in good faith of a ministerial function by a Minister or employee of the State in the administration of this Act.

(5) When a provision of this Act uses the auxiliary “must” to prescribe any qualification or condition for some purpose, office or status, the qualification or condition shall be mandatory and default in complying with it, unless it is otherwise provided—

- (a) frustrates the purpose;
- (b) vitiates the status;
- (c) nullifies the appointment to the office; or
- (d) vacates the tenure in the office,

to which the qualification or condition is attached, but without affecting the operation of subsections (2) to (4).

Corporate and Other Expressions

535. In this Act,

“affairs” means, in relation to any company or other body corporate, the relationship among the company or body corporate, its affiliates

Definition of technical words.

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and the shareholders, directors and officers thereof, but shall not include any businesses carried on by the companies or other bodies corporate;

“affiliate” means an affiliated company or affiliated body corporate within the meaning of section 527;

“associate” when used to indicate a relationship with any persons means—

(i) a company or body corporate of which that person beneficially owns or controls, directly or indirectly, shares or debentures convertible into shares, that carry more than twenty per cent of the voting rights—

(A) under all circumstances;
(B) by reason of the occurrence of an event that has occurred and is continuing; or
(C) by reason of a currently exercisable option or right to purchase those shares or those convertible debentures;

(ii) a partner of that person acting on behalf of the partnership of which they are partners;

(iii) a trust in which that person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity;

(iv) a spouse of that person;

(v) a child or adopted child of that person; and

(vi) relative of that person or of his spouse if that relative has the same residence as that person;

“auditor” includes a partnership of auditors;

“beneficial interest” or “beneficial ownership” includes ownership through a trustee, legal representative, agent or other intermediary;

“body corporate” includes a company within the meaning of section 2(1) or other body corporate wherever or however incorporated;

“corporate instruments” includes any statute, letters patent, memorandum of association, articles of association, certificate of incorporation, certificate of continuance, by-laws, regulations or other instrument by which a body corporate is incorporated or continued or that governs or regulates the affairs of a body corporate;

“debenture” includes debenture stock and any bond or other instrument evidencing an obligation or guarantee, whether secured or not;

“director”, in relation to a body corporate means a person occupying therein the position of a director by whatever title he is called, and “directors” and “board of directors” include a single director;

“external company” means a company as defined in section 249(2);

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

“incorporator” means, in relation to a company, a person who signs the articles of incorporation of the company;

“legal representative”, in relation to a company, shareholder, debenture-holder or other person, means a person who stands in place of and represents the company, shareholder, debenture-holder or person and, without limiting the generality of the foregoing, includes, as the circumstances require, a trustee, executor, administrator, assignee, or receiver of the company, shareholder, debenture-holder or person;

“ordinary resolution” means a resolution passed by a majority of the votes cast by the shareholders who voted in respect of that resolution;

“record” includes any register, book or other record that is required to be kept by a company or other body corporate;

“redeemable share” means a share issued by a company—

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- (i) that the company can purchase or redeem upon demand of the company; or
- (ii) that the company is required by its articles to purchase or redeem at a specified time or upon the demand of a shareholder;

“resident” means a person who is “resident in Guyana” within the meaning of the Income Tax Act;
c. 81:01

“security interest” means a security interest within the meaning of section 95;

“send” includes deliver;

“series”, in relation to shares, means a division of a class of shares;

“share” includes stock;

“shareholder”, in relation to a company, includes—

- (i) a person who agrees to become a member of a company and whose name is entered in the company’s register of members;
- (ii) a subscriber to the articles of incorporation of a company who is deemed for the purposes of paragraph (i) to have agreed to become a member of the company and whose name is entered in the company’s register of members;
- (iii) the personal representative of a deceased shareholder;
- (iv) the trustee in bankruptcy of a bankrupt shareholder; and
- (v) a person in whose favour a transfer of shares has been executed but whose name has not been entered in the register of shareholders, or, if two or more transfers of those shares have been executed, the person in whose favour the most recent transfer has been made;

“special resolution” means a resolution—

- (i) passed by a majority of not less than two-thirds of the votes cast by the shareholders who voted in respect of the resolution; or
- (ii) signed by all the shareholders entitled to vote on the resolution.

DIVISION F

MISCELLANEOUS AND CONSEQUENTIAL MATTERS

536. (1) This section shall apply to a statutory declaration referred to in sections 38(2), 39(3), 40(3) or 54(2). Statutory declaration under certain provisions.

(2) A statutory declaration to which this section applies—

- (a) shall be in the form, and deposited to in the manner prescribed;
- (b) shall set out the declaration required by the relevant section;
- (c) shall give particulars of the transaction or matter in relation to which the declaration is being made; and
- (d) shall contain a statement to the effect that the deponents are satisfied that, in all the circumstances of the case, the declaration may be made.

(3) Where there is failure to comply with subsection (2) and it is proved—

- (a) that the directors of a company made and lodged with the Registrar a statutory declaration to which this section applies;
- (b) that within twelve months after the date on which the declaration was so lodged the winding up of the company is commenced; and
- (c) that the debts of the company were not paid or provided for in full within twelve months after the commencement of the winding up,

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it shall be presumed, until the contrary is proved, that the directors made the declaration reckless as to whether it was true or false.

(4) A prosecution for an offence under subsection (2) shall be commenced not later than three years after the date on which the statutory declaration concerned was lodged with the Registrar.

(5) A shareholder or creditor of a company may apply to the court for an order that a statutory declaration to which this section applies, be declared void on the ground that the circumstances of the particular case do not warrant the making of the declaration, and on the application the court may make any order it deems fit.

(6) An application under subsection (5) shall be made not later than one month after the date on which the statutory declaration concerned was lodged with the Registrar.

Repeal.
[13 of 1995]

537. (1) The former Act is hereby repealed.

(2) Notwithstanding subsection (1) but subject to this Act, the provisions of the former Act shall continue to apply so far as is necessary to enable a former-Act company to function until it is continued under this Act or wound up under Part V of this Act.

(3) Notwithstanding the repeal of the former Act by subsection (1) the Companies Winding Up Rules made under section 230 of the former Act, to the extent to which they could be made under this Act, subject to the power of the Minister to amend or repeal them, continue in force as if they were made under this Act and shall be construed with any necessary modifications and qualifications.

No. 13 of 1979

(4) The Rate of Interest Act 1979 is hereby repealed.

Amendments.
Seventh
Schedule

538. The Acts enumerated in the Seventh Schedule shall be amended in the manner and to the extent described in that Schedule.

References to
Companies
Act.

539. (1) A reference in an unrepealed written law to the former Act shall, as regards a transaction, matter or thing subsequent to the commencement of this Act, be construed and applied, unless the context otherwise requires as a reference to the provisions of this Act that relate to the same subject-matter as the provisions of the former Act; but if there are no provisions in this Act that relate to the same subject-matter, the former Act shall be construed and applied as unrepealed so far as it is necessary to do so to maintain or give effect to the unrepealed provision.

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(2) Subsection (1) shall not apply in respect of the enactments specifically amended by this Act.

540. (1) Where in any written law the expression “registered under the Companies Act” occurs, the expression, unless the context otherwise requires, shall refer to incorporation, continuation or registration under this Act in respect of all transactions, matters or things subsequent to the commencement of this Act.

Transitional.

(2) Where in any other written law the expression “memorandum of association” or “articles of association” occurs, those expressions, unless the context otherwise requires, shall refer respectively to articles of incorporation and by-laws within the meaning of this Act.

(3) Where in any written law a reference is made to winding up under, or to the winding up provisions of, the former Act, then, unless the context otherwise requires, it shall refer, in respect of all transactions, matters or things subsequent to the commencement of this Act, to winding up or dissolution under this act.

(4) This section shall not apply in respect of the enactments specifically amended by this Act.

541. (1) Notwithstanding section 537, when, on the commencement of this Act any proceedings under Part IV of the former Act are pending in respect of the winding-up of any body corporate under that Act, those proceedings may be continued under that Part in all respects as if this Act had not been enacted.

Repeal effect.

(2) When, on the commencement of this Act, an amalgamation agreement entered into under the former Act and approved by the court under that Act is in the course of being filed with the Registrar of Companies or is in his hands, the amalgamation may be continued and effected under that Act as if this Act had not been enacted, unless the parties to the amalgamation withdraw the amalgamation agreement by notice in writing.

542. Section 41 of the Income Tax Act is hereby amended by adding thereto the following subsection as subsection (3) –

Income Tax
Amendment.
c. 81:01

“(3) Notwithstanding subsection (1), any amount added to the stated capital account maintained for any shares pursuant to section 31(7)(b) of the Companies Act, shall not be treated as a loan or advance to a person to whom this section applies.”

c. 89:01

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s. 288

FIRST SCHEDULE

**MATTERS TO BE SPECIFIED IN PROSPECTUS
AND REPORTS TO BE SET OUT THEREIN**

PART I

MATTERS TO BE SPECIFIED

1. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.
2. The number of shares, if any, fixed by the by-laws as the qualification of a director, and any provision in the articles as to the remuneration of the directors.
3. The names, descriptions and addresses of the directors or proposed directors.
4. Where shares are offered to the public for subscription, particulars as to—
 - (a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters—
 - (i) the cost of any property acquired or to be acquired which is to be defrayed in whole or in part out of the proceeds of the issue;
 - (ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;
 - (iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;

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(iv) working capital; and

(b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

5. The time of the opening of the subscription lists.

6. The amount payable on application and allotment of each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

7. The number, description and amount of any shares in or debentures of the company which any person has, or is entitled to be given, 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 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 was given or, if given to existing shareholders or debenture-holders as such, the relevant shares or debentures.

8. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

9. (1) As respects any property to which this paragraph applies—

- (a) the names and addresses of the vendors;

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(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 property 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 property to which this paragraph applies is property purchased or acquired by the company or proposed to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase of the property, other than property—

(a) the contract for the purchase or acquisition whereof 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.

10. The amount, if any, paid or payable as purchase money in cash, shares or debentures for any property to which paragraph 9 applies, specifying the amount, if any, payable for goodwill.

11. The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the company, or the rate of any such commission.

12. The amount or estimated amount of preliminary expenses.

13. Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter, and the consideration for the payment or the giving of the benefit.

14. 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, and a reasonable time and place at which any such material contract or a copy thereof may be inspected.

15. The names and addresses of the auditors, if any, of the company.

16. Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interests of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise, for services rendered by him or by the firm in connection with the promotion or formation of the company.

17. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

18. In case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

PART II

REPORTS TO BE SET OUT

19. (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) as the case requires;

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(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 three financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such 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 three years ending on the date three months before the issue of the prospectus, containing a statement of the 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 three 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 or losses as provided by sub-paragraph (2) and in addition, deal either—

(i) as a whole with the combined profits or losses, of its subsidiaries, so far as they concern members of the company; or

(ii) individually with the profits or losses of each subsidiary so far as they concern members 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 members of the company with the combined profits or losses of its subsidiaries; and

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(b) so far as regards assets and liabilities, deal separately with the company's assets and liabilities as provided by subparagraph (2) 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 members of the company.

20. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants (who shall be named in the prospectus) upon—

- (a) the profits or losses of the business in respect of each of the three 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.

21. (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; and
- (b) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith that body corporate will become a subsidiary of the company,

a report made by accountants (who shall be named in the prospectus) upon—

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(c) the profits or losses of the other body corporate in respect of each of the three financial years immediately preceding the issue of the prospectus; and

(d) the assets and liabilities of the other body corporate at the last date to which the accounts of the body corporate were made up.

(2) The said report shall—

(a) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members 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 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 subparagraph (3) of paragraph 19 in relation to the company and its subsidiaries.

PART III

PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE.

22. The provisions of this Schedule with respect to the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of the preliminary expenses, shall not apply in the case of a prospectus issued more than two years after the date on which the company is registered.

23. Every person shall, for the purposes of this Schedule, be deemed to be a vendor who has entered into contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

- (a) the purchase money is not fully paid at the date of the issue of the prospectus;
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;
- (c) the contract depends for its validity or fulfilment on the result of that issue.

24. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression “vendor” included the lessor, and the expression “purchase money” included the consideration for the lease, and the expression “sub-purchaser” included a sub-lessee.

25. Reference in paragraph 7 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.

26. For the purposes of paragraph 9 where the vendors or any of them are a firm, the members of the firm shall be treated as separate vendors.

27. If in the case of a company which has been carrying on business, or of a business which has been carried on, for less than three years, the accounts of the company or business have only been made up in respect of two years or one year, Part II shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years.

28. The expression “financial year” in Part II means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of the said Part be deemed to be a financial year.

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29. Any report required by Part II 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.

30. Any report by accountants required by Part II shall be made by accountants qualified under this Act for appointment as auditors of a company and shall not be made by any accountant who is an officer or employee, or a person who is a partner of or in the employment of an officer or employee of the company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

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SECOND SCHEDULE STATEMENT IN

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LIEU OF PROSPECTUS PART I

STATEMENT IN LIEU OF PROSPECTUS LODGED FOR REGISTRATION BY

[Insert the name of the company.]

The Share Capital of the Company Divided into	Shares
	Shares
	Shares
Amount (if any) of above capital which consists of redeemable shares.	Shares
The date on or before which these shares are, or are liable, to be redeemed.	
Names, descriptions and addresses of directors or proposed directors.	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the right in respect of capital and dividend attached to, the several classes of shares, respectively.	
Number of shares and debentures issued within the two years preceding the date of this statement or proposed or agreed to be issued otherwise than in cash.	1. Shares 2. Debentures
The consideration for the issue or intended issue of those shares and debentures.	3. Consideration

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Number and description of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.	1. Shares and debentures
Period during which option is exercisable. Minimum price to be paid for shares or debentures subscribed for or acquired under option.	2. Until 3. \$
Consideration for option or right to option.	4. Consideration.
Persons to whom option or right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.	5. Names and addresses
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of purchase money is not material.	
Amount (in cash, shares, or debentures) payable to each separate vendor.	Total purchase price \$
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Cash \$ Shares \$ Debentures \$ Goodwill \$

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Short particulars of any transaction relating to any such property which was compiled within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director, or proposed director of the company had any interest direct or indirect.

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or

Amount paid:	\$
Amount payable:	\$

Rate of the Commission Per cent

Amount or rate of brokerage

The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.

Amount or estimated amount of preliminary expenses. \$

By whom those expenses have been paid or
are payable

Amount paid or intended to be paid to any promoter. Name of promoter: _____
Amount: _____ \$

Consideration for the payment

Any other benefit given or intended to be given to any promoter.

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Consideration for giving of benefit Consideration:

Dates of, parties to, and general nature of every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the delivery of this statement).

Time and place at which the contracts or copies thereof or (1) in the case of a contract not reduced into writing a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a foreign language, a copy of a translation in English or embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation may be inspected.

Names and addresses of the auditors of the company (if any).

Full particulars of the nature and extent of the interest of every director, and of every expert, in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director or expert 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 (in the case of a director) either to induce him to become, or to qualify him as, a director, or

otherwise for service rendered by him or by the firm in connection with the promotion or formation of the company or (in the case of an expert) for services rendered by him or the firm in connection with the promotion or formation of the company.

PART II

REPORTS TO BE SET OUT

1. Where it is proposed to acquire a business, a report by accountants (who shall be named in the statement) with respect to—

- (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the lodging of the statement with the Registrar; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2. (1) Where it is proposed to acquire shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with subparagraph (2) or (3), as the case requires, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members 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.

(2) If the other body corporate has no subsidiaries, the report referred to in subparagraph (1) shall—

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(a) so far as regards profits and losses, deal with the profits or losses of the other body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar; and

(b) so far as regards assets and liabilities, deal with the assets and liabilities of the other body corporate at the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate has subsidiaries, the report referred to in subparagraph (1) shall—

(a) so far as regards profits and losses, deal separately with the profits or losses of the other body corporate as provided by subparagraph (2), and in addition deal as aforesaid either—

- (i) as a whole with the combined profits or losses of its subsidiaries, or
- (ii) individually with the profits or losses of each subsidiary,

or instead of dealing separately with the profits or losses of the other body corporate, deal as aforesaid as a whole with the profits or losses of the other body corporate and with the combined profits or losses of its subsidiaries; and

(b) so far as regards assets and liabilities, deal separately with the assets and liabilities of the other body corporate, as provided by subparagraph (2), and, in addition, deal as aforesaid either—

- (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the assets and liabilities of the other body corporate; or
- (ii) individually with the assets and liabilities of each subsidiary,

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and shall indicate as respects the profits or losses and the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

NOTE: Where a company is not required to furnish any of the reports referred to in this Part, a statement to that effect giving the reasons therefor should be furnished.

(Signatures of the person above named as directors or proposed directors or of their agents authorised in writing)

Date:

PART III

PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE

3. In this Schedule the expression “vendor” includes any person who is a vendor for the purpose of the First Schedule, and the expression “financial year” has the meaning assigned to it in Part III of that Schedule.

4. If in the case of a business which has been carried on or of a body corporate which has been carrying on business, for less than five years, the accounts of the business or body corporate have only been made up in respect of four years, three years, two years, or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

5. Any report required by Part II of 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.

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THIRD SCHEDULE

BY-LAWS

Commission.

1. The company may exercise the power under section 49 of the Act of paying commission.

Lost share
certificates,
etc.
[6 of 1997]

2. When a share certificate or debenture is lost, destroyed or defaced it may be renewed on payment of a fee of thirty dollars and on such terms (if any) as to evidence and indemnity and the payment of the expenses of the company of investigating evidence as the directors think fit.

Lien.

3. (1) The company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently due or not) payable in respect of that share, and the company shall also have a first and paramount lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company, but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this paragraph; the company's lien, if any, on a share shall extend to all dividends payable thereon.

(2) The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

(3) To give effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof; the purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

(4) The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

(5) For the purposes of this paragraph, a share is not a fully paid share if any instalment of the issue price remains to be paid.

4. 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) five per cent per annum, as may be agreed upon between the directors and the person paying that sum in advance.

Payment of
issue price.

5. (1) An instrument of transfer of shares or debentures shall name the transferee, shall state the number or principal amount of the shares or 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 Act otherwise provides or the court otherwise orders.

Transfer of
shares or
debentures.
[6 of 1997]

(2) The directors may decline to register—

- (a) the transfer of a share (not being a fully paid share) to a person of whom they shall not approve;
- (b) the transfer of a share on which the company has a lien; or
- (c) the transfer of a share to a person who is an infant or who is of unsound mind and has been so found by a court in Guyana.

(3) The directors may decline to recognise any instrument of transfer of shares or debentures unless—

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(a) a fee of thirty dollars, or such lesser sum as the directors may from time to time require, is paid to the company in respect thereof;

(b) the instrument of transfer 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.

(4) The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine provided that such registration shall not be suspended for more than thirty days in any year.

(5) The company shall be entitled to charge a fee not exceeding thirty dollars on the registration of every probate, letters of administration, certificate of appointment of a trustee in bankruptcy, power of attorney, notice of interest, charging order, or other instrument.

Transmission
of shares and
debentures.

6. (1) In case of the death of a member or debenture-holder the survivor or survivors where the deceased was a joint holder, and the legal personal representative of the deceased where he was a sole holder, shall be the only person recognised by the company as having any title to his 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 had been jointly held by him with other persons.

(2) Any person becoming entitled to shares or debentures in consequence of the death or bankruptcy of a member 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 member or debenture-holder before his death or bankruptcy, as the case may be.

(3) 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; but 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.

7. (1) If a shareholder fails to pay any instalment of the issue price of a share on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of the instalment remains unpaid, exercise the powers to forfeit and reissue the share and to recover the unpaid instalment conferred on the company by section 29(2) and (3) of the Act. Forfeiture of shares.

(2) A statutory declaration in writing that the declarant is a director or the secretary of the company and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share; the company may receive the consideration (if any) given for the share on the reissue thereof and may, issue a share certificate to the person to whom the share is reissued, and he shall thereupon be registered as the holder of the share and shall not be bound to see 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.

8. 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. Omission to give notice of meeting.

9. (1) In accordance with sections 142 and 149 of the Act any member entitled to attend and vote at a meeting of the company shall be entitled to appoint another person, whether a member of the company Proxies.

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or not, as his proxy to attend and vote instead of him and the proxy shall, subject to that section, have the same rights as the member to speak at the meeting.

(2) An instrument appointing a proxy, shall be in the following form or a form as near thereto as circumstances admit:

Signed this _____ day of _____ 19 ____

Chairman of
meetings.

10. (1) 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 is not 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.

(2) 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 the holding of the meeting, the members present shall choose one of their number to be chairman of the meeting.

(3) 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 but in any other case it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

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11. Postal voting is permitted at meetings and section 133 of the Act shall apply accordingly. Postal voting.

12. Where, at any time the shares of the company are divided into different classes, paragraphs 8 to 11 and the provisions of this Act relating to general meetings shall apply to meetings of any class of members in like manner as they apply to general meetings. Classes of shares.

13. Subject to any rights or restrictions for the time being attached to any class of shares and which may be validly attached thereto pursuant to this Act— Voting of members.

(a) on a show of hands each member and each proxy lawfully present at the meeting shall have one vote, and on a poll each member present in person or by proxy shall have one vote for each share held by him—

(b) in the case of postal voting each person entitled to attend and vote at the meeting shall have one vote for each share held by him.

14. The remuneration payable to any director shall be determined or approved by the members in general meeting. Remuneration of directors.

15. (1) The directors may pay all expenses incurred in promoting and registering the company. Powers and duties of directors.

(2) The directors may exercise all such powers of the company, including power to borrow money and to mortgage or charge its property and undertaking or any part thereof and to issue debentures, as are not by this Act or these by-laws required to be exercised by the members in general meeting.

(3) Subject to compliance with section 90 of the Act, a director may enter into any contract with the company and the contract or any other contract of the company in which a director is in any way interested shall not be liable to be avoided nor shall a director be liable to account for any profit made thereby by reason of the director holding the office of director or of the fiduciary relationship thereby established.

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Proceedings of
directors.

(4) A director may act by himself or his firm in a professional capacity for the company, except as auditor, and he and his firm shall be entitled to proper remuneration for professional services as if he were not a director.

16. (1) The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit.

(2) Questions arising at any meeting shall be decided by a majority of votes and in case of an equality of votes, the chairman shall have a second or casting vote.

(3) A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

(4) It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Guyana.

(5) 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.

(6) 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 these by-laws 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.

(7) 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.

(8) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

(9) 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.

(10) 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.

(11) 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.

(12) 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.

17. (1) Subject to the provisions of this Act, 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's appointment shall be automatically determined if he ceases for any cause to be a director.

Managing
director.

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(2) 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, withdraw, alter or vary all or any of such powers.

Secretary.

18. The secretary or joint secretaries shall be appointed by the directors for such term, at such remuneration and upon such other conditions as they may think fit; and the appointment of any secretary may be terminated by them.

Seal.

19. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf; and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

Dividend.

20. (1) The company may by ordinary resolution declare dividends in respect of any year or other period but no dividend shall exceed the amount recommended by the directors.

(2) The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

(3) The right to declare or pay a dividend is subject to section 50(6) of the Act.

Power to set aside sums.

21. The directors may, before recommending any dividends, set aside out of the profits or income surplus of the company such sums as they think proper in order to provide for a known liability, including a disputed or contingent liability, or as a depreciation or replacement provision and may carry forward any profits or income surplus which they may think prudent not to distribute.

Form of dividend.

22. (1) Subject to section 50(4) of the Act, all dividends shall be declared and paid as a fixed sum per share and not as a proportion of the amount paid in respect of a share.

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(2) The directors may deduct from a dividend payable to a shareholder all sums of money presently payable by the shareholder to the company in respect of his shares.

23. (1) Any dividend payable in cash may be paid by cheque or warrant sent by post to the registered address of the shareholder or, in the case of joint holders to that one 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. Payment of dividend.

(2) Every such cheque shall be made payable to the order of the person to whom it is sent.

(3) Any one of two or more joint holders may give effectual receipts for any dividends.

(4) Every dividend payment shall be accompanied by a statement showing the gross amount of the dividend, and any tax deducted or deemed to be deducted therefrom.

(5) No dividend shall bear interest against the company.

24. The company, upon the recommendation of the directors may exercise the powers conferred— Non-cash dividends and bonus issues.

(a) by section 50(4) of the Act to direct that payment of a dividend shall be wholly or partly by distribution or fully paid up shares in another body corporate;

(b) by section 50(6) of the Act to resolve to make a capitalisation issue of shares; or

(c) by section 52(2) of the Act to resolve to issue shares by way of bonus,

and the directors shall do all acts and things required to give effect to the direction or resolution.

25. (1) The directors may from time to time appoint officers and agents and may appoint any body corporate, firm or body of persons, whether nominated directly or indirectly, by the directors, to be the Officers and agents.

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attorneys 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 by-laws, and for such period and subject to such conditions as they may think fit.

(2) Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

Notices.

26. (1) 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 within Guyana, to the address (if any) within Guyana supplied by him to the company for the giving of notice to him; where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying, 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 twenty-four 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.

(2) 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.

(3) 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 member or debenture-holder by sending it through the post in a prepaid letter addressed to them by name, or by the title of the representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address (if any) within Guyana 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.

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(4) Notice of every general meeting shall be given in any manner so authorised to—

- (a) every member except those members who, having no registered address within Guyana, have not supplied to the company an address within Guyana for the giving of notices to them;
- (b) every person upon whom the ownership of a share devolves by reason of his being a legal personal representative or a trustee in bankruptcy of a member, where a member but for his death or bankruptcy would be entitled to receive notice of the meetings; and
- (c) the auditor for the time being of the company,

and no other person shall be entitled to receive notices of general meetings .

27. (1) If the company is wound up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Act, divide amongst the members in specie or kind the whole or any part of the assets of the company (whether they consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members.

Winding up.

(2) The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the members or shareholders as the liquidator with the like sanction thinks fit.

(3) Notwithstanding anything in this paragraph, no member or shareholder shall be compelled to accept any shares or other securities on which there is any liability.

28. Every director, managing director, agent, auditor, secretary and any 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.

Indemnity.

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FOURTH SCHEDULE

PART I

AMENDMENT OF ARTICLES OF INCORPORATION

Amendment
by special
resolution or
ordinary
resolution.

1. (1) Subject to this Part, a company may—

(a) by special resolution amend its articles of incorporation—

- (i) to change its name;
- (ii) to alter the rights or obligations attached to shares of any class;
- (iii) to add, change or remove restrictions on the transfer of shares;
- (iv) to increase or decrease the number of directors or the minimum or maximum number of directors;
- (v) to add, change or remove any restriction upon the capacity or powers of the company to carry on any activity;
- (vi) to add, change or remove any matter permitted but not required to be included in the articles; or
- (vii) to reduce its share capital; or

(b) by ordinary resolution amend its articles for any other purpose, including any purpose mentioned in paragraph 4 (other than that mentioned in paragraph 4(f)).

(2) The articles of incorporation of a company shall be considered as being amended in respect of the rights or obligations attached to a class of shares if—

- (a) the words stating the rights or obligations in the articles are altered;
- (b) the rights are made substantially less advantageous, or the obligations are made substantially more onerous, even though no alteration of a kind referred to in head (a) is made;
- (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;

(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.

2. This Part is subject to section 224(6)(a) of the Act.

Limitation.

3. The provision included in the articles of incorporation of a company pursuant to section 5(1) (b) of the Act may not be amended.

Certain provision may not be amended.

4. With respect to the share capital of a company, the articles of incorporation of the company may be amended only—

Amendments permitted in relation to share capital.

(a) to change any maximum number of shares which the company is authorised to issue;

(b) to create new classes of shares;

(c) to change the designation of all or any of the company's shares;

(d) to change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class, or into the same or a different number of shares of other classes or series;

(e) to divide a class of shares, whether issued or unissued, into series and to fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof; or

(f) to do anything referred to in paragraph (1)(a)(ii).

5. (1) Notice of a meeting called to pass the special resolution or, as the case may be, the ordinary resolution to amend the articles of incorporation of a company shall be given to all shareholders and

Meetings to pass resolutions.

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debenture-holders of the company and to the trustee of any debenture trust deed covering debentures issued by the company in like manner as it is given to members of the company.

(2) A notice referred to in subparagraph (1) shall set out the terms of the proposed amendment.

(3) A proposal for an amendment of the articles of incorporation of a company may be made by the directors of the company or a shareholder of the company.

Amendment
affecting
classes of
shares.

6. (1) No amendment of a kind referred to in paragraph 4 shall be made in the articles of incorporation of a company 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 approving the alteration is passed at the meeting by a majority comprising at least three-quarters of the votes cast.

(2) The provisions of this Act and the by-laws of the company concerned relating to general meetings shall apply to a meeting held pursuant to subparagraph (1), except that shareholders of the class in question who are not members of the company shall be deemed to be members for the purpose of the meeting, and the quorum for such a meeting shall be one or more persons present in person or by proxy, holding at least three-quarters of the issued shares of the class in question.

(3) If the by-laws of the company concerned provide for postal voting at general meetings, postal votes may be given at a meeting held under this paragraph.

(4) This paragraph 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 has been reissued.

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7. When authorised in a resolution effecting an amendment of the articles of incorporation of a company, the directors of the company may, without further approval, revoke the resolution before it is acted upon.
8. (1) Subject to this paragraph, an amendment of the articles of incorporation of a company shall not take effect until the expiration of one month after it is made.
- (2) Subject to subparagraph (3), subparagraph (1) shall not apply to an amendment of the articles of incorporation of a company to amend its name.
- (3) Where a company amends its articles of incorporation so as to enable it to convert to a public company, any amendment necessary for that purpose shall not have effect unless and until the Registrar reissues pursuant to section 8(1) of the Act, the certificate of incorporation relating to the company.
- (4) Where an application is made to the court under and in accordance with paragraph 13 in respect of any amendment of the articles of incorporation of a company the amendment shall not take effect—
- (a) unless the application is withdrawn; or
(b) the court confirms the amendment.
9. (1) No amendment of the articles of incorporation of a company shall affect an existing cause of action or claim, or liability to prosecution in favour of or against the company or its directors or officers, or any civil or criminal action or proceedings to which the company is, or its directors or officers are, a party.
- (2) Where, but for this paragraph, an amendment of the articles of incorporation of a company—
- (a) would require a member of the company to take or subscribe for more shares than the number held by him at the date on which the amendment is made; or
- Revocation of amendment.
- Time when amendment takes effect.
- Amendment not to affect any cause of action, etc.

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(b) would in any way increase his liability as at that date to contribute to the share capital of, or otherwise to pay money to the company,

the member is not bound by the amendment unless, either before or after the amendment is made, he agrees to be bound by it.

PART II

AMENDMENT OF BY-LAWS

Amendment of
by-laws by
directors.

10. The directors of a company may, subject to this Part and the articles of incorporation of the company, amend the by-laws of the company by altering or adding to them.

Amendment of
by-laws
subject to this
paragraph.

11. (1) An amendment of the by-laws of a company shall not have effect unless the requirements of this paragraph are satisfied.

(2) An amendment of the by-laws of a company shall not have effect—

(a) until the expiration of one month after it is made; and
(b) until it is approved by ordinary resolution at a meeting of the company.

(3) When an application is made to the court under and in accordance with paragraph 13 in respect of any amendment of the by-laws of a company the amendment shall not take effect—

(a) unless the application is withdrawn; or
(b) the court confirms the amendment.

Effect of
amendment.

12. (1) An amendment of the by-laws of a company that has effect shall, subject to this Act, be as valid as if originally contained in the by-laws and shall be subject in like manner to amendment.

(2) Paragraph 9 shall apply to an amendment of the by-laws of a company as it applies to an amendment of the articles of incorporation of a company.

PART III

CANCELLATION OF AMENDMENT OF ARTICLES OF
INCORPORATION OR BY-LAWS

13. (1) An application may be made to the court, within one month after the amendment of the articles of incorporation or by-laws of a company, to cancel the amendment by—

Application to court to cancel amendment.

- (a) the prescribed number of shareholders of the company;
- (b) the prescribed number of debenture-holders of the company; or
- (c) any person appointed by one or more instruments in writing by these shareholders or debenture-holders to make the application on their behalf.

(2) No shareholder who voted in person or by proxy in favour of an amendment of a company's articles of incorporation or by-laws, or in favour of the approval of the class of shareholders in which he belongs being given to the alteration, may make an application under subparagraph (l)(a), or concur in making such an application or be authorised to make, or authorise any other person to make, such an application.

(3) In this paragraph—

“the prescribed number of debenture-holders”, in relation to a company, means—

- (a) the holders of not less than twenty per cent of the company's issued debentures secured by a floating charge; or
- (b) if the company has issued more than one class of debentures so secured, the holders of not less than twenty per cent of the issued debentures of any such class;

“the prescribed number of shareholders”, in relation to a company, means—

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- (a) the holders of not less than ten per cent of the company's issued shares; or
- (b) if the company has issued shares of different classes, the holders of not less than ten per cent of the issued shares of any such class.

(4) In determining the number of shares or debentures whose holders may make an application under subparagraph (1) no account shall be taken of shares or debentures issued after the amendment of the articles of incorporation or by-laws of the company concerned, 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 any such shares or debentures.

PART IV

RIGHT OF SHAREHOLDER TO DISSENT

Right to dissent.

14. (1) Subject to this Part, a holder of shares of a particular class in a company may dissent if the company resolves to amend its articles of incorporation—

- (a) to increase or decrease any maximum number of authorised shares of a class having rights or privileges equal or superior to shares of the particular class;
- (b) to effect an exchange, reclassification or cancellation of all or part of the shares of the particular class;
- (c) to add to, change or remove the rights, privileges, restrictions or conditions attached to, the shares of the particular class and, in particular—
 - (i) to remove or change prejudicially rights to accrued dividends or rights to cumulative dividends;
 - (ii) to reduce or remove a dividend preference; or
 - (iii) to add to, remove or change prejudicially conversion privileges, options, voting, transfer or pre-emptive rights or rights to acquire shares of a company;

- (d) to increase the rights or privileges of any class of shares having rights or privileges equal or superior to the shares of the particular class;
- (e) to create a new class of shares equal or superior to the shares of the particular class;
- (f) to make any class of shares having rights or privileges inferior to the shares of the particular class equal or superior to shares of the particular class;
- (g) to effect an exchange or create a right of exchange of all or part of the shares of another class into shares of the particular class; or
- (h) to constrain the issue or transfer of the shares of the particular class or extend or remove any such constraint.

(2) A shareholder who dissents in any case mentioned in subparagraph (1) is referred to in this Part as a dissenting shareholder.

15. (1) In addition to any other right he may have but subject to paragraph 37, a shareholder who complies with this Part is entitled, when the action approved by the resolution from which he dissents becomes effective, to be paid by the company the fair value of the shares held by him in respect of which he dissents. Payment of fair value.

(2) The fair value of the shares referred to in subparagraph (1) shall be determined as at the close of business on the day before the resolution in question was adopted, but in determining that value any change in value reasonably attributable to the anticipated adoption of the resolution shall be excluded.

16. A dissenting shareholder may only claim under this Part with respect to all the shares of a class held by him on behalf of any one beneficial owner and registered in the name of the dissenting shareholder. No partial dissent.

17. A dissenting shareholder shall send to the company, at or before any meeting at which a resolution of a kind mentioned in paragraph 14(1) is to be voted on, a written objection to the resolution, unless the company did not give notice to the shareholder of the purpose of the meeting and of his right to dissent. Written objection.

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Notice of
resolution.

18. The company shall, within ten days after the passing of a resolution of a kind mentioned in paragraph 14(1), send each shareholder who has sent an objection under paragraph 17 to the company notice that the resolution has been adopted, but such notice is not required to be sent to any shareholder who voted for the resolution or who has withdrawn his objection.

Demand for
payment.

19. A dissenting shareholder shall, within twenty days after he receives a notice under paragraph 18 or, if he does not receive such a notice, within twenty days after he learns that the resolution has been adopted, send to the company written notice containing—

- (a) a statement of his name and address;
- (b) a statement of the number and class of shares in respect of which he dissents; and
- (c) a demand for payment of the fair value of those shares.

Share
certificates.

20. A dissenting shareholder shall, within thirty days after sending a notice under paragraph 19, send the certificates representing the shares in respect of which he dissents to the company.

Forfeiture.

21. A dissenting shareholder who fails to comply with paragraph 20 has no right to make a claim under this Part.

Endorsing
certificate.

22. A company shall endorse on any share certificate received pursuant to paragraph 20 a notice that the holder is a dissenting shareholder under this Part and forthwith return the share certificate to the dissenting shareholder.

Suspension of
rights.

23. After sending a notice under paragraph 19, a dissenting shareholder shall cease to have any rights as a shareholder except the right to be paid the fair value of his shares as determined under this Part, unless the dissenting shareholder withdraws his notice before the company makes an offer under paragraph 24, in which case his rights as a shareholder shall be reinstated.

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24. A company shall, not later than seven days after the day on which the action approved by the resolution is effective or the day the company received the notice referred to in paragraph 19, whichever is the later, send to each dissenting shareholder who has sent such a notice—
- (a) a written offer to pay for his shares in an amount considered by the directors of the company to be the fair value of the shares, accompanied by a statement showing how the fair value was determined; or
- (b) if paragraph 37 applies, a notification that it is unable lawfully to pay dissenting shareholders for their shares.
- Offer to pay.
25. Every offer made under paragraph 24 for shares of the same class or series shall be on the same terms.
- Same terms.
26. Subject to paragraph 37, a company shall pay for the shares of a dissenting shareholder within ten days after an offer made under paragraph 24 has been accepted, but any such offer lapses if the company does not receive an acceptance of the offer within thirty days after the offer has been made.
- Payment.
27. Where a company fails to make an offer under paragraph 24, or if a dissenting shareholder fails to accept an offer, the company may, within fifty days after the action approved by the resolution is effective, apply to the court to fix a fair value for the shares of any dissenting shareholder.
- Application by company to court.
28. If a company fails to apply to the court under paragraph 27, a dissenting shareholder may apply to the court for the same purpose within a further period of twenty days.
- Application by shareholder to court.
29. A dissenting shareholder is not required to give security for costs in an application made under paragraph 27 or 28.
- No security for costs.
30. Upon an application to the court under paragraph 27 or 28—
- Parties.
- (a) all dissenting shareholders whose shares have not been purchased by the company shall be joined as parties and are bound by the decision of the court; and

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Powers of court.

31. Upon an application to the court under paragraph 27 or 28—

(b) the company shall notify each affected dissenting shareholder of the date, place and consequences of the application and of his right to appear and be heard in person or by an attorney-at-law

Valuers.

32. The court may, in its discretion, appoint one or more valuers to assist the court to fix a fair value for the shares of the dissenting shareholders.

Final order.

33. The final order of the court shall be rendered against the company in favour of each dissenting shareholder and for the amount of his shares as fixed by the court.

Interest.

34. The court may, in its discretion, allow a reasonable rate of interest on the amount payable to each dissenting shareholder from the date the action approved by the resolution is effective until the date of payment.

Notice that paragraph 37 applies.

35. If paragraph 37 applies, the company shall, within ten days after a final order is made pursuant to paragraph 33, notify each dissenting shareholder that it is unable lawfully to pay dissenting shareholders for their shares.

Effect where paragraph 37 applies.

36. If paragraph 37 applies, a dissenting shareholder, by written notice delivered to the company within thirty days after receiving a notice under paragraph 35, may—

- (a) withdraw his notice of dissent, in which case the company is deemed to consent to the withdrawal and the shareholder is reinstated to his full rights as a shareholder; or
(b) retain a status as a claimant against the company, to be paid as soon as the company is lawfully able to do so or, in a winding up, to be counted subordinate to the rights of creditors of the company but in priority to its shareholders.

37. A company shall not make a payment to a dissenting shareholder under this Part if there are reasonable grounds for believing that— Limitation.

- (a) the company is or would after the payment be unable to pay its liabilities as they became due; or
(b) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities.

38. A shareholder is not entitled to dissent under this Part if an amendment of the articles of incorporation of a company is made pursuant to section 224(5)(c) of the Act. Exclusion.

FIFTH SCHEDULE

s. 153

**CONTENTS OF ANNUAL RETURN OF
A COMPANY**

1. The address of the registered office of the company.
2. In a case in which the register of members or debenture-holders of the company is kept elsewhere than at the registered office, the address of the place where it is 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 number of authorised shares in the company and, if applicable, the number of authorised shares in respect of each class of shares;

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- (b) the number of shares and, if applicable, each class of shares, of the company which have been issued and are outstanding;
- (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 and, if applicable, of each class, which the company—
 - (i) redeemed (including acquisitions before the redemption date) if the shares or debentures have not been reissued;
 - (ii) acquired by way of transfer or surrender;
 - (iii) forfeited; and
 - (iv) reissued; and
- (g) the total amount of outstanding loans made, guaranteed or secured by the company under section 54 of the Act.

4. The total amount of the company's indebtedness secured by mortgage, or charges which are required to be registered by the Registrar under section 233 of the Act, and the total amount of such indebtedness secured by mortgages and charges falling within paragraphs (a) and (b) of section 233(3) of the Act.

5. A list—

- (a) containing the names and addresses of all persons who, on any day (identified in the return) within two months before the latest day for making the return, 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; and

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(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.

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 the date is the secretary of the company, as are by section 189 required to be contained with respect to directors and the secretary respectively in the register of the directors and secretaries of a company.

7. Name and address of the auditors of the company.

8. Where applicable, a statement whether the company has complied with the requirements of this Act relating to the laying of accounts before the company at its annual general meeting (if any) held on the date to which the return is made up or, if an annual general meeting is not held on that date, the annual general meeting preceding that date.

SIXTH SCHEDULE

s. 157

ACCOUNTS

PRELIMINARY

1. Paragraphs 2 to 13 shall apply to the balance sheet and 14 to 18 to the profit and loss account, and shall be subject to the exceptions and modifications provided for by Part II in the case of a holding or subsidiary company and by Part III in the case of companies of classes therein mentioned; and this Schedule shall have effect in addition to the provisions of section 49 and sections 163 to 167 of the Act.

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PART I

GENERAL PROVISIONS AS TO BALANCE SHEET AND PROFIT AND LOSS ACCOUNT

Balance Sheet

2. The authorised share 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) so far as the information is not given in the profit and loss account, any share capital on which interest has been paid out of capital during the financial year, and the rate at which interest has been so paid; and
- (c) particulars of any redeemed debentures which the company has power to reissue.

3. There shall be stated under separate headings, so far as they are not written off—

- (a) the preliminary expenses;
- (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; and
- (d) any sums allowed by way of discount in respect of any debentures.

4. (1) The reserves, provisions, liabilities and assets shall be classified under headings appropriate to the company's business:

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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 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 assets shall, subject to subparagraph (2), 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 at the commencement of this Act (after deduction of the amounts previously provided or written off for depreciation or diminution in value) shall, if the figures relating to the period before the commencement of this Act 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 Act and, where any of those assets are sold, the said net amount less the amount of the sales shall be treated as if it were the amount of a valuation so made of the remaining assets.

(2) Subparagraph (1) shall not apply—

- (a) to assets for which the figure relating to the period beginning with the commencement of this Act cannot be obtained without unreasonable expense or delay;

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(b) 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;

(c) to any quoted investments or to any unquoted investments of which the value as estimated by the directors is shown either as the amount of the investments or by way of note; or

- (d) to goodwill, patents or trade marks.

(3) For the assets under each heading whose amount is arrived at in accordance with subparagraph (1), there shall be shown—

- (a) the aggregate of the amounts referred to in paragraph (a) of that subparagraph; and
- (b) the aggregate of the amounts referred to in paragraph (b) thereof.

(4) As respects the assets under each heading whose amount is not arrived at in accordance with the said subparagraph (1) because their replacement is provided for as mentioned in subparagraph (2)(b), 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.

(5) As respects assets consisting of investments, the profits accruing on the realisation of any such assets may be used to write down the value of any other such assets remaining.

6. In the case of unquoted investments consisting in equity share capital of other bodies corporate (other than any whose values as estimated by the directors are separately shown, either individually or collectively or as to some individually and as to the rest collectively, and

are so shown either as the amount thereof, or by way of note), 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—

- (a) the aggregate amount of the company's income for the financial year that is ascribable to the investment;
- (b) the amount of the company's share before taxation, and the amount of the share after taxation, of the net aggregate amount of the profits of the bodies corporate in which the investments are held, being profits for the several periods to which accounts sent by them during the financial year to the company related, after deducting the losses of those bodies corporate for those periods (or vice versa);
- (c) the amount of the company's share of the net aggregate amount of the undistributed profits accumulated by the bodies corporate in which 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 bodies corporate have been dealt with in the company's accounts.

7. The aggregate amounts respectively of reserves and provisions (other than provisions for depreciation, renewals or diminution in value of assets) shall be stated under separate heading:

Provided that—

- (a) this paragraph shall not require a separate statement of either of the said amounts which is not material; and
- (b) the Minister may direct that it shall not require a separate statement of the amount of provisions where he is satisfied that that is not required in the public interest and would prejudice the company, but subject to the condition that any heading stating an amount arrived at after taking into account a provision (other than as aforesaid) shall be so framed or marked as to indicate that fact.

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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 the 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 the 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 reserves of 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 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 patents and trade marks 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 property

to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property, the 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 any outstanding loans made under the authority of section 54(2) of the Act;

(d) the aggregate amount of bank loans and overdrafts and 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 period of five years 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 that period;

not being, in either case, bank loans or overdrafts; and

(e) the aggregate amount (before deduction of income tax) which is recommended for distribution by way of dividend.

(2) Nothing in head (b) of subparagraph (1) shall be taken as requiring the amount of the goodwill, patents and trade marks to be stated otherwise than as a single item.

(3) The heading showing the amount of the quoted investments shall be subdivided, 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 recognised stock exchange.

(4) In relation to each loan falling within head (d) of subparagraph (1) (other than a bank loan or overdraft), 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:

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Provided that if the number of loans is such that, in the opinion of the directors, 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 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 trustee for, the company, the nominal amount of the debentures and the amount at which they are stated in the books of the company shall be stated.

13. (1) The matters referred to in the following subparagraphs shall be stated by way of note, or in a statement or report annexed 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.

(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 arrears, the amount to 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 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 which amount is required to be arrived at in accordance with paragraph 5(1) (other than unquoted investments) 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 or particulars of their qualifications for doing so and (whichever is stated) 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 fixed assets consisting of land, how much is ascribable to land of freehold tenure and how much to land of leasehold tenure, and, of the latter, how much is ascribable to land held on long lease and how much to land held on short lease.

(10) If in the opinion of the directors any of the current assets have not 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.

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(11) The aggregate market value of the company's quoted investments where it differs from the amount of the investments as stated, 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) 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.

(13) If the amount carried forward for stock in trade or work in progress is material for the appreciation of its members 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.

(14) The basis on which foreign currencies have been converted into currency of Guyana, where the amount of the assets or liabilities affected is material.

(15) The basis on which the amount, if any, set aside for tax is computed.

(16) Except in the case of the first balance sheet laid before the company after the commencement of this Act, the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet.

PROFIT AND LOSS ACCOUNT

14. (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 period of five years 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 that period;

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 and other taxation on profits, including, where practicable, any taxation imposed elsewhere to the extent of the relief, if any, from income tax and distinguishing where practicable between income tax and other taxation;
- (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, reserves;
- (f) subject to subparagraph (2), 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 purpose thereof;
- (g) the amounts respectively of income from quoted investments and income from unquoted vestments;
- (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 ground-rates, rates and other outgoings);
- (i) the amount, if material, charged to revenue in respect of sums payable in respect of the hire of plant and machinery;
- (j) the aggregate amount (before deduction of income tax) of the dividends paid and proposed.

(2) The Minister may direct that a company shall not be obliged to show an amount set aside to provisions in accordance with subparagraph (1)(f), if the Minister is satisfied that that is not required in the public interest and would prejudice the company, but subject to the

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condition that any heading stating an amount arrived at after taking into account the amount set aside as aforesaid shall be so framed or marked as to indicate that fact.

(3) If, in the case of any assets in which case an amount is charged to revenue by way of provision for depreciation or diminution in value, an amount is also so charged by way of provision for renewal thereof, the last-mentioned amount shall be shown separately.

(4) If the amount charged to revenue by way of provision for depreciation or diminution in value of any fixed assets (other than investments) has been determined otherwise than by reference to the amount of those assets as determined for the purpose of making up the balance sheet, the fact shall be stated.

15. 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.

16. 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".

17. (1) The matters referred to in subparagraph (2) to (4) shall be stated by way of note, if not otherwise shown.

(2) The turnover for the financial year, except in so far as it is attributable to business of such a class as may be prescribed for the purposes of this subparagraph.

(3) If some or all of the turnover is omitted by reason of its being attributable as aforesaid, the fact that it is so omitted.

(4) The method by which turnover stated is arrived at.

(5) A company shall not be subject to the requirements of this paragraph if it is neither a holding company nor a subsidiary of another body corporate and the turnover which, apart from this subparagraph, would be required to be stated does not exceed one hundred thousand dollars.

18. (1) The matters referred to in the following subparagraphs 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 is computed.

(4) Any special circumstances which affect liability in respect of taxation of profits, income or capital gains for the financial year or liability in respect of taxation of profits, income or capital gains 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 Act the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account.

(6) Any material in respect of 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.

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PART II

SPECIAL PROVISIONS WHERE THE COMPANY IS A HOLDING COMPANY OR SUBSIDIARY COMPANY

Modifications of and Additions to Requirements as to Company's own Accounts

19. (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 reference in Part I to the company's investments (except those in paragraphs 13(8) and 14(4)) shall not include investments in its subsidiaries required by this paragraph to be separately set out; and

(b) paragraph 5, paragraph 14(1)(a) and paragraph 18(2) 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 the case of which the subsidiary is concerned as personal representative or in the case of which it is concerned as trustee and neither the company nor any subsidiary thereof if beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(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 they 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 they 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 members;

or, in so far as the information required by this subparagraph is not obtainable, a statement that it is not obtainable:

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Provided that the Minister may, on the application or with the consent of the company's directors, direct that in relation to any subsidiary this subparagraph shall not apply or shall apply only to such extent as may be provided by the direction.

(5) Paragraphs (b) and (c) of subparagraph (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, and the profits or losses attributable to any shares in a subsidiary for the time being held by the holding company or any other of its subsidiaries shall not (for that or any other purpose) be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the company or any of its subsidiaries, except that they may in a proper case be treated where—

- (a) the company is itself the subsidiary of another body corporate; and
- (b) the shares were acquired from that body corporate or a subsidiary of it;

and for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the fact, be treated as accruing from day to day during that year and be apportioned accordingly.

(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 year 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.

20. (1) The balance sheet of a company which is a subsidiary of another body corporate whether or not it is itself a holding company, shall show the aggregate amount of its indebtedness to all bodies corporate of which it is a subsidiary or a fellow subsidiary and the aggregate amount of indebtedness of all such bodies corporate to it, distinguishing in each case between indebtedness in respect of debentures and otherwise, and the aggregate amount of assets consisting of shares in fellow subsidiaries.

(2) For the purposes of this paragraph a company shall be deemed to be a fellow subsidiary of another body corporate if both are subsidiaries in the same body corporate but neither is the other's.

*Consolidated Accounts of Holding Company
and Subsidiaries*

21. Subject to the following paragraphs of this Part, 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 the directors of the holding company think necessary.

22. Subject as aforesaid and to Part III, consolidated accounts shall, in giving the said information, comply as far as practicable, with the requirements of this Act as if they were the accounts of an actual company.

23. Sections 158 and 159 of the Act shall not, by virtue of the two last foregoing paragraphs, apply for the purpose of the consolidated accounts.

24. Paragraph 8 shall not apply for the purpose of any consolidated accounts laid before a company with the first balance sheet so laid after the commencement of this Act.

25. In relation to any subsidiaries of the holding company not dealt with by the consolidated accounts—

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(a) paragraph 19 (2) and (3) 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 paragraph 19(4) where there are no group accounts, but as if references therein to the holding company's accounts were references to the consolidated accounts.

26. 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 paragraph 19(6) where there are no group accounts.

PART III

EXCEPTIONS FOR SPECIAL CLASSES OF COMPANY

27. (1) A banking or discount company shall not be subject to the requirements of Part I other than—

(a) as respects its balance sheet, those of paragraphs 2 and 3, paragraph 4 (so far as it relates to assets), paragraph 10 (except subparagraphs (1) (d) and (4)), paragraphs 11 and 12 and paragraph 13 (except subparagraphs (7), (8), (9), (11) and (12)); and

(b) as respects its profit and loss account, those of subparagraph (1) (h) and (j) of paragraphs 14, 15 and 16 and subparagraphs (1) and (5) of paragraph 18;

but, where in its balance sheet reserves or provisions (other than provisions for depreciation, renewals or diminution in value of assets) are not stated separately, any heading stating an amount arrived at after taking into account a reserve or such a provision shall be so framed or marked as to indicate that fact, and its profit and loss account shall indicate by appropriate words the manner in which the amount stated for the company's profit or loss has been arrived at.

(2) The accounts of a banking or discount company shall not be deemed, by reason only of the fact that they do not comply with any requirements of Part I from which the company is exempt by virtue of this paragraph, not to give the true and fair view required by this Act.

(3) In this paragraph the expression “banking or discount company” means any company which satisfied the Minister that it ought to be treated for the purposes of this Schedule as a banking company or as a discount company.

28. (1) An insurance company shall not be subject to the following requirements of Part I, that is to say—

(a) as respects its balance sheet, those of paragraphs 4 to 8 (both inclusive), subparagraphs (1) (a) and (3) of paragraph 10 and subparagraphs (4), (5) and (7) to (11) (both inclusive) of paragraph 13;

(b) as respects its profit and loss account, those of paragraph 14 (except subparagraphs (l)(b), (c), (d) and (j) and paragraph 18(2));

but, where in its balance sheet reserves or provisions (other than provisions for depreciation, renewals or diminution in value of assets) are not stated separately, any heading stating an amount arrived at after taking into account a reserve or such a provision shall be so framed or marked as to indicate that fact, and its profit and loss account shall indicate by appropriate words the manner in which the amount stated for the company’s profit or loss has been arrived at:

Provided that the Minister may direct that any such insurance company whose business includes to a substantial extent business other than insurance business shall comply with all the requirements of the said Part I or such of them as may be specified in the direction and shall comply therewith as respects either the whole of its business or such part thereof as may be so specified.

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(2) Where an insurance company is entitled to the benefit of this paragraph, then any wholly owned subsidiary thereof shall also be so entitled if its business consists only of business which is complementary to insurance business of the classes carried on by the insurance company.

(3) The accounts of a company shall not be deemed, by reason only of the fact that they do not comply with any requirement of Part I from which the company is exempt by virtue of this paragraph, not to give the true and fair view required by this Act.

(4) For the purposes of this paragraph a company shall be deemed to be the wholly owned subsidiary of an insurance company if it has no members except the insurance company and the insurance company's wholly owned subsidiaries and its or their nominees.

29. (1) A shipping company shall not be subject to the following requirements of Part 1, that is to say—

(a) as respects its balance sheet, those of paragraph 4 (except so far as it relates to assets), paragraphs 5, 8 and subparagraphs (7) and (8) of paragraph 13;

(b) as respects its profit and loss account, those of subparagraph (1) (a), (e) and (f) and sub-paraphraphs (3) and (4) of paragraph 14 and paragraph 17.

(2) The accounts of a company shall not be deemed, by reason only of the fact that they do not comply with any requirements of Part I from which the company is exempt by virtue of this paragraph, not to give the true and fair view required by this Act.

(3) In this paragraph the expression “shipping company” means a company which, or a subsidiary of which, owns ships or includes amongst its activities the management or operation of ships, being a company which satisfies the Minister that, in the national interest, it ought to be treated for the purposes of this paragraph as a shipping company.

30. Where a company entitled to the benefit of any provision contained in this Part is a holding company, the reference in Part II to consolidated accounts complying with the requirements of this Act shall, in relation to consolidated accounts of that company, be construed as referring to those requirements in so far only as they apply to the separate accounts of that company.

PART IV

INTERPRETATION OF SCHEDULE

31. (1) For the purposes of this Schedule, unless the context otherwise requires—

(a) the expression “provision” shall, subject to subparagraph (2), 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 Act; and

(b) any amount retained by way of providing for any known liability—

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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.

32. For the purposes aforesaid—

(a) the expression “quoted investment” means an investment as respects which there has been granted a quotation or permission to deal on a recognised stock exchange, or on any stock exchange, or on any stock exchange of repute outside Guyana, and the expression “unquoted investment” shall be construed accordingly;

(b) the expression “long lease” means a lease in the case of which the portion of the term for which it was granted remaining unexpired at the end of the financial year is not less than fifty years, the expression “short lease” means a lease which is not a long lease and the expression “lease” includes an agreement for a lease;

(c) 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.
