



# Companies Act 1947

## 1947 CHAPTER 47

### PART I

#### MANAGEMENT AND ADMINISTRATION.

##### *Meetings and proceedings.*

#### **1 Preliminary amendments as to annual general meeting.**

- (1) For subsection (1) of section one hundred and twelve of the principal Act (which requires a company to hold a general meeting once at least in every year and not more than fifteen months after the holding of the last preceding general meeting) there shall be substituted the following subsection:—

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

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

- (2) The power conferred by subsection (3) of the said section one hundred and twelve, where there has been default in holding a company's annual general meeting, to call or direct the calling of a general meeting of the company shall be exercisable by the Board of Trade instead of by the court and shall include power to give such ancillary or consequential directions as the Board think expedient, including directions modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company's articles.
- (3) A general meeting held in pursuance of the said subsection (3) shall, subject to any directions of the Board of Trade, be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the year in which the default in

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holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held, unless at that meeting the company resolves that it shall be so treated.

- (4) Where a company resolves that a meeting shall be so treated, a copy of the resolution shall, within fifteen days after the passing thereof, be forwarded to the registrar of companies and recorded by him, and if a company fails to comply with this subsection, the company and every officer of the company who is in default shall be liable to a default fine of two pounds.
- (5) If default is made in complying with any directions of the Board of Trade under the said subsection (3), the company, and every officer of the company who is in default, shall be liable to a fine not exceeding fifty pounds.

## **2 Length of notice of meetings and of business thereat.**

- (1) For paragraph (a) of subsection (1) of section one hundred and fifteen of the principal Act (which, subject to the company's articles, provides that a meeting of a company other than a meeting for the passing of a special resolution may be called by seven days' notice in writing) there shall be substituted the following paragraph:—

“(a) a company's annual general meeting may be called by twenty-one days' notice in writing, and a meeting of a company other than an annual general meeting or a meeting for the passing of a special resolution may be called by fourteen days' notice in writing or, in the case of an unlimited company, by seven days' notice in writing;”

and, notwithstanding anything in the said subsection (1), any provision of a company's articles shall be void in so far as it provides for the calling of a meeting of the company (other than an adjourned meeting) by shorter notice than that specified in this subsection.

- (2) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in the foregoing subsection or in the company's articles, as the case may be, be deemed to have been duly called if it is so agreed—
- (a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and
- (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than ninety-five per cent. in nominal value of the shares giving a right to attend and vote at the meeting, or, in the case of a company not having a share capital, together representing not less than ninety-five per cent. of the total voting rights at that meeting of all the members.
- (3) In the proviso to subsection (2) of section one hundred and seventeen of the principal Act (which enables a resolution of which less than twenty-one days' notice has been given to be passed as a special resolution) for the words " if all the members entitled to attend and vote at any such meeting so agree " there shall be substituted the words " if it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than ninety-five per cent. in nominal value of the shares giving that right or, in the case of a company not having a share capital, together representing not less than ninety-five per cent. of the total voting rights at that meeting of all the members " ; and subsection (5) of the said section one hundred and seventeen (which provides for computing the majority

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on a poll by reference to the votes to which a member is entitled) shall not be taken as applying for the purposes of the said proviso.

- (4) In the provisions of the principal Act hereafter mentioned in this subsection there shall be substituted the longer for the shorter time limit so mentioned, that is to say—
- (a) in subsection (2) of section one hundred and thirteen (which requires a directors' report to be sent to members at least seven days before the statutory meeting of a company which is entitled to commence business) fourteen days for seven days;
  - (b) in paragraph (a) of subsection (1) of section one hundred and thirty (which requires copies of the balance sheet and the documents required to be annexed thereto to be circulated not less than seven days before the meeting at which the balance sheet is to be laid before the company) twenty-one days for seven days;
  - (c) in proviso (a) to subsection (4) of section one hundred and thirty-two (which relates to notice of a proposal to appoint other auditors in place of a company's first auditors) fourteen days for seven days.
- (5) Any document required to be circulated before a meeting by subsection (2) of the said section one hundred and thirteen, or by paragraph (a) of subsection (1) of the said section one hundred and thirty, shall, notwithstanding that it is circulated later than is thereby required, be deemed to have been duly circulated if it is so agreed by all the members entitled to attend and vote at the meeting.
- (6) Where by any provision hereafter contained in this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than twenty-one days before the meeting:

Provided that if, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice though not given within the time required by this subsection shall be deemed to have been properly given for the purposes thereof.

### **3 Circulation of members' resolutions, etc.**

- (1) Subject to the following provisions of this section it shall be the duty of a company, on the requisition in writing of such number of members as is hereinafter specified and (unless the company otherwise resolves) at the expense of the requisitionists.
- (a) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting;
  - (b) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.
- (2) The number of members necessary for a requisition under the foregoing subsection shall be—

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- (a) any number of members representing not less than one twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or
  - (b) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than one hundred pounds.
- (3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting, and notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company:

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

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

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

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

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

- (1) Any provision contained in a company's articles shall be void in so far as it would have the effect either—
  - (a) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or
  - (b) of making ineffective a demand for a poll on any such question which is made either—
    - (i) by not less than five members having the right to vote at the meeting; or
    - (ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
    - (iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.
- (2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of the foregoing subsection a demand by a person as proxy for a member shall be the same as a demand by the member.
- (3) Subsection (4) of section one hundred and seventeen of the principal Act (which makes provision as respects the demanding of a poll at meetings for passing extraordinary and special resolutions) , and in subsection (5) of that section (which provides that the three-fourths majority of the members needed for an extraordinary or special resolution shall, on a poll demanded in accordance with that section, be computed by reference to the number of votes to which each member is entitled) the words " in accordance with this section " , shall cease to have effect.

#### **5 Voting at meetings.**

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

Provided that, unless the articles otherwise provide,—

  - (a) this subsection shall not apply in the case of a company not having a share capital; and
  - (b) a member of a private company shall not be entitled to appoint more than one proxy to attend on the same occasion; and
  - (c) a proxy shall not be entitled to vote except on a poll.
- (2) In every notice calling a meeting of a company having a share capital there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, one or more proxies to attend and vote instead of him, and that a proxy need not also be a member; and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

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- (3) Any provision contained in a company's articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than forty-eight hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.
- (4) If for the purpose of any meeting of a company invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer of the company who knowingly and wilfully authorises or permits their issue as aforesaid shall be liable to a fine not exceeding one hundred pounds:
- Provided that an officer shall not be liable under this subsection by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.
- (5) On a poll taken at a meeting of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way, and accordingly in subsection (5) of section one hundred and seventeen of the principal Act (which provides that the three-fourths majority of the members needed for an extraordinary or special resolution shall on a poll be computed by reference to the number of votes to which each member is entitled) for the reference to the number of votes to which each member is entitled there shall be substituted a reference to the number of votes cast for and against the resolution.
- (6) This section shall apply to meetings of any class of members of a company as it applies to general meetings of the company.

## **6 Meetings attended by single member.**

It is hereby declared that the directions which may be given—

- (a) by the Board of Trade with respect to a general meeting of a company called by or in pursuance of directions of the Board by virtue of the provisions of this Act relating to the annual general meeting; and
- (b) by the court with respect to a general meeting of a company called in pursuance of an order of the court under subsection (2) of section one hundred and fifteen of the principal Act (which provides for the calling of meetings of a company where it is impracticable for them to be called in the ordinary way);

include a direction that one member present in person or by proxy shall be deemed to constitute a meeting.

## **7 Exemption from obligation to print certain resolutions, etc.**

Notwithstanding anything in subsection (1) of section one hundred and eighteen of the principal Act, an exempt private company, as defined in subsection (4) of section fifty-four of this Act, need not forward to the registrar of companies a printed copy of any resolution or agreement to which that section applies, if instead it forwards a copy in some other form approved by the registrar.

## **8 Penalty for failure to keep minutes of proceedings.**

Where a company fails to make minutes of the proceedings of general meetings or of the proceedings at meetings of its directors or of its managers as required by section one hundred and twenty of the principal Act, the company and every officer of the company who is in default shall be liable to a default fine.

### *Minorities.*

## **9 Alternative remedy to winding up in cases of oppression.**

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

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

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## **10 Extension of time limit under s. 61 (2) of principal Act.**

In subsection (2) of section sixty-one of the principal Act (which limits the time allowed a dissenting minority for applying to the court to cancel a variation of the rights attaching to any particular class of shares to seven days after the agreement of the majority is given) for the words " seven days " there shall be substituted the words " twenty-one days ":

Provided that this section shall not apply where the time allowed for applying to the court has already expired before this section comes into force.

## **11 Acquisition of shares of shareholders dissenting from scheme or contract approved by majority.**

- (1) In subsection (1) of section one hundred and fifty-five of the principal Act (which enables a company, where a scheme or contract involving the transfer to it of shares in another company has been approved by the holders of nine-tenths in value of the shares affected, to acquire the shares of the dissentients) the reference to the shares affected shall be taken as referring only to the shares whose transfer is involved, and as not including shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary.
- (2) Where shares in the transferor company of the same class or classes as the shares affected are held as aforesaid to a value greater than one-tenth of the aggregate of their value and that of the shares affected, the said subsection (1) shall apply only if—
  - (a) the transferee company offers the same terms to all holders of the shares affected or, where those shares include shares of different classes, of each class of them; and
  - (b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares affected, are not less than three-fourths in number of the holders of those shares.
- (3) Where, in pursuance of any such scheme or contract as is mentioned in the said section one hundred and fifty-five, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include nine-tenths in value of the shares in the first-mentioned company or of any class of those shares, then—
  - (a) the transferee company shall within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it 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.
- (4) Where a shareholder gives notice under the last foregoing subsection with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed or as the court on the application of either the transferee company or the shareholder thinks fit to order.



- (5) In subsection (2) of the said section one hundred and fifty-five (which enables the transferee company, if dissenting shareholders after being given notice under subsection (1) of the company's desire to acquire their shares fail to transfer them, to become registered as holder thereof, without execution of any instrument of transfer, on transmitting to the transferor company a copy of the notice requiring the transfer and on complying with certain other requirements), after the words " transmit a copy of the notice to the transferor company " there shall be inserted the words " together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company " , and at the end of the said subsection there shall be added the following proviso:—

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

- (6) Nothing in this section shall apply where the transferee company made its offer to shareholders of the transferor company before the coming into force thereof.

*Accounts, directors' report and audit.*

**12 Books of account.**

- (1) For the purposes of subsection (1) of section one hundred and twenty-two of the principal Act (which imposes, on a company the obligation to keep books of account) proper books of account shall not be deemed to be kept with respect to the matters specified in that subsection, if there are not kept such books of account as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.
- (2) A company shall not be deemed to comply with the requirements of the said section one hundred and twenty-two by keeping books of account at a place outside Great Britain, unless there are sent to, and kept at a place in, Great Britain and are at all times open to inspection by the directors such accounts and returns with respect to the business dealt with in the books of account kept outside Great Britain as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding six months and will enable the company's balance sheet and profit and loss account to be prepared in accordance with the principal Act and this Act.

**13 Contents of balance sheet and profit and loss account.**

- (1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year.
- (2) A company's balance sheet and profit and loss account shall comply with the requirements of the First Schedule to this Act, so far as applicable thereto.
- (3) Save as expressly provided in the following provisions of this section or in Part III of the said First Schedule, the requirements of the last foregoing subsection and the said First Schedule shall be without prejudice either to the general requirements of subsection (1) of this section or to any other requirements of the principal Act or this Act.

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- (4) The Board of Trade may, on the application or with the consent of a company's directors, modify in relation to that company any of the requirements of the principal Act or this Act as to the matters to be stated in a company's balance sheet or profit and loss account (except the requirements of subsection (1) of this section) for the purpose of adapting them to the circumstances of the company.
- (5) Subsections (1) and (2) of this section shall not apply to a company's profit and loss account, if—
- (a) the company has subsidiaries; and
  - (b) the profit and loss account is framed as a consolidated profit and loss account dealing with all or any of the company's subsidiaries as well as the company, and—
    - (i) complies with the requirements of this Act relating to consolidated profit and loss accounts; and
    - (ii) shows how much of the consolidated profit or loss for the financial year is dealt with in the accounts of the company.

- (6) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects any accounts laid before the company in general meeting with the provisions of this section and with the other requirements of the principal Act and this Act as to the matters to be stated in accounts, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that a person shall not be sentenced to imprisonment for any such offence unless in the opinion of the court dealing with the case the offence was committed wilfully.

- (7) The following provisions of the principal Act shall cease to have effect, that is to say—
- (a) so much of section one hundred and twenty-four of that Act as relates to fixed and floating assets;
  - (b) section one hundred and twenty-six of that Act (which requires particulars as to subsidiaries); and
  - (c) any other provision of that Act in so far as it imposes a penalty for default in complying with any requirement of that Act as to the matters to be stated in a company's balance sheet or profit and loss account ;

and in subsection (2) of section one hundred and twenty-three of the principal Act for the reference to the reserve fund, general reserve or reserve account shown specifically on the balance sheet, or the reserve fund, general reserve or reserve account to be shown specifically on a subsequent balance sheet there shall be substituted a reference to reserves within the meaning of the First Schedule to this Act.

- (8) For the purposes of this Act, except where the context otherwise requires.—
- (a) any reference to a balance sheet or profit and loss account shall include any notes thereon or document annexed thereto giving information which is required by the principal Act or this Act and is thereby allowed to be so given; and
  - (b) any reference to a profit and loss account shall be taken, in the case of a company not trading for profit, as referring to its income and expenditure account, and references to profit or to loss and, if the company has subsidiaries, references to a consolidated profit and loss account shall be construed accordingly.

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

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

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

- (3) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects the company with the provisions of this section, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless in the opinion of the court dealing with the case the offence was committed wilfully.

- (4) For the purposes of this section a body corporate shall be deemed to be the wholly owned subsidiary of another if it has no members except that other and that other's wholly owned subsidiaries and its or their nominees.

#### **15 Form of group accounts.**

- (1) Subject to the next following subsection, the group accounts laid before' a holding company shall be consolidated accounts comprising—
  - (a) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in group accounts;
  - (b) a consolidated profit and loss account dealing with the profit or loss of the company and those subsidiaries.

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- (2) If the company's directors are of opinion that it is better for the purpose—
- (a) of presenting the same or equivalent information about the state of affairs and profit or loss of the company and those subsidiaries; and
  - (b) of so presenting it that it may be readily appreciated by the company's members;

the group accounts may be prepared in a form other than that required by the foregoing subsection, and in particular may consist of more than one set of consolidated accounts dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries, or of separate accounts dealing with each of the subsidiaries, or of statements expanding the information about the subsidiaries in the company's own accounts, or any combination of these forms.

- (3) The group accounts may be wholly or partly incorporated in the company's own balance sheet and profit and loss account.

## **16 Contents of group accounts.**

- (1) The group accounts laid before a company shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with thereby as a whole, so far as concerns members of the company.
- (2) Where the financial year of a subsidiary does not coincide with that of the holding company, the group accounts shall, unless the Board of Trade on the application or with the consent of the holding company's directors otherwise direct, deal with the subsidiary's state of affairs as at the end of its financial year ending with or last before that of the holding company, and with the subsidiary's profit or loss for that financial year.
- (3) Without prejudice to subsection (1) of this section, the group accounts, if prepared as consolidated accounts, shall comply with the requirements of the First Schedule to this Act, so far as applicable thereto, and if not so prepared shall give the same or equivalent information:

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

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

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

## **18 Meaning of " holding company " and " subsidiary. ".**

- (1) For the purposes of the principal Act and this Act, a company shall, subject to the provisions of subsection (3) of this section, be deemed to be a subsidiary of another if, but only if—
  - (a) that other either—
    - (i) is a member of it and controls the composition of its board of directors; or
    - (ii) holds more than half in nominal value of its equity share capital; or
  - (b) the first mentioned company is a subsidiary of any company which is that other's subsidiary.
- (2) For the purposes of the foregoing subsection, the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say—
  - (a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid; or
  - (b) that a person's appointment thereto follows necessarily from his appointment as director of that other company ; or
  - (c) that the directorship .is held by that other company itself or by a subsidiary of it.
- (3) In determining whether one company is a subsidiary of another—
  - (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;
  - (b) subject to the two following paragraphs, any shares held or power exercisable—
    - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity); or
    - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity;shall be treated as held or exercisable by that other;
  - (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;
  - (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in the last foregoing paragraph) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.
- (4) For the purposes of this Act, a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.
- (5) In this section, the expression " company " includes any body corporate, and the expression " equity share capital " means, in relation to a company, its issued share

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capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

## **19 Directors' report.**

The report under subsection (2) of section one hundred and twenty-three of the principal Act of a company's directors shall deal, so far as is material for the appreciation of the state of the company's affairs by its members and will not in the directors' opinion be harmful to the business of the company or of any of its subsidiaries, with any change during the financial year in the nature of the company's business or in the company's subsidiaries, or in the classes of business in which the company has an interest, whether as member of another company or otherwise.

## **20 General provision as to liability of directors for defective accounts.**

A director shall not be liable to fine or imprisonment under section one hundred and twenty-two or one hundred and twenty-three of the principal Act or any provision contained in the sections of this Act relating to a company's accounts for failing to take reasonable steps to comply or secure compliance with any provision of that Act or this Act, if he shows that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that that provision was complied with and was in a position to discharge that duty.

## **21 Signature and copies of accounts.**

- (1) The profit and loss account and, so far as not incorporated in the balance sheet or profit and loss account, any group accounts laid before a company in general meeting shall be annexed to the balance sheet and approved by the board of directors before the balance sheet is signed on their behalf.
- (2) If any copy of a balance sheet is issued, circulated, or published without having a copy annexed thereto of the profit and loss account or any group accounts required by this section to be so annexed, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.
- (3) Any member of a company having a share capital, whether he is or is not entitled to receive notices of general meetings of the company, shall be entitled under paragraph (a) of subsection (1) of section one hundred and thirty of the principal Act to have sent to him a copy of every balance sheet and of the other documents mentioned in that paragraph, and any holder of debentures of a company shall have the same right under that paragraph as a member of the company:

Provided that this subsection shall not require a copy of those documents to be sent to any person of whose address the company is not aware or to more than one of the joint holders of any shares or debentures.

- (4) Subsection (1), and not subsection (2), of the said section one hundred and thirty shall apply in the case of a private company, as of any other company, except in relation to balance sheets laid before the company before the coming into force of this section.

## **22 Extension of rights and duties of auditors.**

(1) The duties of a company's auditors as laid down by section one hundred and thirty-four of the principal Act shall be extended as follows:—

- (a) they shall report on every profit and loss account and all group accounts laid before the company in general meeting during their tenure of office (as well as on every balance sheet so laid and on the accounts examined by them); and
- (b) their report shall contain (in lieu of the statements required by subsection (1) of the said section one hundred and thirty-four) statements as to the matters mentioned in the Second Schedule to this Act;

and section three hundred and sixty-two of the principal Act (which penalises false statements) shall apply to the auditors' report, as if the reference in the Eleventh Schedule to that Act to subsection (1) of the said section one hundred and thirty-four included a reference to this subsection.

(2) The rights of a company's auditors as laid down by the said section one hundred and thirty-four shall be extended as follows:—

- (a) as respects their right under subsection (2) of that section to any information or explanation necessary for the performance of their duties, it shall be for them to judge what is necessary for that purpose;
- (b) as respects their right under that subsection of access to the books and accounts and vouchers of the company, any limitation imposed by the proviso to that subsection (which relates to branches outside Europe of certain banks) shall cease to have effect;
- (c) they shall be entitled to attend any general meeting of the company (and not merely the meetings mentioned in subsection (3) of that section) and to receive all notices of and other communications relating to- any general meeting which any member of the company is entitled to receive and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

## **23 Extension of disqualifications for appointment as auditor.**

(1) A person shall not be qualified for appointment as auditor of a company unless either—

- (a) he is a member of a body of accountants established in the United Kingdom and for the time being recognised for the purposes of this provision by the Board of Trade; or
- (b) he is for the time being authorised by the Board of Trade to be so appointed either as having similar qualifications obtained outside the United Kingdom or as having obtained adequate knowledge and experience in the course of his employment by a member of a body of accountants recognised for the purposes of the foregoing paragraph or as having before the passing of this Act practised in Great Britain as an accountant:

Provided that this subsection shall not apply in the case of a private company which at the time of the auditor's appointment is an exempt private company, as defined in subsection (4) of section fifty-four of this Act.

(2) In subsection (1) of section one hundred and thirty-three of the principal Act (which disqualifies, among others, directors and officers of a company and partners and employees of officers of a company from appointment as auditors of the company)—

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- (a) references to an officer of the company shall include any servant of the company, but not an auditor; and
- (b) paragraph (b) (which relates to partners and employees of officers of the company) shall apply in like manner to partners and employees of directors of the company; and
- (c) the exception in the said paragraph (b) for private companies shall apply only in the case of a private company which at the time of the auditor's appointment is an exempt private company, as defined in subsection (4) of section fifty-four of this Act.

Nothing in this subsection shall be taken to exclude the application, in relation to the said subsection (1), of the definition of " officer " hereafter contained in this Act.

- (3) A person shall also not be qualified for appointment as auditor of any company if he is, by virtue of the said subsection (1), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company, or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.
- (4) Notwithstanding anything in the foregoing provisions of this section, a Scottish firm shall be qualified for appointment as auditor of a company if, but only if, all the partners are qualified for appointment as auditor thereof.

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

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

and, where at an annual general meeting no auditors are appointed or reappointed, the Board of Trade may appoint a person to fill the vacancy.

- (2) The company shall, within one week of the Board's power under the foregoing subsection becoming exercisable, give them notice of that fact, and if a company fails to give notice as required by this subsection the company and every officer of the company who is in default shall be liable to a default fine.
- (3) Special notice shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be reappointed.
- (4) On receipt of notice of such an intended resolution as aforesaid the company shall forthwith send a copy thereof to the retiring auditor (if any).
- (5) Where notice is given of such an intended resolution as aforesaid, and the retiring auditor makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so.—



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- (a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company);

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

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

- (6) Where notice is given of an intended resolution to appoint some person or persons instead of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with, the retiring auditor shall not be automatically reappointed by virtue of subsection (1) of this section.
- (7) In relation to the first auditors of a company—
  - (a) subsection (4) of section one hundred and thirty-two of the principal Act (which relates to the appointment and term of office of the first auditors) shall have effect with the substitution for the words " until that meeting " of the words " until the conclusion of that meeting ";
  - (b) subsection (5) of this section shall apply to a resolution to remove the first auditors by virtue of subsection (4) of the said section one hundred and thirty-two as it applies in relation to a resolution that a retiring auditor shall not be reappointed.

- (8) The remuneration of the auditors of a company—
  - (a) in the case of an auditor appointed by the directors or by the Board of Trade, may be fixed by the directors or by the Board, as the case may be;
  - (b) subject to the foregoing paragraph shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine;but where the remuneration is not fixed by the company in general meeting, the amount shall be shown under a separate heading in the company's profit and loss

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

## **25 Construction of references to documents annexed to accounts.**

References in the principal Act and this Act to a document annexed or required to be annexed to a company's accounts or any of them shall not include the directors' report or the auditors' report (which are by the principal Act required to be attached to the balance sheet):

Provided that any information which is required by the principal Act or this Act to be given in accounts and is thereby allowed to be given in a statement annexed may be

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given in the directors' report instead of the accounts and, if any such information is so given, the report shall be annexed to the accounts and the principal Act and this Act shall apply in relation thereto accordingly, except that the auditors shall report thereon only so far as it gives the said information.

*Appointment, etc., of directors and secretary.*

## **26 Director and secretary.**

- (1) Every company shall have a director and a secretary and a sole director shall not also be secretary nor shall any company—
  - (a) have as secretary to the company a corporation the sole director of which is a sole director of the company; or
  - (b) have as sole director of the company a corporation the sole director of which is secretary to the company.
- (2) For any reference in the principal Act to a company's secretary or other chief officer there shall accordingly be substituted a reference to the company's secretary.
- (3) Anything required or authorised to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorised generally or specially in that behalf by the directors.
- (4) A provision requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

## **27 Particulars of directors and secretaries.**

- (1) Every company shall, in the register of its directors required to be kept by section one hundred and forty-four of the principal Act, include with respect to the secretary of the company the following particulars, that is to say—
  - (a) in the case of an individual, his present christian name and surname, any former christian name and surname and his usual residential address; and
  - (b) in the case of a corporation or a Scottish firm, its corporate or firm name and registered or principal office;
 and accordingly—
  - (i) for any reference in the principal Act to a company's register of directors there shall be substituted a reference to its register of directors and secretaries; and
  - (ii) in subsection (2) of the said section one hundred and forty-four any reference to directors shall include a reference to "the secretary, and in subsection (4) thereof the references to subsections (1) and (2) thereof shall include a reference to this subsection.
- (2) Where there are joint secretaries, the particulars required by the foregoing subsection shall be given with respect to each of them, except that where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the said particulars.

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- (3) The period within which a company is required to make a return to the registrar of companies under the said subsection (2) of the particulars specified in the said register shall, in relation to the particulars so specified with respect to any person who is the company's secretary at the date of the coming into force of subsection (1) of this section, be fourteen days from that date.
- (4) Any notification to the registrar of companies under the said subsection (2) of a change among the company's directors and secretary or in any of the particulars contained in the said register shall specify the date of the change.
- (5) In subsection (1) of the said section one hundred and forty-four the words " or managers " shall cease to have effect.
- (6) The particulars required by subsection (1) of the said section one hundred and forty-four in the case of an individual who is a director within the meaning of that section—
  - (a) shall, in the case of a company subject to section thirty of this Act, include the date of his birth and shall, in the case of any company, include particulars of any other directorships held by him, except as mentioned in the following paragraph;
  - (b) need not in any case include—
    - (i) particulars of directorships held by him in companies of which the company is the wholly-owned subsidiary, or which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary; or
    - (ii) his nationality of origin, if his nationality is not his nationality of origin;

and paragraph (d) of subsection (1) of section one hundred and forty-five of the principal Act (by which every company to which that section applies is required in all trade catalogues, trade circulars, show cards and business letters to state with respect to every director his nationality of origin, if his nationality is not the nationality of origin) shall cease to have effect.
- (7) Paragraphs (b), (d) and (e) of subsection (4) of section one hundred and forty-five of the principal Act (which relate to the construction for the purposes of that section of references to christian names, surnames and former christian names and surnames) shall apply also for the purposes of the said section one hundred and forty-four and of this section, and for the purposes of paragraph (b) of the last foregoing subsection—
  - (a) the expression " company, " shall include any body corporate incorporated in Great Britain; and
  - (b) a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members ' except that other and that other's wholly-owned subsidiaries and its or their nominees.
- (8) For sub-paragraph (ii) of the said paragraph (e) (which excludes, in the case of natural born British subjects, names changed or disused at an age less than eighteen) there shall be substituted the following sub-paragraph:—
  - “(ii) in the case of any person, a former christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been changed or disused for a period of not less than twenty years; or”.

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

- (1) At a general meeting of a company other than a private company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.
- (2) A resolution moved in contravention of this section shall be void, whether or not its being so moved was objected to at the time:  

Provided that—

  - (a) this subsection shall not be taken as excluding the operation of section one hundred and forty-three of the principal Act (which relates to the validity of a director's acts where a defect is discovered in his appointment); and
  - (b) where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment shall apply.
- (3) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.
- (4) Nothing in this section shall apply to a resolution altering the company's articles.

## **29 Removal of directors.**

- (1) A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him:  

Provided that this subsection shall not, in the case of a private company, authorise the removal of a director holding office for life on the eighteenth day of July, nineteen hundred and forty-five, whether or not subject to retirement under an age limit by virtue of the articles or otherwise.
- (2) Special notice shall be required of any resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.
- (3) Where notice is given of an intended resolution to remove a director under this section and the director concerned makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so—
  - (a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and
  - (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company);

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

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

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

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

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

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

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

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

### **31 Duty to disclose age to company.**

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

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

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

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

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

### **32 Amendment of s. 140 of principal Act.**

References in section one hundred and forty of the principal Act (which restricts the appointment or advertisement of a director) to the share qualification of a director or proposed director shall be construed as including only a share qualification required on appointment or within a period determined by reference to the time of appointment, and references in that section to qualification shares shall be construed accordingly.

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

(1) Where—

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

the court may make an order that that person shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company for such period, not exceeding five years, as may be specified in the order.

- (2) In the foregoing subsection the expression " the court ", in relation to the making of an order against any person by virtue of paragraph (a) thereof, includes the court before which he is convicted, as well as any court having jurisdiction to wind up the company, and in relation to the granting of leave means any court having jurisdiction to wind up the company as respects which leave is sought.
- (3) A person intending to apply for the making of an order under this section by the court having jurisdiction to wind up a company shall give not less than ten days' notice of his intention to the person against whom the order is sought, and on the hearing of the application the last mentioned person may appear and himself give evidence or call witnesses.
- (4) An application for the making of an order under this section by the court having jurisdiction to wind up a company may be made by the official receiver, or by the liquidator of the company, or by any person who is or has been a member or creditor of the company, and on the hearing of any application for an order under this section by the official receiver or the liquidator, or of any application for leave under this section by a person against whom an order has been made on the application of the official receiver or the liquidator, the official receiver or liquidator shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.
- (5) An order may be made by virtue of sub-paragraph (ii) of paragraph (b) of subsection (1) of this section notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made, and for the purposes of the said sub-paragraph (ii) the expression " officer " shall

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include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

- (6) If any person acts in contravention of an order made under this section, he shall, in respect of each offence, be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both.

*Payments to directors.*

**34 Prohibition of tax free payments to directors.**

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

**35 Prohibition of loans to directors.**

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

Provided that nothing in this section shall apply either—

- (a) to anything done by a company which is for the time being an exempt private company as defined in subsection (4) of section fifty-four of this Act; or
  - (b) to anything done by a subsidiary, where the director is its holding company; or
  - (c) subject to the next following subsection, to anything done to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or
  - (d) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business.
- (2) Proviso (c) to the foregoing subsection shall not authorise the making of any loan, or the entering into any guarantee, or the provision of any security, except either—
- (a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or



- (b) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.
- (3) Where the approval of the company is not given as required by any such condition, the directors authorising the making of the loan, or the entering into the guarantee, or the provision of the security, shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

### **36 Payments received by directors for loss of office or on retirement.**

- (1) It shall not be lawful for a company to make to any director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, without particulars with respect to the proposed payment (including the amount thereof) being disclosed to the members of the company and the proposal being approved by the company.
- (2) In subsection (3) of section one hundred and fifty of, the principal Act (which requires a director to disclose payments to be made to him as aforesaid, whether by the company or others, where the payments are to be made in connection with the transfer of shares in the company as a result of an offer made to the general body of shareholders) any reference to an offer made to the general body of shareholders shall include a reference to any offer made—
  - (a) by or on behalf of some other body corporate with a view to the company's becoming its subsidiary or a subsidiary of its holding company; or
  - (b) by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one third of the voting power at any general meeting of the company;and to any other offer which is conditional on acceptance to a given extent.
- (3) In subsection (4) of the said section one hundred and fifty (which provides among other things that where a director fails to disclose any such payment as aforesaid as required by the said subsection (3) he shall account therefor to the persons who have sold their shares as a result of the offer) after the words " if the requirements of the last foregoing subsection are not complied with in relation to any such payment as is mentioned in the said subsection " there shall be inserted the words " or if the making of the proposed payment is not approved before the transfer of any shares in pursuance of the offer by a meeting of the shareholders concerned summoned for the purpose ".
- (4) After the said subsection (4) there shall be inserted the following subsections:—
  - “(4A) The reference in the last foregoing subsection to the shareholders concerned shall be taken as including not only the holders of shares to which the offer relates but also all other holders of shares of the same class as any of the said shares; and where the shareholders concerned are not all the members of the company and no provision is made by the articles for summoning or regulating such a meeting as is mentioned in the last foregoing subsection, the provisions of this Act and of the company's articles relating to general meetings of the company shall for that purpose apply to the meeting either without modification or with such modifications as the Board of Trade on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

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- (4B) if at a meeting summoned for the purpose of approving any payment as required by the said subsection (4) a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall be deemed for the purposes of that subsection to have been approved.”
- (5) A director's expenses of distributing any sum among persons entitled thereto by virtue of the said subsection (4) shall be borne by him and not retained out of that sum.
- (6) Where in proceedings for the recovery of any payment as having, by virtue of subsections (1) and (2) or subsections (3) and (4) of the said section one hundred and fifty, been received by any person in trust, it is shown that—
- (a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement or the offer leading thereto; and
  - (b) the company or any person to whom the transfer was made was privy to that arrangement;
- the payment shall be deemed, except in so far as the contrary is shown, to be one to which the subsections apply.
- (7) It is hereby declared that references in this section and in the said section one hundred and fifty to payments made to any director of a company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, do not include any bona fide payment by way of damages for breach of contract or by way of pension in respect of past services, and for the purposes of this subsection the expression " pension " includes any superannuation allowance, superannuation gratuity or similar payment.

*Disclosure of payments to and interest of officers.*

**37 Register of directors' shareholdings, etc.**

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

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

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

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

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- (3) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him in the said register shall, if he so requires, be indicated in the register.
  - (4) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put upon inquiry as to, the rights of any person in relation to any shares or debentures.
  - (5) The said register shall, subject to the provisions of this section, be kept at the company's registered office and shall be open to inspection during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) as follows:—
    - (a) during the period beginning fourteen days before the date of the company's annual general meeting and ending three days after the date of its conclusion it shall be open to the inspection of any member or holder of debentures of the company; and
    - (b) during that or any other period, it shall be open to the inspection of any person acting on behalf of the Board of Trade,
- In computing the fourteen days and the three days mentioned in this subsection, any day which is a Saturday or Sunday or a bank holiday shall be disregarded.
- (6) Without prejudice to the rights conferred by the last foregoing subsection, the Board of Trade may at any time require a copy of the said register, or any part thereof.
  - (7) The said register shall also be produced at the commencement of the company's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.
  - (8) If default is made in complying with the last foregoing subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds; and if default is made in complying with subsection (1) or (2) of this section, or if any inspection required under this section is refused or any copy required thereunder is not sent within a reasonable time, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds and further to a default fine of two pounds.
  - (9) In the case of any such refusal, the court may by order compel an immediate inspection of the register.
  - (10) For the purposes of this section—
    - (a) any person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director of the company; and
    - (b) a director of a company shall be deemed to hold, or to have any interest or right in or over, any shares or debentures if a body corporate other than the company holds them or has that interest or right in or over them, and either—
      - (i) that body corporate or its directors are accustomed to act in accordance with his directions or instructions; or
      - (ii) he is entitled to exercise or control the exercise of one third or more of the voting power at any general meeting of that body corporate.

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### **38 Particulars in accounts of directors' salaries, pensions, etc.**

(1) In any accounts of a company laid before it in general meeting, 'or in a statement annexed thereto, there shall, subject to and in accordance with the provisions of this section, be shown so far as the information is contained in the company's books and papers or the company has the right to obtain it from the persons concerned—

- (a) the aggregate amount of the directors' emoluments;
- (b) the aggregate amount of directors' or past directors' pensions; and
- (c) the aggregate amount of any compensation to directors or past directors in respect of loss of office.

(2) The amount to be shown under paragraph (a) of subsection (1) of this section—

- (a) shall include any emoluments paid to or receivable by any person in respect of his services as director of the company or in respect of his services, while director of the company, as director of any subsidiary thereof or otherwise in connection with the management of the affairs of the company or any subsidiary thereof; and
- (b) shall distinguish between emoluments in respect of services as director, whether of the company or its subsidiary, and other emoluments;

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

(3) The amount to be shown under paragraph (b) of the said subsection (1)—

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

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

(4) The amount to be shown under paragraph (c) of the said subsection (1)—

- (a) shall include any sums paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while director of the company or on or in connection with his ceasing to be a director of the company, of any other office in connection with the management of the company's affairs or of any office as director or otherwise

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in connection with the management of the affairs of any subsidiary thereof;  
and

- (b) shall distinguish between compensation in respect of the office of director, whether of the company or its subsidiary, and compensation in respect of other offices;

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

- (5) The amounts to be shown under each paragraph of the said subsection (1)—

- (a) shall include all relevant sums paid by or receivable from—

- (i) the company; and  
(ii) the company's subsidiaries; and  
(iii) any other person;

except sums to be accounted for to the company or any of its subsidiaries or, by virtue of section one hundred and fifty of the principal Act, to past or present members of the company or any of its subsidiaries or any class of those members; and

- (b) shall distinguish, in the case of the amount to be shown under paragraph (c) of the said subsection (1), between the sums respectively paid by or receivable from the company, the company's subsidiaries and persons other than the company and its subsidiaries.

- (6) The amounts to be shown under this section for any financial year shall be the sums receivable in respect of that year, whenever paid, or, in the case of sums not receivable in respect of a period, the sums paid during that year, so, however, that where—

- (a) any sums are not shown in the accounts for the relevant financial year on the ground that the person receiving them is liable to account therefor as mentioned in paragraph (a) of the last foregoing subsection, but the liability is thereafter wholly or partly released or is not enforced within a period of two years; or  
(b) any sums paid by way of expenses allowance are charged to United Kingdom income tax after the end of the relevant financial year;

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

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

- (8) If in the case of any accounts the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report thereon, so far as they are reasonably able to do so, a statement giving the required particulars.

- (9) In this section any reference to a company's subsidiary—

- (a) in relation to a person who is or was, while a director of the company, a director also, by virtue of the company's nomination, direct or indirect, of any other

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body corporate, shall, subject to the following paragraph, include that body corporate, whether or not it is or was in fact the company's subsidiary; and

- (b) shall for the purposes of subsections (2) and (3) be taken as referring to a subsidiary at the time the services were rendered, and for the purposes of subsection (4) be taken as referring to a subsidiary immediately before the loss of office as director of the company.

- (10) Section one hundred and twenty-eight of the principal Act, so far as it relates to directors' remuneration, and section one hundred and forty-eight thereof shall cease to have effect.

### **39 Particulars in accounts of loans to officers.**

- (1) Section one hundred and twenty-eight of the principal Act (which requires loans to officers to be shown in the accounts) shall apply to a loan to any person who has during the company's financial year been an officer of the company made before he became an officer, as it applies to a loan made to an officer of the company.
- (2) The said section one hundred and twenty-eight shall apply to loans made to an officer of the company or to any such person as aforesaid by a subsidiary of the company, or by any person other than the company under a guarantee from or on a security provided by a subsidiary of the company, as it applies to loans made by the company or by any other person under a guarantee from or on a security provided by the company, but as if any reference in subsection (2) of that section to the company were a reference to the subsidiary.
- (3) References in this section to a subsidiary shall be taken as referring to a subsidiary at the end of the company's financial year (whether or not a subsidiary at the date of the loan).

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

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

obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

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

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

- (5) In this section, the expressions " company " and " arrangement " have the same meanings as in the said section one hundred and fifty-three.

#### **41 General duty to make disclosure.**

- (1) It shall be the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purposes of the four last foregoing sections.
- (2) Any such notice given for the purposes of the first of the said sections shall be in writing and if it is not given at a meeting of the directors, the director giving it shall take reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.
- (3) Subsection (1) of this section shall apply—
- (a) for the purposes of the third of -the said sections, in relation to officers other than directors; and
  - (b) for the purposes of the second and third of them, in relation to persons who are or have at any time during the preceding five years been officers; and
  - (c) for the purposes of the last of them, in relation to trustees for debenture holders;
- as it applies in relation to directors.
- (4) Any person who makes default in complying with the foregoing provisions of this section shall be liable to a fine not exceeding fifty pounds.
- (5) Where a director, for the purpose of declaring his interest in contracts with the company as required by section one hundred and forty-nine of the principal Act, gives such a general notice of his membership of a specified company or firm as is mentioned in subsection (3) of that section, that notice shall be of no effect unless either it is given at a meeting of the directors or he takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

#### *Investigations.*

#### **42 Inspection of company's affairs on application Of members.**

- (1) The powers of the Board of Trade under section one hundred and thirty-five of the principal Act in relation to the appointment, on the application of members of a

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company, of inspectors to investigate the company's affairs shall in the case of an application made after the coming into force of this section be exercisable—

- (a) in the case of a banking company having a share capital, on the like application as if the company were not a banking company; and
- (b) in the case of any company having a share capital, on the application of not less than two hundred members of the company notwithstanding that they hold less than one-tenth of the issued shares as required by subsection (1) of the said section one hundred and thirty-five;

and the power of the Board under subsection (2) of that section to require evidence for the purpose of showing that the applicants are not actuated by malicious motives in requiring the investigation shall not be exercisable in the case of any application made after the coming into force of this section.

- (2) For subsection (3) of the said section one hundred and thirty-five (which requires officers and agents of the company to produce books and documents) there shall be substituted the following subsection—

“(3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents of or relating to the company which are in their custody or power and otherwise to give to the inspectors all assistance in connection with the investigation which they are reasonably able to give.”

- (3) In the said section one hundred and thirty-five, any reference to officers or to agents shall include past, as well as present, officers or agents as the case may be, and for the purposes of that section the expression " agents " in relation to a company shall include the bankers and solicitors of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.
- (4) If an inspector appointed under the said section one hundred and thirty-five thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath should be so examined, he may apply to the court and the court may if it sees fit order that person to attend and be examined on oath before it on any matter relevant to the investigation, and on any such examination—
  - (a) the inspector may take part therein either personally or by solicitor or counsel;
  - (b) the court may put such questions to the person examined as the court thinks fit;
  - (c) the person examined shall answer all such questions as the court may put or allow to be put to him, but may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him;

and notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him:

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

- (5) If an inspector appointed under the said section one hundred and thirty-five to investigate the affairs of a company thinks it necessary for that purpose to investigate also the affairs of any other body corporate which is or has at any relevant time been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary, he shall have power so to do, and shall report on



the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the first mentioned company.

- (6) Where by virtue of the last foregoing subsection an inspector appointed to investigate the affairs of a company investigates also the affairs of another body corporate, any reference in subsections (3) to (5) of the said section one hundred and thirty-five (which relate to the powers of the inspector) and in subsections (1) and (2) of section one hundred and thirty-six of the principal Act (which relate to proceedings on the inspector's report) to the company shall include a reference to the other body corporate.
- (7) The Board of Trade, in addition to furnishing copies of the report of an inspector appointed under the said section one hundred and thirty-five to the company and, if requested, to the applicants for the investigation as required by subsection (6) of that section, shall, if they think fit, furnish a copy thereof on request and on payment of the prescribed fee to any other person who is a member of the company or of any other body corporate dealt with in the report by virtue of subsection (5) of this section, or whose interests as a creditor of the company or of any such other body corporate as aforesaid appear to the Board to be affected, and the Board may also cause any such report to be printed and published.
- (8) In addition to the final report required by the said subsection (6) an inspector so appointed may and, if so directed by the Board of Trade, shall make interim reports to the Board, and the provisions of the principal Act and this Act shall apply in relation thereto as they apply in relation to the final report.

#### **43 Inspection of company's affairs in other cases.**

- (1) Without prejudice to their powers under the said section one hundred and thirty-five of the principal Act, the Board of Trade—
  - (a) shall appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Board direct, if—
    - (i) the company by special resolution; or
    - (ii) the court by order;declares that its affairs ought to be investigated by an inspector appointed by the Board; and
  - (b) may do so, if it appears to the Board that there are circumstances suggesting—
    - (i) that its business is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members or that it was formed for any fraudulent or unlawful purpose; or
    - (ii) that persons concerned with its formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members; or
    - (iii) that its members have not been given all the information with respect to its affairs which they might reasonably expect.
- (2) The principal Act and this Act shall apply in relation to an inspector appointed under this section and to his report as they apply in relation to an inspector appointed under the said section one hundred and thirty-five and to his report.
- (3) Where an inspector is appointed under this section in pursuance of an order of the court, the Board of Trade shall furnish a copy of his report to the court as well as to the persons required by subsection (6) of the said section one hundred and thirty-five.

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- (4) Section one hundred and thirty-seven of the principal Act (which relates to a company's power itself to appoint inspectors to investigate its affairs) shall cease to have effect, except as respects inspectors appointed before the coming into force of this section \_ or appointed to continue an investigation begun by inspectors appointed before the coming into force thereof.

#### **44 Proceedings on inspector's report.**

- (1) If, in the case of any body corporate liable to be wound up under the principal Act, it appears to the Board of Trade, from any report on its affairs made to them by an inspector appointed by them under the principal Act or under the last foregoing section, that it is expedient so to do by reason of any such circumstances as are referred to in sub-paragraph (i) or (ii) of paragraph (b) of subsection (1) of the last foregoing section, the Board may, unless the body corporate is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable that it should be wound up or a petition for an order under section nine of this Act, or both.
- (2) If from any report so made it appears to the Board of Trade that proceedings ought in the public interest to be brought by any body corporate dealt with by the report for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that body corporate or the management of its affairs, or for the recovery of any property of the body corporate which has been misapplied or wrongfully retained, they may themselves bring proceedings for that purpose in the name of the body corporate.
- (3) The Board of Trade shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with any proceedings brought by virtue of the last foregoing subsection.
- (4) In subsection (2) of section one hundred and thirty-six of the principal Act (which requires the Director of Public Prosecutions to take criminal proceedings on the inspector's report if he considers that the case requires it) the words " and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him " shall cease to have effect.

#### **45 Expenses of inspection of company's affairs.**

- (1) The expenses of and incidental to an investigation by an inspector appointed by the Board of Trade under the principal Act or under the last but one foregoing section shall be defrayed in the first instance by the Board of Trade, but the following persons shall, to the extent mentioned, be liable to repay the Board:—
- (a) any person who is convicted on a prosecution instituted as a result of the investigation by the Director of Public Prosecutions or by or on behalf of the Lord Advocate, or who is ordered to pay damages or restore any property in proceedings brought by virtue of subsection (2) of the last foregoing section, may in the same proceedings be ordered to pay the said expenses to such extent as may be specified in the order;
- (b) any body corporate in whose name proceedings are brought as aforesaid shall be liable to the amount or value of any sums or property recovered by it as a result of those proceedings; and

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

#### **46 Appointment and powers of inspectors to investigate ownership of company.**

- (1) Where it appears to the Board of Trade that there is good reason so to do, they may appoint one or more competent inspectors to investigate and report on the membership of any company and otherwise with respect to the company for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence the policy of the company.
- (2) The appointment of an inspector under this section may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular snares or debentures.

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- (3) Where an application for an investigation under this section with respect to particular shares or debentures of a company is made to the Board of Trade by members of the company, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under section one hundred and thirty-five of the principal Act, the Board of Trade shall appoint an inspector to conduct the investigation, unless they are satisfied that the application is vexatious, and the inspector's appointment shall not exclude from the scope of his investigation any matter which the application seeks to have included therein, except in so far as the Board of Trade are satisfied that it is unreasonable for that matter to be investigated.
- (4) Subject to the terms of an inspector's appointment his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.
- (5) For the purposes of any investigation under this section, subsections (3) to (6) of section one hundred and thirty-five of the principal Act, and subsections (4) to (8) of section forty-two of this Act (which relates to the appointment and functions of inspectors under the said section one hundred and thirty-five) shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, so, however, that—
- (a) the said subsections shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be; and
  - (b) the Board of Trade shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if they are of opinion that there is good reason for not divulging the contents of the report or of parts thereof, but shall cause to be kept by the registrar a copy of any such report or, as the case may be, the parts of any such report, as respects which they are not of that opinion.
- (6) The expenses of any investigation under this section shall be defrayed by the Board of Trade out of moneys provided by Parliament.

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

- (1) Where it appears to the Board of Trade that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, they may require any person whom they have "reasonable cause to believe—
- (a) to be or to have been interested in those shares or debentures; or
  - (b) to act or to have acted in relation to those shares or debentures as the solicitor or agent of someone interested therein;
- to give them any information which he has or can reasonably be expected to obtain as to the present and past interests in those shares or debentures and the names and

addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

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

#### **48 Power to impose restrictions on shares or debentures.**

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

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- (c) being the holder of any such shares, fails to notify of their being subject to the said restrictions any person whom he does not know to be aware of that fact but does know to be entitled, apart from the said restrictions, to vote in respect of those shares whether as holder or proxy;

shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both.

- (6) Where shares in any company are issued in contravention of the said restrictions, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds.
- (7) A prosecution shall not be instituted in England under this section except by or with the consent of the Board of Trade.
- (8) This section shall apply in relation to debentures as it applies in relation to shares.

#### **49 Saving for solicitors and bankers.**

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

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

*Register of members and annual return.*

#### **50 Power to keep register where made up.**

- (1) A company's register of members may be kept at any office of the company where the work of making it up is done, instead of at the company's registered office, and where a company arranges with some other person (in this section referred to as "the agent") for the making up of its register of members to be undertaken on behalf of the company by the agent, the register may be kept at the office of the agent at which the work is done instead of at an office of the company:

Provided that the register shall not be kept—

- (i) in the case of a company registered in England, at a place outside England; or
- (ii) in the case of a company registered in Scotland, at a place outside Scotland.

- (2) Where the company keeps an index of the names of its members under section ninety-six of the principal Act, the index shall be at all times kept at the same place as the register of members, and where the company keeps a dominion register under section one hundred and three of the principal Act, the duplicate of the dominion register required by subsection (3) of section one hundred and four of that Act to be kept at the company's registered office shall, notwithstanding anything in the said subsection (3), be at all times kept at the same place as the company's principal register.
- (3) Every company shall send notice to the registrar of companies of the place where its register of members is kept and of any change in that place:

Provided that a company shall not be bound to send notice under this subsection where the register has, at all times since it came into existence or, in the case of a register in

existence at the coming into force of this section, at all times since then, been kept at the registered office of the company.

- (4) Where a company makes default in complying with subsection (2) of this section or makes default for fourteen days in complying with the last foregoing subsection, the company and every officer of the company who is in default shall be liable to a default fine.
- (5) Where the register of members is kept at the agent's office, and by reason of any default of his the company fails to comply with the requirements of subsection (2) or (3) of this section, or with any requirements of the principal Act or this Act as to the inspection or production of the register or as to furnishing copies of the register or any part thereof, the agent shall be liable to the same penalties as if he were an officer of the company who was in default, and any power of the court under the principal Act to make orders for enforcing compliance with the requirements thereof as to inspection and copies shall extend to the making of orders against the agent and the agent's officers and servants.

## **51 Contents of register of members.**

A company's register of members need not state their occupations.

## **52 Preparation, etc., of annual return.**

- (1) A company need not make an annual return, whether under section one hundred and eight of the principal Act (which relates to companies having a share capital) or under section one hundred and nine thereof (which relates to other companies) either in the year of its incorporation or, if it is not required by this Act to hold an annual general meeting during the following year, in that year.
- (2) The date of a company's annual return under the said section one hundred and eight shall be the fourteenth day after its annual general meeting for the year, and the period within which a company's annual return under either of the said sections one hundred and eight and one hundred and nine must, by virtue of subsection (1) of section one hundred and ten of the principal Act, be completed shall be forty-two days after the said meeting, whether or not that meeting is the first or only ordinary general meeting, or the first or only general meeting, of the company in the year.
- (3) So much of the said section one hundred and ten as requires the annual return to be contained in a separate part of the register of members and applies thereto section ninety-eight of the principal Act (which relates to inspection and copies of the register of members) shall cease to have effect.

## **53 Contents of annual return.**

- (1) A company's annual return shall—
  - (a) where the register of members is, under the provisions of this Act, not kept at its registered office, state where the register is kept;
  - (b) specify all such particulars with respect to any person who at the date of the return is secretary of the company as are by this Act required to be contained with respect to the secretary in the register of the directors and secretaries of a company, and in the said sections one hundred and eight and one hundred and nine references to the particulars required by that Act to be contained

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with respect to directors in the said register shall be construed as referring to the particulars required by that Act and this Act to be contained therein with respect to the company's directors.

(2) Subsection (3) of the said section one hundred and ten (under which, subject to exceptions, the annual return must include a copy of the last balance sheet and the documents required to be annexed thereto, together with the auditors' report thereon)

- (a) shall apply to every balance sheet laid before the company in general meeting during the period to which the return relates, instead of to the last balance sheet audited by the company's auditors; and
- (b) shall require a copy of the directors' report accompanying any such balance sheet, certified in the same way as the balance sheet, to be included in the return;

and every reference in that subsection to a balance sheet, and not only the first reference, shall be taken as including the documents required by law to be annexed thereto.

(3) The annual return of a company having a share capital may, in any year, if the return for either of the two immediately preceding years has given as at the date of that return the full particulars required by subsections (1) and (2) of the said section one hundred and eight as to past and present members and the shares and stock held and transferred by them, give only such of the particulars required by those subsections as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date or to changes as compared with that date in the amount of stock held by a member.

(4) In the case of a company keeping a dominion register—

- (a) references in the last foregoing subsection to the particulars required by subsections (1) and (2) of the said section one hundred and eight shall be taken as not including any such particulars contained in the dominion register, in so far as copies of the entries containing those particulars are not received at the registered office of the company before the date when the return in question is made; and
- (b) where an annual return is made between the date when any entries are made in the dominion register and the date when copies of those entries are received at the registered office of the company, the particulars contained in those entries, so far as relevant to an annual return, shall be included in the next or a subsequent annual return as may be appropriate having regard to the particulars included in that return with respect to the company's principal register.

(5) The annual return of a company made next after the expiry of paragraph (1) of regulation two of the Defence (Companies) Regulations, 1940, (under which the annual return of a company having a share capital need not contain any list of members, except in the case of a company's first annual return or of a private company), need not, if that paragraph applied to the annual return last made by the company, give the particulars required by subsections (1) and (2) of the said section one hundred and eight as to past members of the company or as to shares transferred.

(6) The annual return of a company having a share capital need not in any case state the occupations of the past and present members therein mentioned.



#### **54 Inclusion in annual return of accounts of private companies.**

- (1) A private company shall not after the coming into force of this section be exempt from the obligation to include in its annual return a copy of the balance sheet and other documents required by subsection (3) of section one hundred and ten of the principal Act, unless—
- (a) the conditions mentioned in the next following subsection are satisfied at the date of the return and have been satisfied at all times since the coming into force of this section; and
  - (b) there is sent with the return a certificate signed by the persons signing the certificates required to be so sent by section one hundred and eleven of the principal Act, that to the best of their knowledge and belief the said conditions are and have been satisfied as aforesaid:

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

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

#### **55 Signature of annual return, etc., and penalty for false statements.**

- (1) The following documents, that is to say.—
- (a) the copy forwarded to the registrar of a company's annual return;
  - (b) the certificate as to any balance sheet included in the annual return; and
  - (c) any certificate as to the annual return of a private company;

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shall be signed both by a director and by the secretary of the company, instead of by one of the persons respectively mentioned in subsections (1) and (3) of section one hundred and ten and section one hundred and eleven of the principal Act.

- (2) Section three hundred and sixty-two of the principal Act (which penalises false statements) shall apply in relation to subsection (1) of each of the two last foregoing sections and in relation to paragraph (b) of subsection (1) and subsection (2) of section one hundred and nine and the said section one hundred and eleven of the principal Act as it applies in relation to paragraphs (n) and (o) of subsection (3) of section one hundred and eight of the principal Act.

*Registered office and name.*

#### **56 Establishment of registered office.**

In section ninety-two of the principal Act (which requires a company to have a registered office not later than the twenty-eighth day after its incorporation, and to give notice of the situation of and of any change in its registered office within twenty-eight days of its incorporation or of the change) for the words " twenty-eighth " and " twenty-eight " there shall respectively be substituted the words " fourteenth " and " fourteen ".

#### **57 Amendments as to publication of name.**

Section ninety-three of the principal Act (which relates to the publication by a company of its name) shall have effect as if it had been enacted with—

- (a) in paragraph (c) of subsection (1) thereof, the words " in all business letters of the company and in all notices and other official publications of the company " for the words " in all notices, advertisements and other official publications of the company "; and
- (b) in paragraph (b) of subsection (4) thereof, the words " any business letter of the company or any notice or other official publication of the company" for the words " any notice, advertisement, or other official publication of the company."

#### **58 Extension of Registration of Business Names Act, 1916, to companies.**

- (1) In section one of the Registration of Business Names Act, 1916 (which requires registration under that Act of all individuals and firms carrying on business under a business name), there shall be inserted after paragraph (c) thereof the following paragraph:—

“(d) every company as defined in the Companies Act, 1929, carrying on business under a business name which does not consist of its corporate name without any addition;”.

- (2) Subsection (1) of section three (which "relates to the particulars to be registered), and the proviso to section five (which relates to the time for registration), of the first-mentioned Act shall apply in relation to registration by virtue of this section as if references therein to the passing of that Act were references to the coming into force of this section.

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- (3) Section thirteen of that Act (which relates to the removal of names from the register where a firm or individual ceases to carry on business) shall apply in relation to a company registered under that Act by virtue of this section, which ceases to carry on business in such circumstances as to require registration thereunder, as it applies in relation to a firm which ceases to carry on business, but with the substitution for the reference to the partners in the firm of a reference to the directors and any liquidator of the company.