

REPUBLIC



OF CYPRUS

## THE COMPANIES LAW

*(English translation and consolidation)*

Cap. 113.  
9 of 1968  
76 of 1977  
17 of 1979  
105 of 1985  
198 of 1986  
19 of 1990  
41(I) of 1994  
15(I) of 1995  
21(I) of 1997  
82 (I) of 1999  
149 (I) of 1999  
2(I) of 2000  
135(I) of 2000  
151(I) of 2000  
76(I) of 2001  
70(I) of 2003  
167(I) of 2003  
92(I) of 2004  
24(I) of 2005  
129(I) of 2005  
130(I) of 2005  
98(I) of 2006  
124(I) of 2006  
70(I) of 2007  
71(I) of 2007  
131(I) of 2007  
186(I) of 2007  
87(I) of 2008  
41(I) of 2009  
49(I) of 2009  
99(I) of 2009  
42(I) of 2010  
60(I) of 2010  
88(I) of 2010  
53(I) of 2011  
117(I) of 2011  
145(I) of 2011  
157(I) of 2011  
198(I) of 2011  
64(I) of 2012  
98(I) of 2012.

Office of the Law Commissioner  
Nicosia,  
September, 2012  
ΓΕΝ (Α) – L.111

**ISBN 978-9963-664-41-2**

NICOSIA

---

PRINTED AT THE PRINTING OFFICE OF THE REPUBLIC OF CYPRUS

Price:

## **CONTENTS**

	<b>Page</b>
Note for the Reader.....	iii
Arrangement of sections.....	1
The Companies Law (Cap. 113) (Consolidation in English).....	22
Note.....	359

**NOTE FOR THE READER**

The publication at hand by the Office of the Law Commissioner is an English translation and consolidation of the Companies Law [Cap. 113, as amended by Laws 9/1968, 76/1977, 17/1979, 105/1985, 198/1986, 19/1990, 41(I)/1994, 15(I)/1995, 21(I)/1997, 82(I)/1999, 149(I)/1999, 2(I)/2000, 135(I)/2000, 151(I)/2000, 76(I)/2001, 70(I)/2003, 167(I)/2003, 92(I)/2004, 24(I)/2005, 129(I)/2005, 130(I)/2005, 98(I)/2006, 124(I)/2006, 70(I)/2007, 71(I)/2007, 131(I)/2007, 186(I)/2007, 87(I)/2008, 41(I)/2009, 49(I)/2009, 99(I)/2009, 42(I)/2010, 60(I)/2010, 88(I)/2010, 53(I)/2011, 117(I)/2011, 145(I)/2011, 157(I)/2011, 198(I)/2011, 64(I)/2012, 98(I)/2012].

The Note appearing at the end of the publication is important and should be borne in mind.

However useful the English translation of the consolidated Law is in practice, it does not replace the original text of the Law, since only the Greek text of the Laws published in the Official Gazette of the Republic of Cyprus is authentic.

The Office of the Law Commissioner shall not be under any liability to any person or organisation in respect of any loss or damage, including consequential loss or damage, however caused, which may be incurred or arises directly or indirectly from reliance on information in this publication.

Copyright © Office of the Law Commissioner, Nicosia 2012

Reproduction authorised without prior application. Reference to the source will be appreciated.



## **CHAPTER 113**

### **COMPANIES**

#### **ARRANGEMENT OF SECTIONS**

##### **Section**

1. Short title.
2. Interpretation.

#### **PART I**

#### **INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO**

##### Memorandum of Association

3. Mode of forming incorporated company.
4. Requirements with respect to memorandum.
- 4A. Public company: minimum registered capital.
5. Stamp and signature of memorandum.
6. Restriction on alteration of memorandum.
7. Mode in which and extent to which objects of company may be altered.

##### Articles of Association

8. Articles prescribing regulations for companies.
9. Regulations required in case of company limited by guarantee.
10. Adoption and application of Table A.
11. Printing, stamp and signature of articles.
12. Alteration of articles by special resolution.

##### Form of Memorandum and Articles

13. Statutory forms of memorandum and articles.

##### Registration

14. Registration of memorandum and articles.
15. Effect of registration.
- 15A. Validity of contracts concluded prior to the company being incorporated.
16. Power of company to hold immovable property.
17. Conclusiveness of certificate of incorporation.

##### Provisions with respect to Names of Companies

18. Undesirable name.
19. Change of name.
20. Power to dispense with "limited" in name of charitable and other companies.

##### General provisions with respect to Memorandum and Articles

21. Effect of memorandum and articles
22. Provision as to memorandum and articles of companies limited by guarantee.
23. Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent.
24. Power to alter conditions in memorandum which could have been contained in articles.

The Office of the Law Commissioner

- 25. Copies of memorandum and articles to be given to members.
- 26. Issued copies of memorandum to embody alterations.

Membership of Company

- 27. Definition of member.
- 28. Membership of holding company.

Private Companies

- 29. Meaning of "private company".
- 30. Consequences of default in complying with conditions constituting a company a private company.
- 31. Statement in lieu of prospectus to be delivered to registrar by company on ceasing to be private company
- 31A. Provisions regarding the reincorporation of the company as a private company.

Reduction of Number of Members below Legal Minimum

- 32. Members severally liable for debts where business carried on with fewer than seven.

Contracts, etc.

- 33. Form of contracts.
- 33A. Validity of transactions concluded on behalf of the Company.
- 34. Bills of exchange and promissory notes
- 35. Documents to be signed on the basis of express or implied authorization
- 36. Power for company to have official seal for use abroad.

Authentication of documents

- 37. Authentication of documents.
- 37A. Possibility to use electronic method.

**PART II**

**SHARE CAPITAL AND DEBENTURES**

Prospectus

- 38. Dating of prospectus.
- 39. Matters to be stated and reports to be set out in prospectus.
- 40. Expert's consent to issue of prospectus containing statement by him.
- 41. Registration of prospectus.
- 42. Restriction on alteration of terms in prospectus or statement in lieu of prospectus.
- 43. Civil liability for misstatements in prospectus.
- 44. Criminal liability for misstatements in prospectus.
- 45. Document containing offer of shares or debentures for sale to be deemed prospectus.
- 46. Interpretation of provisions relating to prospectuses.
- 46A. Non-application of sections 38 to 46 of the Law.

Allotment

- 47. Prohibition of allotment unless minimum subscription received.
- 47A. Subscription for registration and payment of share capital
- 47B. Contributions in kind: Methods of valuation and cases where such valuation is not necessary.
- 47C. Acquisition of assets where incorporation has been completed.
- 47D. Non-application of section 47B subject to requirements.

## The Office of the Law Commissioner

- 47E. Liability for publicity in case of application of section 47D.
- 48. Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to registrar.
- 49. Effect of irregular allotment.
- 50. Applications for and allotment of, shares and debentures.
- 51. Return as to allotments.

### Commissions and Discounts, etc.

- 52. Power to pay certain commissions and prohibition of payment of all other commissions, discounts, etc.
- 53. Prohibition of provision of financial assistance by company for purchase of or subscription for its own, or its holding company's shares.

### Construction of References to offering Shares or Debentures to the Public

- 54. Construction of references to offering shares or debentures to the public.

### Issue of Shares at Premium and Discount and Redeemable Preference Shares

- 55. Application of premiums received on issue of shares.
- 56. Power to issue shares at a discount.
- 57. Power to issue redeemable preference shares.
- 57A. Right of the company to purchase or acquire its own shares.
- 57B. Exemptions.
- 57C. Obligation of company to transfer shares acquired in contravention of this Law.
- 57D. Conditions to be met for the company to hold its own shares.
- 57E. Right of company to pledge its own shares.
- 57F. Subscription, acquisition or holding shares through subsidiary.

### Miscellaneous Provisions as to Share Capital

- 58. Power of company to arrange for different amounts being paid on shares.
- 59. Reserve liability of company.
- 59A. Voting rules in relation to a decision of the general meeting for changes in capital. Separate voting per class of shares. Majority.
- 60. Power of company limited by shares to alter its share capital.
- 60A. Increase of share capital. Rules for paying off, etc.
- 60B. Principle of preferring the existing shareholders during the increase of the share capital by way of cash contributions
- 61. Notice to registrar of consolidation of share capital, conversion of shares into stock, etc.
- 62. Notice of increase of share capital.
- 63. Power of company to pay interest out of capital in certain cases.

### Reduction of Share Capital and Related Transactions

- 64. Special resolution for reduction of share capital.
- 65. Application to Court for confirming order, objections by creditors and settlement of list of objecting creditors.
- 66. Order confirming reduction and powers of Court on making such order.
- 67. Registration of order and minute of reduction.
- 68. Liability of members in respect of reduced shares.
- 69. Penalty for concealing name of creditor, etc.

Rights of Shareholders and Variation thereof

- 69A. Equal treatment of shareholders of the same class.
- 70. Rights of holders of special classes of shares.

Transfer of Shares and Debentures, Evidence of Title, etc

- 71. Nature of shares.
- 72. Numbering of shares.
- 73. Transfer not to be registered except on production of instrument of transfer.
- 74. Transfer by personal representative.
- 75. Registration of transfer at request of transferor.
- 76. Notice of refusal to register transfer.
- 77. Certification of transfers.
- 78. Duties of company with respect to issue of certificates.
- 79. Certificate to be evidence of title.
- 80. Evidence of grant of probate.
- 81. Issue and effect of share warrants to bearer.
- 82. Penalty for personation of shareholder.

Special Provisions as to Debentures

- 83. Register of debenture holders.
- 84. Rights of inspection of register of debenture holders and to copies of register and trust deed.
- 85. Liability of trustees for debenture holders.
- 86. Perpetual debentures.
- 87. Power to re-issue redeemed debentures in certain cases.
- 88. Specific performance of contracts to take up debentures.
- 89. Payment of certain debts out of assets subject to floating charge in priority to claims under the charge.

**PART III**

**CHARGES AND MORTGAGES**

Registration of Charges and recording of Mortgages

- 90. Registration of charges created by companies registered in the Republic.
- 91. Duty of company with regard to charges and mortgages created by company.
- 92. Duty of company to register charges existing on property acquired.
- 93. Register of charges to be kept by registrar of companies.
- 94. Endorsement of certificate of registration on debentures.
- 95. Entries of satisfaction and release of property from charge.
- 96. Rectification of register of charges or record of mortgages.
- 97. Registration of enforcement of security.

Provisions as to Company's Register of Charges and of Book of Mortgages and as to Copies of Instruments creating Charges and Mortgages.

- 98. Copies of instruments creating charges and mortgages to be kept by company.
- 99. Company's register of charges and book of mortgages.
- 100. Right to inspect.



Application of Part III to Companies incorporated outside the Republic

101. Application of Part III to charges and mortgages created, etc, by company incorporated outside the Republic.

**PART IV**

**MANAGEMENT AND ADMINISTRATION**

Registered Office, Publication of Name and Recording of Data on Commercial Documents.

102. Registered office of company.  
103. Publication of name by company.

Restrictions on Commencement of Business

104. Restrictions on commencement of business.

Register of Members

105. Register of members.  
106. Index of members.  
107. Provisions as to entries in register in relation to share warrants.  
108. Inspection of register and index.  
109. Consequences of failure to comply with requirements as to register owing to agent's default.  
110. Power to close register.  
111. Power of Court to rectify register.  
112. Trusts not to be entered on register in the Republic.  
113. Register to be evidence  
113A. Notification of transfer of shares.

Overseas Register

114. Power for company to keep an overseas register.  
115. Overseas register.  
116. Transfer of shares registered in the overseas register.  
117. Branch registers kept in the Republic.  
117A. Keeping of a register of members by certain public companies.

Annual Return

118. Annual return to be made by company having a share capital.  
119. Annual return to be made by company not having a share capital.  
120. Time for completion of annual return.  
121. Documents to be annexed to annual return.  
122. Certificates to be sent by private company with annual return.  
123. Repealed by section 4 of L. 167(I) of 2003.

Meetings and Proceedings

124. Statutory meeting and statutory report.  
125. Annual general meeting.

## The Office of the Law Commissioner

- 126. Convening of extraordinary general meeting on requisition.
- 126A. Equal treatment of shareholders
- 127. Length of notice for calling meetings.
- 127A. Information prior to the general meeting
- 127B. Right to put items on the agenda of the general meeting and to table draft resolutions
- 128. General provisions as to meetings and votes.
- 128A. Requirements for participation and voting at the general meeting
- 128B. Participation in the general meeting by electronic means
- 128C. Right to ask questions
- 129. Power of Court to order meeting.
- 130. Proxies.
- 131. Right to demand a poll.
- 132. Removal of certain impediments to the effective exercise of voting rights.
- 133. Representation of corporations at meetings of companies and of creditors.
- 134. Circulation of members' resolutions, etc.
- 135. Extraordinary and special resolutions.
- 136. Resolutions requiring special notice.
- 137. Registration and copies of certain resolutions and agreements.
- 138. Resolutions passed at adjourned meetings.
- 139. Minutes of proceedings of meetings of company and of directors and managers.
- 139A. Voting results
- 140. Inspection of minute books.

### Financial Statements and Audit

- 141. Keeping of books of account.
- 142. Annual and consolidated financial statements.
- 142A. Exemptions relating to the keeping of consolidated financial statements.
- 143. True and fair picture, true and fair presentation.
- 144. Repealed by section 8 of L.167 (I) of 2003
- 145. Repealed by section 8 of L. 167 (I) of 2003
- 146. Repealed by section 8 of L. 167 (I) of 2003
- 147. Repealed by section 8 of L. 167 (I) of 2003.
- 148. Definition of "holding company" and "subsidiary company".
- 149. Signing of balance sheet.
- 150. Publication of financial statements.
- 151. Directors' report.
- 152. Right to receive copies of balance sheets and auditors' report.
- 152A. Compulsory audit by auditors of financial statements and directors' report.
- 153. Appointment and remuneration of auditors.
- 154. Provisions as to resolutions relating to appointment and removal of auditors.
- 155. Qualifications for appointment as auditor.
- 155A. Repealed by section 7 of L.41(I)/2009.
- 155B. Repealed by section 7 of L.41 (I)/2009.
- 155C. Repealed by section 7 of L. 41(I)/2009.
- 155D. Repealed by section 7 of L.41(I)/2009.
- 155E. Repealed by section 7 of L. 41(I)/2009.
- 155F. Repealed by section 7 of L.41(I)/2009
- 156. Repealed by section 7 of L.41(I)/2009
- 157. Repealed by section 15 of L. 167(I) of 2003

### Inspection

- 158. Investigation of company's affairs on application of members.
- 159. Investigation of company's affairs in other cases.
- 160. Power of inspectors to carry investigations into affairs of related companies.
- 161. Production of documents, and evidence, on investigation.
- 162. Inspectors' report.
- 163. Proceedings on inspectors' report.
- 164. Expenses of investigation of company's affairs.
- 165. Inspectors' report to be evidence.
- 166. Appointment and powers of inspectors to investigate ownership of company.

## The Office of the Law Commissioner

- 167. Power to require information as to persons interested in shares or debentures.
- 168. Power to impose restrictions on shares or debentures.
- 169. Saving for advocates and bankers.

### Distribution of dividends, profits and assets

- 169A. Distribution of capital of public company. When it is permitted.
- 169B. Non-application of section 169A to investment companies with fixed capital.
- 169C. When interim dividends, are permitted.
- 169D. Sanctions for contravention of sections 169A to 169C.
- 169E. Interpretation provision.

### Obligations of Directors when Managing and Administering the Company

- 169F. Need to take action in the event of important loss of share capital.

### Directors and other Officers

- 170. Directors.
- 171. Secretary.
- 172. Prohibition of certain persons being sole director or secretary.
- 173. Avoidance of acts done by person in dual capacity as director and secretary.
- 174. Validity of acts of directors.
- 175. Restrictions on appointment or advertisement of director.
- 176. Share qualifications of directors.
- 177. Appointment of directors to be voted on individually.
- 178. Removal of directors.
- 179. Provisions as to undischarged bankrupts acting as directors.
- 180. Power to restrain fraudulent persons from managing companies.
- 181. Prohibitions of tax-free payments to directors.
- 182. Prohibitions of loans to directors.
- 183. Approval of company requisite for payment by it to director for loss of office, etc.
- 184. Approval of company requisite for any payment, in connection with transfer of its property, to director for loss of office, etc.
- 185. Duty of director to disclose payment for loss of office, etc., made in connection with transfer of shares in company.
- 186. Provisions supplementary to sections 183, 184 and 185.
- 187. Register of directors' shareholdings, etc.
- 188. Particulars in accounts of directors' salaries, pensions, etc.,.
- 189. Particulars in accounts of loans to officers, etc.
- 190. General duty to make disclosure for purposes of sections 187, 188 and 189.
- 191. Disclosure by directors of interests in contracts.
- 192. Register of directors and secretaries.
- 193. Particulars with respect to directors in trade catalogues, circulars, etc.,.
- 194. Company may have directors with unlimited liability.
- 195. Special resolution of company making liability of directors unlimited.
- 196. Provisions as to assignment of office by directors.

### Avoidance of Provisions in Articles or Contracts relieving Officers from Liability

- 197. Provisions as to liability of officers and auditors.

### Arrangements and Reconstructions

- 198. Power to compromise with creditors and members.
- 199. Information as to compromises with creditors and members.
- 200. Provisions for facilitating reconstruction and amalgamation of companies.
- 201. Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.

### Merger and Division of Public Companies

- 201A. Scope of application of provisions.

## The Office of the Law Commissioner

- 201B. Limitations of general nature regarding reorganizations falling within section 201A.
- 201C. Procedure regarding reorganizations falling within section 201A – Draft terms of scheme
- 201D. Protection of third parties. Protection of creditors and holders of debentures.
- 201E. Powers of the Court.
- 201F. Validity and lawful consequences of reorganization
- 201G. Civil and criminal liability of the parties involved.
- 201H. Protection of employees.

### Cross-border mergers of limited-liability companies.

- 201I. Interpretation
- 201J. Scope of application
- 201K. Conditions relating to cross-border mergers
- 201L. Common draft terms of cross-border mergers
- 201M. Publication
- 201N. Directors' report
- 201O. Independent expert report
- 201P. Approval by the general meeting
- 201Q. Pre-merger certificate
- 201R. Scrutiny of the legality of the cross-border merger
- 201S. Entry into effect of the cross-border merger
- 201T. Registration
- 201U. Consequences of the cross-border merger
- 201V. Simplified formalities
- 201W. Employee Participation
- 201X. Validity

### Minorities

- 202. Alternative remedy to winding up in cases of oppression.

## **PART V WINDING UP**

### **(I) Preliminary Modes of Winding Up**

- 203. Modes of winding up.

### Contributories

- 204. Liability as contributories of present and past members.
- 205. Definition of 'contributory'
- 206. Nature of liability of contributory
- 207. Contributories in case of death of member.
- 208. Contributories in case of bankruptcy of member.

### (II) Winding Up by the Court

#### Jurisdiction

- 209. Jurisdiction for winding up.
- 210. Transfer of proceedings from one Court to another and statement of case by the Court.

### Cases in which Company may be wound up by Court

- 211. Circumstances in which company may be wound up by Court.
- 212. Definition of inability to pay debts.

### Petition for Winding Up and Effects thereof

- 213. Provisions as to applications for winding up.
- 214. Powers of Court on hearing petition.
- 215. Power to stay or restrain proceedings against company.
- 216. Avoidance of dispositions of property etc, after commencement of winding up.

The Office of the Law Commissioner

217. Avoidance of attachments, etc, in case of winding up.

Commencement of Winding Up

218. Commencement of winding up by the Court.

Consequences of Winding Up Order

219. Copy of order to be forwarded to registrar.

220. Actions stayed on winding - up order.

221. Effect of winding-up order.

Official Receiver in Winding Up

222. Official Receiver and Registrar to be official receiver for winding-up purposes

223. Appointment of official receiver by Court in certain cases.

224. Statement of company's affairs to be submitted to official receiver.

225. Report by official receiver.

Liquidators

226. Power of Court to appoint liquidators.

227. Appointment and powers of provisional liquidator.

228. Appointment, style, etc, of liquidators

229. Provisions where person other than official receiver is appointed liquidator.

230. General provisions as to liquidators.

231. Custody of company's property.

232. Vesting of property of company in liquidator.

233. Powers of liquidator.

234. Exercise and control of liquidator's powers.

235. Books to be kept by liquidator.

236. Payments of liquidator into bank.

237. Audit of liquidator's account.

238. Control of official receiver over liquidators.

239. Release of liquidators.

Committees of Inspection

240. Meetings of creditors and contributories to determine whether committee of inspection shall be appointed.

241. Constitution and proceedings of committee of inspection.

242. Where no committee of inspection.

General Powers of Court in case of Winding Up by Court

243. Power to stay winding up.

244. Settlement of list of contributories and application of assets.

245. Delivery of property to liquidator.

246. Payment of debts due by contributory to company and extent to which set-off allowed.

247. Power of Court to make calls.

248. Payment into bank of moneys due to company.

249. Order on contributory conclusive evidence.

250. Appointment of special manager.

251. Power to exclude creditors not proving in time.

252. Adjustment of rights of contributories.

253. Inspection of books by creditors and contributories.

254. Power to order costs of winding up to be paid out of assets.

255. Power to summon persons suspected of having property of company, etc.

256. Power to order public examination of promoters and officers.

257. Power to arrest absconding contributory.

258. Powers of Court cumulative.

259. Delegation to liquidator of certain powers of Court.

260. Dissolution of company.

(III) Voluntary Winding Up

Resolutions for, and commencement of, Voluntary Winding Up

## The Office of the Law Commissioner

- 261. Circumstances in which company may be wound up voluntarily.
- 262. Notice of resolution to wind up voluntarily.
- 263. Commencement of voluntary winding up.

### Consequences of Voluntary Winding Up

- 264. Effect of voluntary winding up on business and status of company.
- 265. Avoidance of transfers, etc. after commencement of voluntary winding up.

### Declaration of Solvency

- 266. Statutory declaration of solvency in case of proposal to wind up voluntarily.

### Provisions applicable to a Members' Voluntary Winding Up

- 267. Provisions applicable to a members' winding up.
- 268. Power of company to appoint and fix remuneration of liquidators.
- 269. Power to fill vacancy in office of liquidator.
- 270. Power of liquidator to accept shares etc., as consideration for sale of property of company.
- 271. Duty of liquidator to call creditors' meeting in case of insolvency.
- 272. Duty of liquidator to call general meeting at end of each year.
- 273. Final meeting and dissolution.
- 274. Alternative provisions as to annual and final meetings in case of insolvency

### Provisions applicable to a Creditors' Voluntary Winding Up

- 275. Provisions applicable to a creditors' winding up
- 276. Meeting of creditors
- 277. Appointment of liquidator
- 278. Appointment of committee of inspection
- 279. Fixing of liquidators' remuneration and cesser of directors' powers
- 280. Power to fill vacancy in office of liquidator
- 281. Application of section 270 to a creditors' voluntary winding up
- 282. Duty of liquidator to call meetings of company and of creditors at end of each year
- 283. Final meeting and dissolution

### Provisions applicable to every Voluntary Winding Up

- 284. Provisions applicable to every voluntary winding up
- 285. Distribution of property of company.
- 286. Powers and duties of liquidator in voluntary winding up.
- 287. Power of Court to appoint and remove liquidator in voluntary winding up.
- 288. Notice by liquidator of his appointment.
- 289. Arrangement when binding on creditors.
- 290. Power to apply to Court to have questions determined or powers exercised.
- 291. Costs of voluntary winding up.
- 292. Saving for rights of creditors and contributories.

### (IV) WINDING UP SUBJECT TO SUPERVISION OF COURT

- 293. Power to order winding up subject to supervision.
- 294. Effect of petition for winding up subject to supervision.
- 295. Application of sections 216 and 217 to winding up subject to supervision.
- 296. Power of Court to appoint or remove liquidators.
- 297. Effect of supervision order.

### (V) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

#### Proof and Ranking of Claims

- 298. Debts of all descriptions may be proved.

## The Office of the Law Commissioner

- 298 A. Submission to the liquidator of claims of cover pool creditors.
- 299. Application of bankruptcy rules in the winding up of insolvent companies.
- 300. Preferential payments.

### Effect of Winding Up on antecedent and other Transactions

- 301. Fraudulent preference.
- 302. Liabilities and rights of certain fraudulently preferred persons.
- 303. Effect of floating charge.
- 304. Disclaimer of onerous property in case of company being wound up.
- 305. Restriction of rights of creditor as to execution or attachment in case of company being wound up.
- 306. Duties of sheriff as to goods taken in execution.

### Offences antecedent to or in course of Winding Up

- 307. Offences by officers of companies in liquidation.
- 308. Penalty for falsification of books.
- 309. Frauds by officers of companies which have gone into liquidation.
- 310. Liability where proper accounts not kept.
- 311. Responsibility for fraudulent trading of persons concerned.
- 312. Power of Court to assess damages against delinquent directors, etc.
- 313. Prosecution of delinquent officers and members of company.

### Supplementary Provisions as to Winding Up

- 314. Disqualification for appointment as liquidator.
- 315. Corrupt inducement affecting appointment as liquidator.
- 316. Enforcement of duty of liquidator to make returns, etc.
- 317. Notification that a company is in liquidation.
- 318. Exemption of certain documents from stamp duty on winding up of companies.
- 319. Books of company to be evidence.
- 320. Disposal of books and papers of company.
- 321. Information as to pending liquidations.
- 322. Unclaimed assets to be paid to Liquidation Account.
- 323. Resolutions passed at adjourned meetings of creditors and contributories.

### Supplementary Powers of Court

- 324. Meetings to ascertain wishes of creditors or contributories.
- 325. Affidavits etc, in the Republic and outside the Republic.

### Provisions as to Dissolution

- 326. Power of Court to declare dissolution of company void.
- 327. Registrar may strike defunct company off register.
- 328. Property of dissolved company to be *bona vacantia*.
- 329. Power of the Republic to disclaim title to property vesting under section 328.

### Companies Liquidation Account

- 330. Liquidation Account.

### Officers

- 331. Officers and remuneration.
- 332. Returns by officers in winding up.

### Rules and Fees

- 333. General rules and fees for winding up.

**PART VI – RECEIVERS AND MANAGERS**

- 334. Disqualification of body corporate for appointment as receiver.
- 335. Disqualification of undischarged bankrupt from acting as receiver or manager.
- 336. Receiver for debenture holders or creditors.
- 337. Receivers and managers appointed out of Court.
- 338. Notification that receiver or manager appointed.
- 339. Power of Court to fix remuneration on application of liquidator.
- 340. Provisions as to information where receiver or manager appointed.
- 341. Special provisions as to statement submitted to receiver.
- 342. Delivery to registrar of accounts of receivers and managers.
- 343. Enforcement of duty of receivers and managers to make returns, etc.
- 344. Construction of references to receivers and managers.

**PART VII**

**APPLICATION OF LAW TO COMPANIES FORMED OR REGISTERED UNDER FORMER LAWS**

- 345. Application of Law to companies formed and registered under former Companies Laws.

**PART VIII – COMPANIES INCORPORATED OUTSIDE THE REPUBLIC**

Provisions as to Establishment of Place of Business in the Republic

- 346. Application of sections 347 to 353.
- 347. Documents etc, to be delivered to registrar by overseas companies carrying on business in the Republic.
  - 347A. More than one branches.
  - 347B. Obligatory indications in letters and order forms in respect of branches.
- 348. Power of overseas company to hold immovable property.
- 349. Return to be delivered to registrar by overseas company where documents, etc., altered.
- 350. Accounts of overseas company and of place of business.
- 351. Obligation to state name of overseas company, whether limited and country where incorporated.
- 352. Service on overseas company.
- 353. Penalties.
- 354. Interpretation of sections 347 to 353.

Transfer of registered office of companies to and outside the Republic

- 354A. Application of sections 354B to 354O.
- 354B. Suitability for registration as a company continuing in the Republic.
- 354C. Application for registration.
- 354D. Companies which carry out activities for which a licence is required
- 354E. Registration in the Republic.
- 354F. Effects of registration.
- 354G. Non removal from the register of the country of origin.
- 354H. Certificate of continuation.
- 354I. Circumstances where application shall be rejected.
- 354J. Right of a company to be registered as continuing outside the Republic.
- 354K. Application for the Registrar's consent for the continuation of the company outside the Republic.
- 354L. Requirements for the Registrar's consent.
- 354M. Right of creditors to object to the continuation of the company.
- 354N. Consent to the continuation of the company.
- 354O. Striking off from the Register.
- 354P. Register of companies which continue outside Cyprus.
- 354Q. Submission of documents in Greek.
- 354R. Interpretation of sections 354A to 354P.

Prospectuses

- 355. Dating of prospectus and particulars to be contained therein.
- 356. Exclusion of section 355 and relaxation of Fourth Schedule in case of certain prospectuses.



- 357. Provisions as to experts' consent and allotment.
- 358. Registration of prospectus.
- 359. Penalty for contravention of sections 355 to 358.
- 360. Civil liability for misstatements in prospectus.
- 361. Interpretation of provisions as to prospectuses.
- 361A. Non application of sections 355 to 361 of the Law.

#### Winding Up

- 362. Winding up of overseas companies.

### **PART IX** **GENERAL PROVISIONS AS TO REGISTRATION**

- 363. Registration offices.
- 364. Fees and rights to be paid by registrar into the Treasury of the Republic.
- 365. Inspection, production and evidence of documents kept by registrar.
- 365A. Notice from the Registrar on keeping records. Prevalence of particulars entered in the register or published in the Official Gazette of the Republic.
- 365B. Conversion and storage of documents filed at the register of incorporation of companies, in electronic form.
- 365C. Documents to be converted in electronic form on application.
- 365D. Certified copies of documents in electronic form.
- 366. Enforcement of duty of company to make returns to registrar.

### **PART X** **MISCELLANEOUS PROVISIONS WITH RESPECT TO BANKING COMPANIES AND CERTAIN ASSOCIATIONS**

- 367. Prohibition of banking with more than ten members.
- 368. Privileges of banks making annual return.
- 369. Publication of periodical statements by banking companies, etc.
- 370. Prohibition of association with more than twenty members.

### **PART XI** **GENERAL**

- 371. Form of registers, etc.
- 372. Service of documents on a company.

#### Offences

- 373. Penalty for false statements
- 374. Penalty for improper use of word 'limited'.
- 375. Provision with respect to default fines and meaning of 'officer in default'.
- 376. Production and inspection of books where offence suspected.
- 377. Jurisdiction of District Court in continuing offences.
- 378. Provisions as to offences punishable solely by fine.
- 379. Application of fines.
- 380. Saving as to private prosecutors.
- 381. Saving for privileged communications.

#### Legal Proceedings

- 382. Costs in actions by certain companies.
- 383. Power of Court to grant relief in certain cases.
- 384. Power to enforce orders.

The Office of the Law Commissioner

General Provisions as to Council of Ministers

- 385. Authentication of documents issued by the Council of Ministers.
- 386. Documents made or issued by Council of Ministers to be evidence.
- 387. Power to Council of Ministers to make Regulations.

Supplemental

- 388. Construction of references in other Laws to companies registered under the former Companies Laws.
- 389. Savings
- 390. Provisions as to winding up proceedings commenced before the date of commencement of the Law.
- 391. Imposition of a fee
- 392. Date of commencement.

Schedules:

First Schedule. -Tables A, B, C, and D

Second Schedule.- Form of licence to hold immovable property

Third Schedule.- Form of statement in lieu of prospectus to be delivered to registrar by a private company on becoming a public company and reports to be set out therein.

Fourth Schedule.- Matters to be specified in prospectus and reports to be set out therein.

Fifth Schedule.- Form of statement in lieu of prospectus to be delivered to registrar by a company which does not issue a prospectus or which does not go to allotment on a prospectus issued, and reports to be set out therein

Sixth Schedule.- Contents and form of annual return of a company having a share capital

Seventh Schedule.- Repealed by section 6 of L.131 (I) of 2007

Eighth Schedule.-Repealed by section 20 of L.167 (I)/2003

Ninth Schedule.- Repealed by section 8 of L.41(I)/2009.

Tenth Schedule.- Provisions of this Law which do not apply in the case of a winding up subject to supervision of the Court

Eleventh Schedule.- Form of statement to be published by banking companies and insurance companies and deposit, provident and benefit societies

Twelfth Schedule.- Provisions referred to in section 373

Cap. 113. 9 of 1968 76 of 1977 <sup>1</sup> 17 of 1979 105 of 1985 198 of 1986 19 of 1990 <sup>1</sup> 41(I) of 1994 15(I) of 1995 21(I) of 1997 82(I) of 1999 149(I) of 1999 <sup>1</sup> 2(I) of 2000 135(I) of 2000 151(I) of 2000 76(I) of 2001 <sup>1</sup> 70(I) of 2003 <sup>1</sup> 167(I) of 2003 <sup>1</sup> 92(I) of 2004 <sup>1</sup> 24(I) of 2005 <sup>1</sup> 129(I) of 2005 130(I) of 2005 98(I) of 2006 124(I) of 2006 70(I) of 2007 71(I) of 2007 131(I) of 2007 186(I) of 2007 87(I) of 2008 41(I) of 2009 <sup>1</sup> 49(I) of 2009 99(I) of 2009 42(I) of 2010 60(I) of 2010 88(I) of 2010 53(I) of 2011 117(I) of 2011 145(I) of 2011 157(I) of 2011 198(I) of 2011 64(I) of 2012 98 (I) of 2012.	<b>A LAW TO CONSOLIDATE AND AMEND THE LAW RELATING TO COMPANIES</b>
--	---

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

Interpretation . **2.**-(1) In this Law, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them (that is to say):-

2(a) of 167(I) of 2003. "accounts" means the financial statements;

"agent" does not include a person's counsel acting as such;

"annual return" means the return required to be made, in the case of a company having a share capital, under section 118, and, in the case of a company not having a share capital, under section 119;

1949,  
Cap.191 "articles" means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained in Table A made under the Companies (Limited Liability) Law, or

---

<sup>1</sup> See Note at the end of the text.

The Office of the Law Commissioner

First Schedule.	in Table A in the First Schedule;
2(b) of 167(I) of 2003. 2 of 41(I) of 2009.	"audit" means an audit as provided for in section 152A;
2(b) of 167(I) of 2003.	"auditor" means the person appointed as an auditor as provided for in sections 155 to 155 F;
Cap.123. <sup>2</sup> 34 of 1959 9 of 1960.	"bank holiday" means a day which is a bank holiday under the Bank Holidays Law;
	"book and paper" and "book or paper" include accounts, deeds, writings, and documents;
2(b) of 99(I) of 2009.	"common seal" includes a seal which does not leave an engraved impression;
	"company" means a company formed and registered under this Law or an existing company;
2(b) of 167(I) of 2003.	"a company (or companies) of a member state of the European Union (EU)" means a company which has one of the following corporate forms:-
	(i) in Germany: die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung;
	(ii) in Belgium: la societe anonyme/de naamloze vennootschap, la societe en commandite par actions/de commanditaire vennootschap op aandelen, la societe de personnes a responsabilite limitee/de personenvennootschap met beperkte aansprakelijkheid;
2(a) of 71(I) of 2007.	(iii) in Denmark: aktieselskab, kommanditaktieselskab, anpartsselskab;
2(a) of 71(I) of 2007.	(iv) in France: la societe anonyme, la societe en commandite par actions, la societe a responsabilite limitee, la societe par actions simplifiee;
	(v) in Ireland: public companies limited by shares or by guarantee, private companies limited by shares or by guarantee;
	(vi) in Italy: la societa per azioni, la societa in accomandita per azioni, la societa a responsabilita limitata;
	(vii) in Luxembourg: la societe anonyme, la societe en commandite par actions, la societe a responsabilite limitee;
2 (a) of 71(I) of 2007.	(viii) in Netherlands: de naamloze vennootschap, de besloten vennootschap met beperkte aansprakelijkheid;
	(ix) in the United Kingdom: public companies limited by shares or by guarantee, private companies limited by shares or by guarantee;
	(x) in Greece: την ανώνυμη εταιρεία, την εταιρεία περιορισμένης ευθύνης, την ετερόρρυθμη κατά μετοχάς εταιρεία;
	(xi) in Spain: la sociedad anonima, la sociedad commanditaria por

<sup>2</sup> The Bank Holidays Law (Cap123, as amended), was repealed and replaced by the Bank Holidays Law, 1996 (L.13(I)/1996)

The Office of the Law Commissioner

acciones, la sociedad de responsabilidad limitada;

- (xii) in Portugal: la sociedad anonima, de responsabilidade limitada, a sociedade em comandita por accoes, a sociedade por quotas de responsabilidadada limitada;
- (xiii) in Austria: die Aktiengesellschaft, die Gesellschaft mit beschränkter Haftung;
- 2(a) of 71(I) of 2007. (xiv) in Finland: yksityinen osakeyhtio/pivat aktiebolag, julkinen osakeyhtio/publikt aktiebolag;
- (xv) in Sweden: aktiebolag;
- (xvi) in the Czech Republic: spolecnost s rucenim omezenym, akciova spolecnost;
- (xvii) in Estonia: aktsiaselts, osauhing;
- (xviii) in Latvia: akciju sabiedriba, sabiedrtba ar ierobezotu atbildibu;
- (xix) in Lithuania: akcines bendroves, uzdarosios akcines bendroves;
- 2 of 87(I) of 2008. (xx) in Hungary: nyilvanosan mukodo reszvenytarsasag;
- (xxi) in Malta: kumpanija pubblika / public limited liability company, kumpanija privata / private limited liability company, socjeta in akkomandita bil-kapital maqsum fazzjonijiet / partnership *en commandite* with the capital divided into shares;
- (xxii) in Poland: spotka akcyjna, spotka z ograniczona odpowiedzialnoscisi, spotka komandytowo-ackcyjna;
- (xxiii) in Slovenia: delniska druzba, druzba z omejeno odgovornostjo, komanditna delniska druzba;
- (xxiv) in Slovakia: akciova spolocnost', spolocnost's rucenim obmedzenym;
- 2(b) of 71 (I) of 2007. (xxv) in Bulgaria: акционерно дружество, дружество с ограничена отговорност, командитно дружество с акции, събирателно дружество;
- (xxvi) in Romania: societate pe acțiuni, societate cu răspundereere limit societate în comandită pe acțiuni,asocietate în numeme colectiv, societate comandită simplă;
- 2(b) of 71 (I) of 2007.

"company limited by guarantee" and "company limited by shares" have the meanings assigned to them respectively by subsection (2) of section 3;

2 of 60(I) of 2010. "company listed in a regulated market" means a company the registered office of which is situated within the Republic and whose shares are admitted to trading in a regulated market, situated or operating within a member state and does not include: (a) collective investment undertakings within the meaning of section 8 of the Open Ended Undertakings for Collective Investments in Transferable Securities (UCITS) and for Related Matters Law; and (b) undertakings, the sole object of which is the collective investment of capital provided by the public, which operate on the principle of risk spreading and which do

## The Office of the Law Commissioner

not seek to take legal or management control over any of the issuers provided that the said collective investment undertakings are authorized and subject to the supervision of the competent authorities and that they have a depositary exercising functions equivalent to those provided by the Open Ended Undertakings for Collective Investments in Transferable Securities (UCITS) and for Related Matters Law;

"contributory" has the meaning assigned to it by section 205;

"the Court", used in relation to a company, means the Court having jurisdiction under section 209 to wind up the company;

"creditors' voluntary winding up" has the meaning assigned to it by subsection (4) of section 266;

"debenture" includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

"default fine" and "officer who is in default" have, respectively, the meaning assigned to them by section 375;

"director" includes any person occupying the position of director by whatever name called;

2 of 60(I) of  
2010.  
Official  
Journal of the  
EU: L142 of  
30.4.2004,  
p12,

"Directive 2004/25/EC" means Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids;

"document" includes summons, notice, order, and other legal process, and registers;

2(b) of 131  
(I) of 2007.

"exempt private company" *Repealed*;

2 of 60(I) of  
2010.

"electronic means" means the means of electronic equipment used for the processing (including digital compression), storage and transmission of data by wire, by radio, by optical technological means or by other electromagnetic means;

"existing company" means a company formed and registered under the Companies (Limited Liability) Law, or the Companies (Limited by Guarantee) Law, 1949;

2(b) of 167(I)  
of 2003.

"financial statements" means financial statements provided for in sections 142 and 144;

"financial year" means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in general meeting is made up, whether that period is a year or not;

2(b) of 99(I)  
of 2009.

"foreign market" means a multilateral system, which is managed or operated by a market operator and which brings together or facilitates the bringing together of multiple third party buying and selling interests in financial instruments, within the system and in accordance with its non discretionary rules in a way that results in the conclusion of a relevant agreement and financial instruments, negotiated on the basis of its rules and/or systems, and which is situated outside the Republic of Cyprus;

2(c) of 131(I)  
of 2007.

"Generally Accepted Accounting Principles" are considered the accounting standards which are accepted by recognized Stock Exchange Authorities, as these are included in the list of members of the International Organization of Securities Commissions (IOSCO)";

The Office of the Law Commissioner

- "general rules" means general rules made under section 333, and includes forms;
- 2(a) of 167(I) of 2003. "group accounts" means the consolidated financial statements provided for in paragraph (b) of subsection (1) of section 142;
- 2(b) of 167(I) of 2003. "group of companies" means the group of companies comprising of the holding and subsidiary company or companies;
- "holding company" means a holding company as defined by section 148;
- "immovable property" includes:
- (a) land;
  - (b) buildings and other erections, structures, or fixtures affixed to any land or to any building or other erection or structure;
  - (c) trees, vines, and any other thing whatsoever planted or growing upon any land and any produce thereof before severance;
  - (d) springs, wells, water and water rights whether held together with, or independently of, any land;
  - (e) privileges, liberties, easements and any other rights and advantages whatsoever appertaining or reputed to appertain to any land or to any building or other erection or structure;
  - (f) an undivided share in any property hereinbefore set out.
- 2(b) of 167(I) of 2003  
2(a) of 131(I) of 2007.  
Official Journal of EU:  
L, 243  
11.9.2002,  
p.1
- "International Accounting Standards" means the International Accounting Standards (IAS) and the International Financial Reporting Standards (IFRS), for the time being in force as well as the relevant texts issued under the general supervision of the International Accounting Standards Board (IASB) and as these are adopted by the European Union in accordance with the provisions of Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, as from time to time amended or substituted;
- "issued generally" means, in relation to a prospectus, issued to persons who are not existing members or debenture holders of the company;
- 2 of 60(I) of 2010. "member state" means a member state of the European Union;
- "members' voluntary winding up" has the meaning assigned to it by subsection (4) of section 266;
- "memorandum" means the memorandum of association of a company, as originally framed or as altered in pursuance of any enactment;
- "minimum subscription" has the meaning assigned to it by subsection (2) of section 47;
- "notarially" includes certification by a certifying officer;
- "officer", in relation to a body corporate, includes a director, manager or secretary;
- "official receiver" has the meaning assigned to it by section 222;
- 2(a) of 99(I) of 2009. "overseas register" has the meaning assigned to it by subsection (1) of section 114;

The Office of the Law Commissioner

"prescribed" means, as respects the provisions of this Law relating to the winding up of companies, prescribed by general rules, and as respects the other provisions of this Law, prescribed by regulations or Order made by the Council of Ministers ;

"private company" has the meaning assigned to it by subsection (1) of section 29;

"prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company;

2(a) of 70(I) of 2003. "public company" means the company which is not private;

2(b) of 167(I) of 2003. "publication" means the presentation in the general meeting of the company, the dispatch of documents pursuant to subsection (2) of section 152, as well as any reading, announcement, issue, circulation or publication;

"real" and "personal," mean respectively immovable and movable;

2 of 60(I) of 2010. "record date" means a date which is not more than two working days prior to the general meeting to which it relates;

"the registrar of companies", or when used in relation to registration of companies, "the registrar", means the Official Receiver and Registrar and includes any other person appointed by the Council of Ministers to exercise all or any of the powers and perform all or any of the duties of a registrar;

2 of 60(I) of 2010.  
144(I) of 2007  
106(I) of 2009. "regulated market" means the regulated or organized market as such is defined in the Investment Services and Activities and Regulated Markets Law;

"resolution for reducing share capital" has the meaning assigned to it by subsection (2) of section 64;

"resolution for voluntary winding up" has the meaning assigned to it by subsection (2) of section 261;

2 of 98(I) of 2006. "SE" means a European Public Limited Liability Company (or Societas Europaea) and has the meaning assigned to it by article 1 of Council Regulation (EC) no 2157/2001, of 8 October 2001 concerning the Statute for a European company (SE) and including SE which will be registered or has been registered in the Republic;

"share" means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied;

"share warrant" has the meaning assigned to it by subsection (2) of section 81;

"statutory declaration" means an affidavit or other declaration made on oath or affirmation;

"statutory meeting" means the meeting required to be held by subsection (1) of section 124;

"statutory report" has the meaning assigned to it by subsection (2) of section 124;

"subsidiary" means a subsidiary as defined in section 148;

"Table A" means Table A in the First Schedule;

"the time of the opening of the subscription lists" has the meaning assigned to it by subsection (1) of section 50.



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

2(b) of 70(I) of 2003.

(3) References in this Law to a body corporate or to a corporation shall be construed as also including a company incorporated outside the Republic.

(4) Any such provision of this Law overriding or interpreting a company's articles shall, except as provided by this Law, apply in relation to articles in force at the commencement of this Law, as well as to articles coming into force thereafter, and shall apply also in relation to its articles.

## **PART I. INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO**

### *Memorandum of Association*

Mode of forming incorporated company. 2 of 2(I) of 2000.

**3.**-(1) Any seven or more persons, or, where the company to be formed will be a private company, any one or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Law in respect of registration, form an incorporated company, with limited liability.

(2) Such company may be either:

(a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Law termed a "company limited by shares"); or

(b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Law termed "a company limited by guarantee").

Requirements with respect to memorandum .

**4.**-(1) The memorandum of every company must state:

3(a)(i) of 70(I) of 2003  
3(a)(ii) of 70(I) of 2003  
2(a)(i) of 24(I) of 2005  
2(a)(ii) of 24(I) of 2005  
2 of 129(I) of 2005.

(a) (i) in the case of a private company, the name of the company together with the word "limited" or "Ltd" or in case the name of the company is written in latin characters, with the word "limited or Ltd" as the last word of the name;

(ii) in the case of a public company, the name of the company with the words "δημόσια λίμιτεδ" or "δημόσια λτδ" or "δημόσια εταιρεία λίμιτεδ" or "δημόσια εταιρεία λτδ" or "δε λίμιτεδ" or "δε λτδ" or in the case the name of the company is written in latin characters with the words "Public Company Limited" or "Public Company Ltd" or "Public Company Limited or "Public Co. Ltd" or "Plc" or "Public Limited" or "Public Ltd" as the last words of the name,

3 of 98(I) of 2006.

(iii) when referring to SE, the name of the company together with the latin characters "SE" as the last word of the name.

(b) the objects of the company.

(2) The memorandum of a company where limited by shares or by guarantee must

state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, or of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(4) In the case of a company having a share capital-

(a) the memorandum must also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of fixed amount;

(b) no subscriber of the memorandum may take less than one share;

(c) each subscriber must write opposite to his name the number of shares he takes.

3(b) of 70(I) of 2003.

(5) The articles of a public company-

(a) must contain regulations which define the number and the method of appointment of the directors, who are entrusted with the management of the company and its representation against third parties,

(b) may contain regulations which define the allocation of responsibilities between the directors.

Public company: minimum registered capital. 4 of 70(I) of 2003.

**4A.** (1) The minimum capital of a public company, which has been offered for subscription, shall be twenty-five thousand, six hundred and twenty nine euros.

(2) The capital mentioned in subsection (1) is mandatory to exist at the latest, at the time when the issuance of the certificate provided for in subsection (4) of section 104, as the subsection is renumbered by section 24 of this Law, is requested from the Registrar.

Stamp and signature of memorandum . 2 of 76 of 1977.

**5.** The memorandum must bear the same stamp as if it were an agreement, and must be signed by each subscriber in the presence of at least one witness who must attest the signature.

Restriction on alteration of memorandum .

**6.** A company may not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent for which express provision is made in this Law.

Mode in which and extent to which objects of company may be altered.

**7.**(1) Subject to the provisions of this section a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it:

(a) to carry on its business more economically or more efficiently; or

(b) to obtain its main purpose by new or improved means; or

(c) to enlarge or change the local area of its operations; or

(d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or

(e) to restrict or abandon any of the objects specified in the memorandum; or

(f) to sell or dispose of the whole or any part of the undertaking of the company; or

(g) to amalgamate with any other company or body of persons.

(2) The alteration shall not take effect until, and except in so far as, it is confirmed on petition by the Court.

(3) Before confirming the alteration the Court must be satisfied-

(a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and

(b) that, with respect to every creditor who in the opinion of the Court is entitled to object and signifies his objection in the manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured to the satisfaction of the Court:

Provided that the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

(4) The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit.

(5) The Court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company shall be expended in any such purchase.

(6) An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within fifteen days from the date of the order, be delivered by the company to the registrar of companies, and he shall register the copy so delivered and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Law with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum as so altered shall be the memorandum of the company.

The Court may by order at any time extend the time for the delivery of documents to the registrar under this section for such period as the Court may think proper.

(7) If a company makes default in delivering to the registrar of companies any document required by this section to be delivered to him, the company shall be liable to a fine not exceeding eighty-five euros for every day during which the default continues.

4 of 166 of  
1987.

### ***Articles of Association***

Articles  
prescribing  
regulations for  
companies.

**8.** There may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

**9.-** (1) In the case of a company limited by guarantee, the articles must state the

## The Office of the Law Commissioner

Regulations required in case of company limited by guarantee.	<p>number of members with which the company proposes to be registered.</p> <p>(2) Where a company limited by guarantee has increased the number of its members beyond the registered number, it shall, within fifteen days after the increase was resolved on or took place, give to the registrar of companies notice of the increase, and the registrar shall record the increase.</p> <p>If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.</p>
Adoption and application of Table A. First Schedule. Table A.	<p><b>10.</b>-(1) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule.</p> <p>(2) In the case of a company limited by shares and registered after the commencement of this Law, if articles are not registered, or, if articles are registered, insofar as the articles do not exclude or modify the regulations contained in Table A in the First Schedule, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.</p>
Printing, stamp, and signature of articles.	<p><b>11.</b> Articles must -</p> <p>(a) be printed;</p> <p>(b) be divided into paragraphs numbered consecutively;</p> <p>(c) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature.</p>
3 of 76 of 1977.	
Alteration of articles by special resolution.	<p><b>12.</b>-(1) Subject to the provisions of this Law and to the conditions contained in its memorandum, a company may, by special resolution, alter or add to its articles.</p> <p>(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Law, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.</p>
<b><i>Form of Memorandum and Articles</i></b>	
Statutory forms of memorandum and articles.	<p><b>13.</b> The form of-</p> <p>(a) the memorandum of association of a company limited by shares;</p> <p>(b) the memorandum and articles of association of a company limited by guarantee and not having a share capital;</p> <p>(c) the memorandum and articles of association of a company limited by guarantee and having a share capital,</p>
First Schedule, Tables B, C and D.	<p>shall be respectively in accordance with the forms set out in Tables B, C, and D, in the First Schedule, or as near thereto as circumstances admit.</p>

**Registration**

Registration of memorandum and articles.	<b>14.</b> The memorandum and the articles, if any, shall be delivered to the registrar of companies and the registrar shall retain and register them.
Effect of registration.	<p><b>15.</b>-(1) On the registration of the memorandum of a company the registrar shall certify under his hand that the company is incorporated as a limited company.</p> <p>(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Law.</p>
Validity of contracts concluded prior to the company being incorporated. 5 of 70 (I) of 2003.	<p><b>15A.</b>- (1) Any contract concluded before the incorporation of a company by the persons who have signed the memorandum, or by persons authorized by them, in the name of or on behalf of the company under incorporation, shall be temporary and shall not bind the company until the date of incorporation. After that date, the agreement shall constitute a binding contract for the company.</p> <p>(2) In case the company is not incorporated in the end, the obligations undertaken by any person in its name or on its behalf shall be only valid as obligations of the said persons. The liability of the said persons shall be unlimited, joint and several.</p> <p>(3) The liability pursuant to subsection (2) shall not arise in cases where the obligations were expressly undertaken upon the condition of the incorporation of the company.</p>
Power of company to hold immovable property.	<p><b>16.</b>-(1) A company incorporated under this Law shall have power to hold immovable property in any part of the Republic without licence:</p> <p>Provided that a company formed for the purpose of promoting art, science, religion, charity or any other like object not involving the acquisition of gain by the company or by its individual members, shall not, without the licence of the Council of Ministers, hold more than six donums of land, but the Council of Ministers may by licence empower any such company to hold lands in such quantity, and subject to such conditions, as the Council of Ministers thinks fit.</p> <p>(2) A licence given by the Council of Ministers under this section shall be in accordance with the form set out in the Second Schedule or as near thereto as circumstances admit.</p>
Second Schedule . Conclusiveness of certificate of incorporation.	<p><b>17.</b>- (1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Law in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorized to be registered and duly registered under this Law.</p> <p>(2) A statutory declaration by a practicing advocate engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.</p>

***Provisions with respect to Names of Companies***

Undesirable name.	<b>18.</b> No company shall be registered by a name which in the opinion of the Council of Ministers is undesirable.
Change of name.	<b>19.</b> (1) A company may, by special resolution and with the approval of the Council of Ministers signified in writing, change its name.  (2) If, through inadvertence or otherwise, a company on its first registration or on its registration of a new name is registered by a name which, in the opinion of the Council of Ministers, is too like the name by which a company in existence is previously registered, the first-mentioned company may change its name with the sanction of the Council of Ministers and, if he so directs within six months of its being registered by that name, shall change it within a period of six weeks from the date of the direction or such longer period as the Council of Ministers may think fit to allow.  If a company makes default in complying with a direction under this subsection, it shall be liable to a fine not exceeding forty-two euros for every day during which the default continues.  (3) Where a company changes its name under this section, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.  (4) A change of name by a company under this section shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.
4 of 166 of 1987.	
Power to dispense with "limited" in name of charitable and other companies.	<b>20.</b> -(1) Where it is proved to the satisfaction of the Council of Ministers that an association about to be formed as a company is to be formed for promoting commerce, art, science, religion, charity or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Council of Ministers may by licence direct that the association may be registered as a company with limited liability, without the addition of the word "limited" to its name, and the association may be registered accordingly and shall, on registration, enjoy all the privileges and, subject to the provisions of this section, be subject to all the obligations of limited companies.  (2) Where it is proved to the satisfaction of the Council of Ministers-  (a) that the objects of a company registered under this Law as a limited company are restricted to those specified in subsection (1) and to objects incidental or conducive thereto; and  (b) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members,  the Council of Ministers may by licence authorize the company to make by special resolution a change in its name including or consisting of the omission of the word "limited," and subsection (3) and (4) of section 1 shall apply to a change of name under this subsection as they apply to a change of name under that section.  (3) A licence by the Council of Ministers under this section may be granted on such conditions and subject to such regulations as the Council of Ministers thinks fit, and those conditions and regulations shall be binding on the body to which the license is granted, and, where the grant is under subsection (1), shall, if the Council of Ministers so directs, be inserted in the memorandum and articles, or in one of those documents.  (4) A body to which a licence is granted under this section shall be excepted from the provisions of this Law relating to the use of the word "limited" as any part of its name, the publishing of its name and the sending of lists of members to the

registrar of companies.

(5) A licence under this section may at any time be revoked by the Council of Ministers, and upon revocation the registrar shall enter the word "limited" at the end of the name upon the register of the body to which it was granted, and the body shall cease to enjoy the exemptions and privileges or, as the case may be, the exemptions granted by this section:

Provided that, before a licence is so revoked, the Council of Ministers shall give to the body notice in writing of his intention, and shall afford it an opportunity of being heard in opposition to the revocation.

(6) Where a body in respect of which a licence under this section is in force alters the provisions of its memorandum with respect to its objects, the Council of Ministers may, unless he sees fit to revoke the licence, vary the licence by making it subject to such conditions and regulations as the Council of Ministers thinks fit, in lieu of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.

(7) Where a licence granted under this section to a body the name of which contains the words "Chamber of Commerce" is revoked, the body shall, within a period of six weeks from the date of revocation or such longer period as the Council of Ministers may think fit to allow, change its name to a name which does not contain those words, and-

(a) the notice to be given under the proviso to subsection (5) to that body shall include a statement of the effect of the foregoing provisions of this subsection; and

(b) subsections (3) and (4) of section 19 shall apply to a change of name under this subsection as they apply to a change of name under that section.

If the body makes default in complying with the requirements of this subsection, it shall be liable to a fine not exceeding four hundred, twenty seven euros for every day during which the default continues.

4 of 166 of  
1987.

### ***General Provisions with respect to Memorandum and Articles***

Effect of  
memorandum  
and articles.

**21.**-(1) Subject to the provisions of this Law, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.

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

Provision as  
to  
memorandum  
and articles of  
companies  
limited by  
guarantee.

**22.**- (1) In the case of a company limited by guarantee and not having a share capital, and registered after the commencement of this Law, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Law relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of a company limited by guarantee and registered on or after the date aforesaid, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

Alterations in  
memorandum

**23.** Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum

## The Office of the Law Commissioner

or articles increasing liability to contribute to share capital not to bind existing members without consent.

or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company:

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

Power to alter conditions in memorandum which could have been contained in articles.

**24.-** (1) Subject to the provisions of sections 23 and 202, any condition contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may, subject to the provisions of this section, be altered by the company by special resolution. The alteration shall not take effect until, and except in so far as, it is confirmed on petition by the Court.

(2) This section shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the said conditions, and shall not authorize any variation or abrogation of the special rights of any class of members.

(3) Subsections (3), (4), (5), (6) and (7) of section 7 shall apply in relation to any alteration and to any petition made under this section as they apply in relation to alterations and to petitions made under that section.

(4) This section shall apply to a company's memorandum whether registered before or after the commencement of this Law.

Copies of memorandum and articles to be given to members.

**25.-** (1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, subject to payment of 0,0854 euros or such less sum as the company may prescribe.

(2) If a company makes default in complying with this section the company and every officer of the company who is in default shall be liable for each offence to a fine not exceeding forty-two euros.

4 of 166 of 1987.

Issued copies of memorandum to embody alterations.

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

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

4 of 166 of 1987.

### *Membership of Company*

Definition of member.

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



The Office of the Law Commissioner

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

Membership of holding company.  
6 of 70 (I) of 2003.

**28.**-(1) Except in the cases hereafter in this section mentioned and subject to the provisions of sections 57A to 57F, a body corporate cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.

(2) Nothing in this section shall apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(3) This section shall not prevent a subsidiary which is, at the commencement of this Law, a member of its holding company, from continuing to be a member but, subject to subsection (2), the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof.

(4) Subject to subsection (2), subsections (1) and (3) shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references in the said subsections (1) and (3) to such a body corporate included references to a nominee for it.

(5) In relation to a company limited by guarantee which is a holding company, the reference in this section to shares, whether or not it has a share capital, shall be construed as including a reference to the interest of its members as such, whatever the form of that interest.

***Private Companies***

Meaning of "private company".

**29.**-(1) For the purposes of this Law, the expression "private company" means a company which by its articles-

(a) restricts the right to transfer its shares; and

(b) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members of the company; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company:

3 of 2(I) of 2000.

Provided that the shares in a private company may be held by one and only person, either upon the formation of the company or by their subsequent acquisition by one and only person.

(2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.

Consequences of default in complying with conditions constituting a private company.

**30.** Where the articles of a company include the provisions which, under section 29, are required to be included in the articles of a company in order to constitute it a private company but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in section 32, subsection (1) of section 123, paragraph (d) of section 211 and paragraph (i) of proviso (a) to subsection (1) of section 213, and thereupon the provisions contained in the first, third and fourth of those enactments shall apply to the company as if it were not a private company and the provisions contained in the second of those enactments shall cease to apply to the company:

Provided that the Court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or

that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the Court just and expedient, order that the company be relieved from such consequences as aforesaid.

Statement in lieu of prospectus to be delivered to registrar by company on ceasing to be private company. Third Schedule.

**31.-** (1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section 29, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, deliver to the registrar of companies for registration a statement in lieu of prospectus in the form and containing the particulars set out in Part I of the Third Schedule and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule:

Fourth Schedule.

Provided that a statement in lieu of prospectus need not be delivered under this subsection if within the said period of fourteen days a prospectus relating to the company which complies with the Fourth Schedule, is issued and is delivered to the registrar of companies as required by section 41.

Third Schedule.

(2) Every statement in lieu of prospectus delivered under subsection (1) shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the said Third Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefore.

4 of 166 of 1987.

(3) If default is made in complying with subsection (1) or (2), the company and every officer of the company who is in default shall be liable to a default fine of four hundred twenty-seven euros.

3 of 166 of 1987.

(4) Where a statement in lieu of prospectus delivered to the registrar of companies under subsection (1) includes any untrue statement, any person who authorized the delivery of the statement in lieu of prospectus for registration shall be liable on conviction to imprisonment not exceeding two years or to a fine not exceeding eight hundred fifty-four euros, or to both such imprisonment and fine, unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

(5) For the purposes of this section-

(a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

Provisions regarding the re-incorporation of a company as a private company. 7 of 70(I) of 2003.

**31A.** A company which has been incorporated as a public company and which does not increase its offered for subscription share capital to the level provided in section 4A, may be converted into a private company, provided it amends its articles, so that it fulfils the conditions of subsection (1) of section 29.

***Reduction of Number of Members below Legal Minimum***

Members severally liable for debts where business carried on with fewer than seven.  
4(a) of 2(I) of 2000  
4(b) of 2(I) of 2000.

**32.** If at any time the number of members of a company is reduced, in the case of a public company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognizant of the fact that it is carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefore.

***Contracts, etc.***

Form of contracts.

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

3 of 99(I) of 2009.

(a) a contract which if made between private persons would be by law required to be in writing, and if made according to English Law to be under seal, may be made on behalf of the company in writing and either under the common seal of the company or not;

(b) a contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied;

(c) a contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied:

5 of 2(I) of 2000.

Provided that in the case of a private limited-liability company with one and only member, contracts made between such member and the company shall be minuted or shall be made in writing unless they concern the current activities of the company which are carried out in the ordinary course of business.

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

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

Validity of transactions concluded on behalf of the Company.  
2 of 21(I) of 1997  
2 of 151 (I) of 2000.

**33A.**- (1) The company shall be bound towards third parties by acts or transactions of its officers even if such acts or transactions do not fall within the objects of the company, unless such acts or transactions are performed in excess of the powers, which the law confers or allows to be conferred to the officers concerned:

Provided that, the company shall not be bound towards third parties in case such acts or transactions do not fall within the objects of the company, if and insofar, the company proves that the third party knew that the acts or transactions do not fall within the objects of the company or could not, in view of the circumstances, have been unaware of it:

Provided further that, the publication of the articles and of the memorandum does not, of itself amount to sufficient proof of knowledge on behalf of the third person.

8 of 70(I) of 2003.

(2) Any restrictions contained in the articles and in the memorandum of the company, or in the decisions of the directors or of the general meeting on the

powers of the officers or the general meeting of the company cannot be asserted against third parties, even if they have been published.

Bills of exchange and promissory notes.

**34.** A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf of, or on account of, the company by any person acting under its authority.

Documents to be signed on the basis of express or implied authorization. 4 of 99(I) of 2009.

**35.** Any document, signed on behalf of a company, in Cyprus or elsewhere, by any person acting on the basis of express or implied authorization, shall have the same effect as if it were under the common seal of the company:

Provided that, in case the company chooses to use its seal, the seal shall be used in accordance with the regulations of the company's articles.

Power for company to have official seal for use abroad.

**36.-** (1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorized by its articles, have for use in any territory, district, or place not situate in the Republic, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.

(2) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

(3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorize any person appointed for the purpose in that territory, district or place to affix the official seal to any deed or other document to which the company is party in that territory, district or place.

(4) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(5) The person affixing any such official seal shall, by writing under his hand, certify on the deed or other instrument to which the seal is affixed the date on which and the place at which it is affixed.

#### ***Authentication of Documents***

Authentication of documents.

**37.** A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorized officer of the company, and need not be under its common seal.

Possibility to use electronic method. 145(I)/2011.<sup>3</sup> 2 of 145(I) of 2011.

**37A.-**(1) From the date of the coming into force of the Companies (Amendment) (No.3) Law, 2011, every form, certificate, minutes or other document delivered or sent to the registrar of companies for filing or issued by the registrar of companies, as the case may be, and requiring affirmation, certification or signature pursuant to the provisions of this Law, may be signed by an electronic method, provided that the registrar of companies approves the use of such method, in accordance with the directions he may issue pursuant to subsection (2):

Provided that the Council of Ministers may, by a decision thereof, published in the Official Gazette of the Republic, decide that, as of a subsequent date to be determined in the decision thereof it may be possible to use the advanced electronic signature as the term is defined in section 2 of the Legal Framework for

<sup>3</sup> Law 145(I) of 2011 came into force upon publication in the Official Gazette of the Republic, that is on 4.11.2011 (Official Gazette, Suppl.I(I) ), No 4302, dated 4.11.2011).

The Office of the Law Commissioner

Electronic Signatures and Related Matters Law, either in addition or in substitution to the electronic method, referred to in this subsection.

(2)(a) The registrar of companies shall issue directions prescribing:

188(I) of  
2004  
34(I) of 2009.

- (i) the procedure for the implementation of the provisions of this section,
- (ii) the interpretation of the terms "form", "certificate", "minutes" or "other document" for the purposes of this section, and
- (iii) the details of the electronic method to be used in each case.

(b) The directions of the registrar of companies referred to in paragraph (a) shall be published on the website of its office and shall be placed in a conspicuous place at its office.

(3) Whenever the electronic method is used for a signature, it shall be deemed to have the same effect as a manual signature, for the purposes of any criminal or civil proceedings and the person who makes use of such signature shall be deemed to have knowledge of the contents of the document that he signs.

(4)(a) Without prejudice to the generality of subsection (1), the statutory declaration referred to in subsection (2) of section 17 may be submitted to the registrar of companies through the electronic method by the advocate making such declaration.

(b) In case the statutory declaration submitted in accordance with the provisions of paragraph (a) is not true, the person making the declaration shall have the same criminal and civil liability that he would have had as if he had made a false sworn affidavit.

**PART II.**

**Share Capital and Debentures**

*Prospectus*

Dating of  
prospectus.

**38.-** A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

Matters to be  
stated and  
reports to be  
set out in  
prospectus.  
Fourth  
Schedule.

**39.-** (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company must state the matters specified in Part I of the Fourth Schedule and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

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

(3) It shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section:

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

(a) in connection with a bona fide invitation to a person to enter into an

underwriting agreement with respect to the shares or debentures; or

(b) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this subsection, he shall be liable to imprisonment not exceeding two years or to a fine not exceeding two thousand, five hundred and sixty-two euros or to both such imprisonment and fine.

3 of 166 of  
1987.

(4) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if:

(a) as regards any matter not disclosed, he proves that he was not cognizant thereof; or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(c) the non-compliance or contravention was in respect of matters which in the opinion of the Court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 16 of the Fourth Schedule, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

Fourth  
Schedule.

(5) This section shall not apply-

(a) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; or

(b) to the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a prescribed stock exchange;

but, subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Law apart from this section.

Expert's  
consent to  
issue of  
prospectus  
containing  
statement by  
him.

**40.**-(1) A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by an expert shall not be issued unless:

(a) he has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included; and

(b) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

(2) If any prospectus is issued in contravention of this section the company and every person who is knowingly a party to the issue thereof shall be liable to

imprisonment not exceeding two years or to a fine not exceeding two thousand, five hundred and sixty-two euros or to both such imprisonment and fine.

3 of 166 of  
1987.

(3) In this section the expression "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

Registration  
of prospectus.

**41.-** (1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the registrar of companies for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company, or by his agent authorized in writing, and having endorsed thereon or attached thereto:

(a) any consent to the issue of the prospectus required by section 40 from any person as an expert; and

(b) in the case of a prospectus issued generally (that is to say, issued to persons who are not existing members or debenture holders of the company), also-

Fourth  
Schedule.

(i) a copy of any contract required by paragraph 14 of the Fourth Schedule to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and

(ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in paragraph 20 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefore.

Fourth  
Schedule.

The references in sub-paragraph (i) of paragraph (b) of this subsection to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a foreign language, be taken as references to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation.

(2) Every prospectus shall, on the face of it,-

(a) state that a copy has been delivered for registration as required by this section; and

(b) specify, or refer to statements included in the prospectus which specify, any documents required by this section to be endorsed on or attached to the copy so delivered.

(3) The registrar shall not register a prospectus unless it is dated and the copy thereof signed in manner required by this section and unless it has endorsed thereon or attached thereto the documents (if any) specified as aforesaid.

(4) If a prospectus is issued without a copy thereof being delivered under this section to the registrar or without the copy so delivered having endorsed thereon or attached thereto the required documents, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding forty-two euros for every day from the date of the issue of the prospectus until a copy thereof is so delivered with the required documents endorsed thereon or attached thereto.

4 of 166 of  
1987.

5 of 99(I) of  
2009.

(5) In the case of a public company, which issues a prospectus for the purpose of subscription of its shares or other securities or transferable securities in a foreign

market and in reference to which the exception of section 46A does not apply, the prospectus as well as any other documents which accompany it or which must be submitted for registration, may, at the option of the company, be submitted in a language which is widely used in the international financial sector.

Restriction on alteration of terms in prospectus or statement in lieu of prospectus.

**42.**-(1) A company limited by shares or a company limited by guarantee and having a share capital shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus, or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

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

Civil liability for misstatements in prospectus.

**43.**-(1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement included therein, that is to say:-

(a) every person who is a director of the company at the time of the issue of the prospectus;

(b) every person who has authorized himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;

(c) every person being a promoter of the company; and

(d) every person who has authorized the issue of the prospectus:

Provided that where, under section 40, the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not by reason of his having given it be liable under this subsection as a person who has authorized the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.

(2) No person shall be liable under subsection (1) if he proves-

(a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(c) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefore; or

(d) that-

(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true; and

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of the issue



The Office of the Law Commissioner

of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by section 40 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge before allotment thereunder; and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that this subsection shall not apply in the case of a person liable, by reason of his having given a consent required of him by the said section 40, as a person who has authorized the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(3) A person who, apart from this subsection would under subsection (1) be liable, by reason of his having given a consent required of him by section 40 as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert shall not be so liable if he proves-

(a) that, having given his consent under the said section 40 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration; or

(b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal, and of the reason therefore; or

(c) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true.

(4) Where-

(a) the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof; or

(b) the consent of a person is required under section 40 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof shall be liable to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof:

Provided that a person shall not be deemed for the purposes of this subsection to have authorized the issue of a prospectus by reason only of his having given the consent required by section 40 to the inclusion therein of a statement purporting to be made by him as an expert.

(5) For the purposes of this section-

(a) the expression "promoter" means a promoter who was a party to the preparation of the prospectus or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; and

(b) the expression "expert" has the same meaning as in section 40.

Criminal liability for misstatements in prospectus.

3 of 166 of 1987.

**44.**-(1) Where a prospectus issued after the commencement of this Law includes any untrue statement, any person who authorised the issue of the prospectus shall be liable on conviction to imprisonment not exceeding two years, or to a fine not exceeding two thousand five hundred and sixty-two euros or to both such imprisonment and fine unless he proves either that the statement was immaterial or that he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the statement was true.

(2) A person shall not be deemed for the purposes of this section to have authorized the issue of a prospectus by reason only of his having given the consent required by section 40 to the inclusion therein of a statement purporting to be made by him as an expert.

Document containing offer of shares or debentures for sale to be deemed prospectus.

**45.**-(1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of misstatements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Law, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown-

(a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section 39 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus-

(a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and

(b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected;

and section 41 as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company.

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

Interpretation of provisions relating to prospectuses.

**46.** For the purposes of the foregoing provisions of this Part-

(a) a statement included in a prospectus shall be deemed to be untrue if it is

misleading in the form and context in which it is included; and

(b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Non-application of sections 38 to 46 of the Law. 6 of 99(I) of 2009. 114(I) of 2005. 200(I) of 2004.

**46A.** The provisions of sections 38 to 46 of the Law shall not apply in relation to shares or debentures, to which the Public Offer and Prospectus Law and/or the Open Ended Undertakings for Collective Investments in Transferable Securities (UCITS) and for Related Matters Law apply.

### ***Allotment***

Prohibition of allotment unless minimum subscription received .

**47.-** (1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 4 of the Fourth Schedule has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.

Fourth Schedule.

For the purposes of this subsection, a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Law referred to as the "minimum subscription."

9 of 70(I) of 2003.

(3) The amount payable on application on each share shall not be less than twenty-five percent of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per cent per annum from the expiration of the forty-eighth day:

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

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

(6) This section, except subsection (3), shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Subscription for registration and payment of share capital. 10 of 70(I) of 2003.

**47A.**(1) Shares of a public company shall only be allotted only in return for contribution of assets which can be given an economic value, which have already been valued in accordance with section 47B. Undertakings of obligations, which relate to execution of activities or the provision of services, are not considered as assets which can be given an economic value.

(2) Without prejudice to the generality of the prohibition of subsection (1), the allotment of shares without any contribution is permitted to employees of the company.

(3) (a) A public company cannot acquire its own shares which are offered for subscription. If the shares of a company have been subscribed for by a person acting in his own name, but on behalf of the company, the subscriber shall be deemed to have subscribed for them for his own account.

(b) The signatories of the memorandum or, in the case of increase of the subscribed capital, the directors shall be obliged to pay off personally the shares which, in contravention of paragraph (a), the former, stated in the memorandum or the latter stated to the secretary, were to be acquired by the company.

(4) Shares of a public company issued for a consideration of a cash contribution or cash securities, must be paid off at the time of incorporation of the company but at the latest by the date of issuance of the certificate provided for in subsection (4) of section 104, as this subsection has been renumbered by section 24 of this Law:

Provided that the above restriction shall not apply to groups aiming at promoting the participation of its employees in the capital of the business.

(5) Shares issued for a contribution in kind must-

2(a) of 64(I) of 2012.

(a) have been issued to the level of the sum determined in accordance with section 47B:

2(b) of 64(I) of 2012.

Provided that where the increase in subscribed capital is made in order to give effect to a merger or a division, for which an independent expert's report-valuation has been drawn-up, or a public offer for the purchase or exchange of shares for the compensation of the shareholders of the company which is being absorbed or divided or which is the object of the public offer for the purchase or exchange of shares, the valuation of the value of the contributions in kind as provided for by section 47B shall not be necessary, and

(b) be paid off in whole within five years from the date of the issuance of the certificate provided for in subsection (4) of section 104, as this subsection has been renumbered by section 24 of this Law.

Contributions in kind:  
Methods of valuation and cases where such valuation is not necessary.  
10 of 70(I) of 2003  
3 of 87(I) of 2008.

**47B.-** (1) It is obligatory for the valuation of the contributions in kind to be done by a report, which is drafted before the incorporation of the company or, at the time of the issuance of the certificate provided for in subsection (4) of section 104, as this subsection has been renumbered by section 24 of this Law, by one or more independent experts, which have been recognized by the Registrar as qualified to act for the purposes of this section, as prescribed by Regulations, and who is or are appointed by the company. The experts may be natural or legal persons.

(2) The report mentioned in subsection (1) must -

(a) include the description of each contribution and the adopted methods of its calculation,

(b) determine whether the value which results corresponds at least to the nominal value of the shares and to the possible additional amount paid for shares issued at premium in return for the contributions.

(3) The report mentioned in subsection (1) shall be published in accordance with section 365A.

The Office of the Law Commissioner

(4) The valuation provided for in subsection (1) shall not be required when:

(a) ninety per cent of the nominal value of all the shares under valuation has been undertaken by one or more companies and

(b) the following conditions are additionally fulfilled:

(i) with regard to the company in receipt of such contribution, the signatories to the memorandum have in writing waived the drafting of a report by experts,

(ii) the waiver has been communicated to the registrar of companies and has been published in accordance with section 365A,

(iii) the contributing companies-

(a) have reserves, which the Law or the articles do not allow to be distributed, and the amount of which is at least equal to the nominal value of the shares which were issued for the contribution in kind,

(b) guarantee, up to an amount equal to the debts of the recipient company arising between the time the shares are issued for a contribution in kind and one year after the publication of that company's annual accounts for the financial year during which such contributions were furnished. No transfer of shares is allowed during this period. The above guarantee must have been notified to the registrar of companies and have been published pursuant to section 365A; and

(c) capitalize an amount equal to the nominal value of the shares issued for the contribution in kind, depositing it in the reserves. Its distribution is possible only after three years from the publication of the annual accounts of the recipient company for the financial year during which such contributions were made or if necessary, until such later date as all claims relating to the guarantee referred to in subparagraphs (b) which are submitted during this period have been settled.

2 of 70(I) of  
2007.

(5) This section shall not apply in the event of the formation of a new company by way of merger or division provided that an independent expert's report-valuation on the draft terms of merger or division has been drawn up.

3 of 64(I) of  
2012.

Acquisition of  
assets where  
incorporation  
has been  
completed.  
10 of 70 (I) of  
2003  
3 of 70(I) of  
2007  
7 of 99(I) of  
2009.

**47C.**-(1) When a public company acquires any asset from a shareholder or any other person-

(a) before the expiration of two years from the incorporation of the company, and

(b) for a consideration corresponding to at least one tenth of the subscribed capital,

4(a) of 87(I)  
of 2008.  
4(b) of 87(I)  
of 2008.

the transaction shall be submitted to mandatory valuation as provided in subsections (1) to (3) of section 47B and shall be further subject to the approval of the general meeting. Sections 47D and 47E shall apply accordingly.

(2) The provisions of subsection (1) shall not apply-

(a) to anything acquired in the ordinary course of business of the company;

(b) to anything acquired after a Court decision;

(c) to anything acquired in a recognized stock or merchandise exchange.

Non-application of section 47B subject to requirements. 5 of 87(I)/2008.

**47D.-** (1) (a) The provisions of section 47B shall not apply in cases where, after a resolution of the board of directors of the public company, transferable securities or money-market instruments are contributed as consideration in kind and such transferable securities or money-market instruments are evaluated on the basis of the average -weighted- price at which they have been traded on one or more regulated markets, for a minimum time period of three months, preceding the effective date of the contribution of the respective consideration.

(b) In cases where the average -weighted- price has been affected by exceptional circumstances that would significantly change the value of the assets at the effective date of their contribution, amongst others, in cases where the market of such transferable securities or money-market instruments has become illiquid, a revaluation shall be carried out on the initiative and responsibility of the board of directors of the public company. For the purposes of the above-mentioned revaluation the provisions of section 47B shall apply.

(c) For the purposes of the provisions of this subsection, the terms "transferable securities", "money-market instruments" and "regulated market" shall have the meaning assigned to them by subsection (1) of section 2 of the Investment Services and Activities and Regulated Markets Laws, 2007 and 2009.

(2) (a) The provisions of section 47B shall not apply in cases where, after a resolution of the board of directors of the public company, assets other than the transferable securities or money-market instruments mentioned in subsection (1) are contributed as consideration in kind which have already been subject to a fair value by a recognised independent expert and when the following conditions are met:

(i) the fair value has been determined for a date not more than six months before the effective date of the asset contribution;

(ii) the valuation has been performed in accordance with generally accepted valuation standards and principles of valuation which are applicable in the Republic to the kind of assets to be contributed;

(b) When new circumstances, that would significantly change the fair value of the assets at the effective date of their contribution, occur, a revaluation shall be carried out on the initiative and responsibility of the board of directors of the public company. For the purposes of such revaluation the provisions of section 47B shall apply.

(c) In case of absence of the revaluation referred to in paragraph (b), one or more shareholders who hold an aggregate percentage of at least 5% of the subscribed capital of the public company on the date when a resolution is taken for the increase of capital, may demand a valuation by an independent expert, in which case the provisions of section 47B shall apply. The said shareholder or shareholders can submit such demand until the effective date of the contribution in kind, on condition that, on the date of submission of the demand, the said shareholder or shareholders shall still hold a total percentage of at least 5% of the subscribed capital of the public company, as it was on the day the resolution on the increase in the capital was taken.

(3) The provisions of section 47B shall not apply, when after a resolution of the board of directors of the public company, the contribution in kind constitutes of assets, other than the transferable securities and the money-market instruments mentioned in subsection (1), the fair value of which arises, for each separate asset, from the statutory accounts of the previous financial year, provided that the statutory accounts have been subject to an audit according to the provisions of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006, on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC.

Official  
Journal of EU:  
L157,  
9.6.2006,  
p.87.

(4) If any director of the company knowingly contravenes or authorises the contravention of any provisions of this section, he shall be responsible to compensate the company or the person to whom the contribution was made for any loss, damages or expenses which the company or the person to whom the contribution was made may have suffered or sustained by it:

Provided that the procedure for retrieval of any such loss, damage or expenses does not arise after the expiration of two years from the date on which the contribution was made.

Liability for  
publicity in  
case of  
application of  
section 47D.  
5 of 87 (I) of  
2008.

**47E.**-(1) Where the shares of a public company are contributed as consideration in kind as defined in section 47D without an expert's report as provided in section 47B having been submitted, in addition to the requirements of section 118 and within one month after the effective date of contribution of assets, a statement shall be published in the Official Gazette of the Republic, in accordance with section 365A, which shall contain the following:

- (a) a description of the relevant contribution in kind;
- (b) the value of the contribution in kind, the source of the valuation and if required, the method of valuation;
- (c) a statement whether the value arrived at corresponds at least to the number, to the nominal value or, in case of lack of nominal value, the accountable par and, where appropriate, to the premium on the shares to be issued for such consideration ; and
- (d) a statement that no new qualifying circumstances in relation to the original valuation, have occurred.

(2) When a contribution in kind is proposed, without an expert's report as provided in section 47B having been submitted, in relation to an increase of capital proposed within the context of section 62, an announcement containing the date on which the resolution on the increase of capital was passed and the information listed in subsection (1) shall be published, according to the manner stated in section 365A, before the contribution in kind is realised. In this case, the declaration pursuant to subsection (1) shall be limited to the statement that no new qualifying circumstances have occurred since the publication of the aforementioned announcement.

(3) If any director of the company knowingly contravenes or authorises the contravention of any provisions of this section, he shall be liable to compensate the company or the person to whom the contribution was made for any loss, damages or expenses which the company or the person to whom the contribution was made may have suffered or sustained by it:

Provided that the procedure for retrieval of any such loss, damages or expenses shall not be raised after the lapse of two years from the date on which the contribution was made.

Prohibition of  
allotment in  
certain cases  
unless  
statement in  
lieu of  
prospectus  
delivered to  
registrar.

**48.**-(1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the registrar of companies for registration a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing, in the form and containing the particulars set out in Part I of the Fifth Schedule and, in the cases mentioned in Part II of that Schedule,

The Office of the Law Commissioner

setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

Fifth  
Schedule.

(2) Every statement in lieu of prospectus delivered under subsection (1) shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the said Fifth Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefore.

Fifth  
Schedule.

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

(4) If a company acts in contravention of subsection (1) or (2), the company and every director of the company who knowingly and wilfully authorizes or permits the contravention shall be liable to a fine not exceeding eight hundred fifty-four euros.

4 of 166 of  
1987.

(5) Where a statement in lieu of prospectus delivered to the registrar of companies under subsection (1) includes any untrue statement, any person who authorized the delivery of the statement in lieu of prospectus for registration shall be liable on conviction to imprisonment not exceeding two years or to a fine not exceeding two thousand, five hundred and sixty-two euros, or to both such imprisonment and fine unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

3 of 166 of  
1987.

(6) For the purposes of this section-

(a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

Effect of  
irregular  
allotment.

**49.**-(1) An allotment made by a company to an applicant in contravention of the provisions of sections 47 and 48 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes, or permits or authorizes the contravention of, any of the provisions of the said sections with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby:

Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

Applications  
for, and  
allotment of,  
shares and  
debentures.

**50.**-(1) No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus.

The beginning of the said third day or such later time as aforesaid is hereafter in



this Law referred to as "the time of the opening of the subscription lists".

(2) In subsection (1) the reference to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first so issued as a newspaper advertisement:

Provided that, if it is not so issued as a newspaper advertisement before the third day after that on which it is first so issued in any other manner, the said reference shall be construed as referring to the day on which it is first so issued in any manner.

(3) The validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section but, in the event of any such contravention, the company and every officer of the company who is in default shall be liable to a fine not exceeding one thousand, seven hundred and eight euros.

4 of 186 of  
1987.

(4) In the application of this section to a prospectus offering shares or debentures for sale, the foregoing subsections shall have effect with the substitution of references to sale for references to allotment, and with the substitution for the reference to the company and every officer of the company who is in default of a reference to any person by or through whom the offer is made and who knowingly and wilfully authorizes or permits the contravention.

(5) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the third day after the time of the opening of the subscription lists, or the giving before the expiration of the said third day, by some person responsible under section 43 for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

(6) In reckoning for the purposes of this section the third day after another day, any intervening day which is a Saturday or Sunday or which is a bank holiday shall be disregarded, and if the third day, as so reckoned, is itself a Saturday or Sunday or such a bank holiday there shall for the said purposes be substituted the first day thereafter which is none of them.

Return as to  
allotments.

**51.**-(1) Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall within one month thereafter deliver to the registrar of companies for registration-

(a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount, if any, paid or due and payable on each share; and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment deliver to the registrar of companies for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing.

(3) If default is made in complying with this section, every officer of the company who is in default shall be liable to a fine not exceeding four hundred twenty-seven euros for every day during which the default continues:

4 of 166 of  
1987.

Provided that, in case of default in delivering to the registrar of companies within

one month after the allotment any document required to be delivered by this section, the company, or any officer liable for the default, may apply to the Court for relief, and the Court, if satisfied that the omission to deliver the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the Court may think proper.

***Commissions and Discounts, etc.***

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

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

(a) the payment of the commission is authorized by the articles; and

(b) the commission paid or agreed to be paid does not exceed ten per cent of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less; and

(c) the amount or rate per cent of the commission paid or agreed to be paid is-

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

(ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the registrar of companies for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice; and

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

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

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

(5) If default is made in complying with the provisions of this section relating to the delivery to the registrar of the statement in the prescribed form, the company and every officer of the company who is in default shall be liable to a fine not exceeding two hundred thirteen euros.

4 of 166 of  
1987.

Prohibition of

**53.**-(1) Subject as provided in this section and subject to the provisions of sections

provision of financial assistance by company for purchase of or subscription for its own, or its holding company's shares.  
11 of 70(I) of 2003.

57A to 57 F, it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company, or, where the company is a subsidiary company, in its holding company:

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

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

(b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;

(c) the making by a company of loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase or subscribe for fully paid shares in the company or its holding company to be held by themselves by way of beneficial ownership.

4 of 166 of 1987.

(2) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding eight hundred fifty-four euros.

8 of 99(I) of 2009.

(3) In the case of a private company, the prohibition in subsection (1) shall not apply if-

(a) the private company is not a subsidiary of any company which is a public company, and

(b) the relevant action has been approved at any time, with a resolution of the general meeting which has been passed by a majority exceeding ninety per cent of all issued shares of the company:

Provided that, the exception of this subsection shall not affect the obligation to comply with any other section of this Law or with any other law.

***Construction of References to offering Shares or Debentures to the Public***

Construction of references to offering shares or debentures to the public.

**54.-** (1) Any reference in this Law to offering shares or debentures to the public shall, subject to any provision to the contrary contained therein, be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner, and references in this Law or in a company's articles to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be similarly construed.

(2) Subsection (1) shall not be taken as requiring any offer or invitation to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it, and in particular:

(a) a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded as aforesaid; and

(b) the provisions of this Law relating to private companies shall be construed accordingly.

***Issue of Shares at Premium and Discount and Redeemable Preference Shares***

Application of premiums received on issue of shares.

**55.**-(1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account, to be called "the share premium account," and the provisions of this Law relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid up share capital of the company.

(2) The share premium account may, notwithstanding anything in subsection (1), be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares, in writing off-

(a) the preliminary expenses of the company; or

(b) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;

or in providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the company.

(3) Where a company has before the commencement of this Law issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this Law:

Provided that any part of the premiums which has been so applied that it does not at the commencement of this Law form an identifiable part of the company's reserves within the meaning of the Eighth Schedule shall be disregarded in determining the sum to be included in the share premium account.

Eighth Schedule.  
Power to issue shares at a discount.

**56.**-(1) A public company shall not be allowed to issue shares at a discount.

12(a) of 70(I) of 2003  
12(b) of 70(I) of 2003  
12(c) of 70(I) of 2003  
12(d) of 70(I) of 2003.

(2) Subject as provided in this section, it shall be lawful for a private company to issue at a discount shares in the company of a class already issued:

Provided that-

(a) the issue of the shares at a discount must be authorized by resolution passed in general meeting of the company, and must be sanctioned by the Court;

(b) the resolution must specify the maximum rate of discount at which the shares are to be issued;

(c) not less than one year must at the date of the issue have elapsed since the date on which the company was entitled to commence business;

(d) the shares to be issued at a discount must be issued within one month after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

(3) Where a company has passed a resolution authorizing the issue of shares at a discount, it may apply to the Court for an order sanctioning the issue, and on any such application the Court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

Power to issue

**57.**-(1) Subject to the provisions of this section, a company limited by shares may, if

redeemable  
preference  
shares.  
9 of 99(I) of  
2009.

so authorized by its articles, issue preference shares which are, or at the option of the company or of the shareholder are to be liable, to be redeemed:

Provided that-

(a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;

(b) no such shares shall be redeemed unless they are fully paid;

(c) the premium, if any, payable on redemption, must have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed;

(d) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the nominal amount of the shares redeemed, and the provisions of this Law relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company.

(2) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(3) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of the company's authorized share capital.

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactments relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subsection:

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

(5) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

13 of 70 (I) of  
2003.

Right of a  
company to  
purchase or  
acquire its  
own shares.  
116 (I) of  
2005.

(6) The redemption shall be published in accordance with section 365A.

**57A.** (1) Without prejudice to the provisions of subsection (3) of section 47A and subject to the provisions of the Activities of Persons Holding Insider Information and Activities of Market Manipulation (Market Abuse) Law, as well as the principle of equal treatment of all shareholders holding the same position, a public company may acquire its own shares either directly, or through a person acting on his own name but on behalf of the company, provided that this is enabled by its articles and provided that the following provisions are satisfied:

2 of  
135(I)/2000  
14(a) of 70  
(I) of 2003  
6(a) of 87 (I)  
of 2008.

(a) The company has approved by special resolution in general meeting the grant of authorization to its board of directors for acquisition of its own shares within a time period of twelve months from the date that the

decision is taken and has determined the terms and the manner of their acquisition and particularly the maximum number of shares that may be acquired, the period for which the company may own same, which may not exceed two years and, in case there is an intention to acquire them in exchange for monetary consideration, the minimum and maximum price of their acquisition, which, in case of a company the shares of which are listed on the Stock Exchange, shall not exceed by more than five per cent (5%) the average market price of the share of the company during the last five Stock Exchange sessions before carrying out the relevant acquisition:

Provided that the directors and managers of the company shall have an obligation to ensure compliance with the conditions referred to in paragraphs (b), (c) and (d) below.

- (b) The total of the nominal value of shares of a company itself acquired by the company, including the shares which the company already owns and maintains in a portfolio and the shares which a person acting in his name but who acquired same on behalf of the relevant company, may not, at any time, exceed ten per cent (10%) of the subscribed capital or twenty-five per cent (25%) of the average value of the transactions, which, in case of a company the shares of which are listed on the Stock Exchange, were negotiated during the last thirty days, whichever of those amounts is smaller.

Provided that this shall not affect the obligation of a company the shares of which are listed on the Stock Exchange to abide by the provisions of Regulation 61(Z) of the Stock Exchange Regulations regarding the dispersion of capital.

- (c) The monetary consideration payable for the acquisition by a company of its own shares shall be paid out of the realized and non-distributed profits.

14(b) of 70(I)  
of 2003  
6(b) of 87(I)  
of 2008.

- (d) The acquisition of its own shares, including own shares which the company had previously acquired and keeps in a portfolio and the acquisition of shares of the same company which were acquired by a person acting in his own name, but on the company's behalf, should not result in the reduction of the net assets below the amount prescribed by subsection (1) of section 169A.

14(c) of 70(I)  
of 2003  
6(c) of 87(I)  
of 2008.

- (e) The company can only acquire its own shares which have been fully paid up.

14(c) of 70(I)  
of 2003.

- (f) In case of a company the shares of which are listed on the Stock Exchange, the intention of the board of directors of the company to take a decision for the convening of a general meeting, for the ultimate purpose of taking a decision for the acquisition by the company of its own shares, in support of their price in cases where it is considered that the said price is substantially lower than the price which corresponds to the market conditions and to the financial situation and prospects of the company is notified immediately to the Board of the Stock Exchange and the Cyprus Securities and Exchange Commission:

Provided that the relevant resolution of the general meeting shall be notified to the Board of the Stock Exchange and the Cyprus Securities and Exchange Commission before the commencement of the Stock Exchange sessions which follows the relevant resolution.

14(c) of 70(I)  
of 2003.

- (g) The resolution of the general meeting for the acquisition by the company of its own shares shall be published at least ten days before the commencement of the relevant acquisition, in at least two daily newspapers of wide circulation and the relevant publication must include the basic terms of the transaction and specify the time period during which the company intends to proceed with the acquisitions:

Provided that the relevant publication must be repeated every time the company implements the decision of the general meeting for the acquisition of its own shares.

14(c) of 70(I) of 2003.

(h) The board of directors of the company shall have an obligation to prepare forthwith a list of the shareholders from whom the relevant shares were acquired, and such list shall be notified, in case of a company the shares of which are listed on the Stock Exchange, to the Cyprus Securities and Exchange Commission and the Board of the Stock Exchange and shall be communicated to the shareholders at the first general meeting that follows the period of acquisition:

Provided that the board of directors of the company, in carrying out the above announcement, duly substantiates its decision for the acquisition of its own shares from the company, proving-

- (a) The diminishing tendency of the price of the share at the time of the acquisition, and
- (b) by producing an auditors' certificate that this price is substantially lower than the price that corresponds to the actual value of the relevant share.

14(c) of 70(I) of 2003.

(i) The act by which the acquisition by a company of its own shares is concluded shall be notified to the Registrar of Companies and Official Receiver within fourteen days with a statement by the company itself, signed by one director and its secretary, and is liable to a fee, in accordance with the provisions of this Law for the time being in force.

6(d) of 87(I) of 2008.

(j) The acquisition by the company of its own shares shall not affect the satisfaction of the claims of its creditors.

(2) In case the acquisition by a company of its own shares becomes urgently necessary, in order to avoid imminent serious damage to the company, such as, *inter alia*, the decline of the market price of the share below its actual value, as determined by the certified auditors, the company may proceed with an acquisition of its own shares without the prior approval of the general meeting, provided that its board of directors will inform the shareholders of the company, at an extraordinary general meeting, which must be convened within two months at the latest from the date that the relevant resolution is taken, of the reasons for which the particular acquisition or purchase of the relevant shares took place, the number and nominal value of the shares acquired, the part of the issued and fully paid-up capital they represent and of the value of the said shares:

Provided that in case of a company listed in the Stock Exchange, the resolution of the Board of Directors shall be notified, duly reasoned, to the Board of the Stock Exchange and the Cyprus Securities and Exchange Commission within two days from the taking of the said resolution.

Exemptions.  
2 of 135(I) of  
2000.

**57B.**-(1) Acts by which the company acquires its own shares, shall be exempt from the provisions of section 57A, provided that:

- (a) The shares were acquired in carrying out a decision to reduce capital on the basis of the relevant provisions of this Law or in case those were acquired on the basis of section 57 of this Law,
- (b) The shares were acquired after a complete transfer of all the assets of the company,
- (c) The shares were acquired free of charge and have been fully paid-up or have been acquired by banks or other credit institutions as purchasing commission,
- (d) The shares were acquired by virtue of a legal obligation, resulting from a court judgment, for the purpose of protecting the minority

The Office of the Law Commissioner

shareholders in case of a merger, change of object or the type of the company, transfer abroad of its registered office or the imposition of restrictions on the transfer of its shares,

(e) The shares were acquired from a shareholder, if the latter has not paid them up,

(f) The shares were acquired in order to indemnify minority shareholders in associated companies,

(g) The shares have been fully paid-up and acquired by auction following compulsory execution which had the purpose of satisfying a claim of the company against the owner of the relevant shares.

(2) A company that acquires shares in the cases mentioned in sub-paragraphs (b) to (f) of paragraph (1) of this section proceeds with their transfer within a time limit of three years at the latest from the time of their acquisition, except if the nominal value of the shares which have been acquired in this way, including the shares that the company has acquired from a person acting in his name, but on the company's behalf, does not exceed ten per cent (10%) of the subscribed capital.

(3) In case the shares in question have not been transferred within the time-limit specified in paragraph (2) above, these are cancelled by reducing the subscribed capital by the corresponding amount:

Provided that this reduction is necessary to the extent that the acquisition of the shares which must be cancelled had the result of reducing the net assets of the company to an amount lower than that of the subscribed capital, increased by the stock of which this Law does not allow distribution. The amount of the aforementioned subscribed share capital shall be reduced by the amount of the share capital that has been covered, but has not yet been contributed when the former does not appear in the balance sheet.

7 of 87(I) of  
2008.

Obligation of  
company to  
transfer  
shares  
acquired in  
contravention  
of this Law.  
2 of 135(I) of  
2000.

**57C.** A company that acquires shares in contravention of the provisions of sections 57A and 57B shall have the obligation to transfer them within a time limit of a year at the latest from the date of completion of the act of their acquisition:

Provided that if the shares in question are not transferred within that time-limit, then the provisions of sub-paragraph (3) of section 57B shall apply.

Conditions to  
be met for the  
company to  
hold its own  
shares.  
2 of 135(I) of  
2000.

**57D.**-(1) When a company proceeds to acquire its own shares, either directly or through a person acting in his own name, but on its behalf, the possession of those shares shall be subject to the following conditions:

(a) The voting rights and rights of payment of dividends of the shares acquired in that manner shall be suspended.

(b) If those shares are registered in the assets of the balance sheet, then an equivalent amount of undistributed reserved funds shall be included among the liabilities.

2 of 130(I) of  
2005.

(2) When a company acquires its own shares either directly or through a person acting in his own name, but on its behalf, the following must be mentioned in the report of the directors of the company:

(a) The reasons for which the acts in question were carried out during the financial year.



(b) The number and nominal value of the shares acquired and transferred during the course of the financial year, as well as the part of the subscribed capital they represent.

(c) In case of acquisition or disposal for a monetary value, the consideration for the shares.

(d) The number and nominal value of the shares acquired and held by the company, as well as the proportion of the subscribed capital they represent.

Right of a company to pledge its own shares.  
2 of 135(I)/2000.

**57E.** The pledge by the company of its own shares, either by itself or by a person acting in his name, but on its behalf, shall be considered acquisition of shares in the manner mentioned in sections 57A, in paragraph (1) of section 57B and in sections 57D and 53 of this Law:

Provided that the provisions of this section shall not apply to cases of pledging of a number of shares within the context of current transactions carried out by a company with banks and other credit institutions.

Subscription, acquisition or holding of shares through subsidiary.  
15 of 70(I) of 2003.

**57F.-** (1) The subscription, acquisition or holding of shares of a public company (in this section called the "first company") by another limited liability company, local or overseas (in this section called the "other company"), which other company is a subsidiary of the first, shall, for the purposes of sections 57A to 57E, be considered to have been carried out by the first company.

(2) When the subscription, acquisition or holding of the shares through the other company has been carried out under the circumstances mentioned in subsection (1) of section 57B, the provisions of subsections (2) and (3) of section 57B and section 57C shall not apply, but the following will apply:

(a) The voting rights attached to the shares of the first company, which are held by the other company shall be suspended, and

(b) the directors of the first company are obliged to acquire from the other company the shares mentioned in subsections (2) and (3) of section 57B and section 57C at the price at which this other company had acquired them, unless the said directors prove that the first company had no involvement in the subscription or acquisition of the said shares.

(3) This section shall not apply where the said subscription, acquisition or holding is made-

(a) On behalf of a person other than the person subscribing, acquiring or holding the shares and provided this person is neither the first company nor the other company,

(b) by the other company acting as a professional dealer in securities and in its capacity as such, provided that it is a member of a stock exchange situated or operating in the Republic or in a member state of the European Union, or that has obtained a licence to operate or is under the supervision of an authority of the Republic or a member state of the European Union, being the competent authority for the supervision of professionals dealing in securities.

***Miscellaneous Provisions as to Share Capital***

- Power of company to arrange for different amounts being paid on shares.
- 58.-** A company, if so authorized by its articles, may do any one or more of the following things-
- 16 of 70(I) of 2003. (a) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;
- 16 of 70(I) of 2003. (b) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.
- Reserve liability of company.
- 59.-** A company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.
- Voting rules in relation to a decision of the general meeting for changes in capital. Separate voting per class of shares. Majority. 17 of 70(I) of 2003
- 59A-** (1) Where in this Law a decision of shareholders is provided for in relation to the change of the amount or the classes of the share capital or to the rights attached to any class of shares, the following rules shall apply:
- (a) When the share capital of the company is divided into different classes of shares, separate voting takes place for each class of shares, the rights of which are affected by the change.
- (b) The decision shall be taken by a majority of two thirds of the votes corresponding either to the represented securities or to the represented issued share capital. When at least half of the issued share capital is represented, a simple majority shall be sufficient.
- (2) The provisions of subsection (1) shall -
- (a) Apply to the issuance of all the securities convertible into shares or attaching the right to undertake shares, but not to the conversion of securities and the exercise of the right of undertaking;
- (b) not apply to private companies.
- Power of company limited by shares to alter its share capital.
- 60.-** (1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorized by its articles, may alter the conditions of its memorandum as follows, that is to say, it may:
- (a) increase its share capital by new shares of such amount as it thinks expedient;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (c) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;
- (d) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- (e) cancel shares which, at the date of the passing of the resolution in that behalf,

have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section must be exercised by the company in general meeting.

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

Increase of share capital. Rules for paying off, etc. 19 of 70(I) of 2003.

**60A.-** (1) The shares issued by an increase of the share capital of a public company must be paid up-

(a) by a percentage of at least twenty-five per cent of their nominal value, in the case of an issuance for cash consideration. Where provision is made for an issue premium, this amount must be paid in full.

(b) In the case of an issuance for a consideration in kind, they must have been paid up in full, within a timeframe of five years after the date of the resolution for the increase.

8 of 87(I) of 2008.

(2) The value of considerations in kind, mentioned in paragraph (b) of subsection (1), shall be valued according to the provisions in section 47B, except where sections 47D and 47E apply:

Provided that no valuation shall be required when:

(a) The increase of the share capital is effected for the purpose of realizing a merger or a public offer for the purchase or exchange and for the purpose of compensating the shareholders of the company which has been absorbed, or the shareholders of a company which is the subject of the public offer, purchase or exchange, or

(b) the total increase-

(i) has been covered by considerations in kind made from one or more companies, all the shareholders of which have agreed not to have an expert's report drawn up, and

(ii) all the conditions of paragraph (b) of subsection (4) of section 47B are complied with.

(3) If the amount of the increase of the share capital is not fully covered, the share capital shall be increased to the extent covered, only if this is expressly provided for in the terms of issue.

Principle of preferring the existing shareholders during the increase of the share capital by way of cash contributions. 19 of 70(I) of 2003

**60B.-** (1) On the increase of the share capital of a public company by considerations in cash, the shares must be offered on a pre-emptive basis to shareholders in proportion to the percentage of the capital represented by their shares:

Provided that, the right of pre-emption may not be excluded, when, in accordance with the decision for the increase of the share capital, the share issuance is made in favour of banks or other credit institutions, with a purpose of offering them thereafter to the shareholders of the company in accordance with the above-mentioned.

(2) Shares to which a restricted right of participation in the distributions in the meaning of section 169A and/or in the distribution of the company assets in the

case of liquidation is attached, shall not have a right of pre-emption.

(3) When the company has different classes of shares, in which the right to vote or the right to participate in the distributions within the meaning of section 169A and/or in the distribution of the company's assets in the case of liquidation are different between them, and the share capital is to be increased by the issuance of new shares of only one class of such classes, the memorandum or articles may allow the exercise of a right of pre-emption by the shareholders of the other classes only after the exercise of such right by the shareholders of the class from which the new shares are being issued.

(4) (a) The offer for subscription on a pre-emptive basis, as well as the period, within which such right must be exercised, shall be published in accordance with section 365A:

Provided that no publication shall be required when all the shares of the company are nominal, in which case all shareholders must be notified in writing.

(b) The pre-emption right must be exercised within a period which shall not be less than fourteen days from the notification of the offer or the sending out of the letters to the shareholders.

(5) The pre-emption right may not be restricted or excluded from the articles, unless by way of a resolution of the general meeting. The directors shall have an obligation to present to the general meeting a written report which shall state the reasons for restriction or exclusion of the right of pre-emption and shall justify the proposed issue price. The general meeting shall decide in accordance with the regulations set out in section 59A. The decision thereof shall be published pursuant to section 365A.

(6) Subsections (1) to (5) shall apply to the issuance of all securities which are convertible into shares or are accompanied by a right to undertake shares, but not to the conversion of the securities nor to the exercise of the right to subscribe.

Notice to registrar of consolidation of share capital, conversion of shares into stock, etc.

**61.**-(1) If a company having a share capital has-

(a) consolidated and divided its share capital into shares of larger amount than its existing shares; or

(b) converted any shares into stock; or

(c) reconverted stock into shares; or

(d) subdivided its shares or any of them; or

(e) redeemed any redeemable preference shares; or

10 (a) of 99(I) of 2009.

(f) cancelled any shares, otherwise than in connection with a reduction of share capital under section 64 of this Law or,

10 (b) of 99(I) of 2009.

(g) converted any shares belonging to a certain class of shares into another class of shares, such conversion either being made through a resolution or automatically on the basis of the conditions of issue of the relevant shares,

it shall be obliged within one month after so doing to give notice thereof to the registrar of companies specifying, as the case may be, the shares, consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock reconverted.

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

Notice of increase of share capital.

**62.**-(1) Where a company having a share capital whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall, within fifteen days after the passing of the resolution authorizing the

increase, give to the registrar of companies notice of the increase, and the registrar shall record the increase.

4 of 76 of  
1977.

(2) The notice to be given as aforesaid shall include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and there shall be forwarded to the registrar of companies together with the notice a printed copy of the resolution authorizing the increase:

4 of 70(I) of  
2007.

Provided that in case the resolution of the general meeting for the increase of capital grants authority to the directors to issue and allot new shares, this authority shall have a maximum duration of five years, and may be renewed one or more times by the general meeting, for a period of time of maximum five years for each renewal.

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

Power of  
company to  
pay interest  
out of capital  
in certain  
cases.

**63.-** Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the sum so paid by way of interest to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that-

(a) no such payment shall be made unless it is authorized by the articles or by special resolution;

(b) no such payment, whether authorized by the articles or by special resolution, shall be made without the previous sanction of the Council of Ministers;

(c) before sanctioning any such payment the Council of Ministers may, at the expense of the company, appoint a person to inquire and report to him as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry;

(d) the payment shall be made only for such period as may be determined by the Council of Ministers, and that period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided;

(e) the rate of interest shall in no case exceed four per cent per annum or such other rate as may for the time being be prescribed by order of the Council of Ministers;

(f) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

20 of 70 (I) of  
2003.

### ***Reduction of Share Capital and Related Transactions***

Special  
resolution for  
reduction of  
share capital.

**64.-(1)** Subject to confirmation by the Court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorized by its articles, by special resolution notified to the registrar of companies and published pursuant to section 365A reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may-

5 of 70(I) of  
2007.

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
- 2(a) of 198(I) of 2011. (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company; or
- 2(b) of 198(I) of 2011. (d) cancel paid up share capital for the purpose of writing off losses of the company; or
- 2(b) of 198(I) of 2011. (e) cancel paid up share capital by the creation of a reserve, to be called "the capital reduction reserve fund" which will be subject to the same treatment as the share premium account as prescribed in section 55, the provisions of which shall apply in this respect,
- and may, if so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.
- (2) A special resolution under this section is in this Law referred to as a "resolution for reducing share capital".
- 21 of 70(I) of 2003. (3) In the case of a public company the subscribed capital may not be reduced to an amount below the minimum capital provided for in section 4A, unless the decision for the reduction simultaneously provides for an increase of the capital to an amount at least equal to the prescribed minimum.
- Application to Court for confirming order, objections by creditors, and settlement of list of objecting creditors. **65.-** (1) Where a company has passed a resolution for reducing share capital, it may apply to the Court for an order confirming the reduction.
- (2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, the following provisions shall have effect, subject nevertheless to subsection (3):-
- (a) every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, and who can prove that there is a reasonable chance that the proposed reduction of the share capital will endanger the repayment of the debt or the satisfaction of his claim from the company, and that there are no sufficient guarantees in place by the company, shall be entitled to object to the reduction;
- 9 of 87(I) of 2008. (b) the Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;
- (c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Court may direct, the following amount:-
- (i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

The Office of the Law Commissioner

(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

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

Order  
confirming  
reduction and  
powers of  
Court on  
making such  
order.

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

(2) Where the Court makes any such order, it may-

(a) if for any special reason it thinks proper so to do, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof the words "and reduced"; and

(b) make an order requiring the company to publish as the Court directs the reasons for reduction or such other information in regard thereto as the Court may think expedient with a view to giving proper information to the public, and, if the Court thinks fit, the causes which led to the reduction.

(3) Where a company is ordered to add to its name the words "and reduced," those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

Registration  
of order and  
minute of  
reduction.

**67.**-(1) The registrar of companies, on production to him of an order of the Court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute approved by the Court showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount, if any, at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the Court may direct.

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Law with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum, and shall be valid and alterable as if it had been originally contained therein.

(6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section 26.

Liability of  
members in  
respect of  
reduced

**68.**-(1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount paid, or the reduced amount, if any, which is to be

shares. deemed to have been paid, on the share, as the case may be:

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Law with respect to winding up by the Court, to pay the amount of his debt or claim, then-

(a) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and

(b) if the company is wound up, the Court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(2) Nothing in this section shall affect the rights of the contributories among themselves.

Penalty for  
concealing  
name of  
creditor, etc.

**69.** If any officer of the company-

(a) wilfully conceals the name of any creditor entitled to object to the reduction; or

(b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

(c) aids, abets or is privy to any such concealment or misrepresentation as aforesaid,

he shall be guilty of an offence and shall on conviction thereof be liable to imprisonment not exceeding two years or to a fine not exceeding two thousand five hundred and sixty-two euros or to both such imprisonment and fine.

3 of 166 of  
1987.

22 of 70(I) of  
2003.

### ***Rights of Shareholders and Variation thereof***

Equal  
treatment of  
shareholders  
of the same  
class.  
23 of 70(I) of  
2003.

**69A.** The shareholders of a public company, who hold shares of the same class, shall be treated equally by the company. Provisions to the contrary in the memorandum or the articles or the decisions of the general meeting shall be void.

Rights of  
holders of  
special classes  
of shares.

**70.**-(1) If, in the case of a company the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorizing the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per cent of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the Court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the Court.

(2) An application under this section must be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the



application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholder of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the Court on any such application shall be final.

(5) The company shall within fifteen days after the making of an order by the Court on any such application forward a copy of the order to the registrar of companies, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be liable to a default fine.

(6) The expression "variation" in this section includes abrogation and the expression "varied" shall be construed accordingly.

***Transfer of Shares and Debentures, Evidence of Title, etc.***

Nature of shares. **71.** The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.

Numbering of shares. **72.** Each share in a company having a share capital shall be distinguished by its appropriate number:

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

Transfer not to be registered except on production of instrument of transfer. **73.** Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company:

Providing that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law:

11 of 99(I) of 2009 **74.** A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

Transfer by personal representative . **75.** On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

Registration of transfer at request of transferor. **76.**-(1) If a company refuses to register a transfer of any shares or debentures, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

Notice of refusal to register transfer.

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

Certification  
of transfers.

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

(2) Where any person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.

(3) For the purposes of this section-

(a) an instrument of transfer shall be deemed to be certificated if it bears the words "certificate lodged" or words to the like effect;

(b) the certification of an instrument of transfer shall be deemed to be made by a company if-

(i) the person issuing the instrument is a person authorized to issue certificated instruments of transfer on the company's behalf; and

(ii) the certification is signed by a person authorized to certificate transfers on the company's behalf or by any officer or servant either of the company or of a body corporate so authorized;

(c) a certification shall be deemed to be signed by any person if-

(i) it purports to be authenticated by his signature or initials, whether handwritten or not; and

(ii) it is not shown that the signature or initials was or were placed there neither by himself nor by any person authorized to use the signature or initials for the purpose of certifying transfers on the company's behalf.

Duties of  
company with  
respect to  
issue of  
certificates.

**78.-**(1) Every company shall, within two months after the allotment of any of its shares, debentures or debenture stock and within two months after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

The expression "transfer" for the purposes of this subsection means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

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

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

**79.** A certificate, under the common seal of the company, specifying any shares

## The Office of the Law Commissioner

Certificate to be evidence of title. held by any member, shall be *prima facie* evidence of the title of the member to the shares.

Evidence of grant of probate. **80.** The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant.

Issue and effect of share warrants to bearer. **81.**-(1) A company limited by shares, if so authorized by its articles, may, with respect to any fully paid-up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares included in the warrant.

(2) Such a warrant as aforesaid is in this Law termed a "share warrant."

(3) A share warrant shall entitle the bearer thereof to the shares therein specified, and the shares may be transferred by delivery of the warrant.

Penalty for personation of shareholder. **82.** If any person falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Law, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner, he shall be guilty of an offence, and shall on conviction thereof be liable to imprisonment not exceeding five years.

### *Special Provisions as to Debentures*

Register of debenture holders. **83.** Every company shall keep at its registered office a register of holders of debentures of the company:

Provided that a company may keep such register at any other of its offices at which the work of making it up is done or, if the company arranges with some other person for the making up of the register on its behalf at the office of that other person at which the work is done, but in every such case the company shall send a notice to the registrar of companies of the place where the register is kept and of any change in that place.

Rights of inspection of register of debenture holders and to copies of register and trust deed. **84.**-(1) Every register of holders of debentures of a company shall, except when duly closed (but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day shall be allowed for inspection), be open to the inspection of the registered holder of any such debentures or any holder of shares in the company without fee, and of any other person on payment of a fee of 0,0854 euros or such less sum as may be prescribed by the company.

(2) Any such registered holder of debentures or holder of shares as aforesaid or any other person may require a copy of the register of the holders of debentures of the company or any part thereof on payment of 0,0427 euros for every hundred words required to be copied.

(3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of 0,0854 euros or such less sum as may be prescribed by the company, or where the trust deed has not been printed, on payment of 0,0427 euros for every hundred words required to be copied.

4 of 166 of 1987. (4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default shall be liable to a fine not exceeding forty-two euros, and further shall be liable to a default fine of forty-two euros.

4 of 166 of

1987.

(5) Where a company is in default as aforesaid, the Court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

(6) For the purposes of this section, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole thirty days in any year, as may be therein specified.

Liability of trustees for debenture holders.

**85.**-(1) Subject to the following provisions of this section, any provision contained in a trust deed for securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying him against liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

(2) Subsection (1) shall not invalidate-

(a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(b) any provision enabling such a release to be given-

(i) on the agreement thereto of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and

(ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.

(3) Subsection (1) shall not operate-

(a) to invalidate any provision in force at the commencement of this Law so long as any person then entitled to the benefit of that provision or afterwards given the benefit thereof under subsection (4) remains a trustee of the deed in question; or

(b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.

(4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by subsection (3), the benefit of that provision may be given either-

(a) to all trustees of the deed, present and future; or

(b) to any named trustees or proposed trustees thereof, by a resolution passed by a majority of not less than three-fourths in value of the debenture holders present in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose in accordance with the provisions of the deed or, if the deed makes no provision for summoning meetings, a meeting summoned for the purpose in any manner approved by the Court.

Perpetual debentures.

**86.** A condition contained in any debentures or in any deed for securing any debentures, shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

Power to reissue redeemed debentures in certain cases.

**87.**-(1) Where a company has redeemed any debentures previously issued, then:

(a) unless any provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company; or

(b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) On a re-issue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

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

Specific performance of contracts to take up debentures.

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

Payment of certain debts out of assets subject to floating charge in priority to claims under the charge.

**89.**-(1) Where either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) In the application of the said provisions, section 300 shall be construed as if the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding-up order or resolution were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of the appointment of the receiver or possession being taken as aforesaid.

(3) The periods of time mentioned in the said provisions of Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(4) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

**PART III.  
CHARGES AND MORTGAGES**

***Registration of Charges and recording of Mortgages***

Registration of charges created by companies registered in the Republic. 12 (a) of 99(I) of 2009.

**90.-** (1) Subject to the provisions of this Part every charge as well as every amendment, assignment or other change to it created after the fixed date by a company registered in the Republic and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge together with the instrument, if any, duly stamped by which the charge is created or evidenced, are delivered to or received by the registrar of companies for registration in manner required by this Law within twenty one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under this section the money secured thereby shall immediately become payable.

(2) This section applies to the following charges:-

- (a) a charge for the purpose of securing any issue of debentures;
- (b) a charge on uncalled share capital of the company;
- (c) a charge on book debts of the company;
- (d) a floating charge on the undertaking or property of the company;
- (e) a charge on calls made but not paid;
- (f) a charge on a ship or any share in a ship;
- (g) a charge on goodwill, on a patent or a licence under a patent, on a trade mark or on a copyright or a license under a copyright;
- (h) a charge on any other movable property created or evidenced by an instrument, where the company retains possession of such property;
- (i) a charge on immovable property, wherever situate, or any interest therein;

12 (b) of 99(I) of 2009.

Provided that, the cases, to which this section shall not apply, shall include cases of-

- (a) pledge of shares in companies and all the rights emanating from it,
- (b) agreements for the provision of financial collaterals within the meaning of the Financial Collateral Arrangements Law, as may be amended and apply from time to time.

43(I) of 2004.

(3) In the case of a charge created out of the Republic comprising property situate outside the Republic, the delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty- one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in the Republic shall be substituted for twenty one days after the date of the creation of the charge as the time within which the particulars and instrument or copy are to be delivered to the registrar.

(4) Where a charge is created in the Republic but comprises property outside the Republic, the instrument creating or purporting to create the charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(5) Where a negotiable instrument has been given to secure the payment of any book debts of a company the deposit of the instrument for the purpose of securing an advance to the company shall not, for the purposes of this section, be treated as a charge on those book debts.

(6) The holding of debentures entitling the holder to a charge on immovable property shall not for the purposes of this section be deemed to be an interest in immovable property.

(7) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall, for the purposes of this section, be sufficient if there are delivered to or received by the registrar, within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars:-

(a) the total amount secured by the whole series; and

(b) the dates of the resolutions authorizing the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and

(c) a general description of the property charged; and

(d) the names of the trustees, if any, for the debenture holders,

together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series:

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

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

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

(9) In this Part-

(a) the expression "charge" does not include any mortgage of immovable property effected under any Law relating to the registration of mortgages of immovable property in force for the time being and any cover pool as from the coming into force and in accordance with the provisions of the Covered Bonds Law, as amended or substituted for the time being;

(b) the expression "the fixed date" means in relation to the charges specified in paragraphs (h) and (i) of subsection (2), the 1st day of July, 1922, and in relation to the charges specified in paragraphs (a) to (g), both inclusive, of the said subsection, the date of the commencement of this Law.

2 of 53 (I) of  
2011.  
130 (I) of  
2010.

Duty of  
company with  
regard to

**91.-** (1) It shall be the duty of a company to send to the registrar of companies for registration the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under section 90, but registration of

charges and mortgages created by company.

any such charge may be effected on the application of any person interested therein.

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

(3) It shall be the duty of a company to send to the registrar of companies within twenty one days after the date of every mortgage effected by the company on its immovable property under any Law relating to the registration of mortgages of immovable property in force for the time being, particulars thereof for recording, as well as particulars of any cancellation thereof in whole or in part, within twenty one days after the date of such cancellation.

(4) If any company makes default-

(a) in sending to the registrar for registration the particulars of any charge created by the company or of the issues of debentures of a series requiring registration as aforesaid, unless the registration has been effected on the application of some other person; or

(b) in sending to the registrar for recording the particulars of any mortgage effected or cancelled under subsection (3),

4 of 166 of 1987.

then the company and every officer of the company who is in default shall be liable to a default fine of four hundred twenty-seven euros.

Duty of company to register charges existing on property acquired.

**92.-** (1) Where a company registered in the Republic acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the registrar of companies for registration in manner required by this Law within twenty-one days after the date on which the acquisition is completed:

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

4 of 166 of 1987.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine of four hundred twenty-seven euros.

Register of charges to be kept by registrar of companies.

**93.-** (1) The registrar of companies shall keep, with respect to each company, a register and a record in the prescribed form of all the charges requiring registration and of all the mortgages requiring recording respectively, under this Part, and shall, on payment of such fee as may be specified by regulations made by the Council Ministers, enter in the register and record with respect to such charges and mortgages the following particulars:-

(a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in subsection (7) of section 90;

(b) in the case of any mortgage-

(i) the date and description of the instrument creating or evidencing the mortgage; and

(ii) the number and date on the certificate of mortgage; and



The Office of the Law Commissioner

- (iii) the amount secured by the mortgage; and
  - (iv) short particulars of the property mortgaged; and
  - (v) the persons entitled to the mortgage;
- (c) in the case of any other charge-
- (i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property; and
  - (ii) the amount secured by the charge; and
  - (iii) short particulars of the property charged; and
  - (iv) the persons entitled to the charge.

(2) The registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

(3) The register and record kept in pursuance of this section shall be open to inspection by any person on payment of such fee, as may be specified by regulations made by the Council of Ministers.

5 of 76 of  
1977.

Endorsement  
of certificate  
of registration  
on  
debentures.

**94.**-(1) The company shall cause a copy of every certificate of registration given under section 93 to be endorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the charge so registered:

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

(2) If any person knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be liable to a fine not exceeding eight hundred fifty-four euros.

4 of 166 of  
1987.

Entries of  
satisfaction  
and release of  
property from  
charge.

**95.** The registrar of companies, on evidence being given to his satisfaction with respect to any registered charge-

(a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or

(b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,

may enter on the register a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, and where he enters a memorandum of satisfaction in whole he shall, if required, furnish the company with a copy thereof.

Rectification  
of register of  
charges or  
record of  
mortgages.

**96.**- The Court, on being satisfied that the omission to register a charge or to record a mortgage within the time required by this Law or that the omission or misstatement of any particular with respect to any such charge or mortgage or in a memorandum of satisfaction or cancellation of mortgage, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the

position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the Court just and expedient, order that the time for registration or recording shall be extended, or, as the case may be, that the omission or mis-statement shall be rectified.

Registration of enforcement of security.

**97.-** (1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give notice of the fact to the registrar of companies, and the registrar shall, on payment of such fee as may be specified by regulations made by the Council of Ministers, enter the fact in the register of charges.

(2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the registrar of companies notice to that effect, and the registrar shall enter the notice in the register of charges.

4 of 166 of 1987.

(3) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding two hundred thirteen euros for every day during which the default continues.

***Provisions as to Company's Register of Charges and Book of Mortgages and as to Copies of Instruments creating Charges and Mortgages***

Copies of instruments creating charges and mortgages to be kept by company.

**98.** Every company shall cause a copy of every instrument creating any charge requiring registration or any mortgage requiring recording under this Part to be kept at the registered office of the company:

Provided that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

Company's register of charges and book of mortgages.

**99.-** (1) Every company shall keep at the registered office of the company a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge, and, except in the case of securities to bearer, the names of the persons entitled thereto and a book wherein to record particulars of every mortgage on the company's immovable property effected under any Law relating to the registration of mortgages of immovable property in force for the time being.

4 of 166 of 1987.

(2) If any officer of the company knowingly and wilfully authorizes or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding four hundred twenty-seven euros.

Right to inspect.

**100.-** (1) The copies or instruments creating any charge requiring registration and the particulars of mortgages requiring recording under this Part with the registrar of companies, and the register of charges and book of mortgages kept in pursuance of section 99, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection) to the inspection of any creditor or member of the company without fee, and the register of charges and book of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding 0,0854 euros for each inspection, as the company may prescribe.

4 of 166 of 1987.

(2) If inspection of the said copies or register or book is refused, every officer of the company who is in default shall be liable to a fine not exceeding forty-two euros and a further fine not exceeding forty-two euros for every day during which the refusal continues.

(3) If any such refusal occurs in relation to a company registered in the Republic, the Court may by order compel an immediate inspection of the copies, register or book.

***Application of Part III to Companies incorporated outside the Republic***

Application of Part III to charges and mortgages created, etc., by company incorporated outside the Republic.  
13 (a) of 99(I) of 2009  
13(b) of 99 (I) of 2009.

**101.** The provisions of this Part shall extend to charges and mortgages on property in the Republic which are created or effected, and to charges on property in the Republic which is acquired, by a company (whether a company within the meaning of this Law or not) incorporated outside the Republic which has an established place of business in the Republic and has been registered as an overseas company pursuant to the provisions of section 347.

**PART IV.  
MANAGEMENT AND ADMINISTRATION**

3 of 151(I) 2000.

***Registered Office, Publication of Name and Recording of Data in Commercial Documents***

Registered office of company.

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

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

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

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

Publication of name by recording of data in commercial documents.  
4(a) of 151(I) of 2000.

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

(a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;

(b) shall have its name engraven in legible characters on its seal;

4(b) of 151(I) of 2000.

(c) shall have mentioned in legible characters in all business letters of the company and in all notices and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company;

4(c) of 151(I) of 2000.

(i) the name of the company;

(ii) the number of registration of the company;

(iii) whether it concerns a private or a public company;

(iv) the registered office of the company;

The Office of the Law Commissioner

(v) if in the documents mention is made of the capital of the company, the reference must mention the allotted and paid capital;

(vi) if there is good reason, the stage of the liquidation in which the company finds itself.

3(a) of 71(I) of 2007. (1A) In case a company possesses a website, the said website, shall include items (i) to (vi) of paragraph (c) of subsection (1); and

4(d) (i) of 151(I) of 2000 (2) If a company does not publish its name and does not record in the documents mentioned in paragraph (c) of subsection (1) the data enumerated in subparagraphs (i) – (vi) of paragraph (c) of subsection (1) in manner directed by this Law, the company and every officer thereof who is in default shall be liable to a fine not exceeding two hundred thirteen euros, and if a company does not keep its name painted or affixed in manner so directed, the company and every officer of the company who is in default shall be liable to a default fine.

4 of 166 of 1987.

4 of 166 of 1987. (3) If a company fails to comply with paragraph (b) or paragraph (c) of subsection (1), the company shall be liable to a fine not exceeding four hundred twenty-seven euros.

(4) If an officer of a company or any person on its behalf:

(a) uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraved as aforesaid; or

(b) issues or authorizes the issue of any business letter of the company or any notice or other official publication of the company, or signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, or order for money or goods wherein its name is not mentioned in manner aforesaid; or

(c) issues or authorizes the issue of any bill of parcels, invoice, receipt or letter of credit of the company wherein its name is not mentioned in manner aforesaid;

4 of 166 of 1987. he shall be liable to a fine not exceeding four hundred twenty-seven euros, and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount thereof unless it is duly paid by the company.

3(b) of 71(I) of 2007. (5) In case the website of the company does not include items (i) to (vi) of paragraph (c) of subsection (1), the said company and every officer who is responsible for the omission shall be liable to a fine not exceeding eight hundred fifty - four euros.

***Restrictions on Commencement of Business***

Restrictions on commencement of business. **104.-** (1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless-

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and

(b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and

(c) there has been delivered to the registrar of companies for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that the

aforesaid conditions have been complied with.

(2) Where a company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless:

(a) there has been delivered to the registrar of companies for registration a statement in lieu of prospectus; and

(b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and

(c) there has been delivered to the registrar of companies for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that paragraph (b) of this subsection has been complied with.

24(a) of 70(I) of 2003.

(3) (a) A company shall not be entitled to commence business activities, nor undertake loans or related obligations if it has not first been supplied with a certificate from the Registrar which confirms that the nominal value of its subscribed share capital is equal to at least the minimum amount provided for in section 4A.

(b) The Registrar shall issue the above certificate, if the company delivers to him-

(i) a statutory declaration from which the following is evident-

(a) its nominal capital which cannot be lower than that provided in section 4A;

(b) the amount of the share capital which has been paid up;

(c) a budget of the initial expenses of the company, together with an account of the amount already paid and of the obligations undertaken;

(d) a budget of the expenses for services of registration advisors, together with an account of the amount already paid and of the relevant obligations undertaken,

(ii) confirmation by a Bank, which has its registered office or its place of business in the Republic, as to the payment of an amount equal to at least the amount provided for in section 4A into an account which the company holds with such Bank.

24(b) of 70(I) of 2003.

(4) The registrar of companies shall, on the delivery to him of the said statutory declarations, and, in the case of a company which is required by this section to deliver a statement in lieu of prospectus, of such a statement, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

24(c) of 70(I) of 2003.

(5) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(6) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding four hundred twenty seven euros for every day during which the contravention continues.

4 of 166 of 1987.

(7) Nothing in this section shall apply to a private company.

#### ***Register of Members***

Register of members.

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

The Office of the Law Commissioner

(a) the names and addresses of the members, and in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(b) the date at which each person was entered in the register as a member;

(c) the date at which any person ceased to be a member:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (a) of this subsection.

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

Provided that-

(a) if the work of making it up is done at another office of the company, it may be kept at that other office; and

(b) if the company arranges with some other person for the making up of the register to be undertaken on behalf of the company by that other person, it may be kept at the office of that other person at which the work is done, so, however, that it shall not be kept, in the case of a company registered in the Republic, at a place outside the Republic.

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

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

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

Index of members.

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

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

(3) The index shall be at all times kept at the same place as the register of members.

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

Provisions as to entries in register in relation to share warrants.

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

(a) the fact of the issue of the warrant;

(b) a statement of the shares included in the warrant, distinguishing each share by its number so long as the share has a number; and

(c) the date of the issue of the warrant.

The Office of the Law Commissioner

(2) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.

(3) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect of the shares therein specified without the warrant being surrendered and cancelled.

(4) Until the warrant is surrendered, the particulars specified in subsection (1) shall not be deemed to be the particulars required by this Law to be entered in the register of members, and, on the surrender, the date of the surrender must be entered.

(5) Subject to the provisions of this Law, the bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Law, either to the full extent or for any purposes defined in the articles.

Inspection of register and index.

**108.** - (1) Except when the register of members is closed under the provisions of this Law, the register, and index of the names of the members of a company shall, during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge and of any other person on payment of 0,3416 euros, or such less sum as the company may prescribe, for each inspection.

6(a) of 76 of 1977.

6(b) of 76 of 1977.

(2) Any member or other person may require a copy of the register, or of any part thereof, on payment of 0.0854 euros, or such less sum as the company may prescribe, for every hundred words or part thereof required to be copied.

The company shall cause any copy so required by any person to be sent to that person within a period of ten days commencing on the day next after the day on which the requirement is received by the company.

4 of 166 of 1987.

4 of 166 of 1987.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding forty-two euros and further to a default fine of forty-two euros.

(4) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the register and index or direct that the copies required shall be sent to the persons requiring them.

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

**109.** Where, by virtue of proviso (b) to subsection (2) of section 105, the register of members is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with subsection (3) of that section, subsection (3) of section 106, or section 108 or with any requirements of this Law as to the production of the register, that other person shall be liable to the same penalties as if he were an officer of the company who was in default, and the power of the Court under subsection (4) of section 108 shall extend to the making of orders against that other person and his officers and servants.

Power to close register.

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

Power of Court to rectify register.

**111.** - (1) If-

(a) the name of any person is, without sufficient cause, entered in or omitted

from the register of members of a company; or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

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

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

(4) In the case of a company required by this Law to send a list of its members to the registrar of companies, the Court, when making an order for rectification of the register shall by its order direct notice of the rectification to be given to the registrar.

Trusts not to be entered on register in the Republic.

**112.** No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies registered in the Republic.

Register to be evidence.

**113.** The register of members shall be *prima facie* evidence of any matters by this Law directed or authorized to be inserted therein.

Notification of transfer of shares.  
2 of 15(I) of 1995.

**113A.-** (1) Any transfer of shares of a private company with a share capital shall be notified to the Registrar of Companies in the form determined by the Registrar, within fourteen days from the registration of this transfer in its register of members.

(2) The said notification shall include the following:

- (a) The names and addresses of the old and new members;
- (b) the number of shares held by the members existing at the date of the notification; and
- (c) details of the shares which have been transferred from-
  - (i) persons which continue to be members;
  - and
  - (ii) persons which have ceased to be members,

meaning the number of shares and the date of the registration of the transfer.

18 of 99(I) of 2009.

### ***Overseas Register***

Power of a company to keep overseas register.  
14 of 99(I) of 2009.

**114.-** (1) A company with a share capital, the objects of which include the transaction of business in any place outside the Republic or the shares of which are negotiated in a foreign market, and/or the members of which reside in any place outside the Republic, may cause to be kept in such place, in which it transacts business or in which the relevant market is situated or in which its members reside, a branch register of members (in this Law called an "overseas register").

(2) The company shall give to the registrar of companies notice, of the situation of the office where any overseas register is kept and of any change in its situation and, if it is discontinued of its discontinuance, and any such notice shall be given within fourteen (14) days from the date of the commencement of the operation of



the office or of the change or of the discontinuance, as the case may be.

99 (I) of 2009. (3) References to a colonial register or to a dominion register occurring in any articles, registered before the commencement of application of the Companies (Amendment) (No.3) Law, 2009, shall be construed as references to an overseas register.

Overseas register. 14 of 99(I) of 2009. **115.-** (1) An overseas register shall be deemed to be part of the company's register of members, which in this section is called 'the principal register'.

(2) The overseas register shall be kept in the same manner, in which the principal register should be kept under the Law, with the exception that-

(a) the relevant advertisement, before the closure of the register, shall be inserted in a newspaper circulating in the district where the overseas register is kept,

(b) any competent court at the location abroad where the register is kept, may exercise the same power to rectify the register, as it is exercised by the court pursuant to this Law, and

(c) the offences of refusing inspection or providing copies of the overseas register and of authorizing or permitting such refusal may be prosecuted summarily before any court at that location, abroad.

(3) Each company which keeps an overseas register-

(a) shall send, to its registered office, a copy of each entry in the overseas register, immediately after the making of the entry; and

(b) shall ensure that a copy of its overseas register is kept in the place where the principal register of the company is kept, and that it is from time to time duly updated and every such copy, for all purposes of this Law, shall be deemed to be part of the principal register.

(4) Subject to the provisions of this section in relation to the copy of the register, the shares registered in the overseas register shall be distinguished from the shares registered in the principal register, and no action in relation to any shares registered in an overseas register shall during the continuation of that registration be registered in any other register.

(5) A company may terminate the keeping of an overseas register, and immediately all entries in such register shall be transferred to another overseas register which is kept by the company at the same place abroad or in the principal register.

(6) Subject to the provisions of this Law, any company may include such provisions in its articles as it may think fit in relation to the keeping of overseas registers.

(7) If a company fails to comply with the provisions of subsection (3), the company as well as every one of its officers shall commit an offence and shall on conviction be liable to a default fine and, where by virtue of proviso (b) to subsection (2) of section 105, the principal register is kept at the office of a person other than the company and by reason of any default of his the company fails to comply with paragraph (b) of subsection (3) such person shall be liable to the same penalty as if he were an officer of the company who was in default.

Transfer of shares registered in the overseas register. 14 of 99(I) of 2009. **116.** The transfer of a share, registered in an overseas register, shall be considered as a transfer of the company's property situate out of the Republic.

Branch registers kept in the Republic. 14 of 99(I) of 2009.

**117.** If, pursuant to the law applicable in any place outside the Republic, companies incorporated under that law have the power to keep branch registers of their members which reside in the Republic, the Council of Ministers may, with an order published in the Official Gazette of the Republic, order that subsection (2) of section 105, excluding its proviso, and sections 108 and 111, shall, subject to any alterations and adjustments defined in the said order, apply to and in relation to such branch registers which are kept in the Republic, as they apply to and in relation to registers of members within the meaning of this Law.

Keeping of a register of members by certain public companies. 15 of 99(I) of 2009.

**117A.** (1) In case of any public company the shares or other securities or transferrable securities of which are listed in a foreign market, such company shall be considered as complying with the provisions of this Law in relation to the keeping of a register of members, as long as the relevant rules of the relevant market are complied with.

Cap. 149. 22(I) of 1995.

(2) In the cases referred to in subsection (1) above, the provisions of the Contract Law for the pledge of share certificates shall not apply, but, in relation to the pledge of such shares, the rules of the relevant market will apply.

### ***Annual Return***

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

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

Sixth Schedule.

Provided that:-

(a) a company need not make a return under this subsection either in the year of its incorporation or, if it is not required by section 125 to hold an annual general meeting during the following year, in that year;

(b) where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the list referred to in paragraph 5 of Part I on the said Sixth Schedule must state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares required by that paragraph; and

Sixth Schedule Part I.

(c) the return may, in any year, if the return for either of the two immediately preceding years has given, as at the date of that return, the full particulars required by the said paragraph 5, given only such of the particulars required by that paragraph as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date or to changes as compared with that date in the amount of stock held by a member.

18 of 99(I) of 2009.

(2) In the case of a company keeping an overseas register-

(a) references in proviso (c) to subsection (1) to the particulars required by the said paragraph 5 shall be taken as not including any such particulars contained in the overseas 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

16 of 99(I) of 2009.

(b) where an annual return is made between the date when any entries are made in the overseas 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

## The Office of the Law Commissioner

return as may be appropriate having regard to the particulars included in that return with respect to the company's register of members.

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

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

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

**119.-** (1) Every company not having a share capital shall, once at least in every calendar year, make a return stating-

(a) the address of the registered office of the company;

(b) in a case in which the register of members is, under the provisions of this Law, kept elsewhere than at that office, the address of the place where it is kept;

(c) in a case in which any register of holders of debentures of the company is, under the provisions of this Law, kept elsewhere than at the registered office of the company, the address of the place where it is kept;

(d) all such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is secretary of the company as are by this Law required to be contained with respect to directors and the secretary respectively in the register of directors and secretaries of a company:

Provided that a company need not make a return under this subsection either in the year of its incorporation or, if it is not required by section 125 to hold an annual general meeting during the following year, in that year.

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all charges and mortgages which are required to be registered or recorded with the registrar of companies under this Law or which would have been required so to be registered if created after the 1st day of July, 1922.

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

(4) For the purposes of this section the expressions "officer" and "director" shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

Time for completion of annual return.

**120.-** (1) The annual return must be completed within forty-two days after the annual general meeting for the year, whether or not that meeting is the first or only ordinary general meeting, or the first or only general meeting, of the company in the year, and the company must forthwith forward to the registrar of companies a copy signed both by a director and by the secretary of the company.

6(a) of 70(I) of 2007.

(2) If a company fails to comply with this section, the company and every officer of the company who is in default shall commit a criminal offence, and, on conviction thereof shall be liable to a default fine.

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

6(b) of 70(I) of 2007.

(3) In addition and notwithstanding the provisions of subsection (2), if the company omits to comply with this section, the registrar of companies may impose on it an administrative fine not exceeding eight thousand, five hundred and forty-three euros.

Documents to be annexed to

**121.-** (1) (a) Subject to the provisions of this Law, and without prejudice to paragraph (b), there shall be annexed to the annual return copies of all documents

## The Office of the Law Commissioner

annual return. presented to the general meeting of the company in accordance with subsection (1)  
3(a) of 167(I) of section 152.  
of 2003.

(b) The obligation to annex in accordance with paragraph (a), shall not apply-  
(i) to any optional statements presented by the company; and

(ii) to the directors' report,

but only if a copy thereof is available to the public.

3(b) of 167(I) (2) *Deleted.*  
of 2003.

7(a) of 70(I) (3) If a company fails to comply with this section, the company and every officer  
of 2007. of the company who is in default shall commit a criminal offence and, on  
conviction thereof shall be liable to a default fine.  
For the purposes of this subsection, the expression "officer" shall include any  
person in accordance with whose directions or instructions the directors of the  
company are accustomed to act.

7(b) of 70(I) (3A) In addition and notwithstanding the provisions of subsection (3), if the  
of 2007. company omits to comply with this section, the registrar of companies may  
impose on it an administrative fine not exceeding eight thousand, five hundred  
and forty three euros.(€8,543)

Fifth Table. (4) This section shall not apply to an insurance company that has complied with the  
61 of 27 of provisions of subsection (4) of section 26 of the Insurance Companies Law of 1967.  
1967.

Certificates to 122. A private company shall send with the annual return required by section 118 a  
be sent by certificate signed both by a director and by the secretary of the company that the  
private company has not, since the date of the last return, or, in the case of a first return,  
company with since the date of the incorporation of the company, issued any invitation to the public  
annual return. to subscribe for any shares or debentures of the company, and, where the annual  
return discloses the fact that the number of members of the company exceeds 50,  
also a certificate so signed that the excess consists wholly of persons who under  
paragraph (b) of subsection (1) of section 29 are not to be included in reckoning the  
number of fifty.

4 of 167 (I) of 123. *Repealed.*  
2003.

### ***Meetings and Proceedings***

Statutory 124.- (1) Every company limited by shares and every company limited by guarantee  
meeting and and having a share capital shall, within a period of not less than one month nor more  
statutory than three months from the date at which the company is entitled to commence  
report. business, hold a general meeting of the members of the company, which shall be  
called the "statutory meeting".

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

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

(3) The statutory report shall be certified by not less than two directors of the  
company and shall state-

(a) the total number of shares allotted, distinguishing shares allotted as fully paid or  
partly paid up otherwise than in cash, and stating in the case of shares partly paid  
up the extent to which they are so paid up, and in either case the consideration

for which they have been allotted;

- (b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;
- (c) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;
- (d) the names, addresses, and descriptions of the directors, auditors, if any, managers, if any, and secretary of the company; and
- (e) the particulars of any contract the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be delivered to the registrar of companies for registration forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) In the event of any default in complying with the provisions of this section, every director of the company who is knowingly and wilfully guilty of the default, or, in the case of default by the company, every officer of the company who is in default shall be liable to a fine not exceeding four hundred twenty-seven euros.

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

4 of 166 of  
1987.

Annual  
general  
meeting.

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

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

(2) If default is made in holding a meeting of the company in accordance with subsection (1), the Council of Ministers may, on the application of any member of the company, direct the calling of a general meeting of the company, and give such ancillary or consequential directions as the Council of Ministers thinks expedient, including the directions modifying or supplementing, in relation to the calling, holding

and conducting of the meeting, the operation of the company's articles; and it is hereby declared that the directions that may be given under this subsection include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(3) A general meeting held in pursuance of subsection (2) shall, subject to any directions of the Council of Ministers, be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated.

(4) Where a company resolves that a meeting shall be so treated, a copy of the resolutions shall, within fifteen days after the passing thereof, be forwarded to the registrar of companies and recorded by him.

(5) If default is made in holding a meeting of the company in accordance with subsection (1), or in complying with any of the directions of the Council of Ministers under subsection (2), the company and every officer of the company who is in default shall be liable to a fine not exceeding four hundred twenty seven euros, and if default is made in complying with subsection (4), the company and every officer of the company who is in default shall be liable to a default fine of forty-two euros.

4 of 166 of  
1987.  
4 of 166 of  
1987.

Convening of  
extraordinary  
general  
meeting on  
requisition.

**126.-** (1) The directors of a company, notwithstanding anything in its articles, shall, upon the requisition of members of the company holding at the date of the deposit of the requisition not less than one tenth of such of the paid up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company or, in the case of a company not having a share capital, members of the company representing not less than one tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(1A) Notwithstanding the provisions of subsection (1), or anything contained in its articles, the directors of a listed company in a regulated market, shall, on the requisition of members of the company who on the date of the deposit of the requisition hold not less than one twentieth of the paid up capital of the company which at the date of the deposit confers voting rights at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

3 of 60(I) of  
2010.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form each signed by one or more requisitionists.

(3) If the directors do not, within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.

(4) A meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(6) For the purposes of this section the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by

section 135.

Equal treatment of shareholders. 4 of 60(I) of 2010.

**126A.** A company listed in a regulated market shall ensure equal treatment for all members who are in the same position with regard to the exercise of voting rights and participation in a general meeting.

Length of notice for calling meetings.

**127.-** (1) Any provision of a company's articles shall be void in so far as it provides for the calling of a meeting of the company, other than an adjourned meeting, by a shorter notice than-

5 (1) of 60(I) of 2010.

(a) in the case of the annual general meeting, twenty-one days' notice in writing;

(b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, fourteen days' notice in writing; and

5(2) of 60(I) of 2010.

(c) without prejudice to subsection (4) of section 35 of the Public Takeover Bids Laws and of the corresponding provisions of other member states that were enacted in order to comply with articles 9(4) and 11(4) of Directive 2004/25/EC in the case of a company listed in a regulated market:

5 (3) of 60(I) of 2010.  
41 (I) of 2007  
47 (I) of 2009.

(i) in the case of an annual general meeting, twenty-one days' of written notice; and

(ii) in the case of a general meeting (other than an annual general meeting or a meeting for the approval of a special resolution) fourteen days of written notice where-

(a) the company listed in a regulated market offers technical facilitation to its members in order to vote through electronic means, which is accessible to all members holding shares carrying voting rights at general meetings; and

(b) a special resolution, that shortens the notice period to fourteen days, has been approved in the immediately preceding annual general meeting, or at a general meeting that was conducted after that meeting.

(2) Save in so far as the articles of a company make other provision in that behalf, not being a provision avoided by subsection (1), a meeting of the company, other than an adjourned meeting, may be called:

(a) in the case of the annual general meeting, by twenty-one days' notice in writing; and

(b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, by fourteen days' notice in writing.

(c) Without prejudice to subsection (4) of section 35 of the Public Takeover Bids Laws in the case of a company listed in a regulated market:

5 (4) of 60(I) of 2010.

(i) in the case of an annual general meeting, twenty-one days of written notice; and

(ii) in the case of a general meeting (other than an annual general meeting or a meeting for the approval of a special resolution) fourteen days of written notice where:-

(a) the company listed in a regulated market offers technical facilitation to its members in order to vote through electronic means, which is accessible to all members holding shares carrying voting rights at general meetings; and

(b) a special resolution, that shortens the notice period to fourteen days, has been approved in the immediately preceding annual general

The Office of the Law Commissioner

meeting, or at a general meeting that was conducted after that meeting.

5 (5) of 60(I) of 2010.

(3) A meeting of a company other than a company listed in a regulated market shall, notwithstanding that it is called by shorter notice than that specified in subsection (2) 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.

Information prior to the general meeting.  
6 of 60(I) of 2010.

**127A.-** (1) Notwithstanding the provisions of section 10 or anything contained in its articles, the following provisions shall apply with regard to a company listed in a regulated market.

(2) A notice for the calling of a general meeting shall be issued, free of charge, in a manner ensuring fast access to it on a non-discriminatory basis, using such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the member states.

(3) The notice for the calling of the general meeting pursuant to paragraph (c) of subsection (1) and paragraph (c) of subsection (2) of section 133 shall indicate:

(a) when and where the general meeting is to take place and the proposed agenda for the general meeting;

(b) a clear and precise description of any procedures that shareholders must comply with in order to be able to participate and to vote in the meeting, including-

(i) the right of the member to add items on the agenda of the general meeting, to table draft resolutions pursuant to section 127B and to ask questions related to items on the agenda of the general meeting pursuant to section 128C and the deadlines by which those rights may be exercised;

(ii) the right of a member who is entitled to participate, to speak, ask questions and vote, to appoint a proxy pursuant to section 130, including a proxy who is not a member, through electronic means or otherwise or, where permitted, to appoint one or more proxies, each one in order for them to participate, speak, ask questions and vote in the member's place;

(iii) the right to ask questions and the obligation to answer are subject to the measures that may be taken by the Republic or are allowed to be taken by companies, in order to ensure the identification of shareholders, the good order of general meetings and their preparation and the protection of confidentiality and business interests of companies listed in a regulated market. Companies listed in a regulated market may provide one overall answer to questions having the same content. Companies listed in a regulated market shall be deemed to have given an answer if the relevant information is already available on the website of a company listed in a regulated market in a question and answer format;

(iv) the procedure for voting by proxy pursuant to section 130, including the forms to be used and the means by which the company listed in a regulated market is prepared to accept electronic notification of the appointment of the proxy;

(v) where applicable, the procedure that will be followed pursuant to sections



The Office of the Law Commissioner

128B and 132 for electronic voting or voting by correspondence, respectively ;

(c) the record date which will state that only those who are members on the record date shall have the right to participate and vote in the general meeting;

(d) where and how the full and complete text of the documents and draft resolutions referred to in paragraphs (c) and (d) of subsection (4) may be obtained; and

(e) the address of the website on which the information referred to in subsection (4) will be made available.

(4) A company listed in a regulated market shall make available to its members on its website, for a continuous period beginning not later than the twenty-first day before the day of the general meeting, including the day of the meeting, the following-

(a) the notice pursuant to subsection (2) of section 127A;

(b) the total number of shares and voting rights at the date of the notice;

(c) the documents to be submitted to the general meeting;

(d) copies of the draft resolutions or where no resolution is proposed to be adopted, comments from the directors for each item on the proposed agenda of the general meeting;

(e) copies of the forms to be used by a proxy to vote and copies of the forms to be used to vote by correspondence, unless these forms have been sent directly to each member.

(5) The company listed in a regulated market shall make available, on its website the draft resolutions tabled by members as soon as practicable after it has received same.

(6) Where the forms referred to in paragraph (e) of subsection (4) cannot, for technical reasons, be made available on the website of the company listed in a regulated market, the company listed in a regulated market shall indicate on its website that the forms can be obtained on paper, and the company listed in a regulated market shall be required to send the forms by post and free of charge to every member who so requests.

(7) Where the notice of the general meeting is issued later than the twenty-first day before the meeting pursuant to subparagraph (ii), of paragraph (c), of subsection (1) of section 127 or of subparagraph (ii), of paragraph (c), of subsection (2) of section 127 or of subsection (4) of section 35 of the Public Takeover Bids Laws, the period specified in subsection (4) shall be shortened accordingly.

**127B.-** (1) A member of a company listed in a regulated market, shall have the right through the use of electronic means or postal services, at the address designated by the listed company in a regulated market, to:

(a) put items on the agenda of the annual general meeting, provided that each such item is accompanied by reasons which justify its inclusion or a draft resolution to be adopted in the general meeting; and

(b) table draft resolutions as an item on the agenda of a general meeting,

provided that the member or members in question hold at least five per cent (5%) of the issued share capital representing at least five per cent (5%) of the total voting rights of all members who have a right to vote at the general meeting with which this application is related to.

(2) An application by a member to put items on the agenda or to table draft

Right to put items on the agenda of the general meeting and to table draft resolutions.

## The Office of the Law Commissioner

6 of 60(I) of 2010.	<p>resolutions pursuant to paragraph (a) of subsection (1) must be received by the company listed in a regulated market in paper or electronic form at least forty-two days prior to the meeting to which the application relates to.</p> <p>(3) Where the exercise of the right conferred by paragraph (a) of subsection (1), entails a modification of the agenda for the annual general meeting, in cases where the agenda has already been communicated to the members, and only in those circumstances, the company shall make available a revised agenda in the same manner as the previous agenda in advance of the applicable record date or, if no such record date applies, sufficiently in advance of the date of the annual general meeting so as to enable other members to appoint a proxy or, where applicable, to vote by correspondence.</p> <p>(4) In order to facilitate the member to take advantage of paragraph (a) of subsection (1), the company listed in a regulated market shall ensure that the date of its next annual general meeting is made available on its website:-</p> <p>(a) from the end of the previous financial year; or</p> <p>(b) not later than forty-five days prior to the annual general meeting, whichever is sooner.</p>
<p>General provisions as to meetings and votes.</p> <p>6(a) of 2(I) of 2000</p> <p>6(b) of 2(I) of 2000</p> <p>2(a) of 98(I) of 2012.</p>	<p><b>128.-</b> (1) Subject to the provisions of subsection (2) the following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf:-</p> <p>(a) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A, and for the purpose of this paragraph the expression "Table A" means that Table as for the time being in force:</p> <p>Provided that, notice for the calling of a meeting of a public company listed on the Cyprus Stock Exchange, may be done by an announcement by the company on its website and in that case by publication also in the daily press:</p> <p>Provided further that, for any further related explanation or information, the publication in the daily press may direct the shareholders of the company to the company itself or to its website;</p> <p>(b) two or more members holding not less than one tenth of the issued share capital, or, if the company has not a share capital, not less than five per cent in number of the members of the company may call a meeting;</p>
6(c) of 2(I) of 2000.	<p>(c) in the case of a private company with more than one members, and in the case of any other company three members, personally present shall be a quorum;</p> <p>(d) any member elected by the members present at a meeting may be chairman thereof;</p> <p>(e) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each seventeen euros of stock held by him, and in any other case every member shall have one vote.</p>
6(d) of 2(I) of 2000.	<p>(2) In the case of a private company with one and only member, the member shall exercise all the powers of the general meeting, pursuant to this Law, provided always that the decisions taken by the member in general meeting shall be minuted or made in writing.</p>
Requirements for participation	<p><b>128A.-</b> (1) The provisions of this section shall apply to a company listed in a regulated market.</p> <p>(2) A person shall be entered as a member in the relevant register of members</p>

and voting in the general meeting.  
7 of 60(I) of 2010.

(including the overseas register) at the latest by the record date so that it may be able to exercise its right to participate and vote at the general meeting and any alteration in the entries to the relevant register after the record date shall not be taken into consideration in the determination of any person to participate and vote at the meeting.

(3) The right of a member to participate in a general meeting and to vote with respect to its shares, shall not be subject to any requirement that his shares be deposited with, or transferred to, or registered in the name of another person before the general meeting.

(4) A member shall be free to sell or otherwise transfer shares in a company listed in a regulated market at any time during the period between the record date and the general meeting to which it applies, if the right to sell will not have been otherwise subject to such a restriction.

(5) Proof of qualification as a member may only be subject to such conditions as are necessary to ensure the identification of members and only to the extent that such conditions are proportionate to achieving that objective.

**128B.-** (1) A company listed in a regulated market may offer participation in the general meeting by electronic means, including-

Participation in the general meeting by electronic means.  
7 of 60(I) of 2010.

(a) mechanisms for casting votes, whether before or during the meeting, and the mechanisms adopted shall not oblige the member to be physically present at the meeting and shall not oblige the member to appoint a proxy who shall be physically present at the meeting,

(b) real-time transmission of the general meeting,

(c) real-time two-way communication enabling members to address the general meeting from a remote location.

(2)(a) The use of electronic means pursuant to subsection (1) may be subject only to such conditions and restrictions as are necessary to ensure the identity of those participating and the security of the electronic communication, and only to the extent that such conditions and restrictions are proportionate to achieving those objectives.

(b) The members shall be informed of any conditions and restrictions which shall be enforced by a company listed in a regulated market pursuant to paragraph (a).

(c) A company listed in a regulated market which provides electronic means for the participation of its members at a general meeting, shall ensure, so far as that is practically possible, that such means-

(i) ensure the safety of any electronic communication by the member;

(ii) minimise the risk of data alteration and unauthorised access;

(iii) provide verification of the origin of the electronic communication;

(iv) are remedied as soon as practically possible, in the event of any discontinuance or disconnection.

**128C.-** (1) Subject to any measures that a company listed in a regulated market may take to ensure the identity of the member, a member of a company listed in a regulated market shall have a right to ask questions related to items on the agenda of the general meeting and to receive answers to those questions by the company listed in a regulated market.

(2) There is no obligation to answer a question submitted pursuant to subsection (1) where-

Right to ask questions.

(a) the answer would improperly interfere with the preparation of the meeting or confidentiality, or with the business interests of the company listed in a regulated

- 7 of 60(I) of 2010. market;
- (b) the answer has already been given on the website of the company listed in a regulated market in a specially designed question and answer format; or
- (c) according to the judgment of the chairman of the meeting, it would be undesirable for the preservation of the good order of the meeting for the question to be answered.
- Power of Court to order meeting. **129.-** (1) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Law, the Court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient; and it is hereby declared that the directions that may be given under this subsection include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.
- (2) Any meeting called, held and conducted in accordance with an order under subsection (1) shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.
- Proxies. **130.-** (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.
- 8 (1)of 60(I) of 2010. (1A) (a) The provisions of this subsection shall apply to a company listed in a regulated market.
- (b) The appointed proxy may be either a natural or a legal person (whether a member or not) and shall act in accordance with the instructions issued by the appointing member.
- (c) The proxy shall be appointed by written notice to the company listed in a regulated market or by electronic means.
- (d) A member shall be permitted to:-
- (i) appoint a proxy by electronic means, at the address designated by the company listed in a regulated market;
- (ii) to have its notification of the appointment by electronic means accepted by the company listed in a regulated market;
- (iii) be offered at least one effective method of notification by electronic means, by the company listed in a regulated market.
- (e) The appointment of a proxy and the notification of the appointment of a proxy to the company listed in a regulated market and the issuance of instructions to a proxy to vote may only be subject to such formal conditions as are necessary to

ensure the identity of the member or of the proxy or the possibility of verifying the content of the relevant voting instructions, if any, and only to the extent that those conditions are proportionate to achieving those objectives.

4 of 166 of 1987. (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 four hundred twenty-seven euros.

(2A) Notwithstanding the provisions of subsection (2) or anything contained in its articles, in the case of a company listed in a regulated market-

8 (2) of 60(I) of 2010. (a) no limitation may be imposed on the rights of a member to appoint more than one proxy to be present and vote at a general meeting as regards shares held in different securities accounts; and

(b) subject to the provisions of paragraph (a), a member shall not be allowed to appoint more than one proxy to attend and vote at the same meeting, provided however that a member acting as an intermediary on behalf of a client shall not be prevented from appointing each one of his clients or any other third person indicated by the client as proxy.

(3) Any provision contained in the articles of a company listed in a regulated market 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 of 166 of 1987. (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 authorizes or permits their issue as aforesaid shall be liable to a fine not exceeding eight hundred fifty four euros:

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.

8(3) of 60(I) of 2010. (4A) Any provision contained in the articles of a company listed in a regulated market, apart from the condition that the person to be appointed as proxy holder possess legal capacity, shall be void to the degree that it affects the eligibility of a person to be appointed as a proxy.

(5) This section shall apply to meetings of any class of members of a company as it applies to general meetings of the company.

Right to demand a poll. **131.-** (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:

The Office of the Law Commissioner

- (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 subsection (1) a demand by a person as proxy for a member shall be the same as a demand by the member.

Removal of certain impediments to the effective exercise of voting rights. 9 of 60(I) of 2010.

**132.-** (1) On a poll taken at the general meeting of a company listed in a regulated market or a meeting of any class of members of a company listed in a regulated market, a member present either in person or through a proxy and who is 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.

(2) A company listed in a regulated market, may include, with regard to a vote cast pursuant to subsection (1), a vote that was cast in advance by correspondence, subject only to such conditions and restrictions which are necessary to ensure the identity of the person who is voting and to ensure proportionately the achievement of that objective.

(3) A company listed in a regulated market shall only be obliged to count the votes cast in advance by correspondence pursuant to subsection (2), where such votes were cast prior to the date and time set by the company, provided that such date and time do not exceed twenty-four hours prior to the conclusion of the poll.

Representation of corporations at meetings of companies and of creditors.

**133.-** (1) A corporation, whether a company within the meaning of this Law or not, may:

(a) if it is a member of another corporation, being a company within the meaning of this Law, by resolution of its directors or other governing body, authorize such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;

10(1) of 60(I) of 2010.

(b) if it is a creditor, including a holder of debentures, of another corporation, being a company within the meaning of this Law, by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Law or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be;

10 (2) of 60(I) of 2010.

(c) if it has been appointed as a proxy to participate and vote on behalf of a member of a company listed in a regulated market at a general meeting of a company listed in a regulated market, by a resolution of its directors or other governing body, to authorize such person as it thinks fit to act as its proxy at any general meeting of the company listed in a regulated market or at any meeting of any class of members of the company listed in a regulated market, for the purpose of such appointment.

10 (3) of 60(I) of 2010.

(2) A person authorised as aforesaid shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor, or holder of debentures of that other company.

Circulation of members' resolutions, etc.

**134.** -(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 subsection (1) shall be-

(a) any number of members representing not less than one twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

(b) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than one hundred seventy euros.

(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 of 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 it, 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 one thousand, two hundred and eighty-one euros.

4 of 166 of  
1987.

Extraordinary  
and special  
resolutions.

**135.**-(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given:

Provided that, if it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than ninety-five per cent in nominal value of the shares giving that right, or, in the case of a company not having a share capital, together representing not less than ninety-five per cent of the total voting rights at that meeting of all the members, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

(3) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) In computing the majority on a poll demanded on the question that an extraordinary resolution or a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution.

(5) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by this Law or the articles.

Resolutions  
requiring  
special notice.

**136.** Where by any provision hereafter contained in this Law 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 section shall be deemed to have been properly given for the purposes thereof.

Registration  
and copies of

**137.**- (1) A printed copy of every resolution or agreement to which this section applies shall, within fifteen days after the passing or making thereof, be forwarded to



certain  
resolutions  
and  
agreements.

the registrar of companies and recorded by him:

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

(2) Where articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request on payment of 0,0854 euros or such less sum as the company may direct.

(4) This section shall apply to-

(a) special resolutions;

(b) extraordinary resolutions;

(c) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special resolutions or as extraordinary resolutions;

(d) resolutions or agreements which have been agreed to by all the members of some class of shareholders but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;

(e) resolutions requiring a company to be wound up voluntarily, passed under paragraph (a) of subsection (1) of section 261.

4 of 166 of  
1987.

(5) If a company fails to comply with subsection (1), the company and every officer of the company who is in default shall be liable to a default fine of forty-two euros.

4 of 166 of  
1987.

(6) If a company fails to comply with subsection (2) or subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding forty-two euros for each copy in respect of which default is made.

(7) For the purposes of subsections (5) and (6), a liquidator of the company shall be deemed to be an officer of the company.

Resolutions  
passed at  
adjourned  
meetings.

**138.-** Where a resolution is passed at an adjourned meeting of:

(a) a company;

(b) the holders of any class of shares in a company;

(c) the directors of a company,

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Minutes of  
proceedings

**139.-** (1) Every company shall cause minutes of all proceedings of general meetings, all proceedings at meetings of its directors and, where there are managers, all

of meetings of company and of directors and managers. proceedings at meetings of its managers to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers or liquidators shall be deemed to be valid.

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

**139A.-** (1) The provisions of this section shall apply to a company listed in a regulated market.

Voting results.  
11 of 60(I) of  
2010.

(2) Where a member requests a full account of the voting before or during the announcement of the voting in a general meeting, then the company listed in a regulated market, with regard to each resolution proposed at a general meeting shall announce-

(a) the number of shares for which votes have been validly cast;

(b) the proportion of the issued share capital of the company listed in a regulated market represented by those votes, at the end of business on the day prior to the general meeting;

(c) the total number of votes validly cast;

(d) the number of votes cast in favour of and against each proposed resolution and, if counted, the number of abstentions.

(3) Where no member requests a full account of the voting prior or during the announcement of the voting at the general meeting, it shall be sufficient for a company listed in a regulated market to announce the voting results only to the extent needed to ensure that the required majority is reached for each resolution.

(4) The company listed in a regulated market shall ensure that the voting result which was announced pursuant to subsection (3), is published on its website, not later than at the end of the fourteenth day after the date of the meeting at which the voting result was obtained.

Inspection of  
minute books.

**140.-** (1) The books containing the minutes of proceedings of any general meeting of a company shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding 0,0854 euros for every hundred words.

7 of 76 of  
1977.

4 of 166 of  
1987.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding forty-two euros and further to a default fine of forty-two euros.

4 of 166 of  
1987.

(4) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

5 of 167 (I) of 2003.

***Financial Statements and Audit***

Keeping of books of account.  
6(a) of 167(I) of 2003.

**141.-** (1) The directors shall cause to be kept books of accounts which are considered necessary for the preparation of financial statements in accordance with this Law.

6(a) of 167(I) of 2003.

(2) For the purposes of subsection (1), proper books of account shall not be deemed to be kept, if the books which are kept are not sufficient for the presentation of an accurate and fair picture of the affairs of the company as well as an explanation as to its transactions.

(3) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors:

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

6(b) of 167(I) of 2003.

(4) If a director of a company fails to take all reasonable steps to secure compliance with the provisions of this section, he shall commit a criminal offence and on conviction thereof be liable to imprisonment not exceeding one year or to a fine not exceeding one thousand, seven hundred and eight euros or to both such imprisonment and fine:

6(c) of 167(I) of 2003.

Provided that in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty.

Annual and consolidated financial statements.  
7 of 167(I) of 2003.  
2 of 157(I) of 2011.

**142.-** (1) (a) The directors shall cause to be made, for every company, a complete set of financial statements, as this set is prescribed by the International Accounting Standards.

(b) Without prejudice to the provisions of section 142A, each company which has subsidiaries, shall consolidate its financial statements with the financial statements of its subsidiaries as prescribed by the International Accounting Standards, and the said consolidated financial statements shall be presented before the general meeting of the parent company.

(c) In addition to the information requirements imposed by the International Accounting Standards, in the financial statements, and, preferably in the notes thereto, information shall also be presented in relation to:

(i) the data required by sections 183 to 189;

- 3 of 41 (I) of 2009. (ii) the fees of the auditors, as well as any expenditures incurred in relation to their expenses. The total fees charged during the financial year by the auditor or the audit firm for carrying out the statutory audit of annual and consolidated accounts, the total fees charged for other assurance services, the total fees charged for tax advisory services and the total fees charged for other non-audit services shall be separately presented .
- 3 of 131(I) of 2007. (d) Small sized groups shall be exempt from the obligation to prepare consolidated financial statements, referred to in paragraph (b) of this subsection.
- 3 of 131(I) of 2007. (e) For the purposes of this subsection, the term 'small sized group' means a group of companies, of which the companies subject to consolidation–
- (i) are not public;
  - (ii) the preparation of their consolidated financial statements is not governed by any other legislation; and
  - (iii) they satisfy, in their entirety, at the date of closing of the balance sheet of the parent company, two of the following three criteria:
- 2 (a)(i) of 88(I) of 2010. (aa) The total of the assets appearing in the balance sheet (and without deducting the liabilities) does not exceed the amount of 17.500.000 (seventeen million five hundred thousand) Euros;
- 2 (a)(ii) of 88(I) of 2010. (bb) The net level of the turnover does not exceed the amount of 35.000.000 (thirty five million) Euros, and
- (cc) The average number of employees at the relevant period does not exceed two hundred fifty.
- 3 of 131(I) of 2007. (f) Groups of companies of which the ultimate subsidiary or parent companies publish consolidated financial statements on the basis of Generally Recognized Accounting Principles shall be exempt from the obligation to prepare consolidated financial statements.
- (2) (a) Financial statements shall be presented at the latest eighteen months after the incorporation of the company and subsequently once at least in every calendar year.
- (b) In case the dates of preparation of the financial statements of the parent company and the subsidiary or subsidiaries, do not correspond, the adjustments set out in the International Accounting Standards must be made.
- (c) The preparation and presentation of periodical statements shall be permitted, provided that all the relevant provisions of the International Accounting Standards are complied with.
- (3) In the preparation of the financial statements–
- (a) In the "reserve" the amounts which have been written off or been reserved for write off or for the creation of predictions shall not be included.
- Provided that in the case where any amount is reserved as a write off or prediction and it is proven later (in the opinion of the directors) that such amount is greater than what is reasonably required for such purpose, this excess amount shall be considered to be the reserve.
- (b) in the "capital reserve" no amount which was considered as available for distribution is included;
  - (c) every reserve except for the capital reserve shall be considered to be "income reserve";
  - (d) reference to "prediction" is made giving the term the meaning given to it by the International Accounting Standards.

2 (b) of 88(I) of 2010.

(4) (a) The directors of every company shall have a collective duty towards it to ensure that the annual financial statements and, as the case may be, the annual consolidated financial statements shall be prepared and published in accordance with the requirements of this Law and in accordance with the International Accounting Standards.

(b) Without prejudice to the collective civil liability of directors towards the company which exists in case of breach of the duty referred to in paragraph (a), if a director of a company fails to take all reasonable steps to comply with the duty referred to in paragraph (a), shall commit an offence and shall be subject, on conviction, to imprisonment not exceeding one year or to a fine not exceeding one thousand and seven hundred euros or to both such penalties:

Provided that, subject to the provisions of any other special law, in any proceedings against a person in respect of an offence provided for in this paragraph, it shall be a defence to prove that such person had reasonable ground to believe and did believe that a competent and reliable person, who was charged with the duty of seeing that the provisions of paragraph (a), were complied with, was in a position to discharge that duty.

Exemptions relating to the keeping of consolidated financial statements. 3 of 157(I) of 2011.

**142A.**(1) The consolidated financial statements which are prepared pursuant to paragraph (b) of subsection (1) of section 142 should present a true and fair picture of the assets, liabilities, financial position and of the profits or losses of all the companies which are included in the consolidation.

(2) A company which only has subsidiary companies shall be exempted from the provisions of paragraph (b) of subsection (1) of section 142, provided that all the subsidiary companies are not, both individually and as a whole, material for the purposes of subsection (1).

(3) Without prejudice to the provisions of subsection (4), the financial statements of a subsidiary company may be exempted from the obligation of the parent company to include them, pursuant to paragraph (b) of subsection (1) of section 142, in the consolidated financial statements if such subsidiary company is not material so as to affect the true and fair picture of the assets, liabilities, financial position and profits or losses of such consolidated financial statements.

(4) The financial statements of two or more companies for which the exemption of provisions of subsection (3) apply, should be included in the consolidated financial statements, pursuant to paragraph (b) of subsection (2) of section 142, if as a whole such companies are material so as to affect the true and fair picture of the assets, liabilities, financial position and profits or losses of such consolidated financial statements.

(5) The financial statements of a subsidiary company may not be included in the consolidated financial statements, pursuant to paragraph (b) of subsection (2) of section 142, if:

- (a) strict and continuous restrictions substantially prejudice the exercise by the parent company of its rights in the property or administration of the subsidiary company, or
- (b) the necessary information with respect to the subsidiary company for the preparation of the consolidated financial statements cannot be collected without disproportionate costs or inexcusable delays, or
- (c) the shares in the subsidiary company are held for the exclusive purpose of

their subsequent sale.

True and fair picture, true and fair presentation. 7 of 167(I) of 2003.

**143.-** (1) The financial statements shall present a true and fair picture of the company (hereinafter called a "true and fair picture").

(2) The presentation of a true and fair picture shall be achieved through the strict application of the International Accounting Standards, the compliance with which is obligatory for all companies.

(3) Where, in the opinion of the directors, compliance with the International Accounting Standards is not sufficient for the presentation of a true and fair picture, supplementary information must be provided in the notes.

(4) If the financial statements presented or published do not present a true and fair picture, a contravention of this section shall be deemed to exist. To this, the fact that each separate action which has been carried out in compliance with the provisions of this section was, in itself, lawful, or that there was no liability as to the end result of the non presentation of a true and fair picture , cannot be used as an argument.

(5) If a director of a company fails to take all reasonable measures to secure compliance with the provisions of this section, as well as with other requirements of this Law in relation to the matters which must be presented in the financial statements, shall commit an offence and on conviction thereof be liable to imprisonment not exceeding one year or to a fine not exceeding seventeen thousand and eighty-six euros or to both such penalties .

8 of 167(I) of 2003.

**144.** *Repealed.*

8 of 167 (I) of 2003.

**145.** *Repealed.*

8 of 167(I) of 2003.

**146.** *Repealed.*

8 of 167 (I) of 2003.

**147.** *Repealed.*

Meaning of "holding company" and "subsidiary".

**148.-** (1) For the purposes of this Law, a company shall, subject to the provisions of subsection (3), 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

25(a) of 70(I) of 2003.

(ii) holds the majority of the voting rights in the company; or

25(b) of 70(I) of 2003.

(iii) is a member of it and controls the majority of voting rights of its members by virtue of an agreement which has been entered into with its other members;

(b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

(2) For the purposes of subsection (1), 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 paragraph (c) of this subsection, 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 Law, a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

(5) In this section the expression "company" includes any body corporate, and the expression "equity share capital" means, in relation to a company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

Signing of  
balance sheet.  
9(a) of 167  
(I) of 2003.

**149.-** (1) The financial statements of a company shall be signed on behalf of the board by two of the directors of the company, or, if there is only one director, by that director.

(2) In the case of a banking company registered after the 1st day of July, 1922, the balance sheet must be signed by the secretary or manager, if any, and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all the directors.

9(b) of 167  
(I) of 2003.

(3) If any copy of the financial statements which has not been signed as required by this section is issued, circulated or published, the company and every officer of the company who is in default shall be liable to a fine not exceeding four hundred twenty-seven euros.

4 of 166 of  
1987.

Publication of  
financial

**150.-**(1) (a) Whenever the financial statements are published in full they must be published in the form in which they were presented by the auditor and be

statements.  
10 of 167 (I)  
of 2003. accompanied by the complete text of his report. In every case, all the observations, reservations and refusals to express an opinion which the auditor expressed must be presented.

3 of 130(I) of  
2005. (b) If the financial statements are not published in full-

(i) It must be noted that the publication is synoptic;

(ii) the place to which the financial statements have been submitted must be mentioned and in case they have not yet been submitted that should be provided in the publication; and

(iii) the opinion of the auditors must be made known, as well as any other references worth bringing attention to, without the need for the report of the auditors to accompany the publication.

(c) In every case, the financial statements must not be published, separately, but as unified whole.

(2) The issuance, circulation or publication of the above-mentioned statements in contravention of the provisions of subsection (1), shall constitute a criminal offence and the company and every officer of the company who is in default shall, on conviction, be subject to a fine not exceeding eight hundred fifty-four euros.

Directors'  
Report.  
11 of 167(I)  
of 2003. **151.**-(1)(a) There shall be attached to the financial statements a report by the directors in relation to the status and the foreseeable development of the affairs of the company or the group.

(b)The directors' report shall provide information in relation to, at least, the following:-

(i) any change during the financial year in the nature of the business of the company or in its subsidiaries or in the classes of business in which the company has an interest, whether as a member of another company or otherwise, and especially in any takeover or merger which has been realized or intended, whether active or passive;

(ii) any change to the share capital;

(iii) any significant change to the structure, the allocation of responsibilities, or the compensation of the board of directors;

(iv) any activities in the area of research and development to the extent that the relevant data do not already arise from the financial statements;

4(a) of 130(I)  
of 2005. (v) any important event that occurred after the expiry of usage;

(vi) the foreseeable development of the company,

(vii) the existence of branches of the company;

(viii) a fair review of the development and progress of the activities of the company and its position, as well a description of the main risks and uncertainties it is facing;

4(b) of 130(I)  
of 2005. (bA) The review mentioned in subparagraph (viii) of paragraph (b) shall give a balanced and comprehensive analysis of the development and progress of the activities of the company and its position, which shall be proportionate to the size and complexity of its activities.

4 (b) of 130  
(I) of 2005. (bB) (i) To the extent necessary for an understanding of the company's development, progress or position, the analysis mentioned in paragraph (bA) above, shall include financial and economic, as well as, where appropriate, non



financial and economic basic indications of progression related to the specific field of activities, including information relating to environmental and employee matters;

(ii) In providing its analysis the annual report shall, where appropriate, include references to and additional explanations of amounts reported in the annual accounts.

4(b) of 130(I) of 2005. (bC) Small sized private companies, as defined in subsection (2) of section 152A, the securities of which are not admitted for negotiation to a regulated market of a member state and which are not obliged pursuant to this Law to submit consolidated financial statements, shall be exempted from the obligation provided in paragraph (bB) above concerning the analysis of non-financial and economic information.

(c) In every case, the directors' report shall be accompanied by a reasoned recommendation in relation to the distribution of profits, the absorption of losses and the creation of predictions.

3 (a) of 88(I) of 2010. (d) *Repealed.*

(2) (a) When the directors' report is published in whole, it shall be published in the form in which it accompanied the financial statements which were published by the auditor, and shall be accompanied by the complete text of the report of the auditor. In every case, there must be presented all the observations, reservations and refusals to express an opinion, which may have been expressed by the auditor.

(b) When the directors' report is published in a piecemeal manner, it shall not be accompanied by the complete report of the auditor, but only by the observations, reservations and refusals to express his opinion.

(c) The issuance, circulation or publication of any copy of the directors' report without the provisions of this subsection being complied with shall constitute a criminal offence and the company and every officer of the company who is in default shall, on conviction, be subject to a fine not exceeding eight hundred fifty-four euros.

3(b) of 88(I) of 2010. (3) (a) The directors of every company shall have a collective duty towards it to ensure that:

(i) the directors' report shall be prepared and published in accordance with the requirements of this Law;

(ii) in cases where the directors' report includes a statement of corporate governance, such report shall be prepared and published in accordance with the requirements of this Law and of the Transparency Requirements (Securities Admitted to Trading on a Regulated Market) Laws 2007 and 2009 and of the Directives issued thereunder.

190 (I) of 2007  
77(I) of 2009.

(b) Without prejudice to the collective civil liability of directors towards the company which exists in case of breach of the duty referred to in paragraph (a), if a director of a company fails to take all reasonable steps for compliance with the duty referred to in paragraph (a), shall commit an offence and shall on conviction thereof, be liable to imprisonment not exceeding one year or to a fine not exceeding seventeen thousand euros or to both such penalties:

Provided that, subject to the provisions of any other special law, in any proceedings against a person in respect of an offence provided in this paragraph, it shall be a defence to prove that the person had reasonable cause to believe and did believe that an able and responsible person, was assigned with the duty of seeing that the provisions of paragraph (a), were complied with, and was in a position to exercise that duty.

Right to **152.-(1)** The directors shall present to the company in general meeting-

The Office of the Law Commissioner

receive copies of balance sheets and auditors' report.  
12(a) of 167(I) of 2003.

- (a) the set of financial statements;
- (b) the directors' report;
- (c) the auditors' report attached to the above, where this is required by the Law:

2(a) of 42(I)/2010.

Provided that, in the notice for calling a general meeting, in accordance with section 127, at which the above mentioned documents shall be deposited, mention shall be made as to the place and method of their distribution.

12(b) of 167(I) of 2003.  
12(c) of 167(I) of 2003.  
8 of 70 (I) of 2007.  
2(b) of 42(I)/2010.

(2) Copy of the documents referred to in subsection (1) shall be available at least twenty-one days before the date of the general meeting. Such copy may be requested and provided by the company, free of charge, either in electronic or hard form:

- (i) by every member of the company, irrespective of whether he is entitled to receive notices of general meetings of the company;
- (ii) by every holder of debentures of the company, irrespective of whether he is entitled to receive notices of general meetings of the company;
- (iii) by all persons, except members or holders of debentures of the company, who are entitled to receive notices of general meetings of the company:

Provided that:

- (a) In the case of a company not having a share capital, this subsection shall not require the sending of the above-mentioned documents to a member of the company who is not entitled to receive notices of general meetings of the company or to a holder of debentures of the company who is not so entitled;
- (b) at the Annual General Meeting of the shareholders of the company, the company shall have available for distribution to the shareholders present thereat the documents referred to in subsection (1) and it shall also be obliged to comply with its obligations relating to the publication of the documents as this is required in accordance with the provisions of any other related laws, either in the daily press or in its internet site or to any competent supervisory authorities, as well as to the Cyprus Stock Exchange, provided that the company is a public company listed on the Cyprus Stock Exchange.

12(b) of 167(I) of 2003.  
2(c) of 42(I)/2010.

(3) Any member of a company, whether he is or he is not entitled to have sent to him in electronic or hard form copies of the company's balance sheets, and any holder of debentures of the company, whether he is or not so entitled, shall be entitled to be furnished on demand without charge with a copy in electronic or hard form of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy in electronic or hard form of the auditors' report of the balance sheet.

12(b) of 167(I) of 2003.  
8 of 70(I) of

4(a) If default is made in complying with subsection (1), every director of the company who is in default shall commit a criminal offence punishable with a fine not exceeding eight thousand, five hundred and forty-three euros.

2007.

(b) If default is made in complying with subsection (2), the company and every officer of the company who is in default shall commit a criminal offence punishable with a fine not exceeding five thousand, one hundred and twenty five euros.

(c) If, when a person requests any document that he is entitled to receive pursuant to subsection (3), an omission to comply with the said subsection within seven days from the submission of the application, the company and every officer of the company who is in default shall commit a criminal offence punishable with a fine not exceeding eight hundred fifty-four euros.

Compulsory  
auditing of  
financial  
statements  
and directors'  
report by  
auditors.  
13 of 167(I) of  
2003.  
4 of 41 (I) of  
2009.  
42 (I) of  
2009.

**152A.**-(1) (a) The following companies shall, in accordance with the provisions of the Auditors and Statutory Audits of Annual and Consolidated Accounts Law, 2009, submit their financial statements to an auditor for auditing:

- (i) every company required by this Law to prepare consolidated financial statements;
- (ii) every public limited-liability company ;
- (iii) every private limited-liability company not being a small sized company .

(b) The companies mentioned in paragraph (a) shall also submit to the auditor the directors' report for the purpose of auditing its compatibility with the submitted financial statements.

(2) For the purposes of this section, the term "small sized company" means a company in which at least two of the three sizes below shall not exceed, throughout the financial year, the following prices:

- (i) total of assets presented in the balance sheet (and without having subtracted the liabilities ) at 34,172.029 euros;
- (ii) net turnover of 70,052.659 euros;
- (iii) average number of employees, fifty persons:

Provided that the company which initially fulfils the above-mentioned conditions loses its designation as a small sized company only if it exceeds the abovementioned criteria during two consecutive financial years.

(3) The financial statements and the directors' report which have not been audited, in accordance with the provisions in this section, shall be deemed not to have been published under subsection (4) of section 142.

Appointment  
and  
remuneration  
of auditors.

**153.**-(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that, until the conclusion of the next annual general meeting.

(2) At any annual general meeting a retiring auditor, however appointed, shall be re-appointed without any resolution being passed unless-

The Office of the Law Commissioner

- (a) he is not qualified for re-appointment; or
- (b) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be re-appointed; or
- (c) he has given the company notice in writing of his unwillingness to be re-appointed:

Provided that where notice is given of an intended resolution to appoint some person or persons in place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with, the retiring auditor shall not be automatically re-appointed by virtue of this subsection.

(3) Where at an annual general meeting no auditors are appointed or re-appointed, the Council of Ministers may appoint a person to fill the vacancy.

(4) The company shall, within one week of the Council of Ministers' power under subsection (3) becoming exercisable, give him notice of that fact, and, if a company fails to give notice as required by this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(5) Subject as hereinafter provided, the first auditors of a company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until the conclusion of that meeting:

Provided that-

(a) the company may at a general meeting remove any such auditors and appoint in their place any other persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting; and

(b) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon the said powers of the directors shall cease.

(6) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues, the surviving or continuing auditor or auditors, if any, may act.

(7) The remuneration of the auditors of a company-

(a) in the case of an auditor appointed by the directors or by the Council of Ministers, may be fixed by the directors or by the Council of Ministers, as the case may be;

(b) subject to paragraph (a) of this subsection, shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

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

5 of 41 (I) of 2009.

(8) The provisions of this section shall apply subject to the provisions of sections 31, 43 and 44 of the Auditors and Statutory Audits of Annual and Consolidated Accounts Law, 2009.

Provisions as to resolutions relating to appointment and removal of auditors.

**154.-** (1) Special notice shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be re-appointed.

(2) On receipt of notice of such an intended resolution as aforesaid, the company shall forthwith send a copy thereof to the retiring auditor, if any.

(3) Where notice is given of such an intended resolution as aforesaid and the retiring auditor makes with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so,-

(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

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

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

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

(4) Subsection (3) shall apply to a resolution to remove the first auditors by virtue of subsection (5) of section 153 as it applies in relation to a resolution that a retiring auditor shall not be re-appointed.

Qualifications for appointment as auditor.  
2 of 76(I) of 2001.  
4 of 133(I) of 2007.  
6 of 41 (I) of 2009.

**155.-**No person shall be appointed as an auditor of a company unless he has previously acquired a licence pursuant to the provisions of the Auditors and Statutory Audits of Annual and Consolidated Accounts Law, 2009.

7 of 41(I) of 2009.  
7 of 41 (I) of 2009.

**155A. Repealed.**

**155B. Repealed.**

7 of 41 (I) of 2009.

**155C. Repealed.**

7 of 41 (I) of 2009.

**155D. Repealed.**

7 of 41 (I) of 2009.

**155E. Repealed.**

7 of 41 (I) of 2009.

**155F. Repealed.**

**156. Repealed.**

7 of 41 (I) of 2009.

15 of 167(I) of 2003.

**157. Repealed.**

Investigation of company's affairs on application of members. 8(a) of 76 of 1977.	<p><b>158.-</b> (1) The Council of Ministers may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Council of Ministers directs-</p> <p>(a) in the case of a company having a share capital, on the application either of not less than two hundred members or of members holding not less than one-tenth of the shares issued;</p> <p>(b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members.</p>
8(a) of 76 of 1977	(2) The application shall be supported by such evidence as the Council of Ministers may require for the purpose of showing that the applicants have good reason for requiring the investigation, and the Council of Ministers may, before appointing an inspector, require the applicants to give security, for such amount as the Council of Ministers may determine, for payment of the costs of the investigation.
8(b) of 76 of 1977.	
Investigation of company's affairs in other cases.	<p><b>159.</b> Without prejudice to his powers under section 158, the Council of Ministers-</p> <p>(a) shall appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Council of Ministers directs, if-</p> <p>(i) the company by special resolution; or</p> <p>(ii) the Court by order,</p> <p>declares that its affairs ought to be investigated by an inspector appointed by the Council of Ministers; and</p> <p>(b) may do so if it appears to the Council of Ministers that there are circumstances suggesting-</p> <p>(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</p> <p>(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</p> <p>(iii) that its members have not been given all the information with respect to its affairs which they might reasonably expect.</p>
Power of inspectors to carry investigations into affairs of related companies.	<p><b>160.</b> If an inspector appointed under section 158 or 159 to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of any other body corporate which is or has at any relevant time been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary, he shall have power so to do, and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.</p>
Production of documents, and evidence, on investigation.	<p><b>161.-</b> (1) It shall be the duty of all officers and agents of the company and of all officers and agents of any other body corporate whose affairs are investigated by virtue of section 160 to produce to the inspectors all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power and otherwise to give to the inspectors all assistance in connection with the investigation which they are reasonably able to give.</p>

(2) An inspector may examine on oath the officers and agents of the company or other body corporate in relation to its business, and may administer an oath accordingly.

(3) If any officer or agent of the company or other body corporate refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company or other body corporate, as the case may be, the inspectors may certify the refusal under their hand to the Court, and the Court may thereupon inquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the Court.

(4) If an inspector thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath should be so examined, he may apply to the Court and the Court may if it sees fit order that person to attend and be examined on oath before it on any matter relevant to the investigation, and on any such examination-

(a) the inspector may take part therein either personally or by an advocate;

(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 an advocate who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him,

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

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

(5) In this section, any reference to officers or to agents shall include past, as well as present, officers or agents, as the case may be, and for the purposes of this section the expression "agents", in relation to a company or other body corporate shall include the bankers and advocates of the company or other body corporate and any persons employed by the company or other body corporate as auditors, whether those persons are or are not officers of the company or other body corporate.

Inspectors' report.

**162.-** (1) The inspectors may, and, if so directed by the Council of Ministers, shall, make interim reports to the Council of Ministers, and on the conclusion of the investigation shall make a final report to the Council of Ministers. Any such reports shall be written or printed, as the Council of Ministers directs.

(2) The Council of Ministers shall-

(a) forward a copy of any report made by the inspectors to the registered office of the company;

(b) if the Council of Ministers thinks fit, furnish a copy thereof on request and on payment of the prescribed fee to any other person who is a member of the company or of any other body corporate dealt with in the report by virtue of section 160 or whose interests as a creditor of the company or of any such other body corporate as aforesaid appear to the Council of Ministers to be effected;

(c) where the inspectors are appointed under section 158, furnish, at the request of the applicants for the investigation, a copy to them; and

(d) where the inspectors are appointed under section 159 in pursuance of an order of the Court, furnish a copy to the Court,

and may also cause the report to be printed and published.

Proceedings  
on inspectors'  
report.

**163.-** (1) If from any report made under section 162 it appears to the Council of Ministers that any person has, in relation to the company or to any other body corporate whose affairs have been investigated by virtue of section 160, been guilty of any offence for which he is criminally liable, the Council of Ministers shall refer the matter to the Attorney-General.

(2) If, where any matter is referred to the Attorney-General under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company or other body corporate as aforesaid, as the case may be, other than the defendant in the proceedings, to give him all assistance in connection with the prosecution which they are reasonably able to give.

Subsection (5) of section 161 shall apply for the purposes of this subsection as it applies for the purposes of that section.

(3) If, in the case of any body corporate liable to be wound up under this Law, it appears to the Council of Ministers, from any such report as aforesaid that it is expedient so to do by reason of any such circumstances as are referred to in subparagraph (i) or (ii) of paragraph (b) of section 159, the Council of Ministers may, unless the body corporate is already being wound up by the Court, cause a petition to be presented 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 202 or both.

(4) If from any such report as aforesaid it appears to the Council of Ministers 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, he may cause proceedings for that purpose to be brought in the name of the body corporate.

(5) The Council of Ministers shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with any proceedings brought by virtue of subsection (4).

Expenses of  
investigation  
of company's  
affairs.  
3(a) of 129(I)  
of 2005.  
3(c) of 129(I)  
of 2005.

**164.-**(1) Subject to the provisions of subsection (2), the expenses of and incidental to an inspector's investigation appointed by the Council of Ministers on the basis of the preceding provisions of this Law shall be paid by the persons who requested the appointment of the inspector.

3(b) of 129(I)  
of 2005.

(2) For the purposes of this section, any costs or expenses incurred by the Government in or in connection with proceedings brought by virtue of subsection (4) of section 163 (including expenses incurred by virtue of subsection (5) thereof) shall be treated as expenses of the investigation giving rise to the proceedings and notwithstanding the provisions of subsection (1), they shall burden the Republic.

3(b) of 129(I)  
of 2005.

Inspectors'  
report to be  
evidence.

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



Appointment and powers of inspectors to investigate ownership of company.

**166.-** (1) Where it appears to the Council of Ministers that there is good reason so to do, he may appoint one or more competent inspectors to investigate and report on the membership of any company and otherwise with respect to the company for the purpose of determining the true persons who are or have been financially interested in the success or failure, real or apparent, of the company or able to control or materially to influence the policy of the company.

(2) The appointment of an inspector under this section may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a company is made to the Council of Ministers 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 158, the Council of Ministers shall appoint an inspector to conduct the investigation unless he is satisfied that the application is vexatious, and the inspector's appointment shall not exclude from the scope of his investigation any matter which the application seeks to have included therein, except in so far as the Council of Ministers is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of an inspector's appointment his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(5) For the purposes of any investigation under this section, sections 160 to 162 shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, so, however, that-

(a) the said sections shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be; and

(b) the Council of Ministers shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if he is of opinion that there is good reason for not divulging the contents of the report or of parts thereof, 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 he is not of that opinion.

(6) The expenses of any investigation under this section shall be defrayed by the Council of Ministers out of the public revenue.

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

**167.-** (1) Where it appears to the Council of Ministers 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, he may require any person whom he has reasonable cause to believe-

(a) to be or to have been interested in those shares or debentures; or

(b) to act or to have acted in relation to those shares or debentures as the advocate or agent of someone interested therein,

to give him 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 not exceeding one year or to a fine not exceeding one thousand, seven hundred and eight euros or to both such imprisonment and fine.

3 of 166 of  
1987.

Power to  
impose  
restrictions on  
shares or  
debentures.

**168.**-(1) Where in connection with an investigation under section 166 or 167 it appears to the Council of Ministers 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 Law, the Council of Ministers 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 Council of Ministers makes an order directing that shares shall be subject to the said restrictions, or refuses 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 Council of Ministers 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), either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

(5) Any person who-

- (a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to the said restrictions or of any right to be issued with any such shares; or
- (b) votes in respect of any such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or
- (c) being the holder of any such shares, fails to notify of their being subject to the said restrictions any person whom he does not know to be aware of that fact but does know to be entitled, apart from the said restrictions, to vote, in respect of those shares whether as holder or proxy,

3 of 166 of 1987. shall be liable to imprisonment not exceeding one year or to a fine not exceeding one thousand, seven hundred and eight euros or to both such imprisonment and fine.

4 of 166 of 1987. (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 one thousand, seven hundred and eight euros.

(7) A prosecution shall not be instituted under this section except by or with the consent of the Attorney-General.

(8) This section shall apply in relation to debentures as it applies in relation to shares.

Saving for advocates and bankers. **169.** Nothing in the foregoing provisions of this Part shall require disclosure to the Council of Ministers or to an inspector appointed by them-

(a) by an advocate 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.

26 of 70(I) of 2003.

***Distribution of dividends, profits and assets***

Distribution of capital in public companies. When it is permitted. 26 of 70 (I) of 2003.

**169A.-** (1) Except for cases of reduction of subscribed capital, a public company cannot make distributions to its shareholders, when, on the closing date of the last financial year, the net assets, as already presented in its annual accounts, or as could arise as a result of such distribution, are below the total of the subscribed capital and the reserves, the distribution of which the law or the articles do not allow. If part of the subscribed capital has not been called up, and the uncalled part does not appear in the assets shown in the balance sheet, then this part is not taken into account in the subscribed capital.

(2) The amount of a distribution to shareholders cannot exceed the amount of the results of the last financial year, increased by the profits brought forward at the end of the last financial year and sums drawn from reserves available for this purpose, reduced however by the amount of losses brought forward from previous financial years, and sums placed to reserve in accordance with the law or the articles of association.

(3) The term "distribution" as used in subsections (1) and (2), includes, without restricting it to that, the payment of dividends and interest relating to shares.

Non application of section 169A to investment companies with fixed capital. 26 of 70 (I) of 2003.

**169B.-**(1) Section 169A shall not be applicable to investment companies with fixed capital, if the following conditions apply cumulatively:

(a) These companies shall state the term "investment company" in all documents which are notified to the Registrar.

(b) It is not permitted for a company of such form, the net assets of which fall below the amount stated in section 169A(1), to make a distribution to shareholders, provided that at the date of expiry of the last financial year the total assets, as presented in the annual accounts, or following such distribution would become, less than one and a half times the amount of the company's total liabilities to creditors as set out in the annual accounts.

(c) Each company of such form, which makes a distribution, when its net assets fall below the amount stated in section 169A (1), to include in its annual accounts a note to that effect.

(2) "Investment companies with fixed capital" are only deemed to be companies which have as their exclusive object the placement of their capital in securities, immovable or other assets, with the sole objective of spreading investment risk and giving their shareholders the benefit of the results of the management of their assets and which offer their own shares for subscription by the public.

When interim dividends are permitted.  
26 of 70(I) of 2003.

**169C.** A public company shall be allowed to pay interim dividends only if the following conditions apply:

(a) Interim accounts shall be prepared in which the funds available for distribution are shown to be sufficient;

(b) the amount to be distributed cannot exceed the amount of profits made since the end of the last financial year, the annual accounts of which have been finalised, increased by the profits which have been transferred from the last financial year and sums drawn from reserves available for this purpose and reduced by the losses of the previous financial years, and sums to be placed in reserve pursuant to the requirements of the law or the articles of association.

Sanctions for contravention of sections 169A to 169C.  
26 of 70 (I) of 2003.

**169D.** Any distribution made in contravention of sections 169A and 169C must be returned by the shareholders who received it, if the company proves that the said shareholders-

- (a) were aware of the irregularity of the distributions made in their favour; or
- (b) could not in view of the circumstances have been unaware of it.

Interpretation provision.  
26 of 70(I) of 2003.

**169E.** Nothing in sections 169A to 169D shall be construed in such a manner so as to directly or indirectly offend Regulations 114 to 122 of the First Schedule of Table A and generally the ability of the company to increase its subscribed capital by way of capitalization of reserves.

27 of 70 (I) of 2003.

***Obligations of the Directors as to the Administration and Management of the Company***

Actions to be taken in the event of significant loss of share capital.  
27 of 70(I) of 2003.

**169F.** -(1) In the case where losses of previous financial years or other reasons lead a public company to a fifty per cent loss of its subscribed capital or to a level which in the opinion of its directors puts the accomplishment of the company objective in question, an extraordinary general meeting shall be convened immediately, and in any case not later than twenty-eight days after the reduction was made known to the directors, on a date not later than fifty-six days from the day on which the decision to convene was taken, in order to consider whether the company should be wound-up or any other measures taken.

(2) Failure by the directors of the company to act as above, shall constitute a civil offence and shall render them responsible for compensation. Such responsibility shall be personal, unlimited, joint and several.

***Directors and other Officers***

Directors.

**170.** Every company registered on or after the commencement of this Law, other than a private company, shall have at least two directors, and every company registered before that date (other than a private company), and every private company, shall have a director.

Secretary.

**171.**-(1) Every company shall have a secretary and a sole director shall not also be secretary:

28 of 70 (I) of 2003.

Provided that in the case of a limited- liability company with one and only member, the sole director may also be the secretary.

(2) Anything required or authorized 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 authorized generally or specially in that behalf by the directors.

Prohibition of certain persons being sole director or secretary.	<p><b>172.</b> No company shall-</p> <p>(a) have as secretary to the company a corporation the sole director of which, is a sole director of the company; or</p> <p>(b) have as sole director of the company a corporation the sole director of which is secretary to the company:</p>
29 of 70(I) of 2003.	Provided that the provisions of this section shall not apply to a private limited-liability company with one and only member.
Avoidance of acts done by person in dual capacity as director and secretary.	<b>173.</b> A provision requiring or authorizing 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:
30 of 70 (I) of 2003.	Provided that the provisions of this section shall not apply to a private limited-liability company with one and only member.
Validity of acts of directors.	<b>174.</b> The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.
Restrictions on appointment or advertisement of director.	<p><b>175.-</b> (1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus delivered to the registrar by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus or the delivery of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorized in writing-</p> <p>(a) signed and delivered to the registrar of companies for registration a consent in writing to act as such director; and</p> <p>(b) either-</p> <p>(i) signed the memorandum for a number of shares not less than his qualification, if any; or</p> <p>(ii) taken from the company and paid for or agreed to pay for his qualification shares, if any; or</p> <p>(iii) signed and delivered to the registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any; or</p> <p>(iv) made and delivered to the registrar for registration a statutory declaration to the effect that a number of shares, not less than his qualification, if any, are registered in his name.</p> <p>(2) Where a person has signed and delivered as aforesaid an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.</p> <p>(3) References in this section to the share qualification of a director or proposed director shall be construed as including only a share qualification required on appointment or within a period determined by reference to the time of appointment,</p>

and references therein to qualification shares shall be construed accordingly.

4 of 166 of  
1987.

(4) On the application for registration of the memorandum and articles of a company, the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding four hundred twenty seven euros.

(5) This section shall not apply to-

(a) a company not having a share capital; or

(b) a private company; or

(c) a company which was a private company before becoming a public company; or

(d) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

Share  
qualifications  
of directors.

**176.-** (1) Without prejudice to the restrictions imposed by section 175, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

(2) For the purpose of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

(3) The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of the said period or shorter time he ceases at any time to hold his qualification.

(4) A person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

4 of 166 of  
1987.

(5) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding forty-two euros for every day between the expiration of the said period or shorter time or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

Appointment  
of directors to  
be voted on  
individually.

**177.-** (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 174; and

(b) where a resolution so moved is passed, no provision for the automatic re-appointment 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.

Removal of directors.

**178.**-(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, authorize the removal of a director holding office for life at the commencement of this Law, 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 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.

Provisions as to undischarged bankrupts acting as directors.  
3 of 166 of 1987.

**179.**-(1) If any person being an undischarged bankrupt acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the Court by which he was adjudged bankrupt, he shall be liable on conviction to imprisonment not exceeding two years or to a fine not exceeding two thousand, five hundred and sixty-two euros or to both such imprisonment and fine:

Provided that a person shall not be guilty of an offence under this section by reason that he, being an undischarged bankrupt, has acted as director of, or taken part or been concerned in the management of, a company, if he was at the

commencement of this Law acting as director of, or taking part or being concerned in the management of, that company and has continuously so acted, taken part or been concerned since that date and the bankruptcy was prior to that date.

(2) The leave of the Court for the purposes of this section shall not be given unless notice of intention to apply therefore has been served on the Official Receiver and Registrar, and it shall be his duty, if he is of opinion that it is contrary to the public interest that any such application should be granted, to attend on the hearing of and oppose the granting of the application.

(3) In this section the expression "company" includes a company incorporated outside the Republic which has an established place of business within the Republic.

Power to  
restrain  
fraudulent  
persons from  
managing  
companies.

**180.-** (1) Where-

(a) a person is convicted 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 311; 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 subsection (1) 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 subparagraph (ii) of paragraph (b) of subsection (1) 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 subparagraph (ii) that expression "officer", shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

(6) If any person acts in contravention of an order made under this section, he



3 of 166 of 1987.	shall, in respect of each offence, be liable on conviction to imprisonment not exceeding two years or to a fine not exceeding two thousand, five hundred and sixty-two euros or to both such imprisonment and fine.
Prohibition of tax-free payments to directors.	<p><b>181.</b>-(1) It shall not be lawful for a company to pay a director remuneration, whether as director or otherwise, free of income tax, or otherwise calculated by reference to or varying with the amount of his income tax, except under a contract which was in force at the commencement of this Law, and provides expressly, and not by reference to the articles, for payment of remuneration as aforesaid.</p> <p>(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, of the net sum for which it actually provides.</p> <p>(3) This section shall not apply to remuneration due before the commencement of this Law or in respect of a period before the commencement of this Law.</p>
Prohibition of loans to directors.	<p><b>182.</b>- (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-</p>
5 of 131(I) of 2007.	<p>(a) to anything done by a company which is for the time being a private company; or</p> <p>(b) to anything done by a subsidiary, where the director is its holding company; or</p> <p>(c) subject to subsection (2), 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</p> <p>(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.</p> <p>(2) Proviso (c) to subsection (1) shall not authorize the making of any loan, or the entering into any guarantee, or the provision of any security, except either-</p> <p>(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</p> <p>(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.</p> <p>(3) Where the approval of the company is not given as required by any such condition, the directors authorizing 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.</p>
Approval of company requisite for payment by it to director for loss of office, etc.	<b>183.</b> It shall not be lawful for a company to make to any director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, without particulars with respect to the proposed payment, including the amount thereof, being disclosed to members of the company and the proposal being approved by the company.
Approval of company	<b>184.</b> -(1) It is hereby declared that it is not lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment

requisite for any payment, in connection with transfer of its property, to director for loss of office, etc.

to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal approved by the company.

(2) Where a payment which is hereby declared to be illegal is made to a director of the company, the amount received shall be deemed to have been received by him in trust for the company.

Duty of director to disclose payment for loss of office, etc., made in connection with transfer of shares in company.

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

(a) an offer made to the general body of shareholders;

(b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company;

(c) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the company; or

(d) any other offer which is conditional on acceptance to a given extent,

a payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(2) If-

(a) any such director fails to take reasonable steps as aforesaid; or

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

4 of 166 of 1987.

he shall be liable to a fine not exceeding two hundred thirteen euros.

(3) If-

(a) the requirements of subsection (1) are not complied with in relation to any such payment as is therein mentioned; or

(b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of the said shares,

any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made, and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

(4) Where the shareholders referred to in paragraph (b) of subsection (3) are not all the members of the company and no provision is made by the articles for summoning or regulating such a meeting as is mentioned in that paragraph, the

provisions of this Law 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 Council of Ministers on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

(5) If at a meeting summoned for the purpose of approving any payment as required by paragraph (b) of subsection (3) 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.

Provisions  
supplementary  
to sections  
183, 184 and  
185.

**186.**-(1) Where in proceedings for the recovery of any payment as having, by virtue of subsections (1) and (2) of section 184 or subsections (1) and (3) of section 185, been received by any person in trust, it is shown that-

- (a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement or the offer leading thereto; and
- (b) the company or any person to whom the transfer was made was privy to that arrangement,

the payment shall be deemed, except in so far as the contrary is shown, to be one to which the subsections apply.

(2) If in connection with any such transfer as is mentioned in section 184 or 185-

(a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares; or

(b) any valuable consideration is given to any such director,

the excess or the money value of the consideration, as the case may be, shall, for the purposes of that section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(3) It is hereby declared that references in sections 183, 184 and 185 to payments made to any director of a company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, do not include any bona fide payment by way of damages for breach of contract or by way of pension in respect of past services, and for the purposes of this subsection the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in sections 184 and 185 shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are therein mentioned or with respect to any other like payments made or to be made to the directors of a company.

Register of  
directors'  
shareholdings,  
etc.

**187.** -(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 fail to be or cease to be recorded in the said register in relation to any director by reason of a transaction entered into after the commencement of this Law and while he is a director, the register shall also show the date of, and price or other consideration for, the transaction:

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

(3) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him in the said register shall, if he so requires, be indicated in the register.

(4) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put upon inquiry as to, the rights of any person in relation to any shares or debentures.

(5) The said register shall, subject to the provision 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 Council of Ministers.

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 subsection (5), the Council of Ministers 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.

4 of 166 of  
1987.

(8) If default is made in complying with subsection (7), the company and every officer of the company who is in default shall be liable to a fine not exceeding four hundred twenty-seven euros; and if default is made in complying with subsection (1) or (2), 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 eight hundred fifty-four euros and further to a default fine of forty-two euros.

4 of 166 of  
1987.

4 of 166 of  
1987.

(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 the body corporate.

Particulars in accounts of directors' salaries, pensions, etc.

**188.-** (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)-

(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 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 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 subsection (2), whether to or by him or, on his nomination or by virtue of dependence on or other connection with him, to or by any other person; and

(b) shall distinguish between pensions in respect of services as 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 subsection (1)-

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

The Office of the Law Commissioner

(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 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 185, 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 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 therefore as mentioned in paragraph (a) of subsection (5), but the liability is thereafter wholly or partly released or not enforced within a period of two years; or

(b) any sums paid by way of expenses allowance are charged to 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 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.

Particulars in accounts of loans to officers, etc.

**189.-** (1) The accounts which, in pursuance of this Law, are to be laid before every company in general meeting shall, subject to the provisions of this section, contain particulars showing-

(a) the amount of any loans made during the company's financial year to-

(i) any officer of the company; or

(ii) any person who, after the making of the loan, became during that year an officer of the company,

by the company or a subsidiary thereof or by any other person under a guarantee from or on a security provided by the company or a subsidiary thereof (including any such loans which were repaid, during that year); and

(b) the amount of any loans made in manner aforesaid to any such officer or person as aforesaid at any time before the company's financial year and outstanding at the expiration thereof.

(2) Subsection (1) shall not require the inclusion in accounts of particulars of-

(a) a loan made in the ordinary course of its business by the company or a subsidiary thereof, where the ordinary business of the company or, as the case may be, the subsidiary, includes the lending of money; or

(b) a loan made by the company or a subsidiary thereof to an employee of the company or subsidiary, as the case may be, if the loan does not exceed three thousand, four hundred and seventeen euros and is certified by the directors of the company or subsidiary, as the case may be, to have been made in accordance with any practice adopted or about to be adopted by the company or subsidiary with respect to loans to its employees,

not being, in either case, a loan made by the company under a guarantee from or on a security provided by a subsidiary thereof or a loan made by a subsidiary of the company under a guarantee from or on a security provided by the company or any other subsidiary thereof.

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

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

General duty to make disclosure for purposes of sections 187, 188 and 189.

**190.-** (1) It shall be the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purposes of sections 187, 188 and 189 except so far as it relates to loans made, by the company or by any other person under a guarantee from or on a security provided by the company, to an officer thereof.

(2) Any such notice given for the purposes of section 187 shall be in writing and, if it is not given at a meeting of the directors, the director giving it shall take reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given.

(3) Subsection (1) shall apply-

(a) for the purposes of section 189, in relation to officers other than directors; and

The Office of the Law Commissioner

(b) for the purposes of sections 188 and 189, in relation to persons who are or have at any time during the preceding five years been officers,

as it applies in relation to directors.

4 of 166 of  
1987.

(4) Any person who makes default in complying with the foregoing provisions of this section shall be liable to a fine not exceeding four hundred twenty-seven euros.

Disclosure by  
directors of  
interests in  
contracts.

**191.**-(1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(3) For the purposes of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract so made:

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

4 of 166 of  
1987.

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

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

Register of  
directors and  
secretaries.

**192.**- (1) Every company shall keep at its registered office a register of its directors and secretaries.

(2) The said register shall contain the following particulars with respect to each director, that is to say:-

5 (a) of  
151(I) of  
2000.

(a) in the case of an individual, his present Christian name and surname, any former Christian name or surname, his usual residential address, his nationality, his business occupation, if any, particulars of any other directorships held by him;

5(b) of 151  
(I) of 2000.

(b) in the case of a corporation, its corporate name and registered or principal office; and

5(c) of 151 (I)  
of 2000.

(c) whether he can act on behalf of the company by himself, or whether he must act jointly with the other directors:

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

(i) the expression "company" shall include any body corporate incorporated in the



Republic; and

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

(3) The said register shall contain the following particulars with respect to the secretary or, where there are joint secretaries, with respect to each of them, that is to say:-

(a) in the case of an individual, his present Christian name and surname, any former Christian name and surname and his usual residential address; and

(b) in the case of a corporation, its corporate name and registered office.

(4) The company shall, within the periods respectively mentioned in subsection (5), send to the registrar of companies a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register, specifying the date of the change.

(5) The periods referred to in subsection (4) are the following, namely:-

(a) the period within which the said return is to be sent shall be a period of fourteen days from the appointment of the first directors of the company; and

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

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

(6) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of 0,0854 euros, or such less sum as the company may prescribe, for each inspection.

(7) If any inspection required under this section is refused or if default is made in complying with subsection (1), (2), (3) or (4), the company and every officer of the company who is in default shall be liable to a default fine.

(8) In the case of any such refusal, the Court may by order compel an immediate inspection of the register.

(9) For the purposes of this section-

(a) a person in accordance with whose directions or instructions the directors of the company are accustomed to act shall be deemed to be a director and officer of the company;

(b) the expression "Christian name " includes a forename;

(c) references to a former Christian name or surname do not include-

(i) in the case of any person, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been changed or disused for a period of not less than twenty years; or

(ii) in the case of a married woman, the name or surname by which she was known previous to the marriage.

The Office of the Law Commissioner

with respect to directors in trade catalogues, circulars, etc. 17 (a) of 99(I) of 2009.

trade circulars and business letters on or in which the company's name appears and which are issued or sent by the company to any person in any place abroad, state in legible characters with respect to every director being a corporation, the corporate name, and with respect to every director being an individual, the following particulars:-

- (a) his present Christian name, or the initials thereof, and present surname;
- (b) any former Christian names and surnames;
- (c) his nationality, if not Cypriot:

17 (b) of 99(I) of 2009.

Provided that, if special circumstances exist which render it in the opinion of the Council of Ministers expedient that such an exemption should be granted, the Council of Ministers may by order grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by this subsection.

(2) This section shall apply to-

- (a) every company registered under this Law, or the Laws repealed thereby; and
- (b) every company incorporated outside the Republic which has an established place of business within the Republic.

(3) If a company makes default in complying with this section every officer of the company who is in default shall be liable on conviction for each offence to a fine not exceeding forty-two euros, and for the purposes of this subsection, where a corporation is an officer of the company, any officer of the corporation shall be deemed to be an officer of the company:

4 of 166 of 1987.

Provided that no proceedings shall be instituted under this section except by, or with the consent of, the Attorney-General.

(4) For the purposes of this section-

- (a) the expression "director" includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act and the expression "officer" shall be construed accordingly;
- (b) the expression "initials" includes a recognized abbreviation of a Christian name;

and paragraphs (b) and (c) of subsection (9) of section 192 shall apply as they apply for the purposes of that section.

Company may have directors with unlimited liability.

**194.**-(1) In a company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.

(2) In a company in which the liability of a director or manager is unlimited, the directors and any managers of the company and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and before the person accepts the office or acts therein, notice in writing that his liability will be unlimited shall be given to him by the following or one of the following persons, namely, the promoters of the company, the directors of the company, any managers of the company and the secretary of the company.

(3) If any director, manager, or proposer makes default in adding such a statement, or if any promoter, director, manager or secretary makes default in giving such a notice, he shall be liable to a fine not exceeding eight hundred fifty-four euros, and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not

4 of 166 of  
1987.

be affected by the default.

Special  
resolution of  
company  
making  
liability of  
directors  
unlimited.

**195.**(1) A company, if so authorized by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or managers, or of any managing director.

(2) Upon the passing of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum.

Provisions as  
to assignment  
of office by  
directors.

**196.-** If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of the said provision shall, notwithstanding anything to the contrary contained in the said provisions, be of no effect unless and until it is approved by a special resolution of the company.

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

Provisions as  
to liability of  
officers and  
auditors.

**197.** Subject as hereinafter provided, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any officer of the company or any person, whether an officer of the company or not, employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void:

Provided that-

(a) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and

(b) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 383 in which relief is granted to him by the Court.

#### ***Arrangements and Reconstructions***

Power to  
compromise  
with creditors  
and members.

**198.-** (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs.

(2) If a majority in number represented three-fourths in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) shall have no effect until an office copy of the order has been delivered to the registrar of companies for registration, and a

copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

4 of 166 of  
1987.

(4) If a company makes default in complying with subsection (3), the company and every officer of the company who is in default shall be liable to a fine not exceeding forty-two euros for each copy in respect of which default is made.

(5) In this and in section 199 the expression "company" means any company liable to be wound up under this Law, and the expression "arrangement" includes a reorganization of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

Information  
as to  
compromises  
with creditors  
and members.

**199.-** (1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section 198 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 of 166 of  
1987.

(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 eight hundred fifty-four euros, 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.

4 of 166 of  
1987.

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

Provisions for  
facilitating  
reconstruction  
and

**200.-** (1) Where an application is made to the Court under section 198 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection

amalgamation of companies. with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "a transferor company") is to be transferred to another company (in this section referred to as "the transferee company"), the Court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters-

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(d) the dissolution, without winding up, of any transferor company;

(e) the provision to be made for any persons, who within such time and in such manner as the Court directs, dissent from the compromise or arrangement;

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy thereof to be delivered to the registrar of companies for registration within seven days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(4) In this section the expression "property" includes property, rights and powers of every description, and the expression "liabilities" includes duties.

(5) Notwithstanding the provisions of subsection (5) of section 198, the expression "company" in this section does not include any company other than a company within the meaning of this Law.

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

**201.**-(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company, whether a company within the meaning of this Law or not (in this section referred to as "the transferee company"), has, within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and when such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company:

Provided that where shares in the transferor company of the same class

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

(a) the transferee company offers the same terms to all holders of the shares (other than those already held as aforesaid) whose transfer is involved, or, where those shares include shares of different classes, of each class of them; and

(b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three-fourths in number of the holders of those shares.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include nine-tenths in value of the shares in the first-mentioned company or of any class of those shares, then-

(a) the transferee company shall within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and

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

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

(3) Where a notice has been given by the transferee company under subsection (1) and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares:

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

(4) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(5) In this section the expression "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

(6) In relation to an offer made by the transferee company to shareholders of the

transferor company before the commencement of this Law, this section shall have effect-

(a) with the substitution, in lines 8, 9, 10 and 11 of subsection (1), for the words "the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary)", of the words "the shares affected" and with the omission of the proviso to that subsection;

(b) with the omission of subsection (2); and

(c) with the omission, in lines 8, 9, 10 and 11 of subsection (3), of the words "together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company" and of the proviso to that subsection.

31 of 70(I) of  
2003.

***Merger and Division of Public Companies***

Scope of  
application of  
provisions.  
31 of 70(I) of  
2003.

**201A.-** (1) Subject to subsections (1) and (2), the following company reorganizations mentioned in paragraphs (a) to (c) shall also be governed, except for sections 198 to 201, by the provisions of sections 201B to 201H:

(a) Merger by acquisition of one or more public companies by another public company. Such a merger shall mean:

(i) The act by which one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another existing company making available to their shareholders shares of the latter company (the acquiring company) and any setting off amount in cash.

(ii) The acquisition of a company by another, which holds 90% or more, but not the total shares of the first.

(iii) The act by which one or more companies are wound up without going into liquidation and transfer, their total assets and liabilities, to another company to which all their shares and other titles which confer a right to vote at general meeting belong:

Provided that a merger by acquisition may also be effected even when one or more of the companies being acquired are in liquidation, so long as the distribution of their assets among their shareholders has not yet commenced:

Provided further that the provisions for the evaluation of the contributions in kind provided for in section 47B shall apply to the cases mentioned in this subparagraph.

(b) Merger of public companies by formation of a new public company. Such an act is an act by which more companies are wound up without going into liquidation and transfer to one company, that they set up, their total assets and liabilities, making available to their shareholders the shares of the new company and any setting off amount in cash:

Provided that a merger by formation of a new company may also be effected when one or more of the companies being divided are in liquidation so long as the distribution of their assets among their shareholders has not yet commenced:

Provided further that the provisions for the evaluation of the contributions in kind provided for in section 47B shall apply to the incorporation of the new company, referred to in this paragraph.

(c) Division of public companies. This shall mean:

(i) Division by acquisition, that is, the act by which a company is dissolved without going into liquidation and transfers to numerous existing companies (the recipient companies) its total assets and liabilities through a distribution to its shareholders, first, of shares of the above companies receiving the company contributions arising out of the division and second, any setting off amount in cash;

(ii) Division by formation of new companies, that is the act by which a company is dissolved without going into liquidation and transfers to numerous existing companies (the recipient companies) its total assets and liabilities through a distribution to its shareholders, first, of shares of the above companies receiving the company contributions arising out of the division and second, any setting off amount in cash:

Provided that a division by formation of a new company may also be effected when the company being divided is in liquidation, so long as the distribution of its assets among its shareholders has not yet commenced:

Provided further that the provisions for the evaluation of the contributions in kind provided for in section 47B shall apply to the formation of the new company.

(2) The following shall be exempt from the provisions of sections 201B to 201G and as a result only sections 198 to 201 are applicable thereto:

(a) Each company reorganization which is not expressly provided for in the above definitions of subsection (1):

Provided that, where an act falls within the ambit of a company reorganization under the above definitions and is prohibited by sections 201B to 201D hereinbelow, such an act shall not be exempt.

(b) Reorganizations of public companies which are conducted by purchase, sale or exchange of shares or debentures.

(c) Reorganizations of public companies which are conducted by stock exchange transactions, in particular, by way of a public offering for buy out of shares or debentures.

(3) Sections 201B to 201G shall not apply to cases where the company being merged, in the case of a merger or the company which ceases to exist in the case of division is a public company going into liquidation or compromise.

Limitations of general nature regarding reorganisations falling within section 201A. 31 of 70(I) of 2003.

**201B.-** (1) The setting off amount in cash referred to in section 201A above cannot exceed ten per cent of the par value of the shares offered.

(2) The shares of the acquiring company, in the case of a merger, and of the recipient company in the case of a division, cannot be exchanged for shares of the company being acquired and the company being divided respectively, held either:

(a) by the acquiring company or the recipient company itself or a person acting in his own name but on its behalf, or

(b) by the company being acquired or the company being divided itself or a person acting in his own name but on its behalf.

Procedure

**201C.-**(1)(a) The directors of the companies, which participate in the company



The Office of the Law Commissioner

regarding reorganization described in section 201A, shall draw up draft terms of merger or reorganization s falling within division, as the case may be. section 201A. (b)The draft terms mentioned in paragraph (a) shall include at least the following Draft terms of particulars: scheme. 31 of 70(I) of 2003.

(i) the type, name and registered office of the companies;

(ii) the relationship of the exchange of the shares , as well as the amount of the agreed sum, if any, in cash:

9(a) of 70(I) Provided that, this information shall not be required in case of a company of 2007. reorganization pursuant to subparagraphs (ii) and (iii) of paragraph (a) of 4(a) of 64(I) subsection (1) of section 201A. of 2012.

(iii) the manner of disposition of the shares of the acquiring company in the case of merger or the recipient companies in the case of division:

9(b) of 70(I) Provided that, this information shall not be required in case of a company of 2007. reorganization pursuant to subparagraphs (ii) and (iii) of paragraph (a) of 4(b) of 64(I) subsection (1) of section 201A. of 2012.

(iv) the date from which the holding of such shares entitles the holders to participate in profits as well as any special conditions affecting that entitlement:

9(c) of 70(I) Provided that, this information shall not be required in case of a company of 2007. reorganization pursuant to subparagraphs (ii) and (iii) of paragraph (a) of 4(c) of 64(I) subsection (1) of section 201A. of 2012.

(v)the date from which the acts of the company being acquired or being divided are considered, from an accounting point of view, to have been carried out on behalf of the acquiring company or on behalf of one of the recipient companies, respectively;

(vi) the rights conferred by the acquiring company or the recipient companies on the shareholders with special rights and the beneficiaries of titles other than shares, or the measures proposed for them;

(vii) all special advantages provided to the experts in accordance with subsection (3) as well as to the directors of the merging companies or the companies involved in the division.

(c)When the draft terms mentioned in paragraph (a) constitutes draft terms of division, these terms shall also mention, apart from what is provided for in paragraph (b), the following:

(i) The exact description and allocation of the assets and liabilities to be transferred to each of the recipient companies;

(ii) The allocation to the shareholders of the company being divided of the shares of the recipient companies, as well as the criterion on which this allocation is based.

(d) The draft terms shall be published in accordance with section 365A at least 30 days before the date on which the general meeting is held which is convened to decide upon the conversion:

4 (d) of 64(I) Provided that the company being merged or divided shall be exempt from the of 2012. above publication requirement if, for a continuous time period beginning at least one month before the day fixed for the general meeting which is to decide on the

draft terms of merger or division and ending not earlier than the conclusion of that meeting, it makes the draft terms of such merger or division available on its website free of charge for the public. The information which is published on the company's website is maintained for a period of one month after the conclusion of the general meeting. Such period shall be extended by such time period which shall be proportionate to the disruption of access to the website caused by technical or other factors.

9(d) of 70(I)  
of 2007.  
4(e) of 64(I)  
of 2012.

(2) (a) The directors of each company being merged or divided shall draw up a detailed written report explaining and justifying the draft terms of merger from a legal and economic aspect and, in particular, the share exchange ratio. Such report shall also describe any special valuation difficulties which have arisen:

Provided that, in the event of a division, the above written report shall additionally refer to, as the case may be, the compiling of a report for the valuation of the value of the contributions in kind in accordance with section 47B.

9(e) of 70(I)  
of 2007.

(b) The drafting of the directors' report provided for in paragraph (a) shall not be required in case of a company reorganization pursuant to subparagraph (iii) of paragraph (a) of subsection (1) of section 201A.

9(f) of 70(I)  
of 2007.  
4 (f) of 64(I)  
of 2012.

(c) The directors of each of the companies participating in the merger or division of the company shall inform the general meeting of their company as well as the board of directors of the other companies participating so that the latter may inform their respective general meetings of any material change in the assets and liabilities between the date of preparation of the draft terms of merger or division and the date of the general meetings which are to decide on the draft terms of merger or division.

4(g) of 64(I)  
of 2012.

(d) The report referred to in paragraph (a) and/or the information referred to in paragraph (c) shall not be required if all the shareholders and the holders of other securities conferring the right to vote of each of the companies participating in the merger or division have so agreed.

(3) (a) The draft terms provided in subsection (1) and the reports provided in subsection (2) shall be examined by independent experts (natural or legal persons) one for each participating company, appointed specifically for this purpose by the Court after application by the participating companies. The participating companies may request the appointment of a joint expert.

(b) The expert shall have the right to request every useful information and document from the companies and to carry out all necessary investigations.

(c) The expert shall draft a written valuation report, intended for the shareholders, in which he must state whether in his opinion the share exchange ratio is fair and reasonable or not and in which he must at least mention:

(i) the method or methods used to arrive at the share exchange ratio proposed;

(ii) whether such method or methods are adequate in the case in question, indicating the values arrived at using each such method and giving at the same time an opinion on the relative importance attributed to such methods in arriving at the value decided on,

(iii) any special evaluation difficulties which have arisen.

The Office of the Law Commissioner

9(g) of 70(I) of 2007. (d) The production of the expert's valuation report shall not be required in the case of a company reorganization pursuant to subparagraph (iii) of paragraph (a) of subsection (1) of section 201A.

2(a) of 49(I) of 2009. (e) Neither an examination of the draft terms of merger or division nor an expert report shall be required if all the shareholders and the holders of other securities conferring the right to vote of each of the companies involved in the merger or division have so agreed.

4(h) of 64(I) of 2012. (4) Each shareholder of the participating companies shall be entitled to inspect at least the following documents at the registered office of the company and to receive, if so wishes, free of charge and on application, a complete copy or extract of the said documents at least thirty days before the day on which the general meeting is convened which is to decide upon the draft terms or where a shareholder has consented to the use by the company of electronic means for conveying information, he may request that the following documents are sent by electronic mail:

(a) the draft terms;

(b) the annual accounts as well as the reports of the management bodies for the last three financial years of the merging companies or of the companies involved in the division, respectively,

(c) the interim accounts drawn up as at a date which must not be earlier than the first day of the third month preceding the date of the draft terms if the latest annual accounts relate to a financial year which ended more than six months before that date:

Provided that, these interim accounts must be prepared in accordance with the same methods and be presented in the same manner as the last annual accounts:

Provided further that:

(i) It is not mandatory that a new real inventory be made,

(ii) the valuations in the last balance sheet shall be varied only during the variation of the registrations in the company books, however the interim depreciations and predictions will be taken into account as well as important changes of real value which do not arise from the registrations:

4(i) of 64(I) of 2012. Provided even further that, the right of the shareholder pursuant to this subsection shall not apply, where the company publishes a half-yearly financial report in accordance with section 10 of the Transparency Requirements (Securities Admitted to Trading on a Regulated Market) Law, which it makes available to the shareholders:

Provided even further that, the preparation of interim account statements shall not be required if all the shareholders and the holders of other securities conferring the right to vote of each of the companies involved in the merger have so agreed.

(d) the report of the directors of the participating companies according to subsection (2);

2(b) of 49(I) of 2009. (e) as the case may be, the expert's report-valuation according to subsection (3):

9(h) of 70(I) Provided that in case of a company reorganization referred to in

of 2007. subparagraph (iii) of paragraph (a) of subsection (1) of section 201(A), the shareholder's right by virtue of this subsection shall not exist in respect of those documents mentioned in paragraphs (d) and (e), in case those documents are not prepared due to the application of the exemptions contained in paragraph (b) of subsection (2) and in paragraph (d) of subsection (3);

4 (j) of 64(I) of 2012. (f) a company shall be exempt from the requirement to make the documents referred to in paragraphs (a) to (e) available at its registered office if, for a continuous period beginning at least one month before the day fixed for the general meeting which is to decide on the draft terms of merger or division and ending not earlier than the conclusion of that meeting, it makes them available on its website. The information which is published on the company's website is maintained for a period of one month after the conclusion of the general meeting. This period shall be extended by such time period which shall be proportionate to the disruption of access to the website caused by technical or other factors;

4(j) of 64(I) of 2012. (g) the right of the shareholders to receive free of charge subject to a mere application, a copy of the documents referred to in paragraphs (a) to (e) shall not apply if the company's website gives shareholders the possibility, throughout the period referred to in paragraph (f), of downloading and printing the said documents:

Provided that in this case, the company shall make such documents available at its registered office for inspection by the shareholders.

(5) The reorganization shall be decided upon by the general meeting of each participating company, applying subsection (2) of section 198 as to voting and to the extent the decision entails the amendment of the articles, applying by way of supplementation to the provisions as to the amendment of the articles:

4 (k) of 64 (I) of 2012. Provided, that in the event of merger by acquisition of one or more companies by a company which holds 90% or more, but not all, of the shares conferring the right to vote at general meetings of the company being acquired, the approval of the general meeting of the acquiring company shall not be required if the following conditions are fulfilled:

- (i) there has been a publication in accordance with section 365A at least one month before the day of calling the general meeting of the acquiring company or of the companies being acquired which are to decide on the common draft terms of the merger,
- (ii) all the shareholders of such company, at least one month before the day of calling the general meeting, have the right to have knowledge, at its registered office, of the documents referred to in paragraphs (a), (b), and, as the case may be, (c), (d), and (e) of subsection (4) of section 201C, subject to its provisions,
- (iii) one or more shareholders of the acquiring company, holding at least 5% of the subscribed capital, have the right to call a general meeting of the acquiring company, which is to decide on the common draft terms of the merger:

Provided further, that in the event of division, the approval of the division by the general meeting of the recipient company shall not be required, if the following conditions are fulfilled:

- (i) there has been a publication in accordance with section 365A at

The Office of the Law Commissioner

least one month before the day of calling the general meeting of the company being divided which is to decide on the common draft terms of the merger,

- (ii) all the shareholders of the recipient company, at least one month before the day of calling the general meeting, have the right to have knowledge, at its registered office, of the documents referred to in paragraphs (a), (b), and, as the case may be, (c), (d), and (e) of subsection (4) of section 201C, subject to its provisions,
- (iii) one or more shareholders of the recipient company, holding shares which correspond to at least 5% of the subscribed capital, have the right to call a general meeting of the recipient company, which is to decide on the common draft terms of the division;

(6) In the case of division-

(a) When an asset is not allocated to anyone under the draft terms of division and the interpretation of the scheme does not provide for the possibility of a decision as to how this should be allocated, this asset or its equivalent value shall be allocated among all the recipient companies according to the net assets allocated to each of those companies under the draft terms of division,

(b) when a liability is not allocated to anyone under the draft terms of division and the interpretation of the scheme does not provide for the possibility of a decision as to how this should be allocated, each one of the recipient companies shall be jointly and severally liable. The liability shall be restricted to the net assets allocated to each recipient company,

(c) *Deleted.*

2(c) of 49(I) of 2009.  
4(l) of 64(I) of 2012.  
4(m) of 64(I) of 2012.

(7) In the event of merger by acquisition of one or more companies by a company which holds 90% or more, but not all, of the shares conferring the right to vote at general meetings of the company being acquired, the requirements of subsections (2), (3) and (4) shall not be required if the following conditions are fulfilled:

- (a) the minority shareholders of the company being acquired may exercise the right to redeem their shares on behalf of the acquiring company;
- (b) in this case, the minority shareholders shall have a claim which is equivalent to the value of their shares; in the event of disagreement, this sum shall be determined by the court.

Protection of third parties.  
Protection of creditors and holders of debentures.  
31 of 70(I) of 2003.

**201D.**-(1) (a) As regards the protection of the creditors in relation to their claims created before the publication of the draft terms provided for in section 201C and which have not fallen due as at the date of publication, paragraph (e) of subsection (1) of section 200 shall be applicable.

(b) The order to be issued by the Court must provide for an obligation of the participating companies to provide suitable guarantees to the creditors when-

- (i) the financial status of the merging companies (in the case of merger by acquisition or by formation of new company) or of the company being divided as well as the company which in accordance with

The Office of the Law Commissioner

the draft terms of division shall undertake the obligation towards the creditors (in the case of division) render this protection mandatory, and

(ii) provided the said creditors do not already have similar safeguards:

5 of 64(I) of  
2012.

Provided that the creditors are entitled to apply to the district court for adequate safeguards provided that they can credibly demonstrate that, due to the merger, the satisfaction of their claims is at stake and that no adequate safeguards have been obtained from the company.

(c) If in the case of a division a creditor of a company, to which the respective obligation has been transferred in accordance with the draft terms, has not been satisfied, each one of the recipient companies shall be severally and jointly liable for this obligation. This liability for each recipient company shall be restricted to the net assets distributed to it, except for the company to which the obligation has been transferred.

(2) (a) As regards the protection of holders of debentures of the merging companies, or of the companies involved in the division, paragraph (e) of subsection (1) of section 200 shall be applicable, except where the merger or division has been approved by a meeting of the holders of debentures pursuant to the procedure provided for in subsection (2) of section 198, or by the holders themselves, individually.

(b) If, in the case of a division a holder of debentures of a company to which the respective obligation has been transferred in accordance with the draft terms of division, has not been satisfied, each one of the recipient companies shall be jointly and severally liable for the obligation. The liability shall be restricted for each recipient company to the net assets distributed to it, except for the company to which the obligation has been transferred.

Powers of the  
Court.  
31 of 70(I) of  
2003.

**201E.**- (1) The division shall be decided by an order issued by the Court, applying mutatis mutandis section 200.

(2) In applying mutatis mutandis section 200, the Court shall also have the following powers in relation to the division of a company:

- (a) to convene a general meeting of the shareholders of the company being divided to decide upon the division,
- (b) to secure that the shareholders of each company involved in the division have received or can obtain at least the documents mentioned in section 201C(4) within a timeframe sufficient to enable them to examine them in good time and in any event at least twenty-one days before the date of the general meeting of their company which shall decide upon the division,
- (c) to convene any meeting of creditors of each of the companies involved in the division, to decide upon the division,
- (d) to secure that the creditors of each company participating in the division have received or can obtain at least the draft terms of division plan within a timeframe sufficient to enable them to examine it in good time and in any event at least twenty-one days before the date of the general meeting of their company which shall decide upon the division,
- (e) to approve the draft terms of the division plan.

Validity and

**201F.**-(1) Section 198(3) shall apply with regard to the time on which the

lawful  
consequences  
of  
reorganization  
.  
31 of 70(I) of  
2003.

reorganization shall take effect.

(2) Subject to the provisions of subsection (1), a merger shall have the following consequences:

(a) The transfer of all the assets and liabilities of the company being acquired to the acquiring company in accordance with the allocation provided for in the draft terms of the merger. This transfer shall be valid both between the company being acquired and the acquiring company and as regards third parties;

(b) The shareholders of the company being acquired become shareholders of the acquiring company:

10 of 70(I) of  
2007.  
6 of 64(I) of  
2012.

Provided that this paragraph shall not apply to the case of a company reorganization pursuant to subparagraph (ii) and (iii) of paragraph (a) of subsection (1) of section 201A.

(c) The company being acquired shall cease to exist.

(3) A division shall have the following consequences:

(a) The transfer of all the assets and liabilities of the company being divided to the recipient companies in accordance with the allocation provided for in the draft terms of the division plan. Such transfer shall take effect both between the company being divided and the recipient companies and as regards third parties;

(b) The shareholders of the company being divided shall become shareholders of one or more of the recipient companies in accordance with the allocation provided in the draft terms of the division plan;

(c) The company being divided ceases to exist.

Civil and  
criminal  
liability of the  
parties  
involved.  
31 of 70(I) of  
2003.

**201G.** (1) The directors who signed the reorganization plan and the explanatory report and the experts who signed the valuation report, shall be liable for every loss to the shareholders of the company being acquired or the company being divided, arising from negligent behaviour conducted during the preparation of the merger or the division in applying section 43, *mutatis mutandis*.

7(a) of 64(I)  
of 2012.

2(a) This provision shall not apply to the absorption of a company by another, which already holds the total shares of the company being absorbed, either itself or through trustees.

7(b) of 64(I)  
of 2012.

(b) This provision shall not apply in the event of a company reorganisation pursuant to subparagraph (ii), of paragraph (a), of subsection (1) of section 201A.

(3) When the reorganization plan and the explanatory report signed by the directors or the valuation report signed by the experts, any untrue statement of facts, every person signing the abovementioned documents shall commit a criminal offence and shall on conviction be punishable with imprisonment for a period not exceeding two years or with a fine not exceeding two thousand, five hundred and sixty-two euros or both, unless he proves that he had reasonable cause to believe and did believe up to the date of submission of the above

mentioned documents that the statement was true.

Protection of employees.  
31 of 70(I) of 2003.  
104(I) of 2000.

**201H.** The protection of the rights of the employees of each of the companies which participate in the reorganization, shall be regulated in accordance with the Maintenance and Safeguarding of Employees' Rights in Transfers of Undertakings, Businesses, or Parts of Undertakings, or Businesses , Law, 2000.

### *Cross Border Mergers of Limited-Liability Companies*

Interpretation  
.  
2 of 186(I) of 2007<sup>4</sup>.

**201I.** For the purposes of application of sections 201J to 201X, unless the context otherwise requires-

"cross border merger of limited-liability companies" means the merger of limited-liability companies, which have been incorporated in accordance with the legislation of a member state and which have their registered office, their central administration or their principal place of business within the Community, provided that at least two of such companies are governed by the law of different member states;

"Regulation (EC) No. 2157/2001" means Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company (SE), as amended and/or substituted from time to time;

Official  
Journal of the  
EU: L294,  
10.11.2001  
p.1

"limited-liability company" means:

- (a) a company of a member state of the European Union and a Cyprus company, or
- (b) a company with share capital and having legal personality, possessing separate assets which alone serve to cover its debts and subject under the national law governing it, to conditions concerning guarantees such as are provided for by Directive 68/151/EEC for the protection of the interests of members and others;

"Cyprus company" means a company in the context of subsection (1) of section 2 of this Law;

"Directive 68/151/EEC" means First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by member states of companies within the meaning of the second paragraph of article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community, as amended and/or substituted from time to time;

Official  
Journal of the  
EU: L65,  
14.3.1968,  
p.8

"Directive 2001/86/EC" means Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, as amended and/or substituted from time to time;

"Directive 2005/56/EC means Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited-liability companies, as amended and/or substituted from time to time;

Official  
Journal of the  
EU: L294,  
10.11.2001,  
p. 22.

"merger" means an operation whereby:

- (a) one or more limited-liability companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing limited-liability company - the acquiring company - in exchange for the issue to their members of securities or shares representing the capital of that acquiring

Official

<sup>4</sup> Law 186(I) of 2007 uses the term "Κεφαλαιουχική εταιρεία" which means "Company having share capital". Nevertheless, for the purposes of compatibility with the Community legislation, the term "limited-liability company" is used in the text.



Journal of the  
EU: L310,  
25.11.2005,  
p.1.

company and, if applicable, a cash payment not exceeding 10% of the nominal value, or, in the absence of a nominal value, of the accounting par value of those securities or shares; or

(b) two or more limited-liability companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to a limited-liability company that they form - the new company - in exchange for the issue to their members of securities or shares representing the capital of that new company and, if applicable, a cash payment not exceeding 10% of the nominal value, or in the absence of a nominal value, of the accounting par value or those securities or shares; or

(c) a limited-liability company, on being dissolved without going into liquidation, transfers all its assets and liabilities to the limited-liability company holding all the securities or shares representing its capital.

Scope of  
application.  
2 of 186(I) of  
2007.

**201J.-** (1) Sections 201K-201X shall apply to cross-border mergers of limited-liability companies, provided that at least one of the merging limited-liability companies is a Cyprus company or the company resulting from the cross-border merger is a Cyprus company.

(2) Notwithstanding the meaning assigned to the term of 'merger' by section 201I, sections 201K-201X shall also apply to cross-border mergers where the amount anticipated in the meaning of the term 'merger' allows the cash payment to exceed 10 % of the nominal value, or, in the absence of a nominal value, of the accounting par value of the securities or shares representing the capital of the company resulting from the cross-border merger, given that this is allowed by the law of the member state that governs at least one of the merging limited liability companies.

(3) Sections 201K-201X, shall not apply to cross-border mergers involving a company the object of which is the collective investment of capital provided by the public, which operates on the principle of risk-spreading and the shares of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of that company. Action taken by such a company to ensure that the stock exchange value of its shares does not vary significantly from its net asset value shall be regarded as equivalent to such repurchase or redemption.

Conditions  
relating to  
cross border  
mergers.  
2 of 186(I) of  
2007.

**201K.-** (1) Cross-border mergers shall only be possible between types of companies which may merge under the national law of the member states concerned:

Provided that every Cyprus company may take part in a cross-border merger, with the exception of:

(a) limited-liability companies by guarantee;

(b) companies in liquidation.

(2) A Cyprus company taking part in a cross-border merger shall comply with the provisions of this Law, including those concerning the decision-making process relating to the merger, the protection of creditors of the merging companies, debenture holders and the holders of securities or shares.

(3) For the purpose of protecting minority members who have opposed the cross-border merger, section 201 of this Law shall apply mutatis mutandis.

Common draft  
terms of  
cross-border  
merger.

**201L.** The Directors of each of the Cyprus companies taking part in the cross-border merger shall draw up the common draft terms of cross-border merger. The common draft terms of cross-border merger shall include at least the following particulars:

2 of 186(I) of  
2007.

- (a) the form, name and registered office of the merging limited- liability companies and those proposed for the company resulting from the cross-border merger;
- (b) the ratio applicable to the exchange of securities or shares representing the company capital and where applicable, the amount of any cash payment;
- (c) the terms for the allotment of securities or shares representing the capital of the company resulting from the cross-border merger;
- (d) the likely repercussions of the cross-border merger on employment;
- (e) the date from which the holding of such securities or shares representing the company capital will entitle the holders to share in profits and any special conditions affecting that entitlement;
- (f) the date from which the transactions of the merging limited-liability companies will be treated for accounting purposes as being those of the limited-liability company resulting from the cross-border merger;
- (g) the rights conferred by the limited-liability company resulting from the cross-border merger on members enjoying special rights or on holders of securities other than shares representing the company capital, or the measures proposed concerning them;
- (h) any special advantages granted to the experts who examine the draft terms of the cross-border merger or to members of the administrative, management, supervisory or controlling organs of the merging limited liability companies;
- (i) the memorandum and articles of the limited-liability company resulting from the cross-border merger;
- (j) where appropriate, information on the procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the limited liability company resulting from the cross-border merger are determined pursuant to section 201W.
- (k) information on the evaluation of the assets and liabilities which are transferred to the company resulting from the cross-border merger;
- (l) dates of the merging companies' accounts used to establish the conditions of the cross-border merger.

Publication.  
2 of 186(I) of  
2007.

**201M.**-(1) The Directors of each of the merging Cyprus companies shall file in time before the Registrar of Companies the common draft terms of the cross-border merger, mentioned in section 201L, which shall be published, in accordance with the provisions of section 365A, for each of the merging Cyprus companies, at least one month before the date of the general meeting which is to decide thereon:

8 of 64(I) of  
2012.

Provided that each one of the merging Cyprus companies shall be exempt from the above publication requirement if, for a continuous time period beginning at least one month before the day fixed for the general meeting which is to decide on the common draft terms of cross-border merger and ending not earlier than the conclusion of that meeting, it makes the common draft terms of such merger available on its website free of charge for the public. The information which is published on the company's website is maintained for a period of one month after the conclusion of the general meeting. This period shall be extended by such time period which shall be proportionate to the disruption of access to the website

caused by technical or other factors.

(2) The Directors of each of the merging Cyprus companies shall file in time before the Registrar of Companies the following particulars for each of the merging companies, which shall be published in the Official Gazette of the Republic in accordance with the provisions of section 365A:

(a) the type, name and registered office of every merging limited-liability company;

(b) the register in which the documents referred to in section 365A of this Law are filed in respect of each merging company and, in respect of each of the remaining merging companies of another member state, those documents required by the relevant national legislation transposing the provisions of Article 3(2) of Directive 68/151/EEC, as well as the number of the entry in that register;

(c) an indication, for each of the merging limited-liability companies, of the arrangements made for the exercise of the rights of creditors and of any minority members of the merging companies and the address at which complete information on those arrangements may be obtained free of charge.

Directors' report.  
2 of 186(I) of 2007.

**201N.-** (1) The Directors of each of the merging Cyprus companies shall draw up a report intended for the members thereof, explaining and justifying the legal and economic aspects of the cross-border merger and explaining the implications of the cross-border merger for members, creditors and employees.

(2) The report shall be made available to the members and to the representatives of the employees or, where there are no such representatives, to the employees themselves, not less than one month before the date of the general meeting referred to in section 201P.

(3) Where the Directors receive, in good time, an opinion from the representatives of the employees of the company, the said opinion shall be appended to the report.

Independent expert report.  
2 of 186(I) of 2007.

**201O.-** (1) An independent expert report intended for members and made available not less than one month before the date of the general meeting referred to in section 201P shall be drawn up for each merging Cyprus company. Such experts may be natural or legal persons and are appointed by the Court following an application by the relevant merging Cyprus company.

(2) As an alternative to experts operating on behalf of each of the merging limited liability companies, one or more independent experts, appointed for that purpose at the joint request of the merging limited liability companies by a competent judicial or administrative authority in the member state the legislation of which governs one of the merging limited-liability companies or the limited-liability company resulting from the cross-border merger or approved by such an authority, may examine the common draft terms of cross-border merger and draw up a single written report to all the members of the merging limited-liability companies.

(3) The expert report shall include at least the following particulars:

(a) the method or methods used to arrive at the share exchange ratio proposed;

(b) state whether such method or methods are adequate in the case in question, indicating the values arrived at using each such method and giving at the same time, an opinion on the relative importance attributed to such methods in arriving at the value decided on;

(c) any special valuation difficulties.

(4) The independent experts shall be entitled to secure from each of the merging companies all information they consider necessary for the discharge of their duties.

(5) If all the members of each of the companies involved in the cross-border merger have so agreed, neither an examination of the common draft terms of cross-border merger by independent experts nor an expert report shall be required.

Approval by  
the general  
meeting.  
2 of 186(I) of  
2007.

**201P.-** (1) After taking note of the reports referred to in sections 201N and 201O, the general meeting of each of the merging Cyprus companies shall decide on the approval of the common draft terms of cross-border merger.

(2) The general meeting may reserve the right to make implementation of the cross-border merger conditional on express ratification by it of the arrangements decided on with respect to the participation of employees in the limited-liability company resulting from the cross-border merger.

(3) On the approval of the common draft terms of cross-border merger, the general meeting shall expressly indicate whether it approves of the possibility for the members of any of the other merging non-Cyprus limited liability companies to have recourse to a procedure prescribed by the national legislation that governs that merging company which allows for the scrutiny and amendment of the ratio applicable to the exchange of securities or shares, or a procedure which allows for the compensation of minority members, without preventing the registration of the cross-border merger:

Provided that, the decision resulting from the application of the procedure shall be binding on the limited-liability company resulting from the cross-border merger and all its members.

Pre-merger  
certificate.  
2 of 186(I) of  
2007.

**201Q.-(1)** The District Court of the district where the registered office of each of the merging Cyprus companies is situated shall be competent to scrutinise the legality of the cross-border merger as regards that part of the procedure which concerns each of the merging Cyprus companies.

(2) Each of the merging Cyprus companies concerned shall apply to the Court referred to in subsection (1), requesting a certificate conclusively attesting to the proper completion of the pre-merger acts and formalities.

(3) The District Court, if satisfied that the provisions of sections 201IL – 201P are observed shall issue, without delay, to each Cyprus merging company, the certificate referred to in subsection (2).

(4) The District Court may issue the certificate referred to in subsection (2), even if the procedure referred to in section 201P(3) has commenced from any other merging limited-liability non-Cyprus company:

Provided that, in this case, the Court must indicate on the certificate that the procedure is pending.

Scrutiny of  
the legality of  
the cross  
border

**201R.-** (1) Where the limited-liability company resulting from the cross-border merger is governed by this Law, the District Court of the district where the registered office of the said company is situated shall be competent to scrutinise the legality of the cross-border merger as regards that part of the procedure which concerns the

merger.  
2 of 186(I) of  
2007.

completion of the cross-border merger and, where appropriate, the formation of the new company resulting from the cross border merger.

(2) In exercising its scrutiny referred to in subsection (1), the District Court shall, in particular, ensure that the merging limited-liability companies have approved the common draft terms of cross-border merger in the same terms and, as the case may be, whether the arrangements for employee participation in each of the merging Cyprus companies have been determined in accordance with section 201W of this Law and for each merging non-Cyprus company in accordance with the relevant national legislation transposing the provisions of Article 16 of Directive 2005/56/EC.

(3) For the purpose of exercising the scrutiny referred to in subsection (2), each merging Cyprus company shall submit to the District Court the certificate referred to in subsection (2) of section 201Q and every other non-Cyprus merging company the certificate issued by the competent authority subject to the relevant national legislation according to Article 10(2) of Directive 2005/56/EC within six months of its issue, together with the common draft terms of cross-border merger approved by the general meeting in accordance with section 201P where Cyprus merging companies are concerned and in accordance with the provisions of Article 9 or of Directive 2005/56/EC where all other non Cyprus merging companies are concerned.

(4) Provided that the District Court is satisfied with the legality of the procedure concerning the completion of the cross-border merger, it shall make a decision approving the completion of the cross border merger and shall authorise the entry into force of the cross-border merger.

Entry into  
effect of the  
cross border  
merger.  
2 of 186(I) of  
2007.

**201S.** The cross border merger shall take effect from the date of its entry into effect which is determined in the decision made by the District Court in accordance with section 201R or where the authority competent to approve the completion of the cross border merger is the authority of another member state in accordance with the provisions of Article 11 of Directive 2005/56/EC the cross border merger shall commence to take effect on the date determined by the national legislation for the purposes of Article 12 of Directive 2005/56/EC.

Registration.  
2 of 186(I) of  
2007.

**201T.-** (1) Each merging Cyprus company shall file with the Registrar of Companies an official copy of the decision issued pursuant to subsection (4) of section 201IH, for the purposes of registration and publication in accordance with section 365A, and a copy of that decision shall be appended to every copy of the memorandum of the new company formed on completion of the cross-border merger.

(2) On receipt of the official copy referred to in subsection (1), the Registrar of Companies, shall notify, without delay, the registry in which each of the merging companies of other member state was required to file documents that the cross-border merger has taken effect, in accordance with Article 3 of Directive 68/151/EC.

(3) On receipt of notice that the cross-border merger has been completed and approved by the competent national authority of another Member State in accordance with Article 11 of Directive 2005/56/EC, the Registrar of Companies shall, according to Article 13(2) of Directive 2005/56/EC, without delay cause for that decision to be registered and published pursuant to section 365A.

(4) On registration of the copy of the decision referred to in subsection (1) in the Register of Companies of each merging Cyprus company, the Registrar of Companies shall remove from the Register of Companies the Cyprus company being acquired indicating the date on which the cross border merger takes effect.

Consequences

**201U.-** (1) A cross-border merger carried out as laid down in paragraphs (a) and (c)

of the cross  
border  
merger.  
2 of 186(I) of  
2007.

of section 201I shall, from the date referred to in 201S, have the following consequences:

(a) all the assets and liabilities of the company being acquired shall be transferred to the acquiring company;

(b) the members of the company being acquired shall become members of the acquiring company;

(c) the company being acquired shall cease to exist.

(2) A cross-border merger carried out as laid down in paragraph (b) of section 201I above shall, from the date referred to in section 201S, have the following consequences:

(a) all the assets and liabilities of the merging companies shall be transferred to the new company;

(b) the members of the merging companies shall become members of the new company;

(c) the merging companies shall cease to exist.

(3) The limited-liability company resulting from the cross border merger shall comply with the formalities required by this Law or in the case of the merging limited-liability non-Cyprus companies the laws to which such companies are subject to, as regards the completion of special formalities before the transfer of certain assets, rights and obligations by the merging companies becomes effective against third parties.

(4) The rights and obligations of the merging limited-liability companies arising from contracts of employment or from employment relationships and existing at the date on which the cross-border merger takes effect shall, by reason of that cross-border merger taking effect, be transferred to the limited-liability company resulting from the cross-border merger on the date on which the cross-border merger takes effect.

(5) No shares in the acquiring company shall be exchanged for shares in the company being acquired held either:

(a) by the acquiring company itself or through a person acting in his or her own name but on its behalf;

(b) by the company being acquired itself or through a person acting in his or her own name but on its behalf.

Simplified  
formalities.  
2 of 186(I) of  
2007.

**201V.-** (1) Where a cross-border merger by acquisition is carried out by a Cyprus company which holds all the shares and all other securities conferring the right to vote at general meetings of the company or companies being acquired:

(a) The provisions of paragraphs (b), (c) and (e) of section 201L, section 201O, and section 201U, paragraph 1 (b) shall not apply;

(b) Subsection (1) of section 201P shall not apply to the company or companies being acquired.

(2) Where a cross-border merger by acquisition is carried out by a limited-liability company which holds all the shares and other securities conferring the right to

vote at general meetings of the company or companies being acquired:

(a) Article 5, points (b), (c) and (e), Article 8 and Article 14, paragraph (1) point (b) of Directive 2005/56/EC shall not apply,

(b) Article 9, paragraph (1) of Directive 2005/56/EC shall not apply to the company or companies being acquired.

Employee participation.  
2 of 186(I) of 2007.

**201W.**-(1) Subject to the provisions of subsection (2), the limited-liability company resulting from the cross-border merger shall be subject to the legislation in force concerning employee participation, if any, in the member state where it has its registered office.

(2) The legislation in force concerning employee participation, if any, in the member state where the limited-liability company resulting from the cross-border merger has its registered office shall not apply, where at least one of the merging limited-liability companies has, in the six months before the publication of the draft terms of the cross-border merger as referred to in section 201M in case of a Cyprus merging company and in Article 6 of Directive 2005/56/EC in the case of a merging company of another member state, an average number of employees that exceeds 500 and is operating under an employee participation system in the case of a Cyprus merging company within the meaning of the term "participation" referred to in section 2 of the Law Supplementing the Statute for a European Company with regard to the Involvement of Employees, and, in the case of a merging company of another member state of the European Union, within the meaning of Article 2 (k) of Directive 2001/86/EC or where the national legislation applicable to the company resulting from the cross-border merger:

277(I) of 2004.

(a) does not provide for at least the same level of employee participation as operated in the relevant merging limited-liability companies, measured by reference to the proportion of employee representatives amongst the members of the administrative or supervisory organ or their committees or of the management group which covers the profit units of the company, subject to employee representation, or

(b) does not provide for employees of establishments of the limited-liability company resulting from the cross-border merger that are situated in other member states the same entitlement to exercise participation rights as those enjoyed by those employees employed in the member state where the company resulting from the cross-border merger has its registered office.

(3) In the cases referred to in subsection (2), the participation of employees in the limited-liability company resulting from the cross-border merger and their involvement in the definition of such rights shall be regulated by the Republic, *mutatis mutandis* and without prejudice to subsections (4) to (7), in accordance with the principles and procedures laid down in Article 12, paragraphs 2,3 and 4 of Council Regulation (EC) No 2157/2001 and the following provisions of the Law Supplementing the Statute for a European Company, with regard to the Involvement of Employees;

(a) sections 5, 6, 7 and subsections (1), (2), (3), paragraph (a) of subsection (4) and subsection (7) of section 8;

(b) subsection (1), paragraphs (a), (g), (h) of subsection (2) and subsection (3) of section 9;

(c) section 10;

(d) sub-section (2) of section 4;

(e) subsection (1) and paragraph (b) of subsection (2) of section 11;

(f) sections 16, 18, 19 and 20.

(4) With respect to the principles and procedures referred to in subsection (3):

(a) the relevant organs of the merging companies have the right to choose without any prior negotiation to be directly subject to the standard rules for participation referred to in section 15(2) of the Law Supplementing the Statute for a European Company, with regard to the Involvement of Employees and to abide by those rules from the date of registration, in accordance with section 201T;

(b) the special negotiating body has the right to decide, by a majority of two thirds of its members representing at least two thirds of the employees, including the votes of members representing employees in at least two different member states, not to open negotiations or to terminate negotiations already opened and to rely on the rules on participation in force in the member state where the registered office of the limited-liability company resulting from the cross-border merger will be situated;

(c) if in one of the merging limited-liability companies employee representatives constitute at least one third of the administrative board, the percentage of employee representatives in the administrative board of the limited liability company resulting from the merger may never result in a lower proportion of employee representatives than one third.

(5) The extension of participation rights to employees of the company resulting from the cross-border merger employed in other member states, as provided for in paragraph (b) of subsection (2), shall not entail any obligation for member states which choose to do so to take those employees into account when calculating the size of workforce thresholds giving rise to participation rights under national law.

(6) When at least one of the merging limited-liability companies is operating under an employee participation system and the limited-liability company resulting from the cross-border merger is to be governed by such a system in accordance with the rules referred to in subsection (2), that company shall be obliged to take a legal form allowing for the exercise of participation rights.

(7) When the limited-liability company resulting from the cross-border merger is operating under an employee participation system, that company shall be obliged to take measures to ensure that employees' participation rights are protected in the event of subsequent domestic mergers for a period of three years after the cross-border merger has taken effect, by applying, *mutatis mutandis*, the provisions of this section.

Validity.  
2 of 186(I) of  
2007.

**201X.-** A cross-border merger which has taken effect as provided for in Regulation 201S may not be declared null and void.

### ***Minorities***

Alternative  
remedy to  
winding up in  
cases of  
oppression.

**202.** (1) Any member of a company who complains that the affairs of the company are being conducted in a manner oppressive to some part of the members (including himself) or, in a case falling within subsection (3) of section 163, the Council of Ministers may cause an application to be made to the Court by petition for an order under this section.



(2) If on any such petition the Court is of opinion-

(a) that the company's affairs are being conducted as aforesaid; and

(b) that to wind up the company would unfairly prejudice that part of the members, but otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up,

the Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

(3) Where an order under this section makes any alteration in or addition to any company's memorandum or articles, then, notwithstanding anything in any other provision of this Law but subject to the provisions of the order, the company concerned shall not have power without the leave of the Court to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order; but, subject to the foregoing provisions of this subsection, the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company and the provisions of this Law 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 333 shall apply as it applies in relation to a winding-up petition.

## **PART V.- WINDING UP**

### **(I) PRELIMINARY**

#### ***Modes of Winding Up***

Modes of winding up.

**203.-** (1) The winding up of a company may be either-

(a) by the Court; or

(b) voluntary ; or

(c) subject to the supervision of the Court.

(2) The provisions of this Law with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

#### ***Contributories***

Liability as contributories of present and past members.

**204.-** (1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of subsection (2) and the following qualifications:-

(a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;

(b) a past member shall not be liable to contribute in respect of any debt or

The Office of the Law Commissioner

liability of the company contracted after he ceased to be a member;

(c) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Law;

(d) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;

(e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of subsection (3), be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(f) nothing in this Law shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;

(g) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

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

Provided that-

(a) a past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;

(b) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;

(c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company and the costs, charges and expenses of the winding up.

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

Definition of  
"contributory".

**205.** The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Nature of  
liability of  
contributory.

**206.** The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Contributories  
in case of

**207.-** (1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives, his heirs and legatees, shall be liable

## The Office of the Law Commissioner

death of member. in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) Where the personal representatives are placed on the list of contributories, the heirs or legatees need not be added, but they may be added as and when the Court thinks fit.

(3) If default is made in paying any money due under this section proceedings may be taken for compelling payment thereof out of the estate.

Contributories in case of bankruptcy of member. **208.** If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories,-

(a) his trustee in bankruptcy shall represent him for all of the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

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

### (II) WINDING UP BY THE COURT

#### *Jurisdiction*

Jurisdiction for winding up. **209.-** (1) Subject to the provisions of section 22 of the Courts of Justice Law, the District Court of the district where the registered office of a company is situated shall have jurisdiction to wind up any company registered in the Republic:  
2(a) of 82(I) of 1999.

Provided that for the determination of whether the procedure falls under the jurisdiction of a Senior District Judge or a District Judge, the amount of the share capital of the company which has been paid up or been credited as paid up shall be taken into account:

14 of 1960  
50 of 1962  
11 of 1963  
8 of 1969  
40 of 1970  
58 of 1972  
1 of 1980  
35 of 1982  
16 of 1983  
29 of 1983  
91 of 1983  
16 of 1984  
51 of 1984  
83 of 1984  
93 of 1984  
18 of 1985  
71 of 1985  
89 of 1985  
96 of 1986  
317 of 1987  
49 of 1988  
64 of 1990  
136 of 1991  
149 of 1991  
237 of 1991  
42(I) of 1992  
43(I) of 1992

Provided further that, subject to the Courts of Justice Law, any interim order during the winding up proceeding may be made by a Senior District Judge or District Judge, irrespective of whether the proceeding would not have come under the jurisdiction of the Senior District Judge or District Judge, in accordance with the provisions of this subsection.

102(I) of  
1992  
26(I) of  
1993  
82(I) of  
1995  
102(I) of  
1996  
4(I) of  
1997  
53(I) of 1997  
90(I) of 1997  
27(I) of 1998  
53(I) of 1998  
110(I) of 1998  
34(I) of 1999  
146(I) of 1999  
41(I) of 2000  
32(I) of 2001  
40(I) of 2002  
80(I) of 2002  
140(I) of 2002  
206(I) of 2002  
17(I) of 2004  
165(I) of 2004  
268(I) of 2004  
21(I) of 2006  
99(I) of 2007  
170(I) of 2007  
76(I) of 2008  
81(I) of 2008  
118(I) of 2008  
119(I) of 2008  
36(I) of 2009  
129(I) of 2009  
138(I) of 2009  
19(I) of 2010  
166(I) of 2011.

2(b) of 82(I)  
of 1999.

(2) For the purposes of this section, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

Transfer of  
proceedings  
from one  
Court to  
another and  
statement of  
case by the  
Court.

**210.-** (1) The winding up of a company by the Court or any proceedings in the winding up may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one Court to another Court, or may be retained in the Court in which the proceedings were commenced although it may not be the Court in which they ought to have been commenced.

(2) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Chief Justice.

(3) If any question arises in any winding up proceeding in a Court which all the parties to the proceeding, or which one of them and the Court, desire to have determined in the first instance in the Supreme Court, the Court shall state the facts in the form of a special case for the opinion of the Supreme Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the Supreme Court for the purposes of the determination.

***Cases in which Company may be wound up by Court***

Circumstances in which company may be wound up by Court.	<p><b>211.</b> A company may be wound up by the Court if-</p> <p>(a) the company has by special resolution resolved that the company be wound up by the Court;</p> <p>(b) default is made in delivering the statutory report to the registrar or in holding the statutory meeting;</p> <p>(c) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;</p>
6 of 151(I) of 2000 32 of 70(I) of 2003.	<p>(d) the number of members is reduced, in the case of a public company, below seven. The Court shall grant to the company a sufficient in its judgment timeframe for the removal of the reason for winding-up, and shall proceed with the winding-up, only if the company either from the beginning declares inability to increase its number of members, or cannot increase it within the given timeframe;</p> <p>(e) the company is unable to pay its debts;</p> <p>(f) the Court is of opinion that it is just and equitable that the company should be wound up;</p>
4 of 98(I) of 2006.	<p>(g) the SE fails to remedy the situation according to article 64 of Council Regulation (EC) No. 2157/2001 of 8 October 2001 concerning the Statute for a European Company (SE).</p>
Definition of inability to pay debts..	<p><b>212.-</b> A company shall be deemed to be unable to pay its debts:</p>
2 of 17 of 1979. 2 of 105 of 1985.	<p>(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding eight hundred, fifty-four euros than due has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or</p> <p>(b) if execution or other process issued on a judgment, decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or</p> <p>(c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.</p>

### ***Petition for Winding Up and Effects thereof***

Provisions as to applications for winding up.	<p><b>213.-</b> (1) An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately:</p> <p>Provided that-</p> <p>(a) a contributory shall not be entitled to present a winding up petition unless-</p> <p>(i) either the number of members is reduced, in the case of a private company, below two , or, in the case of any other company, below seven; or</p> <p>(ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of</p>
---	---

a former holder; and

(b) a winding-up petition shall not, if the ground of the petition is default in delivering the statutory report to the registrar or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and

(c) the Court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the Court; and

(d) in a case falling within subsection (3) of section 163, a winding-up petition may be presented by the Attorney-General.

(2) Where a company is being wound up voluntarily or subject to supervision, a winding-up petition may be presented by the official receiver attached to the Court as well as by any other person authorized in that behalf under the other provisions of this section, but the Court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

Powers of Court on hearing petition.

**214.-** (1) On hearing a winding-up petition the Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the Court shall not refuse to make a winding-up order on the ground only that the assets of the company have been charged or mortgaged to an amount equal to or in excess of those assets or that the company has no assets.

(2) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the Court, if it is of opinion,-

(a) that the petitioners are entitled to relief either by winding up the company or by some other means; and

(b) that in the absence of any other remedy it would be just and equitable that the company should be wound up,

shall make a winding-up order, unless it is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3) Where the petition is presented on the ground of default in delivering the statutory report to the registrar or in holding the statutory meeting, the Court may-

(a) instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held; and

(b) order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

Power to stay or restrain proceedings against company.

**215.** At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may:

(a) where any action or proceeding against the company is pending in any District Court or the Supreme Court apply to the Court in which the action or proceeding is pending for a stay of proceedings therein; and

(b) where any other action or proceeding is pending against the company, apply to the Court having jurisdiction to wind up the company to restrain further

proceedings in the action or proceeding,

and the Court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

Avoidance of dispositions of property, etc., after commencement of winding up.

**216.** In a winding up by the Court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.

Avoidance of attachments, etc., in case of winding up.

**217.** Where any company is being wound up by the Court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

### *Commencement of Winding Up*

Commencement of winding up by the Court.

**218.-** (1) Where, before the presentation of a petition for the winding up of a company by the Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

### *Consequences of Winding-up Order*

Copy of order to be forwarded to registrar.

**219.-** On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company or otherwise as may be prescribed, to the registrar of companies, who shall make a minute thereof in his books relating to the company.

Actions stayed on winding-up order.

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

Effect of winding-up order.

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

### *Official Receiver in Winding up*

Official Receiver and Registrar to be official receiver for winding-up purposes.

**222.-** (1) For the purposes of this Law so far as it relates to the winding up of companies by the Court, the term "official receiver" means the Official Receiver and Registrar and includes any other person appointed for the purpose by the Council of Ministers.

(2) Any such other person shall, for the purpose of his duties under this Law, be styled "the official receiver" and, subject to the directions of the Official Receiver and Registrar, he may represent him in all proceedings in Court or in any administrative or other matter.

Appointment of official receiver by Court in certain cases.

**223.** With a view to securing the more convenient and economical conduct of the winding up, the Court may, upon application by the Official Receiver and Registrar, appoint any person to act as official receiver in that winding up under the directions of the Official Receiver and Registrar.

Statement of company's affairs to be submitted to official receiver.

**224.** - (1) Where the Court has made a winding-up order or appointed a provisional liquidator, there shall, unless the Court thinks fit to order otherwise and so orders, be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary of the company, or by such of the persons hereinafter in this subsection mentioned as the official receiver, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons-

(a) who are or have been officers of the company;

(b) who have taken part in the formation of the company at any time within one year before the relevant date;

(c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the official receiver capable of giving the information required;

(d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the relevant date or within such extended time as the official receiver or the Court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver or provisional liquidator, as the case may be, out of the assets of the company such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the Court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding eighty-five euros for every day during which the default continues.

4 of 166 of 1987.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.

(8) In this section the expression "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding-up order.

Report by official receiver.

**225.-** (1) In a case where a winding-up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under section 224, or, in a case where the Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court-

(a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities; and



(b) if the company has failed, as to the cause of the failure; and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court.

(3) If the official receiver states in any such further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the Court shall have the further powers provided in section 256.

### ***Liquidators***

Power of Court to appoint liquidators.

**226.** For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a liquidator or liquidators.

Appointment and powers of provisional liquidator.

**227.-** (1) Subject to the provisions of this section, the Court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition.

(2) The appointment of a provisional liquidator may be made at any time before the making of a winding-up order, and either the official receiver or any other fit person may be appointed.

(3) Where a liquidator is provisionally appointed by the Court, the Court may limit and restrict his powers by the order appointing him.

Appointment, style, etc., of liquidators.

**228.** The following provisions with respect to liquidators shall have the effect on a winding-up order being made:-

(a) the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;

(b) the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the official receiver;

(c) the Court may make any appointment and order required to give effect to any such determination and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the Court shall decide the difference and make such order thereon as the Court may think fit;

(d) in a case where a liquidator is not appointed by the Court, the official receiver shall be the liquidator of the company;

(e) the official receiver shall by virtue of his office be the liquidator during any vacancy;

(f) a liquidator shall be described, where a person other than the official receiver is liquidator, by the style of "the liquidator", and, where the official receiver is liquidator, by the style of "the official receiver and liquidator", of the particular company in respect of which he is appointed and not by his individual name.

## The Office of the Law Commissioner

Provisions where person other than official receiver is appointed liquidator.	<p><b>229.</b> Where, in the winding up of a company by the Court, a person other than the official receiver is appointed liquidator, that person-</p> <p>(a) shall not be capable of acting as liquidator until he has notified his appointment to the registrar of companies and given security in the prescribed manner to the satisfaction of the Court;</p> <p>(b) shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company and generally such aid as may be requisite for enabling that officer to perform his duties under this Law.</p>
General provisions as to liquidators.	<p><b>230.-</b> (1) A liquidator appointed by the Court may resign or, on cause shown, be removed by the Court.</p> <p>(2) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the Court may direct, and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the Court directs.</p> <p>(3) A vacancy in the office of a liquidator appointed by the Court shall be filled by the Court.</p> <p>(4) If more than one liquidator is appointed by the Court, the Court shall declare whether any act by this Law required or authorized to be done by the liquidator is to be done by all or any one or more of the persons appointed.</p> <p>(5) Subject to the provisions of section 314, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.</p>
Custody of company's property.	<p><b>231.</b> Where a winding-up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be, shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.</p>
Vesting of property of company in liquidator.	<p><b>232.</b> Where a company is being wound up by the Court, the Court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the Court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.</p>
Powers of liquidator.	<p><b>233.-</b> (1) The liquidator in a winding up by the Court shall have power, with the sanction either of the Court or of the committee of inspection,-</p> <p>(a) to bring or defend any action or other legal proceeding in the name and on behalf of the company;</p> <p>(b) to carry on the business of the company so far as may be necessary for the beneficial winding up thereof;</p> <p>(c) to appoint an advocate to assist him in the performance of his duties;</p> <p>(d) to pay any classes of creditors in full;</p> <p>(e) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;</p>

(f) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof.

(2) The liquidator in a winding up by the Court shall have power-

(a) to sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in parcels;

(b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal;

(c) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;

(d) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

(e) to raise on the security of the assets of the company any money requisite;

(f) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;

(g) to appoint an agent to do any business which the liquidator is unable to do himself;

(h) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the Court of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

Exercise and control of liquidator's powers.

**234.**-(1) Subject to the provisions of this Law, the liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.

(3) The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Law, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

Books to be kept by liquidator.

**235.** Every liquidator of a company which is being wound up by the Court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

Payments of liquidator into bank.

**236.-** (1) Every liquidator of a company which is being wound up by the Court shall, in such manner and at such times as the Council of Ministers directs, pay the money received by him to such bank as the Council of Ministers may direct, and the bank shall furnish him with a receipt of the money so paid.

4 of 166 of 1987.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding eight hundred fifty-four euros or such other amount as the official receiver in any particular case authorizes him to retain, then, unless he explains the retention to the satisfaction of the official receiver, he shall pay interest on the amount so retained in excess at the rate of twenty per cent per annum, and shall be liable to disallowance of all or such part of his remuneration as the Court may think just, and to be removed from his office by the Court, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the Court shall not pay any sums received by him as liquidator into his private banking account.

Audit of liquidator's accounts.

**237.-** (1) Every liquidator of a company which is being wound up by the Court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the official receiver, or as he directs, an account of his receipts and payments as liquidator.

(2) The account shall be in a prescribed form, shall be made in duplicate and shall be verified by a statutory declaration in the prescribed form.

(3) The official receiver shall cause the account to be audited, and for the purpose of the audit the liquidator shall furnish the official receiver with such vouchers and information as the official receiver may require, and the official receiver may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the official receiver, and the other copy shall be delivered to the Court for filing, and each copy shall be open to the inspection of any person on payment of the prescribed fee.

(5) The liquidator shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory:

Provided that the Council of Ministers may in any case dispense with compliance with all or any of the provisions of this subsection.

(6) The accounts of the official receiver under this Law, when acting as liquidator, shall be audited in such manner as the Accountant-General may direct.

Control of official receiver over

**238.-** (1) The official receiver shall take cognizance of the conduct of liquidators of companies which are being wound up by the Court, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him

liquidators. by Law, rules or otherwise with respect to the performance of his duties or if any complaint is made to the official receiver by any creditor or contributory in regard thereto, the official receiver shall inquire into the matter, and take such action thereon as he may think expedient.

(2) The official receiver may at any time require any liquidator of a company which is being wound up by the Court to answer any inquiry in relation to any winding up in which he is engaged, and may, if the official receiver thinks fit, apply to the Court to examine him or any other person on oath concerning the winding up.

(3) The official receiver may also direct a local investigation to be made of the books and vouchers of the liquidator.

Release of liquidators. **239.-** (1) When the liquidator of a company which is being wound up by the Court has realized all the property of the company, or so much thereof as can, in his opinion, be realized without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Court shall, on his application, cause a report on his accounts to be prepared and, on his complying with all the requirements of the Court, shall take into consideration the report and any objection which may be urged by any creditor or contributory or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly.

(2) Where the release of a liquidator is withheld, the Court may, on the application of any creditor or contributory or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

#### *Committees of Inspection*

Meetings of creditors and contributories to determine whether committee of inspection shall be appointed. **240.-** (1) When a winding-up order has been made by the Court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the Court for appointing a liquidator in place of the official receiver, to determine further whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2) The Court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid the Court shall decide the difference and make such order thereon as the Court may think fit.

Constitution and proceedings of committee of inspection. **241.-** (1) A committee of inspection appointed in pursuance of this Law shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the Court.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when

he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt or compounds or arranges with his creditors or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy:

Provided that if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled he may apply to the Court and the Court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

Where no committee of inspection.

**242.** Where in the case of a winding up there is no committee of inspection, the official receiver may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Law authorized or required to be done or given by the committee.

#### ***General Powers of Court in case of Winding up by Court***

Power to stay winding up.

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

(2) On any application under this section the Court may, before making an order, require the official receiver to furnish to the Court a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute of the order in his books relating to the company.

Settlement of list of contributories and application of assets.

**244.-** (1) As soon as may be after making a winding-up order, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Law, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities:

Provided that, where it appears to the Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

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

Delivery of property to liquidator.

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

Payment of debts due by contributory to company and extent to which set-off allowed.

**246.-** (1) The Court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Law.

(2) The Court in making such order may make to any director or manager whose liability is unlimited or to his estate an allowance by way of set-off of any money due to him or to his estate from the company on any independent dealing or contract with the company but not any money due to him as a member of the company in respect of any dividend or profit.

(3) When all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of Court to make calls.

**247.-**(1) The Court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Payment into bank of moneys due to company.

**248.-** (1) The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into the bank into which payments of liquidators are made under section 236 instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into such bank in the event of a winding up by the Court shall be subject in all respects to the orders of the Court.

Order on contributory conclusive evidence.

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

(2) All other pertinent matters stated in the order shall be taken to be truly as against all persons and in all proceedings against the estate of a deceased contributory, in which case the order shall be only prima facie evidence for the purpose of charging his estate, unless his heirs or legatees were on the list of contributories at the time of the order being made.

Appointment of special manager.

**250.-**(1) Where in any proceedings the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court, and the Court

The Office of the Law Commissioner

may on such application appoint a special manager of the said estate or business to act during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the Court.

(2) The special manager shall give such security and account in such manner as the Court directs.

(3) The special manager shall receive such remuneration as may be fixed by the Court.

Power to exclude creditors not proving in time.

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

Adjustment of rights of contributories.

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

Inspection of books by creditors and contributories.

**253.-** (1) The Court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

(2) Nothing in this section shall be taken as excluding or restricting any statutory rights of a government department or person acting under the authority of a government department.

Power to order costs of winding up to be paid out of assets.

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

Power to summon persons suspected of having property of company, etc.

**255.-** (1) The Court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(2) The Court may examine him on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The Court may require him to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.

Power to order public examination of promoters and officers.

**256.-** (1) Where an order has been made for winding up a company by the Court, and the official receiver has made a further report under this Law stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation, the Court may, after consideration of the report, direct that that person or officer shall attend before the Court on a day appointed by the Court for that purpose



## The Office of the Law Commissioner

and be publicly examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorized by the Court in that behalf, employ an advocate.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory may also take part in the examination either personally or by an advocate.

(4) The Court may put such questions to the person examined as the Court thinks fit.

(5) The person examined shall be examined on oath and shall answer all such questions as the Court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ an advocate, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that, if any such person applies to the Court to be exculpated from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the Court to any matters which appear to the official receiver to be relevant, and if the Court, after hearing any evidence given or witnesses called by the official receiver, grants the application, the Court may allow the applicant such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The Court may, if it thinks fit, adjourn the examination from time to time.

Power to  
arrest  
absconding  
contributory.

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

Powers of  
Court  
cumulative.

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

Delegation to  
liquidator of  
certain  
powers of  
Court.

**259.** Provision may be made by general rules for enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Law in respect of the following matters:-

(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;

(c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;

(d) the making of calls;

(e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the Court, and subject to the control of the Court:

Provided that the liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

Dissolution of company.

**260.**-(1) When the affairs of a company have been completely wound up, the Court, if the liquidator makes an application in that behalf, shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) A copy of the order shall within fourteen days from the date thereof be forwarded by the liquidator to the registrar of companies who shall make in his books a minute of the dissolution of the company.

4 of 166 of 1987.

(3) If the liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding forty-two euros for every day during which he is in default.

### **(III) VOLUNTARY WINDING UP**

#### ***Resolutions for, and Commencement of, Voluntary Winding Up***

Circumstances in which company may be wound up voluntarily.

**261.**- (1) A company may be wound up voluntarily-

(a) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

(b) if the company resolves by special resolution that the company be wound up voluntarily;

(c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) In this Law the expression "a resolution for voluntary winding up" means a resolution passed under any of the provisions of subsection (1).

Notice of resolution to wind up voluntarily.

**262.**- (1) When a company has passed a resolution for voluntary winding up, it shall, within fourteen days after the passing of the resolution, give notice of the resolution by advertisement in the *Gazette*.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine, and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

Commencement of voluntary winding up.

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

#### ***Consequences of Voluntary Winding Up***

Effect of voluntary winding up on business and status of company.

**264.** In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall,

notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Avoidance of transfers, etc., after commencement of voluntary winding up.

**265.** Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

### ***Declaration of Solvency***

Statutory declaration of solvency in case of proposal to wind up voluntarily.  
5(a) of 98(I) of 2006.

**266.-** (1) Where it is proposed to wind up a company voluntarily or where a plan has been adopted for the purpose of transferring the registered office of an SE to another member state, the directors of the company or, in the case of a company having more than two directors, the majority of the directors, may, at a meeting of the directors make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding twelve months from the commencement of the winding up as may be specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Law unless-

(a) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the registrar of companies for registration before that date; and

(b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

5 (b) of 98(I) of 2006.

(3) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall commit an offence and on conviction thereof be liable to imprisonment for a period not exceeding two years or to a fine not exceeding two thousand, five hundred and sixty-two euros or to both such imprisonment and fine; and if the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

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

### ***Provisions applicable to a Members' Voluntary Winding Up***

Provisions applicable to a members' winding up.

**267.** The provisions contained in sections 268 to 274, both inclusive, shall, subject to the provisions of the last of them, apply in relation to a members' voluntary winding up.

Power of company to appoint and fix remuneration of liquidators.

**268.-** (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting or the liquidator sanctions the continuance thereof.

Power to fill

**269.-**(1) If a vacancy occurs by death, resignation or otherwise in the office of

The Office of the Law Commissioner

vacancy in office of liquidator.

liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Law or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

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

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

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration under the provisions of any Law relating to arbitration in force for the time being.

(4) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court.

Duty of liquidator to call creditors' meeting in case of insolvency.

**271.-** (1) If, in the case of a winding up commenced after the commencement of this Law, the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 266 he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company.

4 of 166 of 1987.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding four hundred twenty-seven euros.

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

**272.-**(1) Subject to the provisions of section 274 in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the registrar of companies may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not

4 of 166 of 1987. exceeding eighty-five euros.

Final meeting and dissolution. **273.-** (1) Subject to the provisions of section 274, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in the *Gazette*, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a fine not exceeding forty-two euros for every day during which the default continues:

4 of 166 of 1987.

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

(4) The registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

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

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within seven days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding forty-two euros for every day during which the default continues.

4 of 166 of 1987.

(6) If the liquidator fails to call a general meeting of the company as required by this section, he shall be liable to a fine not exceeding four hundred twenty-seven euros.

4 of 166 of 1987.

Alternative provisions as to annual and final meetings in case of insolvency. **274.** Where section 271 has effect, sections 282 and 283 shall apply to the winding up to the exclusion of sections 272 and 273, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up:

Provided that the liquidator shall not be required to summon a meeting of creditors under the said section 282 at the end of the first year from the commencement of the winding up, unless the meeting held under the said section 271 is held more than three months before the end of that year.

#### ***Provisions applicable to a Creditors' Voluntary Winding Up***

Provisions applicable to a creditors' winding up. **275.** The provisions contained in sections 276 to 283, both inclusive, shall apply in relation to a creditors' voluntary winding up.

Meeting of creditors. **276.-** (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held

the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the *Gazette* and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall-

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made:

(a) by the company in complying with subsections (1) and (2);

(b) by the directors of the company in complying with subsection (3);

(c) by any director of the company in complying with subsection (4),

4 of 166 of  
1987.

the company, directors or director, as the case may be, shall be liable to a fine not exceeding eight hundred fifty-four euros, and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

Appointment  
of liquidator.

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

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

Appointment  
of committee  
of inspection.

**278.**-(1) The creditors at the meeting to be held in pursuance of section 276 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

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

mentioned in the resolution.

(2) Subject to the provisions of this section and to general rules, the provisions of section 241 (except subsection (1)) shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the Court.

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

**279.-** (1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

Power to fill vacancy in office of liquidator.

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

Application of section 270 to a creditors' voluntary winding up. Duty of liquidator to call meetings of company and of creditors at end of each year.

**281.** The provisions of section 270 shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that powers of the liquidator under the said section shall not be exercised except with the sanction of the Court or of the committee of inspection.

**282.-** (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the registrar of companies may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

4 of 166 of 1987.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding eighty-five euros.

Final meeting and dissolution.

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

(2) Each such meeting shall be called by advertisement in the *Gazette* specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a fine not exceeding forty two euros for every day during which the default continues:

4 of 166 of 1987.

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

(4) The registrar on receiving the account and, in respect of each such meeting, either of the returns hereinbefore mentioned, shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved:

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

4 of 166 of 1987. (5) It shall be the duty of the person on whose application an order of the Court under this section is made, within seven days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding forty-two euros for every day during which the default continues.

4 of 166 of 1987. (6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be liable to a fine not exceeding four hundred twenty-seven euros.

### ***Provisions applicable to every Voluntary Winding Up***

Provisions applicable to every voluntary winding up. **284.** The provisions contained in sections 285 to 292, both inclusive, shall apply to every voluntary winding up whether a members or a creditors' winding up.

Distribution of property of company. **285.** Subject to the provisions of this Law as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu*, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

Powers and duties of liquidator in voluntary winding up. **286.-** (1) The liquidator may-

- (a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of the Court or the committee of inspection or (if there is no such committee) a meeting of the creditors, exercise any of the powers given by paragraphs (d), (e) and (f) of subsection (1) of section 233 to a liquidator in a winding up by the Court;
- (b) without sanction, exercise any of the other powers by this Law given to the liquidator in a winding up by the Court;
- (c) exercise the power of the Court under this Law of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories;
- (d) exercise the power of the Court of making calls;
- (e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Law may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

Power of Court to appoint and remove liquidator in voluntary winding up. **287.** (1) If from any cause whatever there is no liquidator acting, the Court may appoint a liquidator.

(2) The Court may, on cause shown, remove a liquidator and appoint another liquidator.



Notice by liquidator of his appointment.	<b>288.-</b> (1) The liquidator shall, within fourteen days after his appointment, publish in the <i>Gazette</i> and deliver to the registrar of companies for registration a notice of his appointment in the prescribed form.
4 of 166 of 1987.	(2) If the liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding forty-two euros for every day during which the default continues.
Arrangement when binding on creditors.	<b>289.-</b> (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution and on the creditors if acceded to by three-fourths in number and value of the creditors.  (2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.
Power to apply to Court to have questions determined or powers exercised.	<b>290.-</b> (1) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.  (2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.  (3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute of the order in his books relating to the company.
Costs of voluntary winding up.	<b>291.</b> All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.
Saving for rights of creditors and contributories.	<b>292.</b> The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, but in the case of an application by a contributory the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

#### ***(IV) WINDING UP SUBJECT TO SUPERVISION OF COURT***

Power to order winding up subject to supervision.	<b>293.</b> When a company has passed a resolution for voluntary winding up, the Court may make an order that the voluntary winding up shall continue but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.
Effect of petition for winding up subject to supervision.	<b>294.</b> A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over actions, be deemed to be a petition for winding up by the Court.
Application of sections 216 & 217 to winding up subject to supervision.	<b>295.</b> A winding up subject to the supervision of the Court shall, for the purposes of sections 216 and 217 be deemed to be a winding up by the Court.
Power of	<b>296.-</b> (1) Where an order is made for a winding up subject to supervision, the Court

Court to  
appoint or  
remove  
liquidators.

may by that or any subsequent order appoint an additional liquidator.

(2) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Law with respect to the appointment of liquidators in a voluntary winding up.

(3) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

Effect of  
supervision  
order.

**297.-** (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily:

Provided that the powers specified in paragraphs (d), (e) and (f) of subsection (1) of section 233 shall not be exercised by the liquidator except with the sanction of the Court, or, in a case where before the order the winding up was a creditors' voluntary winding up, with the sanction of the Court or the committee of inspection, or (if there is no such committee) a meeting of the creditors.

(2) A winding up subject to the supervision of the Court is not a winding up by the Court for the purpose of the provisions of this Law specified in the Tenth Schedule, but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes be deemed to be an order for winding up by the Court:

Tenth  
Schedule.

Provided that where the order for winding up subject to supervision was made in relation to a creditors' voluntary winding up in which a committee of inspection had been appointed, the order shall be deemed to be an order for winding up by the Court for the purpose of section 241 (except subsection (1) thereof) except in so far as the operation of this section is excluded in a voluntary winding up by general rules.

## **(V) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP**

### ***Proof and Ranking of Claims***

Debts of all  
descriptions  
may be  
proved.

**298.** In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Law of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Submission to  
the liquidator  
of claims of  
cover pool  
creditors.  
3 of 53(I) of  
2011.

**298A.-** (1) A cover pool creditor shall not be entitled to submit individually his claims to the liquidator, only the covered bond business administrator shall have this right who shall submit before the liquidator the claims on behalf of the cover pool creditors, on an overall basis.

(2) For the purposes of this section the terms "covered bond business administrator" and "cover pool creditor" shall have the meaning assigned to these terms by section 2 of the Covered Bonds Law.

Application of  
bankruptcy  
rules in  
winding up of  
insolvent  
companies.

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

company as they respectively are entitled to by virtue of this section.

Preferential  
payments.

**300.-** (1) In a winding up there shall be paid in priority to all other debts-

(a) the following rates and taxes:-

(i) all local rates due from the company at the relevant date, and having become due and payable within twelve months next before that date;

(ii) all Government taxes and duties due from the company at the relevant date and having become due and payable within twelve months before that date and, in the case of assessed taxes, not exceeding in the whole one year's assessment.

2(a) of 198 of  
1986  
2 of 19 of  
1990.

(b)(i) any salary owed to an employee and any sum withheld by the employer from the employee's salary for the payment of any obligations of the employee or otherwise, that the employer has not paid; and

(ii) any other sum or benefit of the employee that arises as a result of an agreement or employment relationship, including any sum owed to a recognized union that arises from the employment relationship between the employer and the employee or otherwise, that the employer has not paid.

2 of 41(I) of  
1994.

The provisions of this paragraph shall not apply in cases where an employee of a private company is a shareholder or member of the company's board of directors unless he holds shares or participates in the board of directors as a representative and in an evidently procedural and non-substantive manner, and provided that there is no first or second degree relationship between himself and the person being represented.

2(a) of 198 of  
1986.

(c) every amount of compensation which the company is obliged to pay to an employee, on account of bodily harm suffered by the employee as a result of an accident caused by his employment and during his employment with the company.

An employee of a private company who is a shareholder thereof is exempted, unless the company is voluntarily wound-up or wound-up for reconstruction or merger purposes.

2(a) of 198 of  
1986.

(d) Every amount due to the employee, excluding an employee of a private company who is a shareholder thereof, concerning the leave which he is entitled to from his employment in the company for an employment period of only one year.

2(b) of 198 of  
1986.

(2) Where any payment has been made:

(a) to any clerk, servant, workman or labourer in the employment of a company, on account of wages or salary; or

(b) to any such clerk, servant, workman or labourer or, in the case of his death, to any other person in his right, on account of accrued holiday remuneration,

out of money advanced by some person for that purpose, the person by whom the money was advanced shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the clerk, servant, workman or labourer, or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

2 (b) of 198  
of 1986.

(3) The foregoing debts shall-

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures

under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

2(b) of 198 of 1986. (4) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

2(b) of 198 of 1986. (5) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

2 (b) of 198 of 1986. (6) For the purposes of this section-

41 of 1980<sup>5</sup>  
48 of 1982  
11 of 1983  
7 of 1984  
10 of 1985  
116 of 1985  
4 of 1987  
199 of 1987  
214 of 1987  
68 of 1988  
96 of 1989  
136 of 1989  
17 of 1990  
218 of 1991  
98(I) of 1992  
64(I) of 1993  
18(I) of 1995  
55(I) of 1996  
87(I) of 1997  
80(I) of 1998  
84(I) of 1998  
55(I) of 1999  
98(I) of 2000  
99(I) of 2000  
2(I) of 2001  
51(I) of 2001  
135 (I)  
of 2001  
143(I) of  
2001  
71(I) of  
2002  
132 (I) of  
2002  
10(I) of  
2005  
142(I) of  
2005  
53(I) of  
2006  
161(I) of  
2006

(a) the terms "salary", "employee" and "basic insured salaries" shall have the meaning assigned to them by the Social Insurance Laws, 1980 to 2009;

---

<sup>5</sup> Note: The Social Insurance Law, 1980 (L.41/1980 as amended) was repealed and replaced by the Social Insurance Law, 2010 [L.59(I)/2010, as amended by Laws 114(I)/2010, 126(I)/2010, 2(I)/2012, 37(I)/2012].

110(I) of  
2007  
164(I) of  
2007  
9(I) of  
2008  
24(I) of  
2008  
22(I) of 2009  
93(I) of 2009  
112(I) of  
2009.

2(d) of 198 of 1986. (b) the expression "the relevant date" means:

(i) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator, or, if no such appointment was made, the date of the winding-up order, unless in either case the company had commenced to be wound up voluntarily before that date; and

(ii) in any case where the foregoing subparagraph does not apply, means the date of the passing of the resolution for the winding up of the company.

2(b) of 198 of 1986. (7) This section shall not apply in the case of a winding up where the winding-up order was made before the commencement of this Law, and in such a case the provisions relating to preferential payments which would have applied if this Law had not passed shall be deemed to remain in full force.

***Effect of Winding Up on antecedent and other Transactions***

Fraudulent preference. **301.-** (1) Any conveyance, charge, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company within six months before the commencement of its winding up which, had it been made or done by or against an individual within six months before the presentation of a bankruptcy petition on which he is adjudged bankrupt, would be deemed in his bankruptcy a fraudulent preference, shall in the event of the company being wound up be deemed a fraudulent preference of its creditors and be invalid accordingly:

Provided that, in relation to things made or done before the commencement of this Law, the provisions relating to fraudulent preference which would have applied if this Law had not been passed shall remain in full force.

(2) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

Liabilities and rights of certain fraudulently preferred persons. **302.-** (1) Where, in the case of a company wound up, anything made or done after the commencement of this Law is void under section 301 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.

(2) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all incumbrances other than those to which the charge for the company's debt was then subject.

(3) On any application made to the Court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an

action for the recovery of the sum paid.

This subsection shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.

Effect of floating charge.

**303.** Where a company is being wound up, a floating charge on the undertaking or property of the company created within twelve months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent per annum or such other rate as may for the time being be prescribed by order of the Accountant-General.

Disclaimer of onerous property in case of company being wound up.

**304.-** (1) Where any part of the property of a company which is being wound up consists of immovable property burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may with the leave of the Court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the Court, disclaim the property:

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

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the Court, given notice to the applicant that he intends to apply to the Court for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The Court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Law in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order

being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

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

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event, if the case so requires, as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

Restriction of rights of creditor as to execution or attachment in case of company being wound up.

**305.-** (1) Where a creditor has issued execution against the goods or immovable property of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up:

Provided that-

(a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall, for the purposes of the foregoing provision, be substituted for the date of the commencement of the winding up;

(b) a person who purchases in good faith under a sale by the sheriff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator; and

(c) the rights conferred by this subsection on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court may think fit.

(2) For the purpose of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against immovable property shall be deemed to be completed by making the judgment a charge on the immovable property.

(3) In this section the expression "goods" includes all chattels personal, and the expression "sheriff" includes any officer charged with the execution of a writ or other process.

Duties of sheriff as to

**306.-** (1) Subject to the provisions of subsection (3), where any goods of a company are taken in execution, and, before the sale thereof or the completion of the execution

goods taken  
in execution. by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding up has been passed, the sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

4 of 166 of  
1987. (2) Subject to the provisions of subsection (3), where under an execution in respect of a judgment for a sum exceeding two hundred thirteen euros the goods of a company are sold or money is paid in order to avoid sale, the sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the sheriff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

(4) In this section the expression "goods" includes all chattels personal, and the expression "sheriff" includes any officer charged with the execution of a writ or other process.

#### *Offences antecedent to or in course of Winding Up*

Offences by  
officers of  
companies in  
liquidation. **307.-** (1) If any person, being a past or present officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the Court or voluntarily, or is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up-

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or

(b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or

(c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or

(d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of seventeen euros or upwards, or conceals any debt due to or from the company; or

(e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of seventeen euros or upwards; or

(f) makes any material omission in any statement relating to the affairs of the company; or

(g) knowingly or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof; or

(h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or



(i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company; or

(j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or

(k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company; or

(l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses; or

(m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or

(n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or

(o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company; or

(p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

he shall be guilty of an offence and on conviction thereof shall, in the case of the offences mentioned, respectively, in paragraphs (m), (n) and (o) of this subsection, be liable to imprisonment not exceeding five years and, in the case of any other offence, shall be liable to imprisonment not exceeding two years:

Provided that it shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (n) and (o), if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (o) of subsection (1), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be guilty of an offence, and shall on conviction thereof be liable to imprisonment not exceeding two years or to a fine not exceeding two thousand, five hundred and sixty-two euros or to both such imprisonment and fine.

3 of 166 of  
1987.

(3) For the purposes of this section, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

Penalty for  
falsification  
of books.

**308.** If any officer or contributory of any company being wound up destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of an

offence, and on conviction thereof be liable to imprisonment not exceeding two years.

Frauds by officers of companies which have gone into liquidation.

**309.** If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up,-

(a) has by false pretences or by means of any other fraud induced any person to give credit to the company;

(b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company;

(c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company, he shall be guilty of an offence and shall be liable on conviction to imprisonment not exceeding two years.

Liability where proper accounts not kept.

**310.-** (1) If where a company is wound up it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is the shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the default was excusable, be liable on conviction to imprisonment not exceeding one year.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

Responsibility for fraudulent trading of persons concerned.

**311.-** (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court may direct.

On the hearing of an application under this subsection the official receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.

(2) Where the Court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the person liable or any company or person acting on his behalf, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

For the purposes of this subsection, the expression "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

3 of 166 of  
1987.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1) of this section, every person who was knowingly a party to the carrying on of the business in manner aforesaid, shall be liable on conviction to imprisonment not exceeding three years or to a fine not exceeding two thousand, five hundred and sixty-two euros or to both such imprisonment and fine.

(4) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.

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

**312.-** (1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable, for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

Cap.5.  
49 of 1985  
197 of 1986  
156(I) of  
1999  
2(I) of  
2008  
74(I) of  
2008.

(3) Where an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of paragraph (g) of subsection (1) of section 3 of the Bankruptcy Law.

Prosecution of  
delinquent  
officers and  
members of  
company.

**313.-** (1) If it appears to the Court in the course of a winding up by, or subject to the supervision of, the Court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up, or of its own motion, direct the liquidator to refer the matter to the Attorney-General.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Attorney-General, and shall furnish to the Attorney-General such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as he respectively may require.

(3) Where any report is made under subsection (2) to the Attorney-General, he may, if he thinks fit, refer the matter to the Official Receiver and Registrar for further inquiry, and the Official Receiver and Registrar shall thereupon investigate the matter and may, if he thinks it expedient, apply to the Court for an order conferring on him or any person designated by him for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as

are provided by this Law in the case of a winding up by the Court.

(4) If it appears to the Court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Attorney-General under subsection (2), the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2).

(5) If, where any matter is reported or referred to the Attorney-General under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

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

(6) If any person fails or neglects to give assistance in manner required by subsection (5), the Court may, on the application of the Attorney-General, direct that person to comply with the requirements of the said subsection, and where any such application is made with respect to a liquidator the Court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

#### ***Supplementary Provisions as to Winding up***

Disqualification  
for  
appointment as  
liquidator.

**314.** A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the Court or in a voluntary winding up, and-

(a) any appointment made in contravention of this provision shall be void; and

4 of 166 of  
1987.

(b) any body corporate which acts as liquidator of a company shall be liable to a fine not exceeding eight hundred fifty-four euros.

Corrupt  
inducement  
affecting  
appointment  
as liquidator.  
4 of 166 of  
1987.

**315.** Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall be liable to a fine not exceeding eight hundred fifty-four euros.

Enforcement  
of duty of  
liquidator to  
make returns,  
etc.

**316.-** (1) If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the Court may, on an application made to the Court by any contributory or creditor of the company or by the registrar of companies, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid.

Notification that a company is in liquidation.	<p><b>317.-</b> (1) Where a company is being wound up, whether by or under the supervision of the Court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.</p> <p>(2) If default is made in complying with this section, the company and any of the following persons who knowingly and wilfully authorizes or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a fine of one hundred seventy euros.</p>
4 of 166 of 1987.	
Exemption of certain documents from stamp duty on winding up of companies.	<p><b>318.</b> In the case of a winding up by the Court or of a creditors' voluntary winding up of a company-</p> <p>(a) every document relating solely to any mortgage, charge or other encumbrance on, or any estate, right or interest in any property which forms part of the assets of the company and which, after the execution of the document, is or remains part of the assets of the company; and</p> <p>(b) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceeding under any such winding up,</p> <p>shall be exempt from duties chargeable under the enactments relating to stamp duties.</p>
Books of company to be evidence.	<p><b>319.</b> Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.</p>
Disposal of books and papers of company.	<p><b>320.-</b> (1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say:</p> <p>(a) in the case of a winding up by or subject to the supervision of the Court, in such way as the Court directs;</p> <p>(b) in the case of a members' voluntary winding up, in such way as the company by extraordinary resolution directs, and, in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.</p> <p>(2) After five years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.</p> <p>(3) Provision may be made by general rules for enabling the official receiver to prevent, for such period (not exceeding five years from the dissolution of the company) as the official receiver thinks proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to appeal to the Court from any direction which may be given by the official receiver in the matter.</p> <p>(4) If any person acts in contravention of any general rules made for the purposes of this section or of any direction of the official receiver thereunder, he shall be liable to a fine not exceeding eight hundred fifty-four euros.</p>
4 of 166 of 1987.	
Information as to pending liquidations.	<p><b>321.-</b> (1) If where a company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed</p>

particulars with respect to the proceedings in and position of the liquidation.

4 of 166 of  
1987.

(2) If a liquidator fails to comply with this section, he shall be liable to a fine not exceeding four hundred twenty-seven euros for each day during which the default continues.

Unclaimed  
assets to be  
paid to  
Liquidation  
Account.

**322.-** (1) If, where a company is being wound up, it appears either from any statement sent to the registrar under section 321 or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt or any money held by the company in trust in respect of dividends or other sums due to any person as a member of the company the liquidator shall forthwith pay the said money into the Companies Liquidation Account kept by the Accountant-General, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(2) Any person claiming to be entitled to any money paid to the Accountant-General in pursuance of this section may apply to him for payment thereof, and the Accountant-General may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

(3) Any person dissatisfied with the decision of the Accountant-General in respect of a claim made in pursuance of this section may appeal to the Court.

Resolutions  
passed at  
adjourned  
meetings of  
creditors and  
contributories.

**323.** Where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

### ***Supplementary Powers of Court***

Meetings to  
ascertain  
wishes of  
creditors or  
contributories.

**324.-** (1) The Court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Law or the articles.

Affidavits,  
etc., in the  
Republic and  
outside the  
Republic.

**325\*.-** (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in the Republic, before any Court, judge or person lawfully authorized to take and receive affidavits or before any of the Republic's consuls or vice-consuls in any place outside the Republic.

(2) All Courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature, as the case may be, of any such Court, judge, person, consul or vice-consul attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

### ***Provisions as to Dissolution***

Power of  
Court to

**326.-** (1) Where a company has been dissolved, the Court may at any time within two years of the date of the dissolution, on an application being made for the purpose by

---

\*Note: The wording of section 325 of Cap.113 has been modified in compliance with Article 188 of the Constitution and the Official Languages of the Republic (Interpretation) Law, 1993 (L.21(I)/93) and thus the phrases appearing therein have been omitted.

declare  
dissolution of  
company  
void.

the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, or such further time as the Court may allow, to deliver to the registrar of companies for registration an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding forty-two euros for every day during which the default continues.

4 of 166 of  
1987.

Registrar may  
strike defunct  
company off  
register.

**327.-** (1) Where the registrar of companies has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

(3) If the registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the *Gazette*, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the registrar shall publish in the *Gazette* and send to the company or the liquidator, if any, a like notice as is provided in subsection (3).

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of this notice the company shall be dissolved:  
Provided that-

(a) the liability, if any, of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and

(b) nothing in this subsection shall affect the power of the Court to wind up a company the name of which has been struck off the register.

9 of 76 of  
1977.

(6) Any company which omits to file at the registrar any document required by this Law, may be struck-off from the Register of Companies, such striking off taking place at least six months after the date of the letter sent by the registrar requesting such document and shall be published in the Official Gazette of the Republic.

9 of 76 of  
1977.

(7) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court on an application made by the company or member or creditor before the expiration of twenty years from the publication in the *Gazette* of the notice aforesaid may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being

delivered to the registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

9 of 76 of 1977. (8) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some officer of the company, or, if there is no officer of the company whose name and address are known to the registrar of companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

Property of dissolved company to be *bona vacantia*. **328.** Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (not including property held by the company on trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the Court under sections 326 and 327 be deemed to be *bona vacantia* and shall accordingly belong to the Republic, and shall vest and may be dealt with in the same manner as other *bona vacantia* accruing to the Republic.

Power of the Republic to disclaim title to property vesting under section 328. **329.-** (1) Where any property vests in the Republic under section 328, the Republic's title thereto under that section may be disclaimed by a notice signed by the Accountant-General.

(2) Where a notice of disclaimer under this section is executed as respects any property, that property shall be deemed not to have vested in the Republic under section 328, and subsections (2) and (6) of section 304 shall apply in relation to the property as if it had been disclaimed under subsection (1) of the said section 304 immediately before the dissolution of the company.

(3) The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Republic either expressly or by taking possession or other act evincing that intention.

(4) A notice of disclaimer under this section shall be of no effect unless it is executed within twelve months of the date on which the vesting of the property as aforesaid came to the notice of the Accountant-General, or, if an application in writing is made to the Accountant-General by any person interested in the property requiring him to decide whether he will or will not disclaim, within a period of three months after the receipt of the application or such further period as may be allowed by the Court which would have had jurisdiction to wind up the company if it had not been dissolved.

(5) A statement in a notice of disclaimer of any property under this section that the vesting of the property came to the notice of the Accountant-General on a specified date or that no such application as aforesaid was received by him with respect to the property before a specified date shall, until the contrary is proved, be sufficient evidence of the fact stated.

(6) And notice of disclaimer under this section shall be delivered to the registrar of companies and retained and registered by him, and copies thereof shall be published in the *Gazette* and sent to any persons who have given the Accountant-General notice that they claim to be interested in the property.

#### ***Companies Liquidation Account***

Liquidation Account. **330.** An account, to be called "the Companies Liquidation Account" shall be kept by the Accountant-General, and all moneys received by him under the provisions of section 322 shall be paid to that account.

#### ***Officers***



- Officers and remuneration. **331.-** (1) The Council of Ministers may appoint such additional officers as may be required for the execution of this Part, and may remove any person so appointed.
- (2) The Council of Ministers shall direct whether any and what remuneration is to be allowed to any officer of, or person performing any duties under this Part in relation to the winding up of companies, and may vary, increase or diminish that remuneration as he thinks fit.
- Returns by officers in winding up. **332.** The official receiver and any officer of the Court acting in the winding up of companies shall make to the Accountant-General such returns of their business in connection therewith, at such times, and in such manner and form, as the Accountant-General may direct, and from those returns the Accountant-General may cause books to be prepared which shall, under Regulations made by the Council of Ministers, be open for public information and searches.

#### *Rules and Fees*

- General rules and fees for winding up. **333.** The Council of Ministers may, with the advice and assistance of the Chief Justice, make general rules for carrying into effect the objects of this Law so far as it relates to the winding up of companies and for the fees to be paid in respect of proceedings in relation thereto and the manner the same shall be collected and accounted for.

### **PART VI – RECEIVERS AND MANAGERS**

- Disqualification of body corporate for appointment as receiver.  
4 of 166 of 1987. **334.-** A body corporate shall not be qualified for appointment as receiver of the property of a company, and any body corporate which acts as such a receiver shall be liable to a fine not exceeding eight hundred fifty-four euros.
- Disqualification of undischarged bankrupt from acting as receiver or manager.  
3 of 166 of 1987. **335.-** (1) If any person being an undischarged bankrupt acts as receiver or manager of the property of a company on behalf of debenture holders, he shall, subject to the following subsection, be liable on conviction to imprisonment not exceeding two years or to a fine not exceeding two thousand five hundred and sixty-two euros or to both such imprisonment and fine.
- (2) Subsection (1) shall not apply to a receiver or manager where-
- (a) the appointment under which he acts and the bankruptcy were both before the commencement of this Law; or
- (b) he acts under an appointment made by order of a Court.
- Receiver for debenture holders or creditors. **336.** Where an application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the Court, the official receiver may be so appointed.
- Receivers and managers appointed out of Court. **337.-** (1) A receiver or manager of the property of a company appointed under the powers contained in any instrument may apply to the Court for directions in relation to any particular matter arising in connection with the performance of his functions, and on any such application the Court may give such directions, or may make such order declaring the rights of persons before the Court or otherwise, as the Court thinks just.
- (2) A receiver or manager of the property of a company appointed as aforesaid shall, to the same extent as if he had been appointed by order of a Court, be personally liable on any contract entered into by him in the performance of his functions, except in so far as the contract otherwise provides, and entitled in respect of that liability to indemnity out of the assets; but nothing in this subsection shall be taken as limiting any right to indemnity which he would have apart from this subsection, or as limiting his liability on contracts entered into without authority or as conferring

any right to indemnity in respect of that liability.

Notification  
that receiver  
or manager  
appointed.

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

4 of 166 of  
1987.

(2) If default is made in complying with the requirements of this section, the company and any of the following persons who knowingly and wilfully authorizes or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a fine not exceeding one hundred seventy euros.

Power of  
Court to fix  
remuneration  
on application  
of liquidator.

**339.-** (1) The Court may, on an application made to the Court by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company.

(2) The power of the Court under subsection (1) shall, where no previous order has been made with respect thereto under that subsection,-

(a) extend to fixing the remuneration for any period before the making of the order or the application therefore; and

(b) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application therefore; and

(c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order:

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

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

Provisions as  
to information  
where  
receiver or  
manager  
appointed.

**340.-** (1) Where a receiver or manager of the whole or substantially the whole of the property of the Company (hereafter in this section and in section 341 referred to as "the receiver",) is appointed on behalf of the holders of any debentures of the company secured by a floating charge, then subject to the provisions of this and of section 341-

(a) the receiver shall forthwith send notice to the company of his appointment; and

(b) there shall, within fourteen days after receipt of the notice, or such longer period as may be allowed by the Court or by the receiver, be made out and submitted to the receiver in accordance with section 340 a statement in the prescribed form as to the affairs of the company; and

(c) the receiver shall within two months after receipt of the said statement send-

(i) to the registrar of companies and to the Court, a copy of the statement and of any comments he sees fit to make thereon and in the case of the registrar of companies also a summary of the statement and of his comments (if any) thereon; and

(ii) to the company, a copy of any such comments as aforesaid or, if he does not see fit to make any comment, a notice to that effect; and

(iii) to any trustees for the debenture holders on whose behalf he was appointed and, so far as he is aware of their addresses, to all such debenture holders a copy of the said summary.

(2) The receiver shall within two months, or such longer period as the Court may allow after the expiration of the period of twelve months from the date of his appointment and of every subsequent period of twelve months, and within two months or such longer period as the Court may allow after he ceases to act as receiver or manager of the property of the company, send to the registrar of companies, to any trustees for the debenture holders of the company on whose behalf he was appointed, to the company and (so far as he is aware of their addresses) to all such debenture holders an abstract in the prescribed form showing his receipts and payments during that period of twelve months or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.

(3) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect-

(a) with the omission of the references to the Court in subsection (1); and

(b) with the substitution for the references to the Court in subsection (2) of references to the registrar of companies,

and in any other case references to the Court shall be taken as referring to the Court by which the receiver was appointed.

(4) Subsection (1) shall not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act, except that, where that subsection applies to a receiver or manager who dies or ceases to act before it has been fully complied with, the references in paragraphs (b) and (c) thereof to the receiver shall (subject to subsection (5)) include references to his successor and to any continuing receiver or manager.

Nothing in this subsection shall be taken as limiting the meaning of the expression "the receiver" where used in, or in relation to, subsection (2).

(5) This and section 341, where the company is being wound up, shall apply notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.

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

(7) If the receiver makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding forty-two euros for every day during which the default continues.

4 of 166 of  
1987.

Special  
provisions as  
to statement  
submitted to  
receiver.

**341.-** (1) The statement as to the affairs of a company required by section 340 to be submitted to the receiver (or his successor) shall show as at the date of the receiver's appointment the particulars of the company's assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.

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

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

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

(4) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect with the substitution for references to the Court of references to the registrar of companies; and in any other case references to the Court shall be taken as referring to the Court by which the receiver was appointed.

(5) If any person without reasonable excuse makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding eighty-five euros for every day during which the default continues.

4 of 166 of  
1987.

(6) References in this section to the receiver's successor shall include a continuing receiver or manager.

Delivery to  
registrar of  
accounts of  
receivers and  
managers.

**342.-** (1) Except where subsection (2) of section 340 applies, every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month, or such longer period as the registrar of companies may allow, after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, deliver to the registrar of companies for registration an abstract in the prescribed form showing his receipts and his payments during that period of six months, or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.

4 of 166 of  
1987.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding forty-two euros for every day during which the default continues.

Enforcement  
of duty of  
receivers and  
managers to  
make returns,  
etc.

**343.-** (1) If any receiver or manager of the property of a company-

(a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver or manager is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so; or

(b) having been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to vouch the same and to pay over to the liquidator the amount properly payable to him,

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

(2) In the case of any such default as is mentioned in paragraph (a) of subsection

(1), an application for the purposes of this section may be made by any member or creditor of the company or by the registrar of companies, and in the case of any such default as is mentioned in paragraph (b) of that subsection, the application shall be made by the liquidator, and in either case the order may provide that all costs of and incidental to the application shall be borne by the receiver or manager, as the case may be.

(3) Nothing in this section shall be taken to prejudice the operation of enactments imposing penalties on any receivers in respect of any such default as is mentioned in subsection (1).

Construction of references to receivers and managers.

**344.** It is hereby declared that, except where the context otherwise requires,-

(a) any reference in this Law to a receiver or manager of the property of a company, or to a receiver thereof, includes a reference to a receiver or manager, or (as the case may be) to a receiver, of part only of that property and to a receiver only of the income arising from that property or from part thereof; and

(b) any reference in this Law to the appointment of a receiver or manager under powers contained in any instrument includes a reference to an appointment made under powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument.

## **PART VII.**

### **APPLICATION OF LAW TO COMPANIES FORMED OR REGISTERED UNDER FORMER LAWS**

Application of Law to companies formed and registered under former Companies Laws.

**345.** In the application of this Law to existing companies, it shall apply in the same manner-

(a) in the case of a company, other than a company limited by guarantee, as if the company had been formed and registered under this Law as a company limited by shares;

(b) in the case of a company limited by guarantee, as if the company had been formed and registered under this Law as a company limited by guarantee:

1949.  
Cap. 191.  
25 of 1949.

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Companies (Limited Liability) Law, or the Companies (Limited by Guarantee) Law, 1949, as the case may be.

## **PART VIII.**

### **COMPANIES INCORPORATED OUTSIDE THE REPUBLIC**

#### ***Provisions as to Establishment of Place of Business in the Republic***

Application of sections 347 to 353.

**346.** Sections 347 to 353, both inclusive, shall apply to all overseas companies, that is to say, companies incorporated outside the Republic which, after the commencement of this Law, establish a place of business within the Republic, and companies incorporated outside the Republic which have, before the commencement of this Law, established a place of business within the Republic and continue to have an established place of business within the Republic at the commencement of this Law.

Documents, etc., to be delivered to registrar by overseas companies carrying on

**347.**-(1) Overseas companies which, after the commencement of this Law, establish a place of business within the Republic shall, within one month of the establishment of the place of business, deliver to the registrar of the overseas companies for registration-

(a) written report from which the following arises:

business in  
the Republic.  
33(a) of 70(I)  
of 2003.

- (i) the name and legal form of the overseas company, as well as the name of the branch, if that is different from the name of the company;
- (ii) the head office and the address (postal or other) of the overseas company, as well as the address (postal or other) of the place of business;
- (iii) the object and subject of business of the overseas company and the place of business;
- (iv) where applicable, the register abroad (with relevant number of entry) of the overseas company, where its basic data has been entered;
- (v) its subscribed capital where this exists;
- (vi) where applicable, information in relation to the winding-up of the overseas company, the appointment of liquidators, personal data and the powers of the liquidators, as well as the completion of the liquidation, bankruptcy, bankruptcy compromise or other analogous procedure to which the overseas company is subject;
- (vii) in the case of an overseas company of a non-member state of the European Union, the law of the state, governing the company.

33 (a) of 70(I) of 2003. (b) a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company as well as every amendment to the said documents, and, if the instrument is not written in the English language, a certified translation thereof;

33(b) of 70(I)  
of 2003.

33(a) of 70(I) of 2003. (c) a list of the directors and secretary of the company as well as of all the persons which are authorised to represent the company and the branches in its transactions with third parties and before the Courts and the Authorities containing the particulars mentioned in subsection (2);

33(c) of 70(I)  
of 2003.

33(a) of 70(I) of 2003. (d) the names and addresses of some one or more persons resident in the Republic authorised to accept on behalf of the company service of process and any notices required to be served on the company.

(2) The list referred to in paragraph (b) of subsection (1) shall contain the following particulars, that is to say-

(a) with respect to each director,-

(i) in the case of an individual, his present Christian name and surname and any former Christian name or surname, his usual residential address, his nationality and his business occupation, if any, or if he has no business occupation but holds other directorship or directorships, particulars of that directorship or of some one of those directorships; and

(ii) in the case of a corporation, its corporate name and registered or principal office;

(b) with respect to the secretary or, where there are joint secretaries, with respect to each of them,-

(i) in the case of an individual, his present Christian name and surname, any former Christian name and surname and his usual residential address; and

(ii) in the case of a corporation its corporate name and registered office.

Paragraphs (b) and (c) of subsection (9) of section 192 shall apply for the purpose of the construction of references in this subsection to present and former Christian names and surnames as they apply for the purpose of the construction of such references in that section.

33(d) of 70(I) of 2003. (c) with respect to the persons authorised to represent the overseas company, the commencement, termination and extent of their authorization;

33(d) of 70 (I) of 2003. (d) with respect to the persons authorised to represent the place of business, the commencement, termination and extent of their authorization.

1949. (3) Overseas companies, other than those mentioned in subsection (1), shall, if at the commencement of this Law they have not delivered to the registrar in the case of a company mentioned in subsection (1) of section 146 of the Companies (Limited Liability) Law, the documents and particulars specified in subsection (1) of that section continue subject to the obligation to deliver those documents and particulars in accordance with the said Laws.

Cap.191.

(4) If any overseas company ceases to have a place of business in the Republic, it shall, forthwith, give notice of the fact to the registrar of companies and, as from the date from which notice is given, the obligation of the company to deliver any document to the registrar shall cease.

More than one branches. 34 of 70(I) of 2003. **347A.** In the case where the overseas company has more than one branches within the Republic, the disclosure imposed by this Law as regards the information which is common for all branches, shall be complied with by the reference of each new branch to the information entered as to the first branch. In this case, the compulsory disclosure by the other branches shall be restricted to a mention of the register of the branch where the disclosure was made, as well as the entry number of the branch thereof in the said register.

Obligatory indications in letters and order forms in respect of branches. 34 of 70(I) of 2003. **347B.**-(1) Letters and order forms used by a branch, shall, apart from the indications in paragraph (c) of subsection (1) of section 103, bear the indication of the register, where the file of the branch is kept as well as the entry number thereof in that register. (2) Provided the law of the state by which the company is governed provides for the entry of the company in a register, the above-mentioned letters and order forms must also bear the register in this state as well as the entry number of the company in the said register.

Power of overseas company to hold immovable property. **348.** Where an overseas company has delivered to the registrar of companies- (a) in the case of a company to which subsection (1) of section 347 applies, the documents and particulars therein mentioned;

1949. (b) in the case of a company mentioned in subsection (1) of section 146 of the Companies (Limited Liability) Law, the documents and particulars specified in subsection (1) of that section,

Cap.191.

it shall have the same power to hold immovable property in the Republic as if it were a company incorporated under this Law.

Return to be delivered to registrar by overseas company where documents, etc., altered. **349.** If any alteration is made in- (a) the charter, statutes, or memorandum and articles of an overseas company or any such instrument as aforesaid; or (b) the directors or secretary of an overseas company or the particulars contained in the list of the directors and secretary; or

(c) the names or addresses of the persons authorized to accept service on behalf of an overseas company,

the company shall, within the prescribed time, deliver to the registrar for the registration a return containing the prescribed particulars of the alteration.

Accounts of overseas company and of place of business.  
16 of 167(I) of 2003.

**350.-** (1) (a) Every overseas company, which has a branch in the Republic, shall deliver in each financial year to the registrar of companies, copies of:

- (i) the financial statements;
- (ii) the directors' report;
- (iii) and the auditors' report,

which the overseas company presented at its last general meeting and proceeded to publish in accordance with the provisions of the state where it is incorporated.

(b) Every company of a member state of the European Union, which, in accordance with the laws of the said state and in harmonisation with the provisions of Directives of the European Union No. 78/660/EEC, 83/349/EEC and 84/253/EEC is exempt, in whole or in part of the above- mentioned obligations, shall be exempt from the aforementioned obligation.

(2) (a) In addition to the obligation pursuant to subsection (1), every overseas company with a branch in the Republic shall-

- (i) prepare financial statements and a directors' report for the branch;
- (ii) submit the above-mentioned statements and the directors' report to an auditor for auditing;
- (iii) deliver to the registrar of companies copies of the above-mentioned financial statements, the directors' report and the auditors' report, as defined in sections 118 to 122,

as if the branch was a company within the meaning of this Law and in accordance with the applicable provisions in accordance with this Law, subject however to any specific exceptions.

11(a) of 70(I) of 2007.

(b) The obligation described in paragraph (a) shall not burden overseas companies which -

11(b) of 70(I) of 2007.

- (i) in the state of origin, prepare financial statements and submit them for audit and publication in accordance with the provisions of Directives of the European Union No. 78/660/EEC, 83/349/EEC, 84/253/EEC, and
- (ii) have delivered to the registrar of companies the documents required in subsection (1).

11(c) of 70(I) of 2007.

(3) An overseas company which according to the legislation of the state in which it has been incorporated and the provisions of Directives of the European Union No. 78/660/EEC, 83/349/EEC, 84/253/EEC is exempt, in whole or in part, from the obligations in subsections (1) and (2), shall deliver to the registrar of companies a certificate signed by the director and the secretary of the company that the company is an exempt company, stating the provision of the relevant law pursuant to which the exemption applies and the respective provision of the Directives to which it corresponds, which provides for the exemption, as well as a declaration by the relevant Authority that the said company is an exempt company pursuant to the said provision.

Obligation to state name of

**351.** Every overseas company shall-



## The Office of the Law Commissioner

overseas company, whether limited, and country where incorporated.	<p>(a) in every prospectus inviting subscriptions for its shares or debentures in the Republic state the country in which the company is incorporated; and</p> <p>(b) conspicuously exhibit on every place where it carries on business in the Republic the name of the company and the country in which the company is incorporated; and</p> <p>(c) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices and other official publications of the company; and</p> <p>(d) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every such prospectus as aforesaid and in all bill-heads, letter paper, notices and other official publications of the company in the Republic, and to be affixed on every place where it carries on its business.</p>
Service on overseas company.	<p><b>352.</b> Any process or notice required to be served on an overseas company shall be sufficiently served if addressed to any person whose name has been delivered to the registrar under the foregoing provisions of this Part and left at or sent by post to the address which has been so delivered:</p> <p>Provided that-</p> <p>(a) where any such company makes default in delivering to the registrar the name and address of a person resident in the Republic who is authorized to accept on behalf of the company service of process or notices; or</p> <p>(b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served,</p> <p>a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in the Republic.</p>
Penalties.  4 of 166 of 1987. 4 of 166 of 1987.	<p><b>353.-</b> If any overseas company fails to comply with any of the foregoing provisions of this Part the company, and every officer or agent of the company who knowingly and wilfully authorises or permits the default, shall be liable to a fine not exceeding four hundred twenty-seven euros, or, in the case of a continuing offence, eighty-five euros for every day during which the default continues.</p>
Interpretation of sections 347 to 353.	<p><b>354.</b> For the purposes of the foregoing provisions of this Part-</p> <p>the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;</p> <p>the expression "director" in relation to a company includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;</p> <p>the expression "place of business" includes a share transfer or share registration office;</p> <p>the expression "prospectus" has the same meaning as when used in relation to a company incorporated under this Law;</p> <p>the expression "secretary" includes any person occupying the position of secretary by whatever name called.</p>
2 of 124 (I) of 2006.	<p><b><i>Transfer of registered office of companies to and outside the Republic</i></b></p>

Application of sections 354B to 354O. 2 of 124(I) of 2006.

**354A.-** (1) Sections 354B to 354I shall apply to all overseas companies, incorporated or registered pursuant to the laws of an approved country or jurisdiction, according to the laws of which these companies can still exist as legal entities under the legal regime of another approved country or jurisdiction.

(2) Sections 354J to 354O shall apply to all companies incorporated under this Law and wish to continue to exist as legal entities, under the legal regime or jurisdiction of a country other than the Republic.

Suitability for registration as a company continuing in the Republic. 2 of 124(I) of 2006.

**354B.** An overseas company, the memorandum of which enables it to continue under the legal regime of another approved country or jurisdiction, may ask from the registrar to be registered as a company continuing in the Republic pursuant to the provisions of this Law.

Application for registration. 2 of 124(I) of 2006.

**354C.-**(1) The application submitted to the Registrar by the overseas company for its registration as continuing in the Republic shall be accompanied by the following documents:

(a) the resolution or equivalent document of the overseas company which authorises it to be registered as continuing in the Republic. The resolution or the equivalent document must, as practicable as possible, been adopted by such body of the overseas company and by such majority according to the laws of the country or jurisdiction under which the overseas company is incorporated and according to its memorandum, in the same way that a special resolution is adopted according to this Law,

(b) a copy of the revised memorandum of the overseas company, which satisfies the requirements for the incorporation of the company according to this Law and which is in conformity with the laws of the country or jurisdiction of incorporation of the overseas company,

(c) a certificate of good standing or an equivalent document of the overseas company issued by the relevant authority of the country or jurisdiction in which the overseas company is incorporated or other evidence which satisfies the Registrar that the overseas company complies with the conditions of registration of that authority,

(d) a sworn affidavit by a director of the overseas company duly authorised by the board of directors or an equivalent administrative body or by a person to whom the management or the representation of the overseas company has been assigned, confirming:

(i) the name of the overseas company and the name under which it will continue to exist, which must comply with the provisions of section 4;

(ii) the jurisdiction under which the overseas company has been incorporated;

(iii) the date of incorporation of the overseas company;

(iv) the resolution or the equivalent document deciding that the overseas company will be incorporated as continuing in the Republic according to paragraph (a) of subsection (1);

(v) that the overseas company has given official notice to the relevant authority in the country of incorporation of its intention to be registered as continuing in the Republic, according to the procedure laid down in this Law:

Provided that the sworn affidavit must be accompanied by a receipt of such official notification;

The Office of the Law Commissioner

(vi) that no administrative or criminal proceedings have been commenced against the overseas company for the contravention of the laws of the country or the jurisdiction in which it has been incorporated;

(e) a sworn affidavit by a director of the overseas company duly authorised by the board of directors or an equivalent administrative body or by a person to whom the administration or the representation of the overseas company has been assigned, which confirms the solvency of the overseas company and by which the signatories will declare that they are not aware of any circumstances which could affect in a negative and substantial manner the solvency of the company in a period of twelve months from the date of submission of the relevant application according to paragraph (a) of subsection (1);

(f) a list of the directors of the overseas company and of the secretary of the company if any, and of the persons to whom the administration and or the representation of the company has been assigned to when the overseas company has no directors or secretary;

(g) a list of the current members of the overseas company certified in such a way that the Registrar may possibly demand and in such a way that will be acceptable to the Registrar as sufficient conformity with the requirements of this Law in relation to the list of the members of the overseas company;

(h) such documents as the Registrar may determine depending on the circumstances and in order to be satisfied that:

(i) such an application is permissible under the laws of the country or jurisdiction in which the overseas company has been incorporated and ,

(ii) the consent has been received by such number or proportion of the shareholders, employees, debenture holders and/or creditors of the overseas company as required by the laws of the country or jurisdiction of incorporation.

(2) Every director of an overseas company or the persons to whom the management or representation of the overseas company has been assigned to, whenever making a declaration of solvency according to paragraph (e) of subsection (1), without the facts which they have or should have been aware of to justify such declaration, shall be guilty of an offence, and on conviction thereof, be liable to imprisonment not exceeding one year and to a fine not exceeding thirty-four thousand, one hundred and seventy two euros.

Companies which carry out activities for which licence is required and public companies.  
2 of 124(I) of 2006.

**354D.**-(1) (a) When an overseas company carries out within or from the country or jurisdiction of its incorporation or registration, an activity for which a licence or authorization is required both according to Cyprus laws and the laws of the country or jurisdiction of its incorporation or registration, the overseas company is bound to submit to the Registrar the official consent of its registration as continuing in the Republic, which shall be granted by the competent authority granting the above-mentioned licence, or from an authorizing body of the country, or the jurisdiction of incorporation or registration of the company.

(b) Notwithstanding the provisions of paragraph (a), every overseas company that is registered as continuing in the Republic and intends to carry out activities for which it needs to obtain a licence or an authorisation in the Republic, it must, according to the law, obtain the said licence or authorisation from the competent authority of the Republic before it begins its activities.

(2) Where the overseas company is a public company, it shall submit, in addition to the documents mentioned above, the following documents:

The Office of the Law Commissioner

(a) if the overseas company has offered its shares or debentures to the public, the most recent public offer for registration or the equivalent document that will satisfy the requirements of this Law;

(b) if the overseas company's shares are listed in a recognized stock exchange, it shall submit evidence that will satisfy the Registrar that the consent of the relevant authorities of the stock exchange has been given in relation to the registration of the company as continuing in the Republic. For the purposes of this paragraph, "recognized stock exchange" means the stock exchange which is recognized by the competent authorities;

(c) a list of the current members of the overseas company certified in such a way that the registrar may demand and in such a way as the registrar will accept as sufficient evidence for conformity with the requirements of this Law in relation to the list of members of the overseas company.

Registration in  
the Republic.  
2 of 124(I) of  
2006.

**354E.**-(1) Without prejudice to subsection (2), the documents referred to in sections 354C and 354D must be delivered to the registrar for submission, who upon satisfied that they comply with the provisions of this Law, shall submit them temporarily and shall certify that the company is temporarily registered as continuing in the Republic from the date of the registration. The date in question must appear on the temporary certificate of continuation.

(2) If, according to the opinion of the registrar, the name declared under section 354C as the name under which the overseas company will continue creates the danger of confusion or it is misleading with the name of a registered company or a trade mark, the registrar shall give directions to the overseas company in order to amend its name and shall not temporarily register the said company according to subsection (1), until he is satisfied that the name under which the overseas company will continue its activities has been amended in such a way that it does not create the danger of confusion or of becoming misleading.

Effects of  
registration.  
2 of 124(I) of  
2006.

**354F.** From the date of the entry into force of the temporary certificate of continuation that is issued by the registrar pursuant to section 354E above:

(a) the company referred to in the temporary certificate of continuation:

(i) shall be considered to be a body corporate incorporated pursuant to this Law and shall be considered as temporarily registered in the Republic for the purposes of this Law,

(ii) shall be subject to all the duties and shall be capable to exercise all the powers of a company which is registered pursuant to this Law;

(b) the certificate of incorporation, as amended in accordance with paragraph (b) of section 354C of this Law shall be considered to be the memorandum and, where appropriate, the articles of the company;

(c) the registration of the overseas company shall be invalid and with no legally binding result, pursuant to this Law, if this is done with the aim:

(i) to create a new legal entity;

(ii) to cause loss or to affect the continuation of the company as a body corporate;

(iii) to affect the property of the company and the way in which this company will retain all its property, rights, debts and obligations;

(iv) to render ineffective any legal or other proceedings that were commenced or that are about to be commenced against it;

(v) to acquit or prevent any conviction, decision, opinion, order, debt, or obligation which is pending or which will become pending or any reason that

The Office of the Law Commissioner

exists against the overseas company and or against any shareholder, director, officer or persons to whom the management or representation of the company has been assigned to.

Non removal  
from the  
register of the  
country of  
origin.  
2 of 124(I) of  
2006.

**354G.** Within a period of six months from the date of the issuance by the Registrar of the temporary certificate of continuation, the overseas company shall submit evidence to the Registrar from the competent authority of the country or jurisdiction of its incorporation, that it has ceased to be a company registered in the country that it was originally incorporated. In case the overseas company does not submit such evidence, the Registrar may:

(a) remove the name of the overseas company from the register and inform the competent authority of the country or jurisdiction concerned that the company is not registered in Cyprus, or

(b) in case there is reasonable cause for not having submitted the above-mentioned documents, allow an extension of three months during which the said documents have to be submitted:

Provided that in case the documents are not submitted within the prescribed period there is no further extension of time and the procedure provided for in paragraph (a) shall be immediately followed.

Certificate of  
continuation.  
2 of 124(I) of  
2006.

**354H.** With the presentation at the Registrar of the evidence that proves that the overseas company is no longer a company registered in the country or jurisdiction that it was originally incorporated and with the delivery at the Registrar of the temporary certificate of continuation, the Registrar shall issue the certificate of continuation confirming that the company is registered as continuing in the Republic.

Circumstances  
where  
application  
shall be  
rejected.  
2 of 124(I) of  
2006.

**354I.** An application for the registration of an overseas company as continuing in the Republic shall be rejected in the following circumstances:

(a) the dissolution or liquidation of the overseas company has started or the proceedings of insolvency or an arrangement or composition or proceedings of execution of court orders or other analogous proceedings have been initiated from or against the overseas company;

(b) a liquidator or special administrator of the overseas company or receiver of its property has been appointed;

(c) there is any decision or order with which the creditors' rights are suspended or limited; or

(d) there are proceedings that have commenced against it for the contravention of the laws of the country or the jurisdiction of its incorporation.

Right of a  
company to  
be registered  
as continuing  
outside the  
Republic.  
2 of 124(I) of  
2006.

**354J.** A company registered pursuant to this Law may, provided that the laws of the country or jurisdiction so permit, and provided that the consent of the Registrar has been granted in advance, submit an application to the competent authority of the country or jurisdiction that it chose to be registered with the aim to continue under the legal regime of that country or jurisdiction.

Application for  
the Registrar's  
consent for  
the

**354K.** The application of the company for the consent of the Registrar to continue to exist as a body corporate under the legal regime of the country or jurisdiction other than the Republic, shall be accompanied by a statement signed by at least two directors of the company duly authorised from its board of directors or if the board of directors

continuation  
of the  
company  
outside the  
Republic.  
2 of 124(I) of  
2006.

comprises of only one director, from him, and it must include the following:

- (a) the name of the company, under which it wishes to be registered in the approved country or jurisdiction,
- (b) the place of the proposed registration of the company and the name and address of the competent authority in the approved country or jurisdiction, and
- (c) the date on which it is proposed to establish the head office of the company in the particular approved country or jurisdiction.

Requirements  
for the  
Registrar's  
consent.  
2 of 124(I) of  
2006.

**354L.** For the consent of the Registrar to be granted in relation to the continuation of the company in another country or jurisdiction the following requirements must be in effect:

- (a) (i) an approved shareholders' special resolution of the company according to the memorandum and articles of the company authorizing the said application;  
  
(ii) before the general meeting, the directors present interim statements which include the registrations and important changes of real value which are not evident from the registrations and which are drawn up from the date of invitation to the said general meeting;  
  
(iii) the special resolution together with the interim statements must be delivered to the registrar for submission to the file of the company,
- (b) the company shall deliver to the Registrar for submission a declaration which confirms the solvency of the company and which confirms that the directors are not aware of any circumstances that could negatively influence the solvency of the company within a period of three years. The said declaration shall be signed by at least two directors of the company, duly authorized by its board of directors except if the board of directors comprises of one director, in which case it shall be signed by him,
- (c) when the company carries out any activity within or from the Republic that requires a licence from any competent authority, the company must have submitted to the Registrar evidence of such consent by the said competent authority for the continuation of the company in another country or jurisdiction,
- (d) in case that the company is a public company, and its shares have been listed on a recognized stock exchange, the company must have submitted to the Registrar the consent of the said stock exchange and of the Cyprus Stock Exchange Commission,
- (e) the company has submitted all the fees and has completed all the proceedings relating to the company's business, according to this Law,
- (f) the company has submitted the relevant fee regarding its application for the registrar's consent,
- (g) no proceedings for the liquidation of the company have been initiated nor, any insolvency proceedings, arrangements or compositions, or proceedings for execution of court orders or any other analogous proceedings have been initiated by or against the company, in the

The Office of the Law Commissioner

Republic or elsewhere,

- (h) at the time of filing the application for the Registrar's consent, the company has not contravened its duties or obligations according to this Law,
- (i) the company must have submitted the total of the taxes and duties that are due or that will become due until the date of submission of the application provided for in section 354K.

(2) Any director of a company making a declaration of solvency under subparagraph (a) of subsection (1) without the facts he had or should have been aware of to justify such a declaration, shall be guilty of an offence and on conviction thereof be liable to imprisonment not exceeding one year and to a fine not exceeding €34.172 (thirty four thousand, one hundred and seventy two euros)

Right of  
creditors to  
object to the  
continuation  
of the  
company.  
2 of 124(I) of  
2006.

**354M.**- (1) In addition to the requirements of section 354L of this Law, the registrar shall refuse to give its consent for the continuation of the company in another approved country or jurisdiction until three months have passed from the publication of a notice in two daily newspapers of wide circulation in the Republic, which is related to the extraordinary resolution referred to in paragraph (a) of subsection (1) of section 354L of this Law. A copy of the publication in the newspaper submitted to the Registrar within fourteen (14) days shall be evidence of such publication.

(2) During the aforementioned period of three months, any creditor of the company may object before a Court to the continuation of the company under the legal regime of another country or jurisdiction, indicating sufficient reason why the said continuation of the company must not be effected. The Court may approve the said continuation of the company with an order, or it may approve the said continuation of the company on the basis of sufficient guarantees or prohibit the said continuation of the company.

Consent to  
the  
continuation  
of the  
company.  
2 of 124(I) of  
2006.

**354N.** Provided that the requirements of section 354L are fulfilled and the three month period referred to in section 354M has expired without an objection to the continuation of the company, or in the case that an objection has been submitted provided that the Court approved the continuation of the company under the legal regime of another country or jurisdiction or approves the said continuation of the company according to sufficient guarantees and such guarantees are provided, the Registrar shall consent to the continuation of the company under the legal regime of another country or jurisdiction.

Striking off  
from the  
register.  
2 of 124(I) of  
2006.

**354O.** With the issue of the document of continuation according to which the company continues in another approved country or jurisdiction, the company shall immediately deliver to the Registrar a copy of the document of continuation and, with this act, the company shall cease to be a registered company in the Republic from the date that its continuation in the other approved country or jurisdiction is placed in force, the Registrar shall strike off the name of the company from the register and it shall issue a certificate of striking off:

Provided that pursuant to this section, striking off from the register shall not constitute liquidation and that, nothing in this section shall-

(a) oust or prejudice the jurisdiction of any Court in the Republic in proceedings which were initiated by or against the company before it ceased to be a company registered in the Republic,

(b) affect the property of the company,

(c) exempt or prejudice any conviction, decision, opinion, order, debt, responsibility or obligation that is owed or that is about to be owed or for any reason that exists against the company or any other person.

Register of  
companies

**354P.** The Registrar shall keep a register of all companies that received his consent to be registered as continuing in another approved country or jurisdiction. The register

which  
continue  
outside  
Cyprus.  
2 of 124(I) of  
2006.

shall include the name of the company as continuing as well as all relevant details.

Submission of  
documents in  
Greek.  
2 of 124(I) of  
2006.

**354Q.** Where, pursuant to the provisions of this Part, it is required to deliver documents to the Registrar, these documents have to be submitted in the Greek language or in certified translation in the Greek language.

Interpretation  
of sections  
354A to 354P.  
2 of 124(I) of  
2006.

**354R.** For the purpose of interpretation of the provisions of sections 354A to 354P-

“overseas company” means a company incorporated outside the Republic;

“document of continuation” includes every document or certificate confirming that the company has been registered as a company continuing in an approved country or jurisdiction outside the Republic;

“approved country or jurisdiction” means a country or jurisdiction having equivalent legislative provisions as this Law;

64(I) of  
2001<sup>6</sup> 157(I)  
of 2002  
71(I) of  
2004  
187(I) of  
2004.

“Cyprus Stock Exchange Commission” means the public law corporate body that was set up by virtue of the Stock Exchange Commission (Constitution and Competence) Law;

“continuing company” means the company that continues to exist as a body corporate under the legal regime of another approved country or jurisdiction:

Provided that the rights and obligations of the continuing company shall not be affected by the registration of the company as one continuing within and outside the Republic according to this Law;

“document of incorporation” includes the memorandum and the articles as well as any other document serving the same purpose.

### ***Prospectuses***

Dating of  
prospectus  
and  
particulars to  
be contained  
therein.

**355.-** (1) It shall not be lawful for any person to issue, circulate or distribute in the Republic any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside the Republic, whether the company has or has not established, or when formed will or will not establish, a place of business in the Republic unless the prospectus is dated and-

(a) contains particulars with respect to the following matters:-

(i) the instrument constituting or defining the constitution of the company;

(ii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

(iii) an address in the Republic where the said instrument, enactments or

<sup>6</sup> Note: Law 64(I) of 2001, as amended, was repealed and replaced by the Stock Exchange Commission Law, 2009 (L.73(I)/2009).



The Office of the Law Commissioner

provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected;

(iv) the date on which and the country in which the company was incorporated;

(v) whether the company has established a place of business in the Republic, and, if so, the address of its principal office in the Republic;

Fourth Schedule. (b) subject to the provisions of this section, states the matters specified in Part I of the Fourth Schedule and sets out the reports specified in Part II of that Schedule, subject always to the provisions contained in Part III of that Schedule:

Fourth Schedule. Provided that the provisions of sub-paragraphs (i), (ii) and (iii) of paragraph (a) shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business, and, in the application of Part I of the Fourth Schedule for the purposes of this subsection, paragraph 2 thereof shall have effect with the substitution, for the reference to the articles, of a reference to the constitution of the company.

(2) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by virtue of paragraph (a) or (b) of subsection (1), or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful for any person to issue to any person in the Republic a form of application for shares in or debentures of such a company or intended company as is mentioned in subsection (1) unless the form is issued with a prospectus which complies with this Part and the issue whereof in the Republic does not contravene the provisions of section 357 of this Law:

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

(4) In the event of non-compliance with or contravention of any of the requirements imposed by paragraphs (a) and (b) of subsection (1), a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if-

(a) as regards any matter not disclosed, he proves that he was not cognizant thereof; or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:

Fourth Schedule. Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 16 of the Fourth Schedule, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section-

(a) shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; and

(b) except in so far as it requires a prospectus to be dated, shall not apply to the issue of a prospectus relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being

dealt in or quoted on a prescribed stock exchange,

but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Law, apart from this section.

Exclusion of section 355 and relaxation of Fourth Schedule in case of certain prospectuses.

**356.-** (1) Where-

(a) it is proposed to offer to the public by a prospectus issued generally any shares in or debentures of a company incorporated or to be incorporated outside the Republic, whether the company has or has not established, or when formed will or will not establish, a place of business in the Republic; and

(b) application is made to a prescribed stock exchange for permission for those shares or debentures to be dealt in or quoted on that stock exchange,

there may on the request of the applicant be given by or on behalf of that stock exchange a certificate of exemption, that is to say, a certificate that, having regard to the proposals (as stated in the request) as to the size and other circumstances of the issue of shares or debentures and as to any limitation on the number and class of persons to whom the offer is to be made, compliance with the requirements of the Fourth Schedule would be unduly burdensome.

Fourth Schedule.

(2) If a certificate of exemption is given, and if the proposals aforesaid are adhered to and the particulars and information required to be published in connection with the application for permission to the stock exchange are so published, then:

Fourth Schedule.

(a) a prospectus giving the particulars and information aforesaid in the form in which they are so required to be published shall be deemed to comply with the requirements of the Fourth Schedule; and

(b) except in so far as it requires a prospectus to be dated, the last foregoing section shall not apply to any issue, after the permission applied for is given, of a prospectus or form of application relating to the shares or debentures.

Provisions as to expert's consent and allotment.

**357.-** (1) It shall not be lawful for any person to issue, circulate or distribute in the Republic any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside the Republic, whether the company has or has not established, or when formed will or will not establish, a place of business in the Republic-

(a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or

(b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions (other than penal provisions) of section 49, so far as applicable.

(2) In this section the expression "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him, and for the purposes of this section a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Registration of prospectus.

**358.-** (1) It shall not be lawful for any person to issue, circulate or distribute in the Republic any prospectus offering for subscription shares in or debentures of a company

incorporated or to be incorporated outside the Republic, whether the company has or has not established, or when formed will or will not establish, a place of business in the Republic, unless before the issue, circulation or distribution of the prospectus in the Republic, a copy thereof certified by the chairman and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the registrar of companies, and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy-

Fourth Schedule.	<p>(a) any consent to the issue of the prospectus required by section 357;</p> <p>(b) a copy of any contract required by paragraph 14 of the Fourth Schedule to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus deemed by virtue of a certificate granted under section 356 to comply with the requirements of that Schedule, a contract or a copy thereof or a memorandum of a contract is required to be available for inspection in connection with the application under that section to the stock exchange in question, a copy or, as the case may be, a memorandum of that contract; and</p> <p>(c) where the persons making any report required by Part II of that Schedule have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 29 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefore.</p>
19 of 99(I) of 2009.	<p>(2) The references in paragraph (b) of subsection (1) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a foreign language, be taken as references to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation, and the reference to a copy of a contract required to be available for inspection shall include a reference to a copy of a translation thereof or a copy embodying a translation of parts thereof.</p> <p>(3) In the case of a public company, which issues a prospectus for the purpose of subscription of its shares or other securities or transferable securities in a foreign market and in relation to which the exception of section 361A does not apply, the prospectus as well as any other documents which accompany it or which must be submitted for registration, may, at the option of the company, be submitted in a language which is widely used in the international financial sector.</p>
<p>Penalty for contravention of sections 355 to 358.</p> <p>3 of 166 of 1987.</p>	<p><b>359.</b> Any person who is knowingly responsible for the issue, circulation or distribution of a prospectus, or for the issue of a form of application for shares or debentures, in contravention of any of the provisions of sections 355 to 358 shall be liable to imprisonment not exceeding two years or to a fine not exceeding two thousand, five hundred and sixty-two euros or to both such imprisonment and fine.</p>
Civil liability for misstatements in prospectus.	<p><b>360.</b> Section 43 shall extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside the Republic, whether the company has or has not established, or when formed will or will not establish, a place of business in the Republic, with the substitution, for references to section 40, of references to section 357.</p>
Interpretation of provisions as to prospectuses.	<p><b>361.-</b> (1) Where any document by which any shares in or debentures of a company incorporated outside the Republic are offered for sale to the public would, if the company concerned had been a company within the meaning of this Law, have been deemed by virtue of section 45 to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this Part, a prospectus issued by the company.</p> <p>(2) An offer of shares or debentures for subscription or sale to any person whose ordinary business it is to buy or sell shares or debentures, whether as principal or</p>

agent, shall not be deemed an offer to the public for the purposes of this Part.

(3) In this Part the expressions "prospectus", "shares" and "debentures" have the same meaning as when used in relation to a company incorporated under this Law.

Non-application of sections 355 to 361 of the Law.  
20 of 99(I) of 2009.  
114(I) of 2005.  
200(I) of 2004.

**361A.** The provisions of sections 355 to 361 of the Law shall not apply in relation to shares or debentures, to which the Public Offer and Prospectus Law and/or the Open Ended Undertakings for Collective Investments in Transferable Securities (UCITS) and for Related Matters Law apply.

### *Winding Up*

Winding up of overseas companies.  
2 of 9 of 1968.

**362.** Where a company incorporated outside the Republic or which has been carrying on business in the Republic, ceases to carry on business in the Republic, it may be wound up by the Court under the provisions of this Law, notwithstanding that it has been dissolved or otherwise ceases to exist as a company under or by virtue of the Laws of the country under which it was incorporated.

## **PART IX GENERAL PROVISIONS AS TO REGISTRATION**

Registration offices.

**363.-** (1) For the purposes of the registration of companies under this Law, there shall be an office in the Republic at such place as the Council of Ministers thinks fit.

(2) The Council of Ministers may appoint such registrars, assistant registrars, clerks and servants as the Council of Ministers thinks necessary for the registration of companies under this Law, and may make regulations with respect to their duties, and may remove any persons so appointed.

(3) The Council of Ministers may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(4) Whenever any act is by this Law directed to be done to or by the registrar of companies, it shall, until the Council of Ministers otherwise directs, be done to or by the existing registrar of companies, or in his absence to or by such person as the Council of Ministers may for the time being authorise:

Provided that, in the event of the Council of Ministers altering the constitution of the existing registry office, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the Council of Ministers may appoint.

Fees and rights to be paid by registrar into the Treasury of the Republic.  
10 of 76 of 1977.

**364.** The registrar shall deposit all fees and stamp duties which are paid to it at the Treasury of the Republic.

Inspection, production and evidence of documents kept by registrar.

**365.-** (1) Any person may-

The Office of the Law Commissioner

11(a) of 76 of 1977. (a) inspect the documents kept by the registrar of companies, on payment of such fee as may be appointed by the Council of Ministers,

11(b) of 76 of 1977. (b) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar, on payment for the certificate, certified copy or extract of such fees as the Council of Ministers may appoint.

Provided that-

(i) in relation to documents delivered to the registrar with a prospectus in pursuance of sub-paragraph (i) of paragraph (b) of subsection (1) of section 41, the rights conferred by this subsection shall be exercisable only during the fourteen days beginning with the date of publication of the prospectus or with the permission of the Council of Ministers, and in relation to documents so delivered in pursuance of paragraph (b) of subsection (1) of section 358 the said rights shall be exercisable only during the fourteen days beginning with the date of the prospectus or with the permission of the Council of Ministers; and

7(a) of 151(I) of 2000. (ii) the right conferred by paragraph (a) of this subsection shall not extend to any copy sent to the registrar under section 340 of a statement as to the affairs of a company or of any comments of the receiver or his successor or a continuing receiver or manager thereon, but only to the summary thereof, except where the person claiming the right either is or is the agent of a person stating himself in writing to be a member or creditor of the company to which the statement relates, and the right conferred by paragraph (b) of this subsection shall be similarly limited;

7(b) of 151(I) of 2000. (c) subject to the provisions of subsection (3), request that the copies, mentioned in paragraph (b), be issued without certification by the registrar.

(2) No process for compelling the production of any document kept by the registrar shall issue from any Court except with the leave of that Court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the Court.

(3) A copy of, or extract from, any document kept and registered at the office for the registration of companies, certified to be a true copy under the hand of the registrar or other officer duly authorized by him (whose official position it shall not be necessary to prove), shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

4 of 166 of 1987. (4) Any person untruthfully stating himself in writing for the purposes of proviso (ii) to subsection (1) to be a member or creditor of a company shall be liable to a fine not exceeding four hundred twenty-seven euros.

Notice from the Registrar on keeping records. Prevalence of particulars entered in the register or published in the Official Gazette of the Republic. 35 of 70(I) of 2003. **365A.-** (1) Care of the Registrar, an announcement relating to the undertaking by him for keeping and presenting as set out in section 365, of all the documents which are delivered to him from the companies in accordance with the provisions of this Law, shall be published in the Official Gazette of the Republic.

(2) The announcement shall mandatorily contain-

(a) the name of the company;

(b) a reference to the type of document and the subject matter to which it refers;

(c) the date of submission.

(3) The announcement shall be drawn up care of the submitting company. In this case it shall be checked by the registrar for its completeness and accuracy.

(4) In the case of discrepancy between the entry in the Register and the publication

The Office of the Law Commissioner

in the Official Gazette of the Republic, the text published in the Official Gazette of the Republic cannot be used as against third parties by the company. Third parties may, however, rely on it, unless the company proves that the third parties had knowledge of the entered documents or particulars.

(5) All documents and particulars which, by virtue of the provisions of this Law shall be delivered by the company to the Registrar and shall be entered in the Register, can be used against third parties by the company only after the publication regulated in accordance with subsection (1), unless the company proves that the said third parties had knowledge of the entered documents or entered particulars:

Provided that, with regard to the actions carried out before the sixteenth day after publication, the said filed actions and material cannot be used in evidence against third parties who prove that they could not have been aware of the said filed actions and material.

12 of 70(I) of 2007.

(6) Third parties may, in every case, rely upon documents and particulars in respect of which the publication requirements in the Register and the Official Gazette of the Republic have not yet been completed, unless due to a lack of publication the documents and particulars are deprived of validity.

Conversion and storage of documents filed at the register of incorporation of companies, in electronic form.  
4 of 71(I) of 2007.

**365B.** As of 1<sup>st</sup> January 2007, the documents delivered by the companies to the registrar, pursuant to the provisions of sections 4 to 13, 17, 203, 219, subsection (3) of section 243, subsection (2) of section 260 and subsection (1) of section 262 of this Law, shall be filed in the companies register of incorporation in electronic form:

Provided that in cases where the documents referred to in this section are delivered to the registrar in a hard copy form, the registrar shall convert same into electronic form:

Provided, further that, the registrar may collect a fee with respect to the conversion referred to in the first proviso.

Documents to be converted in electronic form on application.  
4 of 71(I) of 2007.

**365C.**-(1) The documents which have been filed at the register of incorporation of companies up to 31<sup>st</sup> December 2006, pursuant to sections 4 to 13, 17, 203 and 219, subsection (3) of section 243, subsection (2) of section 260 and subsection (1) of section 262 of this Law shall not be required to be converted into electronic form.

(2) Any company may, for the purpose of disclosure, file an application for the conversion of the documents referred to in subsection (1) of this section into electronic form, on payment of a relevant fee.

Certified copies of documents in electronic form.  
4 of 71(I) of 2007.

**365D.**-(1) Certified copies of documents which have been filed in the register of incorporation of companies pursuant to the provisions of sections 4 to 13, 17, 203, 219, subsection (3) of section 243, subsection (2) of section 260 and subsection (1) of section 262 of this Law, may be obtainable on request, electronically or in writing, as the applicant chooses, regardless of whether the filing of these documents in the register of incorporation of companies has been made before or after the 1 of January 2007. The said application may be submitted by electronic means or in writing, upon payment of the relevant fee.

(2) Notwithstanding the application of the provisions of subsection (1), the documents which have been filed in the register of incorporation of companies pursuant to the provisions of sections 4 to 13 of this Law, in hard copy form, until the 31 December 2006, and at least ten years before the filing of the application referred to in subsection (1), shall not be provided by electronic means.

(3) The copies may be provided without being certified as true copies, unless the

applicant explicitly requests such a certification.

(4) With respect to the certification of electronically certified copies, there shall be at least one advanced electronic signature, as the term 'electronic signature' is defined under the Legal Framework for Electronic Signatures and other Related Matters Law.

(5) For the purpose of interpretation of this section, 'electronic means' shall mean that the information is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data and entirely transmitted, conveyed and received by wire or by optical means or other electromagnetic means.

Enforcement of duty of company to make returns to registrar.

**366.-** (1) If a company, having made default in complying with any provision of this Law which requires it to file with, deliver or send to the registrar of companies any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the Court may, on an application made to the Court by any member or creditor of the company or by the registrar of companies, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

#### **PART X.**

#### **MISCELLANEOUS PROVISIONS WITH RESPECT TO BANKING COMPANIES AND CERTAIN ASSOCIATIONS**

Prohibition of banking with more than ten members.

**367.** No company or association consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Law, or is formed in pursuance of some other Law, in force for the time being.

Privileges of banks making annual return.

**368.-** (1) Where a company carrying on the business of bankers has duly forwarded to the registrar of companies the annual return required by section 118 and has added thereto a statement of the names of the several places where it carries on business, the company shall be deemed to be a "bank" and "bankers" within the meaning of the Bankers' Books Evidence Act, 1879.

42 & 43  
Vict.c.11.

(2) The fact of the said annual return and statement having been duly forwarded may be proved in any legal proceedings by the certificate of the registrar.

Publication of periodical statements by banking companies, etc.  
Fifth Table.  
61 of 27 of 1967.  
12 of 76/77.  
Eleventh Schedule.

**369.-** (1) Every company, being a banking company or an insurance company or a deposit, provident or benefit society, shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form set out in the Eleventh Schedule, or as near thereto as circumstances admit.

(2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding 0.0427 euros.

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

Fifth Table.  
61 of 27 of  
1967.

(5) For the purposes of this Law, a company carrying on business as an insurance company jointly within one or more other businesses, shall be considered to be an insurance company.

Fifth Table.  
61 of 27 of  
1967.

(6) This section shall not apply with respect to an insurance company falling within the scope of the provisions of the Insurance Companies Law, 1967 which concern the obligation of such company to submit accounts and a balance-sheet, provided that the company complies with the aforementioned provisions.

Prohibition of  
association  
with more  
than twenty  
members.

**370.** No association, consisting of more than twenty persons shall be formed for the purpose of carrying on any business (other than the business of banking) that has for its object the acquisition of gain by the association, or by the individual members thereof, unless it is registered as a company under this Law, or is formed in pursuance of some other Law, in force for the time being.

## **PART XI. GENERAL**

Form of  
registers, etc.

**371.-** (1) Any register, index, minute book or book of account required by this Law to be kept by a company may be kept either by making entries in bound books or by recording the matters in question in any other manner.

(2) Where any such register, index, minute book or book of account is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery, and where default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding four hundred twenty-seven euros and further shall be liable to a default fine.

4 of 166 of  
1987.

Service of  
documents on  
a company.

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

## ***Offences***

Penalty for  
false  
statements.  
Twelfth  
Schedule.  
13 of 76/77.  
17(a) of  
167(I)/2003.  
17(b) of  
167(I)/2003.  
3 of 166 of  
1987.

**373.** If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of any of the provisions of this Law specified in the Twelfth Schedule, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of an offence, and on conviction thereof be liable to imprisonment not exceeding five years or to a fine not exceeding eighty-five thousand, four hundred and thirty euros or to both such imprisonment and fine.

Penalty for  
improper use  
of word  
"limited."  
6 of 98(I) of  
2006.  
4 of 166 of  
1987.

**374.** If any person or persons trade or carry on business under any name or title of which "limited" or SE, or any contraction or imitation of that word, is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding forty-two euros for every day upon which that name or title has been used.



Provision with respect to default fines and meaning of "officer in default".  
4 of 166 of 1987.

**375.-** (1) Where by any enactment in this Law it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every such officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine not exceeding such amount as is specified in the said enactment, or, if the amount of the fine is not so specified, to a fine not exceeding forty-two euros.

(2) For the purpose of any enactment in this Law which provides that an officer of a company who is in default shall be liable to a fine or penalty, the expression "officer who is in default" means any officer of the company who knowingly and wilfully authorizes or permits the default, refusal or contravention mentioned in the enactment.

Production and inspection of books where offence suspected.

**376.-** (1) If on an application made to a member of a District Court in Chambers by or on behalf of the Attorney-General, the registrar of companies, the official receiver or a Police Officer above the rank of Inspector, there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made-

(a) authorizing any person named therein to inspect the said books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or

(b) requiring the secretary of the company or such other officer thereof as may be named in the order to produce the said books or papers or any of them to a person named in the order at a place so named.

(2) Subsection (1) shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in paragraph (b) thereof shall be made by virtue of this subsection.

(3) The decision of a member of a District Court under this section shall not be appealable.

Jurisdiction of District Court in continuing offences.

**377.** Whenever under this Law any offence is punishable with a fine for every day during which the default, refusal or contravention constituting the offence continues, such offence shall be triable by a President of a District Court or a District Judge, notwithstanding anything in any other Law contained and notwithstanding that the aggregate amount of the fine which may be imposed is otherwise beyond the jurisdiction of such President of the District Court or District Judge.

Provisions as to offences punishable solely by fine.

**378.-** (1) All offences under this Law made punishable solely by any fine may be prosecuted at any time within twelve months from the date on which evidence sufficient in the opinion of a Law Officer to justify the proceedings comes to his knowledge:

Provided that proceedings shall not be so taken more than three years after the commission of the offence.

(2) For the purposes of subsection (1), a certificate of a Law Officer as to the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence thereof.

(3) Subsection (1), so far as it relates to the time within which proceedings may be taken, and subsection (2) shall apply to proceedings in respect of offences which under the Companies (Limited Liability) Laws, 1922 to 1944, and the Companies (Limited by Guarantee) Law, 1949, are triable summarily as it applies to proceedings

18 of 1922 to

45 of 1944,  
25 of 1949. in respect of the offences mentioned in the said subsection (1):

Provided that this subsection shall not have effect in relation to any proceedings if the time allowed under the said Laws apart from this section for taking them had already expired before the commencement of this Law.

Application of fines. **379.** The Court imposing any fine under this Law may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Law shall be paid into the Treasury.

Saving as to private prosecutors. **380.** Nothing in this Law relating to the institution of criminal proceedings by or on behalf of the Attorney-General shall be taken to preclude any person from instituting or carrying on any such proceedings.

Saving for privileged communications. **381.** Where proceedings are instituted under this Law against any person by or on behalf of the Attorney-General, nothing in this Law shall be taken to require any person who has acted as advocate for the defendant to disclose any privileged communication made to him in that capacity.

### *Legal Proceedings*

Costs in actions by certain companies. **382.** Where a company is plaintiff in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power of Court to grant relief in certain cases. **383.-** (1) If in any proceeding for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor (whether he is or is not an officer of the company) it appears to the Court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think fit.

(2) Where any such officer or person aforesaid has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a Court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

Power to enforce orders. **384.** Orders made by a Court under this Law may be enforced in the same manner as orders made in an action pending therein.

### *General Provisions as to Council of Ministers*

Authentication of documents issued by the Council of Ministers. **385.** Any approval, sanction or licence or revocation of licence which under this Law may be given or made by the Council of Ministers may be under the hand of the Registrar or of any person authorized in that behalf by the Council of Ministers.

Documents made or issued by the Council of Ministers to **386.** All documents made or issued for the purposes of this Law by the Council of Ministers or any person authorised in that behalf by him shall be received in evidence without further proof.

be evidence.

Power to  
Council of  
Ministers to  
make  
Regulations.

**387.-** (1) The Council of Ministers shall have power to make regulations-

(a) in respect of all matters stated or required in this Law to be prescribed;

(b) prescribing forms to be used for any matter under the provisions of this Law;

(c) altering or adding to the requirements of this Law as to the matters to be stated in a balance sheet, profit and loss account and group accounts and, in particular, of those of the Eighth Schedule; and any reference in this Law to the said Eighth Schedule shall be considered as a reference to that Schedule with any alterations or additions made by regulations for the time being in force under this subsection;

Eighth  
Schedule.  
14 of 76 of  
1977.

(d) determining the fees or stamp duties which should be paid by virtue of any provision, or in relation to any provision of this Law, or generally by companies or in relation to them, and providing that the manner of payment of such fees and stamp duties namely in cash or by stamps or any of them in cash and others by stamps, will be each time determined by the Registrar;

7 of 98(I) of  
2006.

(e) in relation to all matters that have to be regulated or are being regulated for the purpose of facilitating the implementation in the Republic of the provisions of Council Regulation (EC) No. 2157/2001 dated 8 of October 2001 concerning the Statute for a European company (SE) as amended from time to time and may, in addition, create offences concerning the contravention of the regulations made by virtue of this paragraph or of the afore-mentioned Council Regulation, which shall be punishable with imprisonment for a term not exceeding two years or with a fine of thirty four thousand, one hundred and seventy-two euros, (€34,172) or with both such imprisonment and fine.

(2) The Council of Ministers may by regulations-

Table A  
Eleventh  
Schedule.  
15 of 76 of  
1977.

(a) alter Table A and the form in the Eleventh Schedule;

Tables B, C,  
and D, of First  
Schedule and  
forms in  
Second  
Schedule and  
Part II of  
Sixth  
Schedule.

(b) alter or add to Tables B, C and D in the First Schedule and the forms in the Second Schedule and Part II of the Sixth Schedule,

but no alteration made by the Council of Ministers in Table A shall affect any company registered before the alteration, or repeal as respects that company any portion of that Table.

(3) No regulations shall be made under subsection (1) so as to render more onerous the requirements therein referred to, unless a draft of the regulations has been published in the *Gazette*.

3 of 17 of  
1979.

(4) Regulations made under this section shall be laid before the House of Representatives. If within thirty days from the date of such laying the House of Representatives does not by resolution amend or annul the Regulations so laid, in whole or in part, they shall then, soon after the period hereinbefore mentioned, be published in the Official Gazette of the Republic and shall come into force as from such publication. In the event of their amendment, in whole or in part, by the House of Representatives, they shall be published in the Official Gazette of the Republic as amended by the House and shall come into force as from such publication.

### ***Supplemental***

Construction

**388.** Notwithstanding subsection (1) of section 11 of the Interpretation Law (which

of references in other Laws to companies registered under the former Companies Laws.

Cap. 1.  
11 of 1989.  
18 of 1922 to  
45 of 1944.  
25 of 1949.

provides that where a Law repeals and re-enacts, with or without modification, any provisions of a former Law, references in any other Law to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted), references in any Law other than this Law to a company formed and registered under the Companies (Limited Liability) Laws, 1922 to 1944, or the Companies (Limited by Guarantee) Law, 1949, shall, unless the context otherwise requires, be construed as references to a company formed and registered under those Laws or this Law.

Savings.

**389.-** (1) Nothing in this Law shall affect any Order in Council, order, rule, regulation, appointment, conveyance, charge, mortgage, deed or agreement made, resolution passed, direction given, proceeding taken, instrument issued or thing done under any former enactment relating to companies, but any such Order in Council, order, rule, regulation, appointment, conveyance, charge, mortgage, deed, agreement, resolution, direction, proceeding, instrument or thing shall, if in force at the commencement of this Law, continue in force, and so far as it could have been made, passed, given, taken, issued or done under this Law shall have effect as if made, passed, given, taken, issued or done under this Law.

(2) Nothing in this Law shall affect any prosecution instituted under the provisions of any former enactment relating to companies.

(3) Nothing in this Law shall affect-

Cap 117<sup>7</sup>.

(a) the provisions of section 55 of the Trade Unions Law (which avoids the registration of a trade union under the enactments relating to companies);

*Gazettes*  
Suppl. No.3.  
23.2.1946  
Suppl. No.2A  
9.12.1950.

(b) the provisions of any Defence Regulations having effect under the provisions of the Supplies and Services (Transitional Powers) (Cyprus) Order, 1946, which continues in force by the Supplies and Services (Continuance) Order, 1950.

(4) Any document referring to any former enactment relating to companies shall be construed as referring to the corresponding enactment of this Law.

(5) Any person appointed to any office under or by virtue of any former enactment relating to companies shall be deemed to have been appointed to that office under or by virtue of this Law.

(6) Any register kept under any former enactment relating to companies shall be deemed part of the register to be kept under the corresponding provisions of this Law.

(7) All funds and accounts constituted under this Law shall be deemed to be in continuation of the corresponding funds and accounts constituted under the former enactments relating to companies.

(8) Nothing in this Law shall affect-

(a) the incorporation of any company registered under any enactment hereby repealed;

(b) the regulations contained in Table A made under the former enactments relating

<sup>7</sup> Note: The Trade Unions Law (Cap117) was repealed and replaced by the Trade Unions Law, 1965 (L.71/1965, as amended by Laws 22 of 1970, 48(I) of 1991, 97(I) of 1996).

to companies, so far as the same apply to any company existing at the commencement of this Law.

(9) Where any offence, being an offence for the continuance of which a penalty was provided, has been committed under any former enactment relating to companies, proceedings may be taken under this Law in respect of the continuance of the offence after the commencement of this Law, in the same manner as if the offence had been committed under the corresponding provisions of this Law.

Cap.1.  
11 of 1989.

(10) Save to the extent to which it is otherwise provided by subsection (4) the mention of particular matters in this section shall be without prejudice to the general application of section 11 of the Interpretation Law with respect to the effect of repeals.

(11) In this section the expression "former enactment relating to companies" means the Companies (Limited Liability) Law, and the Companies (Limited by Guarantee) Law, 1949.

Provisions as  
to winding-up  
proceedings  
commenced  
before the  
date of  
commenceme  
nt of the Law.

**390.-** (1) The provisions of this Law with respect to winding up (other than section 315 as applied for the purposes of section 389 and subsection (2) of this section) shall not apply to any company of which the winding up commenced before the date of the commencement of this Law but any such company shall be wound up in the same manner and with the same incidents as if this Law (apart from the enactments aforesaid) had not passed, and, for the purposes of the winding up, the Laws, under which the winding up commenced shall be deemed to remain in full force.

(2) A copy of every order staying the proceedings in a winding up commenced as aforesaid shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute of the order in his books relating to the company.

Imposition of  
a fee.  
61(2) of 27 of  
1967.<sup>8</sup>  
2 of 117(I) of  
2011.<sup>8</sup>

**391.-**(1) Notwithstanding the provisions of this Law or any other Law or Regulations made thereunder, all registered companies shall be obliged to pay an annual fee of three hundred and fifty euros (€350.00), which shall be paid in accordance with the following procedure:

(a) Existing registered companies, which in accordance with the provisions of this section are subject to an obligation of payment of a fee, shall be obliged with respect to the year 2011 to pay such fee, not later than the 31December 2011.

(b) Existing registered companies, with respect to each year following the year 2011, shall be obliged to pay such fee, not later than the 30 June of each year:

Provided that, a company shall not be obliged to pay a fee, in accordance with the provisions of this section, on the year of its registration and with respect to such year:

Provided further that, in case of companies which belong to a group of companies, the total amount of the fees which need to be paid by the said companies should not exceed the amount of twenty thousand euros (€20,000), such amount to be divided amongst such companies equally.

(2) In case a company delays to comply with its obligation of payment of the annual fee set out in section until the 30 June of each year, but which proceeds with the payment of such fee within two months of the date set out above, shall be subject to a charge of ten per cent (10%), while a company which delays to proceed with payment of the said annual fee but which proceeds with its payment within a period

---

<sup>8</sup> Note: Section 391 of the Companies Law (Cap.113 as amended), was repealed by section 61(2) of the Insurance Companies Law, 1967 (L.27/1967).By virtue of Law 117(I)/2011, a new section 391 has been inserted.

of five months after the 30 June of each year, shall be subject to an additional charge of thirty per cent (30%).

(3) Notwithstanding the provisions of subsection (2), in case a company does not comply with the payment of the said annual fee, within the time limits set out above and in accordance with the procedures provided for in this section, the Registrar shall proceed with its removal from the register, applying mutatis mutandis, the provisions of section 327 of this Law:

Provided that within a time period of two years from the removal of a company from the register and as long as the company pays to the Registrar a fee of five hundred euros (€500.00), such company shall be considered as ipso jure reinstated in the register, and in such case the Registrar shall carry out the relevant correction:

Provided further that after two years from the removal of a company from the register and as long as the company pays to the Registrar a fee of seven hundred and fifty euros (€750.00), such company shall be considered as ipso jure reinstated in the register, and in such case the Registrar shall carry out the relevant correction.

(4) At the Registrar's discretion, the provisions of this section shall not apply in the case of a dormant company or companies or group of companies that do not possess any assets or in the case of a company that possesses assets which are located in areas which are not under the control of the Republic.

Date of  
commencement.

**392.-** This Law came into operation on the 1st day of July, 1951.

**SCHEDULES**  
**FIRST SCHEDULE**

(Tables A, B, C and D - Sections 2 and 13)

**TABLE A**

**PART I. REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES, NOT BEING A PRIVATE COMPANY**

*Interpretation*

1. In these regulations:-

"the Law" means the Companies Law, Cap. 113.

"the seal" means the common seal of the company.

"Secretary" means any person appointed to perform the duties of the secretary of the company.

"Republic" means the Republic of Cyprus.

Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Law or any statutory modification thereof in force at the date at which these regulations become binding on the company.

*Share Capital and Variation of Rights*

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in the company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise as the company may from time to time by ordinary resolution determine.

3. Subject to the provisions of section 57 of the Law, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed on such terms and in such manner as the company before the issue of the shares may by special resolution determine.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

5. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

6. The company may exercise the powers of paying commissions conferred by

section 52 of the Law, provided that the rate percent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section and the rate of the commission shall not exceed the rate of ten per cent of the price at which the shares in respect whereof the same is paid are issued or an amount equal to 10% of such price (as the case may be). Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other. The company may also on any issue of shares pay such brokerage as may be lawful.

7. Except as required by law, no person shall be recognized by the company as holding any share upon any trust, and the company shall not be bound by or be compelled in any way to recognize (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

8. Every person whose name is entered as a member in the register of members shall be entitled without payment to receive within two months after allotment or lodgement of transfer (or within such other period as the conditions of issue shall provide) one certificate for all his shares or several certificates each for one or more of his shares upon payment of 0.2135 euros for every certificate after the first or such less sum as the directors shall from time to time determine. Every certificate shall be under the seal and shall specify the shares to which it relates and the amount paid up thereon. Provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

9. If a share certificate be defaced, lost or destroyed, it may be renewed on payment of a fee of 0.2135 euros. or such less sum and on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investigating evidence as the directors think fit.

10. The company shall not give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or in its holding company nor shall the company make a loan for any purpose whatsoever on the security of its shares or those of its holding company, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 53 (1) of the Law.

*Lien*

11. The company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a first and paramount lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.

12. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

13. To give effect to any such sale the directors may authorize some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered



as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

14. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

*Calls On Shares*

15. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times, provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call, and each member shall (subject to receiving at least fourteen days' notice specifying the time or times and place of payment) pay to the company at the time or times and place so specified the amount called on his shares. A call may be revoked or postponed as the directors may determine.

16. A call shall be deemed to have been made at the time when the resolution of the directors authorizing the call was passed and may be required to be paid by instalments.

17. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

18. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate not exceeding five per cent per annum as the directors may determine, but the directors shall be at liberty to waive payment of such interest wholly or in part.

19. Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these regulations be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable, and in case of non-payment all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

20. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

21. The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become payable) pay interest at such rate not exceeding (unless the company in general meeting shall otherwise direct) five per cent per annum, as may be agreed upon between the directors and the member paying such sum in advance.

*Transfer of Shares*

22. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and, except as provided by sub-paragraph (4) of paragraph 2 of the Seventh Schedule, the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

23. Subject to such of the restrictions of these regulations as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve.

24. The directors may decline to register the transfer of a share (not being a fully paid share) to a person of whom they shall not approve, and they may also decline to register the transfer of a share on which the company has a lien.

25. The directors may also decline to recognize any instrument of transfer unless:  
(a) a fee of 0.2135 euros or such lesser sum as the directors may from time to time require is paid to the company in respect thereof;

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and

(c) the instrument of transfer is in respect of only one class of share.

26. If the directors refuse to register a transfer they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

27. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine, provided always that such registration shall not be suspended for more than thirty days in any year.

28. The company shall be entitled to charge a fee not exceeding 0.2135 euros. on the registration of every probate, letters of administration, certificate of death or marriage, power of attorney, or other instrument.

#### *Transmission of Shares*

29. In case of the death of a member the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognized by the company as having any title to his interest in the shares; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

30. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death or bankruptcy, as the case may be.

31. If the person so becoming entitled shall elect to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he shall elect to have another person registered he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

32. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings

of the company:

Provided always that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within ninety days the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

*Forfeiture of Shares*

33. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

34. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

35. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time, thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

36. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

37. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were payable by him to the company in respect of the shares, but his liability shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

38. A statutory declaration in writing that the declarant is a director or the secretary of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

39. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

*Conversion of Shares into Stock*

40. The company may by ordinary resolution convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination.

41. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as and subject to which the shares from which the stock arose might previously to conversion have been transferred, or

as near thereto as circumstances admit; and the directors may from time to time fix the minimum amount of stock transferable but so that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

42. The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

43. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

*Alteration of Capital*

18 of 70(I) of  
2003.

44. The company may from time to time by resolution in accordance with the provisions of section 59A of the Law, and, in the case of a private company, by ordinary resolution, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

45. The company may by ordinary resolution-

(a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(b) subdivide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of section 60 (1) (d) of the Law;

(c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

46. The company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with, and subject to, any incident authorized, and consent required, by law.

*General Meetings*

47. The company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of the company and that of the next. Provided that so long as the company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the directors shall appoint.

48. All general meetings other than annual general meetings shall be called extraordinary general meetings.

49. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 126 of the Law. If at any time there are not within the Republic sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

*Notice of General Meetings*

50. An annual general meeting and a meeting called for the passing of a special resolution shall be called by twenty one days' notice in writing at the least, and a meeting of the company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by fourteen days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business, and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company:

Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this regulation, be deemed to have been duly called if it is so agreed-

(a) in the case of a meeting called as the annual general meeting, by all the 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 95% in nominal value of the shares giving that right.

51. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

*Proceedings at General Meetings*

18(1)(a) of 167(I)  
of 2003.

52. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the financial statements, the report of the directors and the report of the auditors in the place of those retiring and the appointment of, and the fixing of the remuneration of, the auditors.

53. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members present in person shall be a quorum.

54. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

55. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act the directors present shall elect one of their number to be chairman of the meeting.

56. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

57. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

58. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:

(a) by the chairman; or

(b) by at least three members present in person or by proxy ; or

(c) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(d) 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.

Unless a poll be so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

The demand for a poll may be withdrawn.

59. Except as provided in regulation 62, if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

60. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

61. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

#### *Votes of Members*

62. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person shall have one vote, and on a poll every member shall have one vote for each share of which he is the holder.

63. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

64. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by the administrator of his property, his committee, receiver, curator bonis, or other person in the nature of an administrator, committee, receiver or curator bonis appointed by that Court, and any such administrator, committee, receiver, curator bonis or other person may, on a poll, vote by proxy.

65. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been

paid.

66. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

67. On a poll votes may be given either personally or by proxy.

68. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing, or, if the appointer is a corporation, either under seal, or under the hand of an officer or attorney duly authorized. A proxy need not be a member of the company.

69. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at such other place within the Republic as is specified for that purpose in the notice convening the meeting, not less than fortyeight hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twentyfour hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

70. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit-

" ..... Limited.

I/We, ....., of ....., being a member/members of the above-named company, hereby appoint ..... of ....., or failing him ..... of ....., as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, as the case may be] general meeting of the company, to be held on the ..... day of ....., 19....., and at any adjournment thereof.

Signed this ..... day of .....,19....."

71. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit:

" ..... Limited.

I/We, ....., of ....., being a member/members of the above-named company, hereby appoint ..... of ....., or failing him ..... of ....., as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, as the case may be] general meeting of the company, to be held on the ..... day of ....., 19....., and at any adjournment thereof.

Signed this ..... day of .....,19.....

This form is to be used in favour of\*/against the resolution. Unless otherwise instructed, the proxy will vote as he thinks fit.

-----  
\* Strike out whichever is not desired."  
-----

72. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

73. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

*Corporations acting by Representatives at Meetings*

74. Any corporation which is a member of the company may by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

*Directors*

75. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them.

76. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.

77. The shareholding qualification for directors may be fixed by the company in general meeting, and unless and until so fixed no qualification shall be required.

78. A director of the company may be or become a director or other officer of, or otherwise interested in, any company promoted by the company or in which the company may be interested as shareholder or otherwise, and no such director shall be accountable to the company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company unless the company otherwise direct.

*Borrowing Powers*

79. The directors may exercise all the powers of the company to borrow money, and to charge or mortgage its undertaking, property and uncalled capital, or any part thereof, and to issue debentures, debenture stock, and other securities whether outright or as security for any debt, liability or obligation of the company or of any third party:

Provided that the amount for the time being remaining undischarged of moneys borrowed or secured by the directors as aforesaid (apart from temporary loans obtained from the company's bankers in the ordinary course of business) shall not at any time, without the previous sanction of the company in general meeting, exceed the nominal amount of the share capital of the company for the time being issued, but nevertheless no lender or other person dealing with the company shall be concerned to see or inquire whether this limit is observed. No debt incurred or security given in excess of such limit shall be invalid or ineffectual except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was thereby exceeded.

*Powers and Duties of Directors*

80. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Law or by these regulations, required to be exercised by the company in general meeting, subject, nevertheless, to any of these regulations, to the provisions of the Law and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

81. The directors may from time to time and at any time by power of attorney



appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these regulations) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorize any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

82. The company may exercise the powers conferred by section 36 of the Law with regard to having an official seal for use abroad, and such powers shall be vested in the directors.

18 of 99(I) of 2009. 83. The company may exercise the powers conferred upon the company by sections 114 to 117 (both inclusive) of the Law with regard to the keeping of an overseas register, and the directors may (subject to the provisions of those sections) make and vary such regulations as they may think fit respecting the keeping of any such register.

84. (1) A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall declare the nature of his interest at a meeting of the directors in accordance with section 191 of the Law.

(2) A director shall not vote in respect of any contract or arrangement in which he is interested, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting, but neither of these prohibitions shall apply to-

(a) any arrangement for giving any director any security or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the company; or

(b) any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or

(c) any contract by a director to subscribe for or underwrite shares or debentures of the company; or

(d) any contract or arrangement with any other company in which he is interested only as an officer of the company or as holder of shares or other securities,

and these prohibitions may at any time be suspended or relaxed to any extent, and either generally or in respect of any particular contract, arrangement or transaction, by the company in general meeting.

(3) A director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with his office of director for such period and on such terms (as to remuneration and otherwise) as the directors may determine and no director or intending director shall be disqualified by his office from contracting with the company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract, or any contract or arrangement entered into by or on behalf of the company in which any director is in any way interested, be liable to be avoided, nor shall any director so contracting or being so interested be liable to account to the company for any profit realized by any such contract or arrangement by reason of such director holding that office or of the fiduciary relation thereby established.

(4) A director, notwithstanding his interest, may be counted in the quorum present at any meeting whereat he or any other director is appointed to hold any such office

or place of profit under the company or whereat the terms of any such appointment are arranged, and he may vote on any such appointment or arrangement other than his own appointment or the arrangement of the terms thereof.

(5) Any director may act by himself or his firm in a professional capacity for the company, and he or his firm shall be entitled to remuneration for professional services as if he were not a director; provided that nothing herein contained shall authorize a director or his firm to act as auditor to the company.

85. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the directors shall from time to time by resolution determine.

86. The directors shall cause minutes to be made in books provided for the purpose-

- (a) of all appointments of officers made by the directors;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

87. The directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

#### *Disqualification of Directors*

88. The office of director shall be vacated if the director-

- (a) ceases to be a director by virtue of section 176 of the Law; or
- (b) becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- (c) becomes prohibited from being a director by reason of any order made under section 180 of the Law; or
- (d) becomes of unsound mind; or
- (e) resigns his office by notice in writing to the company; or
- (f) shall for more than six months have been absent without permission of the directors from meetings of the directors held during that period.

#### *Rotation of Directors*

89. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

90. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

91. A retiring director shall be eligible for re-election.

92. The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring director shall if offering himself for re-election be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

93. No person other than a director retiring at the meeting shall unless recommended by the directors be eligible for election to the office of director at any general meeting unless not less than three nor more than twenty-one days before the date appointed for the meeting there shall have been left at the registered office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

94. The company may from time to time by ordinary resolution increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

95. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these regulations. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election, but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

96. The company may by ordinary resolution, of which special notice has been given in accordance with section 136 of the Law, remove any director before the expiration of his period of office notwithstanding anything in these regulations or in any agreement between the company and such director. Such removal shall be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.

97. The company may by ordinary resolution appoint another person in place of a director removed from office under the immediately preceding regulation, and without prejudice to the powers of the directors under regulation 95 the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. A person appointed in place of a director so removed or to fill such a vacancy shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

*Proceedings of Directors*

98. The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from the Republic.

99. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

100. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors,

the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

101. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

102. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

103. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

104. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

105. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

106. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

#### *Managing Director*

107. The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. A director so appointed shall not, whilst holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall be automatically determined if he ceases from any cause to be a director.

108. A managing director shall receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors may determine.

109. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any of such powers.

#### *Secretary*

110. The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

111. No person shall be appointed or hold office as secretary who is-

The Office of the Law Commissioner

- (a) the sole director of the company; or
- (b) a corporation the sole director of which is the sole director of the company; or
- (c) the sole director of a corporation which is the sole director of the company.

112. A provision of the Law or these regulations requiring or authorizing 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.

*The Seal*

113. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorized by the directors in that behalf, and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

*Dividends and Reserve*

114. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

115. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

116. No dividend shall be paid otherwise than out of profits.

117. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit. The directors may also without placing the same to reserve carry forward any profits which they may think prudent not to divide.

118. Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.

119. The directors may deduct from any dividend payable to any member all sums of money (if any) presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

120. Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets and in particular of paid up shares, debentures or debenture stock of any other company or in any one or more of such ways, and the directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members

upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the directors.

121. Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses or other moneys payable in respect of the shares held by them as joint holders.

122. No dividend shall bear interest against the company.

18 (1)(b) of 167(I)  
of 2003.

*Financial Statements and Audit*

18 (1)(b) of 167(I)  
of 2003.

123. The directors shall see to the compliance with section 141.

124. The books of account shall be kept at the registered office of the company, or, subject to section 141 (3) of the Law, at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

125. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the directors or by the company in general meeting.

18(1)(c) of 167(I)  
of 2003.

126. The directors shall cause to be prepared and to be presented before the general meeting of the company and within the timeframes set by this Law, the documents set out in subsection (1) of section 152.

18(1)(d) of 167(I)  
of 2003.

127. Copies of the documents mentioned in subsection (1) of section 152, shall not less than twenty one days before the date of the meeting be sent to every member of, and every holder of debentures of, the company and to every person registered under regulation 31. Provided that this regulation 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.

*Capitalization of Profits*

128. The company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalize any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid, or partly in the one way and partly in the other, and the directors shall give effect to such resolution:

Provided that a share premium account and a capital redemption reserve fund may, for the purposes of this regulation, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

129. Whenever such a resolution as aforesaid shall have been passed the directors shall make all appropriations and applications of the undivided profits resolved to be capitalized thereby, and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorize any person to enter on behalf of all the members entitled thereto into an agreement with the company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalization, or (as the case may require) for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalized, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

*Audit*

130. Auditors shall be appointed and their duties regulated in accordance with sections 153 to 156 (both inclusive) of the Law.

*Notices*

131. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within the Republic) to the address, if any, within the Republic supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

132. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

133. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within the Republic supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

134. Notice of every general meeting shall be given in any manner hereinbefore authorized to-

(a) every member except those members who (having no registered address within the Republic) have not supplied to the company an address within the Republic for the giving of notices to them;

(b) every person upon whom the ownership of a share devolves by reason of his being a legal personal representative or a trustee in bankruptcy of a member where the member but for his death or bankruptcy would be entitled to receive notice of the meeting; and

(c) the auditor for the time being of the company.

No other person shall be entitled to receive notices of general meetings.

*Winding Up*

135. If the company shall be wound up the liquidator may, with the sanction of an extraordinary resolution of the company and any other sanction required by the Law, divide amongst the members *in specie* or kind the whole or any part of the assets of the company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

*Indemnity*

136. Every director, managing director, agent, auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 383 of the Law in which relief is granted to him by the Court.

**PART II - REGULATIONS FOR THE MANAGEMENT OF A PRIVATE COMPANY LIMITED BY SHARES**

1. The regulations contained in Part I of Table A (with the exception of regulations 24 and 53) shall apply.
2. The company is a private company and accordingly-
  - (a) the right to transfer shares is restricted in manner hereinafter prescribed;
  - (b) the number of members of the company (exclusive of persons who are in the employment of the company and of persons who having been formerly in the employment of the company were while in such employment and have continued after the determination of such employment to be members of the company) is limited to fifty: Provided that where two or more persons hold one or more shares in the company jointly they shall for the purpose of this regulation be treated as a single member;
  - (c) any invitation to the public to subscribe for any shares or debentures of the company is prohibited;
  - (d) the company shall not have power to issue share warrants to bearer.
3. The directors may, in their absolute discretion and without assigning any reason therefore, decline to register any transfer of any share, whether or not it is a fully paid share.
4. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided two members present in person or by proxy shall be a quorum.
5. Subject to the provisions of the Law, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorized representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.
6. The directors may at any time require any person whose name is entered in the register of members of the company to furnish them with any information, supported (if the



directors so require) by a statutory declaration which they may consider necessary for the purpose of determining whether or not the company is an exempt private company within the meaning of subsection (4) of section 123 of the Law.

Note.- Regulations 3 and 4 of this Part are alternative to regulations 24 and 53 respectively of Part I.

36 of  
70(I) of  
2003.

**PART III - REGULATIONS FOR THE MANAGEMENT OF A PRIVATE LIMITED LIABILITY COMPANY WITH ONE AND SOLE MEMBER**

1. The regulations contained in Part I of Table A (with the exception of Regulations 24,53, 111(a) and 112) shall apply.
2. The company shall be a private company and shall have one and sole member.
3. The sole member of the company shall exercise all the powers of the general meeting, pursuant to this Law, provided always that the decisions of the sole member in general meetings shall be recorded in minutes or drawn up in writing.
4. The contracts entered into between the sole member and the Company, shall be recorded in minutes or drawn up in writing unless they refer to current business of the company concluded under normal conditions.

**TABLE B  
FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES**

1st. The name of the company is "The Eastern Steam Packet Company, Limited."

2nd. The objects for which the company is established are "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

3rd. The liability of the members is limited.

4th. The share capital of the company is three hundred forty one thousand, seven hundred and twenty euros divided into 1,000 shares of three hundred forty one euros each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers		Number of shares taken by each Subscriber
1. A.B. of	Merchant	200
2. C.D. of	"	25
3. E.F. of	"	30
4. G.H. of	"	40
5. I.J. of	"	15
6. K.L. of	"	5
7. M.N. of	"	10
Total shares taken .. .. .		325
..		

Dated the ..... day of ....., 19.....

Witness to the above signatures,  
Y.Z.  
(address).....

**TABLE C**  
**FORM OF MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY**  
**LIMITED BY GUARANTEE, AND NOT HAVING A SHARE CAPITAL**

*Memorandum of Association*

1st. The name of the company is "The Cyprus School Association, Limited."

2nd. The objects for which the company is established are "the carrying on a school for boys in Cyprus and the doing all such other things as are incidental or conducive to the attainment of the above object."

3rd. The liability of the members is limited.

4th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding seventeen euros.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers

1. A.B. of	Schoolmaster
2. C.D. of	"
3. E.F. of	"
4. G.H. of	"
5. I.J. of	"
6. K.L. of	"
7. M.N. of	"

Dated the ..... day of ....., 19....

Witness to the above signatures,  
Y.Z.  
(address).....

**ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION**

*Interpretation*

1. In these articles:

"the Law" means the Companies Law, Cap. 113.

"the seal" means the common seal of the company.

"secretary" means any person appointed to perform the duties of the secretary of the company.

"the Republic" means the Republic of Cyprus.

Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

Unless the context otherwise requires, words or expressions contained in these articles

## The Office of the Law Commissioner

shall bear the same meaning as in the Law or any statutory modification thereof in force at the date at which these articles become binding on the company.

### *Members*

2. The number of members with which the company proposes to be registered is ....., but the directors may from time to time register an increase of members.

3. The subscribers to the memorandum of association and such other persons as the directors shall admit to membership shall be members of the company.

### *General Meeting*

4. The company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of the company and that of the next. Provided that so long as the company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the directors shall appoint.

5. All general meetings other than annual general meetings shall be called extraordinary general meetings.

6. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 126 of the Law. If at any time there are not within the Republic sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

### *Notice of General Meetings*

7. An annual general meeting and a meeting called for the passing of a special resolution shall be called by twenty-one days' notice in writing at the least, and a meeting of the company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by fourteen days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the articles of the company, entitled to receive such notices from the company:

Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this article, 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 representing not less than ninety-five per cent of the total voting rights at that meeting of all the members.

8. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

### *Proceedings at General Meetings*

9. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration, of the auditors.

10. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members present in person shall be a quorum.

11. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

12. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act the directors present shall elect one of their number to be chairman of the meeting.

13. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

14. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

15. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded-

(a) by the chairman; or

(b) by at least three members present in person or by proxy; or

(c) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.

Unless a poll be so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost and an entry to that effect in the book containing the minutes of proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

The demand for a poll may be withdrawn.

16. Except as provided in article 18, if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

17. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

18. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

19. Subject to the provisions of the Law a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorized representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.

*Votes of Members*

20. Every member shall have one vote.

21. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by the administrator of his property, his committee, receiver, curator bonis or other person in the nature of an administrator, committee, receiver or curator bonis appointed by that Court, and any such administrator, committee, receiver, curator bonis or other person may, on a poll, vote by proxy.

22. No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid.

23. On a poll votes may be given either personally or by proxy.

24. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing, or, if the appointer is a corporation, either under seal or under the hand of an officer or attorney duly authorized. A proxy need not be a member of the company.

25. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at such other place within the Republic as is specified for that purpose in the notice convening the meeting, not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

26. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit-

" ..... Limited.

I/We, ....., of ....., being a member/members of the above-named company, hereby appoint ..... of ....., or failing him ..... of ....., as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, as the case may be] general meeting of the company, to be held on the ..... day of ....., 19....., and at any adjournment thereof.

Signed this ..... day of ....., 19....."

27. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit:

" ..... Limited.

I/We, ....., of ....., being a member/members of the above-named company, hereby appoint ..... of ....., or failing him ..... of ....., as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, as the case may be] general meeting of the company, to be held on the ..... day of ....., 19....., and at any adjournment thereof.

Signed this ..... day of ....., 19....."

This form is to be used in favour of\*/against the resolution. Unless otherwise instructed, the proxy will vote as he thinks fit.

-----  
\* Strike out whichever is not desired.  
-----

28. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

29. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of such death, insanity or revocation as aforesaid shall have been received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

*Corporations acting by Representatives at Meetings*

30. Any corporation which is a member of the company may by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company, and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

*Directors*

31. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them.

32. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors shall also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.

*Borrowing Powers*

33. The directors may exercise all the powers of the company to borrow money, and to charge or mortgage its undertaking and property, or any part thereof, and to issue debentures, debenture stock and other securities, whether outright or as security for any debt, liability or obligation of the company or of any third party.

*Powers and Duties of Directors*

34. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Law or by these articles, required to be exercised by the company in general meeting, subject nevertheless to the provisions of the Law or these articles and to such regulations, being not inconsistent with the aforesaid provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

35. The directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorize any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

36. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn,

accepted, endorsed, or otherwise executed, as the case may be, in such manner as the directors shall from time to time by resolution determine.

37. The directors shall cause minutes to be made in books provided for the purpose-
- (a) of all appointments of officers made by the directors;
  - (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
  - (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

*Disqualification of Directors*

38. The office of director shall be vacated if the director-

(a) without the consent of the company in general meeting holds any other office of profit under the company; or

(b) becomes bankrupt or makes any arrangement or composition with his creditors generally; or

(c) becomes prohibited from being a director by reason of any order made under section 180 of the Law; or

(d) becomes of unsound mind; or

(e) resigns his office by notice in writing to the company; or

(f) is directly or indirectly interested in any contract with the company and fails to declare the nature of his interest in manner required by section 191 of the Law.

A director shall not vote in respect of any contract in which he is interested or any matter arising thereout, and if he does so vote his vote shall not be counted.

*Rotation of Directors*

39. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

40. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

41. A retiring director shall be eligible for re-election.

42. The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring director shall, if offering himself for re-election, be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

43. No person other than a director retiring at the meeting shall unless recommended by the directors be eligible for election to the office of director at any general meeting unless, not less than three nor more than twenty-one days before the date appointed for the meeting, there shall have been left at the registered office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

44. The company may from time to time by ordinary resolution increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

45. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these articles. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election, but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

46. The company may by ordinary resolution, of which special notice has been given in accordance with section 136 of the Law, remove any director before the expiration of his period of office notwithstanding anything in these articles or in any agreement between the company and such director. Such removal shall be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.

47. The company may by ordinary resolution appoint another person in place of a director removed from office under the immediately preceding article. Without prejudice to the powers of the directors under article 45 the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. The person appointed to fill such a vacancy shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

*Proceedings of Directors*

48. The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from the Republic.

49. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

50. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the articles of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

51. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

52. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

53. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

54. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.



## The Office of the Law Commissioner

55. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

56. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

### *Secretary*

57. The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

58. A provision of the Law or these articles requiring or authorizing 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.

### *The Seal*

59. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorized by the directors in that behalf, and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

### *Financial Statements and Audit*

18(2)(a) of  
167(I)/2003.

18(2)(a) of  
167(I) of 2003. 60. The directors shall see to the compliance with section 141.

61. The books of account shall be kept at the registered office of the company, or, subject to section 141 (3) of the Law, at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

18(2)(b) of  
167(I) of 2003. 62. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the financial statements and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the directors or by the company in general meeting.

18(2)(c) of  
2003. 63. The directors shall cause to be prepared and presented before the general meeting of the company and within the timeframes set out in this Law, the documents mentioned in subsection (1) of section 152.

18(2)(d) of  
167(I) of 2003. 64. Copies of the documents mentioned in subsection (1) of section 152, shall not less than twenty-one days before the date of the meeting be sent to every member of, and every holder of debentures of, the company. Provided that this

article 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 debentures.

### *Audit*

65. Auditors shall be appointed and their duties regulated in accordance with sections 153 to 156 (both inclusive) of the Law.

### *Notices*

66. A notice may be given by the company to any member either personally or by sending

it by post to him or to his registered address, or (if he has no registered address within the Republic) to the address, if any, within the Republic supplied by him to the Company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

67. Notice of every general meeting shall be given in any manner hereinbefore authorized to-

(a) every member except those members who (having no registered address within the Republic) have not supplied to the company an address within the Republic for the giving of notices to them;

(b) every person being a legal personal representative or a trustee in bankruptcy of a member where the member but for his death or bankruptcy would be entitled to receive notice of the meeting; and

(c) the auditor for the time being of the company.

No other person shall be entitled to receive notices of general meetings.

Names, Addresses and Descriptions of Subscribers	
1. A.B. of	Schoolmaster
2. C.D. of	"
3. E.F. of	"
4. G.H. of	"
5. I.J. of	"
6. K.L. of	"
7. M.N. of	"

Dated the ..... day of ....., 19.....

Witness to the above signatures,  
Y.Z.  
(address).....

**TABLE D**  
**MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY**  
**GUARANTEE, AND HAVING A SHARE CAPITAL**

*Memorandum of Association*

1st. The name of the company is "The Tourist Hotel Company, Limited."

2nd. The objects for which the company is established are "the facilitating travelling in Cyprus, by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object."

3rd. The liability of the members is limited.

4th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding thirty-four euros.

5th. The share capital of the company shall consist of eight hundred fifty four thousand and three hundred euros, divided into five thousand shares of one hundred seventy euros each.

The Office of the Law Commissioner

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers		Number of Shares taken by each Subscriber
1. A.B. of	Merchant	200
2. C.D. of	"	25
3. E.F. of	"	30
4. G.H. of	"	40
5. I.J. of	"	15
6. K.L. of	"	5
7. M.N. of	"	10
Total Shares Taken ..		325
.. . . .		

Dated the ..... day of ....., 19....

Witness to the above signatures,  
Y.Z.  
(address).....

**ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION**

1. The number of members with which the company proposes to be registered is ..... but the directors may from time to time register an increase of members.

2. The regulations of Table A, Part I, set out in the First Schedule to the Companies Law, Cap. 113., shall be deemed to be incorporated with these articles and shall apply to the company.

Names, Addresses and Descriptions of Subscribers	
1. A.B. of	Merchant
2. C.D. of	"
3. E.F. of	"
4. G.H. of	"
5. I.J. of	"
6. K.L. of	"
7. M.N. of	"

Dated the ..... day of ....., 19....

Witness to the above signatures,  
Y.Z.  
(address).....

**SECOND SCHEDULE  
(Sections 16 and 387)**

**FORM OF LICENCE TO HOLD IMMOVABLE PROPERTY**

The Council of Ministers hereby licences the ..... to hold the immovable property

hereunder described (*insert description and extent of immovable property*).

The conditions of this licence are (*insert conditions, if any*).

**THIRD SCHEDULE.  
(Section 31)**

**FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR  
BY A PRIVATE COMPANY ON BECOMING A PUBLIC COMPANY AND REPORTS TO BE  
SET OUT THEREIN**

**PART I. FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN**

*The Companies Law, Cap. 113.*

Statement in lieu of Prospectus delivered for registration by (*insert the name of the company*) pursuant to section 31 of the Companies Law, Cap. 113.

Delivered for registration by

The nominal share capital of the company

Divided into .. .. .

€	
Shares	of€.....
each	
"	"
"	
"	"
"	

Amount (if any) of above capital which consists of redeemable preference shares.

The earliest date on which the company has power to redeem these shares.

Names, descriptions and addresses of directors or proposed directors.

Amount of shares issued .. .. .

Shares	of€.....
each	

Amount of commissions paid in connection therewith.

Shares

Amount of discount, if any, allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement.

Unless more than one year has elapsed since the date on which the company was entitled to commence business:

Amount of preliminary expenses .. .. .

€	Name of promoter:
	Amount €

By whom those expenses have been paid or are payable.

Consideration:
Name of promoter:
Nature and value of benefit:

Amount paid to any promoter

Consideration for the payment .. .. .

Any other benefit given to any promoter.

Consideration for giving of benefit .. ..

If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred

by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.

Consideration for the issue of those shares or debentures.

Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

Period during which option is exercisable.

Price to be paid for shares or debentures subscribed for or acquired under option.

Consideration for option or right to option.

Persons to whom option or right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.

Names and addresses of vendors of property (1) purchased or acquired by the company within the two years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the company, except where the contract for its purchase or acquisition was entered into in the ordinary course of business and there is no connection between the contract and the company ceasing to be a private company or where the amount of the purchase money is not material.

Amount (in cash, shares or debentures) paid or payable to each separate vendor.

Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill.

Short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest direct or indirect.

Dates of, parties to, and general nature of every material contract (other than contracts entered into in the ordinary course of business or entered into more than two years before the delivery of this statement).

Time and place at which the contracts or copies thereof may be inspected or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or

Consideration:

1. .... shares of €..... fully paid
2. .... shares upon which €..... per share is credited as paid
3. debentures €...

4. Consideration:

1. .... shares of €..... and .... debentures of €.....

2. Until
- 3.

4. Consideration:

5. Names and addresses:

Total purchase price €.....  
 Cash €.....  
 Shares €.....  
 Debentures €.....  
 Goodwill €.....

partly in a foreign language, a copy of a translation thereof in English or embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation.

Names and addresses of the auditors of the company.

Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the company within the two years preceding the date of this statement or proposed to be purchased or acquired by the company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or to qualify him as, a director, or otherwise for services rendered or to be rendered to the company by him or by the firm.

Rates of the dividends (if any) paid by the company in respect of each class of shares in the company in each of the five financial years immediately preceding the date of this statement or since the incorporation of the company whichever period is the shorter.

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

(Signatures of the persons above-named as directors or proposed directors or of their agents authorized in writing.)

.....

.....

.....

(Date)

## **PART II. REPORTS TO BE SET OUT**

1. If unissued shares or debentures of the company are to be applied in the purchase of a business, a report made by accountants (who shall be named in the statement) upon-

(a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the registrar; and

(b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2. (1) If unissued shares or debentures of the company are to be applied directly or indirectly in any manner resulting in the acquisition of shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-paragraph (2) or (3) of this paragraph, as the case requires, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other body corporate has no subsidiaries, the report referred to in the foregoing sub-paragraph shall-

(a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the registrar; and

(b) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate at the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate has subsidiaries, the report referred to in sub-paragraph (1) of this paragraph shall-

(a) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by the last foregoing sub-paragraph, and in addition deal either:

(i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate; or

(ii) individually with the profits or losses of each subsidiary, so far as they concern members of the other body corporate; or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries; and

(b) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by the last foregoing sub-paragraph and, in addition, deal either-

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities; or

(ii) individually with the assets and liabilities of each subsidiary;

and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

### **PART III. PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE**

3. In this Schedule the expression "vendor" includes a vendor as defined in Part III of the Fourth Schedule, and the expression "financial year" has the meaning assigned to it in that Part of that Schedule.

4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five years, the accounts of the business or body corporate have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

5. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

6. Any report by accountants required by Part II of this Schedule shall be made by accountants qualified under this Law for appointment as auditors of a company which is not an exempt private company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company, or of

the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

**FOURTH SCHEDULE.**

(Sections 31, 39, 41, 47, 355, 356, 358)

**MATTERS TO BE SPECIFIED IN PROSPECTUS AND REPORTS TO BE SET OUT THEREIN**

**PART I. MATTERS TO BE SPECIFIED**

1. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.
2. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.
3. The names, descriptions and addresses of the directors or proposed directors.
4. Where shares are offered to the public for subscription, particulars as to-
  - (a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters:
    - (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
    - (ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;
    - (iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;
    - (iv) working capital; and
  - (b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.
5. The time of the opening of the subscription lists.
6. The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.
7. The number, description and amount of any shares in or debentures of the company which any person has, or is entitled to be given, an option to subscribe for, together with the following particulars of the option, that is to say-
  - (a) the period during which it is exercisable;
  - (b) the price to be paid for shares or debentures subscribed for under it;
  - (c) the consideration (if any) given or to be given for it or for the right to it;
  - (d) the names and addresses of the persons to whom it or the right to it was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.



8. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

9. (1) As respects any property to which this paragraph applies-

(a) the names and addresses of the vendors;

(b) the amount payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor;

(c) short particulars of any transaction relating to the property completed within the two preceding years in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company had any interest direct or indirect.

(2) The property to which this paragraph applies is property purchased or acquired by the company or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of the issue of the prospectus, other than property-

(a) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or

(b) as respects which the amount of the purchase money is not material.

10. The amount, if any, paid or payable as purchase money in cash, shares or debentures for any property to which the last foregoing paragraph applies, specifying the amount, if any, payable for goodwill.

11. The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the company, or the rate of any such commission.

12. The amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

13. Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter, and the consideration for the payment or the giving of the benefit.

14. The dates of, parties to and general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus.

15. The names and addresses of the auditors, if any, of the company.

16. Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

17. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

18. In the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

## **PART II. REPORTS TO BE SET OUT**

19. (1) A report by the auditors of the company with respect to-

- (a) profits and losses and assets and liabilities, in accordance with sub-paragraph (2) or (3) of this paragraph, as the case requires; and

- (b) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the five financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years;

and, if no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

(2) If the company has no subsidiaries, the report shall-

- (a) so far as regards profits and losses, deal with the profits or losses of the company in respect of each of the five financial years immediately preceding the issue of the prospectus; and

- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the company at the last date to which the accounts of the company were made up.

(3) If the company has subsidiaries, the report shall-

- (a) so far as regards profits and losses, deal separately with the company's profits or losses as provided by the last foregoing sub-paragraph, and in addition, deal either-

- (i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the company; or

- (ii) individually with the profits or losses of each subsidiary, so far as they concern members of the company;

or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company and, so far as they concern members of the company, with the combined profits or losses of its subsidiaries; and

- (b) so far as regards assets and liabilities, deal separately with the company's assets and liabilities as provided by the last foregoing sub-paragraph and, in addition, deal either-

- (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities; or

- (ii) individually with the assets and liabilities of each subsidiary,

and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

20. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made

by accountants (who shall be named in the prospectus) upon-

- (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the issue of the prospectus; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

21. (1) If-

- (a) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate; and
- (b) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith that body corporate will become a subsidiary of the company,

a report made by accountants (who shall be named in the prospectus) upon-

- (i) the profits or losses of the other body corporate in respect of each of the five financial years immediately preceding the issue of the prospectus; and
- (ii) the assets and liabilities of the other body corporate at the last date to which the accounts of the body corporate were made up.

(2) The said report shall-

- (a) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired; and
- (b) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by sub-paragraph (3) of paragraph 19 of this Schedule in relation to the company and its subsidiaries.

### **PART III. PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE**

22. Paragraphs 2, 3, 12 (so far as it relates to preliminary expenses) and 16 of this Schedule shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

23. Every person shall, for the purposes of this Schedule, be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where-

- (a) the purchase money is not fully paid at the date of the issue of the prospectus;
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;
- (c) the contract depends for its validity or fulfilment on the result of that issue.

24. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

25. References in paragraph 7 of this Schedule to subscribing for shares or debentures shall include acquiring them from a person to whom they have been allotted or agreed to be

allotted with a view to his offering them for sale.

26. For the purposes of paragraph 9 of this Schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

27. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

28. The expression "financial year" in Part II of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than year, that greater or less period shall for the purpose of that Part of this Schedule be deemed to be a financial year.

29. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

30. Any report by accountants required by Part II of this Schedule shall be made by accountants qualified under this Law for appointment as auditors of a company which is not an exempt private company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

#### **FIFTH SCHEDULE.**

(Section 48)

#### **FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A COMPANY WHICH DOES NOT ISSUE A PROSPECTUS OR WHICH DOES NOT GO TO ALLOTMENT ON A PROSPECTUS ISSUED, AND REPORTS TO BE SET OUT THEREIN**

##### **PART I. FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN**

*The Companies Law, Cap. 113.*

Statement in lieu of Prospectus delivered for registration by (insert the name of the company) pursuant to section 48 of the Companies Law, Cap. 113.

Delivered for registration by

The nominal share capital of the company.

Divided into

€  
..... shares of €.....  
each  
" "  
" "  
" "

Amount (if any) of above capital which consists of redeemable preference shares.

The earliest date on which the company has power to redeem these shares.

Names, descriptions and addresses of directors or proposed directors.

If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred

..... shares of €.....  
each

by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.

The consideration for the intended issue of those shares and debentures.

Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

Period during which option is exercisable.

Price to be paid for shares or debentures subscribed for or acquired under option.

Consideration for option or right to option.

Persons to whom option or right to option was given or, if given to existing shareholders or debenture holders as such the relevant shares or debentures.

Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material.

Amount (in cash, shares or debentures) payable to each separate vendor.

Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.

Short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest direct or indirect.

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or

Rate of the commission .. .. .

The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.

Estimated amount of preliminary expenses.

By whom those expenses have been paid or

1. .... shares of  
€..... fully paid.

2. .... shares upon  
which€..... per share  
credited as paid.

3. .... debentures  
€.....

4. Consideration:

1. .... shares of  
€..... and .....  
debentures of€.....

2. Until

3.

4. Consideration:

5. Names and  
addresses:

Total purchase  
price€.....

Cash .. .. .€.....

Shares .. .. .€.....

Debentures ..€.....

Goodwill .. ..€.....

Amount paid

Amount payable.

Rate percent.

€.....

The Office of the Law Commissioner

are payable.

Amount paid or intended to be paid to any promoter.

Consideration for the payment

Any other benefit given or intended to be given to any promoter.

Consideration for giving of benefit .. . . .

Dates of, parties to and general nature of every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than 2 years before the delivery of this statement).

Time and place at which the contracts or copies thereof may be inspected or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a foreign language, a copy of a translation thereof in English or embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation.

Names and addresses of the auditors of the company (if any).

Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

Name.....of promoter

Amount€.....

Consideration:

Name.....of promoter:

Nature and value of benefit:

Consideration:

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorized in writing.)

(Date)

.....  
.....  
.....

**PART II. REPORTS TO BE SET OUT**

1. Where it is proposed to acquire a business, a report made by accountants (who shall be named in the statement) upon:

- (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the registrar; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2. (1) Where it is proposed to acquire shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by accountants (who shall be named in

the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-paragraph (2) or (3) of this paragraph, as the case requires, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other body corporate has no subsidiaries, the report referred to in the last foregoing sub-paragraph shall-

- (a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the registrar; and
- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate at the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate has subsidiaries, the report referred to in sub-paragraph (1) of this paragraph shall-

- (a) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by the last foregoing sub-paragraph, and in addition deal either-
  - (i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate; or
  - (ii) individually with the profits or losses of each subsidiary, so far as they concern members of the other body corporate; or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries; and
- (b) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by the last foregoing sub-paragraph and, in addition, deal either-
  - (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities; or
  - (ii) individually with the assets and liabilities of each subsidiary,

and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

### **PART III. PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE**

3. In this Schedule the expression "vendor" includes a vendor as defined in Part III of the Fourth Schedule, and the expression "financial year" has the meaning assigned to it in that Part of that Schedule.

4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five years, the accounts of the business or body corporate have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

5. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

6. Any report by accountants required by Part II of this Schedule shall be made by accountants qualified under this Law for appointment as auditors of a company which is not an exempt private company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

**SIXTH SCHEDULE.**  
(Sections 118 and 387)

**CONTENTS AND FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL**  
**PART I. CONTENTS**

1. The address of the registered office of the company.
2. (1) If the register of members is, under the provisions of this Law, kept elsewhere than at the registered office of the company, the address of the place where it is kept.  
  
(2) If any register of holders of debentures of the company is, under the provisions of this Law, kept elsewhere than at the registered office of the company, the address of the place where it is kept.
3. A summary, distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, specifying the following particulars-
  - (a) the amount of the share capital of the company and the number of shares into which it is divided;
  - (b) the number of shares taken from the commencement of the company up to the date of the return;
  - (c) the amount called up on each share;
  - (d) the total amount of calls received;
  - (e) the total amount of calls unpaid;
  - (f) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures;
  - (g) the discount allowed on the issue of any shares issued at a discount or so much of that discount as has not been written off at the date on which the return is made;
  - (h) the total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return;
  - (i) the total number of shares forfeited;
  - (j) the total amount of shares for which share warrants are outstanding at the date of the return and of share warrants issued and surrendered respectively since the date of the last return, and the number of shares comprised in each warrant.
- 4 .Particulars of the total amount of the indebtedness of the company in respect of all charges and mortgages which are required to be registered or recorded with the registrar of companies under this Law, or which would have been required so to be registered if created after the 1st day of July, 1922.
5. A list-
  - (a) containing the names and addresses of all persons who, on the fourteenth day after the company's annual general meeting for the year, are members of the company, and of persons who have ceased to be members since the date of the last return or, in the case of the first return, since the incorporation of the company;
  - (b) stating the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return (or, in the case of the first return, since the incorporation of the company) by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers;
  - (c) if the names aforesaid are not arranged in alphabetical order, having annexed thereto an index sufficient to enable the name of any person therein to be easily found.
6. All such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is the secretary of the company as are by this Law required to be contained with respect to directors and the secretary respectively in the register of the directors and secretaries of a company.

**PART II. FORM**

ANNUAL RETURN of ..... Limited, made up to the ..... day of ....., 19..... (being



the fourteenth day after the date of the annual general meeting for the year 19.....).

(1) Address.

(Address of the registered office of the company.)

(2) Situation of Registers of Members and Debenture holders.

(a) *(Address of place at which the register of members is kept, if other than the registered office of the company.)*

(b) *(Address of any place in the Republic other than the registered office of the company at which is kept any register of holders of debentures of the company.)*

(3) Summary of Share Capital and Debentures.

(a) *Nominal Share Capital.*

Nominal share capital €..... divided into:

*(Insert number and class)* shares of ..... each

..... shares of ..... each

..... shares of ..... each

..... shares of ..... each

(b) *Issued Share Capital and Debentures.*

	Number	Class	shares
Number of shares of each class taken up to the date of this return (which number must agree with the total shown in the list as held by existing members).	.....	.....	.....
Number of shares of each class issued subject to payment wholly in cash.	.....	.....	.....
Number of shares of each class issued as fully paid up for a consideration other than cash.	.....	.....	.....
Number of shares of each class issued as partly paid up for a consideration other than cash and extent to which each such share is so paid up.	.....	issued as paid up to the extent of € ..... per share.	.
	.....	issued as paid up to the extent of € ..... per share.	.
	.....	issued as paid up to the extent of € ..... per share.	.
Number of shares (if any) of each class issued at a discount.	.....		shares
	.....		shares
	.....		shares

The Office of the Law Commissioner

Amount of discount on the issue of shares which has not been written off at the date of this return.	€ .....			
Amount called up on € ..... per share on number of shares of €..... per share on each class.	.....Number	Class.		shares
€ ..... per share on Total amount of calls received, including payments on application and allotment and any sums received on shares forfeited.	.....	.....	.	shares
			.	shares
			.	shares
			.	shares
			.	shares
			.	shares
			.	shares
Total amount (if any) agreed to be considered as paid on number of shares of each class issued as €..... on fully paid up for a consideration other than cash.	.....		.	shares
	.....		.	shares
	.....		.	shares
	.....		.	shares
			.	shares
			.	shares
			.	shares
			.	shares
Total amount (if any) agreed to be considered as paid on number of shares of each class issued as € ..... on partly paid up for a consideration other than cash.	.....		.	shares
	.....		.	shares
	.....		.	shares
	.....		.	shares
			.	shares
			.	shares
			.	shares
			.	shares
Total amount of calls unpaid .. . . .	€ .....			
Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures.	€.....			
Total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return.	€.....			
Total number of shares of each class forfeited.	.....		.	shares
	.....		.	shares
	.....		.	shares
Total amount paid (if any) on shares forfeited.	€ .....			

The Office of the Law Commissioner

Total amount of shares for which share warrants to bearer are outstanding. € .....

Total amount of share warrants to bearer issued and surrendered respectively since the date of the last return. Issued:€ .....  
Surrendered: € .....

Number of shares comprised in each share warrant to bearer, specifying in the case of warrants of different kinds, particulars of each kind. ....

(4) Particulars of Indebtedness.

Total amount of indebtedness of the company in respect of all charges and mortgages which are required to be registered or recorded with the registrar of companies under the Companies Law, Cap. 113, or which would have been required so to be registered if created after 1st July, 1922. € .....

(5) List of Past and Present Members.

List of persons holding shares or stock in the company on the fourteenth day after the annual general meeting for 19...., and of persons who have held shares or stock therein at any time since the date of the last return, or in the case of the first return, of the incorporation of the company.

Folio in register ledger containing particulars	Names and addresses	Number of shares held by existing members at date of return * **	Account of Shares			Remarks
			Particulars of shares transferred since the date of the last return, or in the case of the first return, of the incorporation of the company, by (a) persons who are still members and (b) persons who have ceased to be members ***			
			Numb er**	Date of registration of transfer		

\* The aggregate number of shares held by each member must be stated, and the aggregates must be added up so as to agree with the number of shares stated in the Summary of Share Capital and Debentures to have been taken up.

\*\* When the shares are of different classes these columns should be subdivided so that the number of each class held, or transferred, may be shown separately. Where any shares have been converted into stock the amount of stock held by each member must be shown.

\*\*\* The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer.

*Notes*

1. If the return for either of the two immediately preceding years has given as at the date of that return the full particulars required as to past and present members and the shares and stock held and transferred by them, only such of the particulars need be given 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.

The Office of the Law Commissioner

2. If the names in the list are not arranged in alphabetical order, an index sufficient to enable the name of any person to be readily found must be annexed.

-----

(6) Particulars of Directors and Secretaries.

Particulars of the persons who are directors of the company at the date of this return.

Name (In the case of an individual, present Christian name or names and surname. In the case of a corporation, the corporate name)	Any former Christian name or names and surname	Nationality	Usual residential address (In the case of a corporation, the registered office)	Business occupation and particulars of other directorships
---	--	-------------	---	--

Particulars of the person who is secretary of the company at the date of this return.

Name (In the case of an individual, present Christian name or names and surname. In the case of a corporation, the corporate name)	Any former Christian name or names and surname	Usual residential address (In the case of a corporation, the registered office)
--	---	--

Signed ....., Director  
Signed ....., Secretary

*Notes*

"Director" includes any person who occupies the position of a director by whatsoever name called, and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

"Christian name" includes a forename.

"Former Christian name" and "former surname" do not include-

(a) 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

(b) in the case of a married woman the name or surname by which she was known previous to the marriage.

The names of all bodies corporate incorporated in the Republic of which the director is also a director, should be given, except bodies corporate of which the company making the return is the wholly-owned subsidiary or bodies corporate which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary. A body corporate is 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. If the space provided in the form is insufficient, particulars of other directorships should be listed on a separate statement attached to this return.

-----

Delivered for filing by .....

(This should be printed at the bottom of the first page of the return.)

**CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURN**

*Certificate to be given by a Director and the Secretary of every Private Company (whether an Exempt Private Company or not)*

We certify that the company has not since the date of [\* the incorporation of the company/the last annual return] issued any invitation to the public to subscribe for any shares or debentures of the company.

Signed ....., Director.  
Signed ....., Secretary.

-----

\* In the case of the first return strike out the second alternative. In the case of a second or subsequent return strike out the first alternative.

-----

*Further Certificate to be given as aforesaid if the Number of Members of the Company exceeds Fifty*

We certify that the excess of the number of members of the company over fifty consists wholly of persons who, under paragraph (b) of subsection (1) of section 29 of the Companies Law, Cap. 113, are not to be included in reckoning the number of fifty.

Signed ....., Director.

Signed ....., Secretary.

*Certified copies of financial statements, directors' reports and auditors' reports*

19 of 167(I)/2003. There must be annexed to this report a copy certified both by a director and the secretary of the company to be a true copy, of all the documents presented to the company in accordance with section 152. In the event that any of the said documents is in a foreign language, there must be annexed a translation in an official language of the Republic certified in the prescribed manner as a true translation. If any of the above-mentioned documents does not comply with the provisions of the law as in force at the time of the audit relating to the form of the said document, such insertions and amendments on the document as would have been required so as to comply with the above-mentioned requirements and the fact that the document has been amended in such a manner must be explicitly stated thereon.

**SEVENTH SCHEDULE** – Repealed by section 6 of L.131(I) of 2007.

**EIGHTH SCHEDULE** - Repealed by section 20 of L.167(I)/2003.

**NINTH SCHEDULE** – Repealed by section 8 of L.41(I)/2009.

#### **TENTH SCHEDULE.**

(Section 297.)

#### **PROVISIONS OF THIS LAW WHICH DO NOT APPLY IN THE CASE OF A WINDING-UP SUBJECT TO SUPERVISION OF THE COURT**

22 of 167(I)/2003.

<u>Section</u>	<u>Subject Matter</u>
142.	<input type="checkbox"/> Annual and consolidated financial statements.
224.	<input type="checkbox"/> Statement of company's affairs to be submitted to official receiver.
225.	<input type="checkbox"/> Report by official receiver.
226.	<input type="checkbox"/> Power of Court to appoint liquidators.
227.	<input type="checkbox"/> Appointment and powers of provisional liquidator.
228.	<input type="checkbox"/> Appointment, style, etc., of liquidators.
229.	<input type="checkbox"/> Provisions where person other than official receiver is appointed liquidator.
230 except subsec. (5).	<input type="checkbox"/> General provisions as to liquidators.
234.	<input type="checkbox"/> Exercise and control of liquidator's powers.
235.	<input type="checkbox"/> Books to be kept by liquidator.
236.	<input type="checkbox"/> Payments of liquidator into bank.

- 237. ☐ Audit of liquidator's accounts.
- 238. ☐ Control of Official Receiver over liquidators.
- 239. ☐ Release of liquidators.
- 240. ☐ Meetings of creditors and contributories to determine whether committee of inspection shall be appointed.
- 241. ☐ Constitution and proceedings of committee of inspection.
- 242. ☐ Where no committee of inspection.
- 250. ☐ Appointment of special manager.
- 251. ☐ Power to order public examination of promoters and officers.
- 259. ☐ Delegation to liquidator of certain powers of Court.
- 336. ☐ Receiver for debenture holders or creditors.

**16 of 76/77.**  
**ELEVENTH SCHEDULE**  
 (Sections 369 and 387.)

61 of  
27 of 1967.

**FORM OF STATEMENT TO BE PUBLISHED BY BANKING COMPANIES  
 AND INSURANCE COMPANIES AND DEPOSIT, PROVIDENT AND  
 BENEFIT SOCIETIES**

\* The share capital of the company is ..... divided into ..... shares of ..... each.  
 The number of shares issued is .....  
 Calls to the amount of ..... pounds per share have been made, under which the sum of  
 ..... pounds has been received.  
 The liabilities of the company on the first day of January (or July) were-  
   Debts owing to sundry persons by the company:  
     On judgment, € .....  
     On specialty, € .....  
     On notes or bills, € .....  
     On simple contracts, € .....  
     On estimated liabilities. € .....  
 The assets of the Company on that day were:  
   Government securities (stating them)  
   Bills of exchange and promissory notes, € .....  
   Cash at the bankers, € .....  
   Other securities, € .....

**16 of 16/77**  
**TWELFTH SCHEDULE.**  
 (Section 373)

**PROVISIONS REFERRED TO IN SECTION 373**

<u>Section or provision of Schedule</u>	<u>Subject Matter</u>
17.	<input type="checkbox"/> Conclusiveness of certificate of incorporation.
31.	<input type="checkbox"/> Statement in lieu of prospectus to be delivered to registrar by company on ceasing to be a private company.

39.	<input type="checkbox"/> Matters to be stated and reports to be set out in prospectus.
48.	<input type="checkbox"/> Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to registrar.
51.	<input type="checkbox"/> Return as to allotments.
90.	<input type="checkbox"/> Registration of charges created by companies registered in the Republic.
91 (1) and (3).	<input type="checkbox"/> Duty of company with regard to charges and mortgages created by company.
92.	<input type="checkbox"/> Duty of company to register charges existing on property acquired.
101.	<input type="checkbox"/> Application of Part III to charges and mortgages created, etc., by company incorporated outside the Republic.
104.	<input type="checkbox"/> Restrictions on commencement of business.
119 [except para. (a) of subsec. (1)].	<input type="checkbox"/> Particulars in annual return of company not having a share capital.
122.	<input type="checkbox"/> Certificates to be sent by private company with annual return.
123 (1).	<input type="checkbox"/> Certificate of satisfaction of conditions constituting a company an exempt private company.
124.	<input type="checkbox"/> Statutory meeting and statutory report.
156 (1), (3).	<input type="checkbox"/> Auditors' report and right to information and explanations.
175.	<input type="checkbox"/> Restrictions on appointment or advertisement of director.
288.	<input type="checkbox"/> Notice by liquidator of his appointment.
340 (2).	<input type="checkbox"/> Abstract of receiver's receipts and payments.
342.	<input type="checkbox"/> Delivery to registrar of accounts of receivers and managers.
347.	<input type="checkbox"/> Documents, etc., to be delivered to registrar by overseas companies carrying on business in the Republic.
349.	<input type="checkbox"/> Return to be delivered to registrar by overseas company where documents, etc., altered.
350.	<input type="checkbox"/> Accounts of overseas company.
351.	<input type="checkbox"/> Obligation to state name of overseas company, whether limited, and country where incorporated.
Sch. VI, Part I, paras. 2, 4, 6.	<input type="checkbox"/> Particulars in annual return of company having a share

capital.

**NOTE**

The following observations do not form part of the principal law and they cannot be included in the consolidated text of the Law as a part thereof. However, in view of the fact that they affect the application of the Law, it was considered expedient to include them in this Note:

1. The principal law came into force on the 1<sup>st</sup> July, 1951 (See section 392 of the principal law).
2. By virtue of section 61(1) of the Insurance Companies Law, 1967 (L.27/1967), the principal law was amended. (See First column of the Fifth Table of Law 27 of 1967). Also, section 391 of the principal law which prohibited the incorporation of companies for the purpose of carrying on the business of assurance, was repealed by virtue of section 61(1) of L.27/1967. By virtue of Law 117(I) of 2011, published in the Official Gazette of the Republic, Suppl. I, dated 31.8.2011, a new section 391 has been inserted.
3. The Eleventh Schedule of the principal law was repealed by virtue of section 16 of the Companies (Amendment) Law, 1977 (L.76 of 1977) and the Twelfth and Thirteenth Schedules have been renumbered to Eleventh and Twelfth Schedules, respectively.
4. The words "Governor" or "Governor in Council", "Her Majesty" or "Crown", or "Colonial Secretary" wherever found in the text have been changed to "Council of Ministers", "Republic", and "Registrar" respectively, in accordance with Article 188 of the Constitution and the Official Languages of the Republic (Interpretation) Law, 1993. (L.21(I)/93).
5. In the principal law (Cap.113) the term "body corporate" is used in relation to the term "νομικό πρόσωπο". In consequence, the same term is used in relation to the term "νομικό πρόσωπο" appearing in all subsequent amending laws, with exception of those provisions transposing EU Directives where the term "legal person" is used, in compliance with english version of the respective Directive.
6. Though there is a discrepancy in the laws enacted in Greek, as the use of this term either "Εφορος Εταιρειών", or "έφορος εταιρειών", or "Εφορος", or "έφορος", or "Εφορος Εταιρειών και Επίσημος Παραλήπτης", a literal translation in English of the said terms was followed.
7. The sums in CYP£ pounds wherever found in the text have been converted into Euros according to the provisions of P.I. 312/2007 issued pursuant to the Adoption of the Euro Law, 2007 (L.33(I)/2007, as amended).
8. The Companies (Amendment) Law, 1977 (L.76/1977) published in the Official Gazette of the Republic, No. 1413, dated 31.12.1977, contains the following provision:  

"Entry into force of this Law.	17. Sections 1 and 14 of this Law shall come into force as from the date of publication of this Law in the Official Gazette of the Republic, and the remaining sections thereof shall come into force as from the 1 <sup>st</sup> January 1978".
--------------------------------	--



9. The Companies (Amendment) Law, 1990 (L.19/1990) published in the Official Gazette of the Republic, Supplement I, dated 2.3.1990, contains the following provision:

“Entry into force of this Law. 3. This Law shall apply to any distribution of dividends or payment of the companies obligations in full, irrespective of whether a winding-up order has been made prior to the publication of this Law in the official Gazette of the Republic.”

10. The Companies (Amendment) (No 2) Law, 1999 (L. 149(I)/1999) published in the Official Gazette of the Republic, Supplement I (I), dated 17.12.1999, contains the following special provision:

“Special provision. 2. Notwithstanding any provisions of the principal law and the regulations made thereunder, companies registered pursuant to the provisions of the principal law prior to 14 August 1974, after having satisfied the Registrar of Companies that they had their registered office or their place of business or all of their assets in an occupied or inaccessible area and that they have not been active in the free areas-

(a) Shall remain registered in the relevant registers of the Registrar despite the fact that they do not file annual reports and other documents required by the principal law,

(b) Shall not be required to file the necessary documents for as long as they are not active:

Provided that the shareholders of such companies may-

(i) Transfer their shares by way of succession or by instrument inter vivos to their lawful successors; and

(ii) secure the relevant certificates, after having satisfied the Registrar that there was no change in the information referred to in section 118 of the principal law that is included in the annual report of a company;

(c) Shall be bound to submit the necessary documents and to pay the necessary fees and generally to comply with all the provisions of the principal law and the regulations made thereunder from the date on which they are reactivated”.

11. The Companies (Amendment) Law, 2001 (L.76(I)/2001) published in the Official Gazette of the Republic, Supplement I(I), dated 4.5.2001, contains the following transitional provision:

“Transitional Provisions. 3.-(1) Subject to the provisions of subsections (2) to (4) of section 155, as substituted by virtue of section 2 of this Law, every person who, on the date of the entry into force of this Law, was considered to have the qualifications for appointment as an auditor of companies, by virtue of subsection (1) of section 155, which is repealed by this Law, shall continue to be considered as having the said qualifications.

(2) Within one year from the date of the entry into force of this Law, every person to whom subsection (1) applies, is bound to communicate his name and address to the Registrar of Companies.

(3) A failure of communication, in contravention of subsection (2), shall constitute a criminal offence punishable with a fine up to five hundred twelve euros.

- 58 of 1961<sup>9</sup>  
4 of 1963  
21 of 1966  
60 of 1969  
47 of 1973  
37 of 1975  
12 of 1976  
15 of 1977  
8 of 1979  
40 of 1979  
24 of 1981  
41 of 1983  
33 of 1984  
76 of 1984  
14 of 1985  
73 of 1985  
180 of 1986  
163 of 1987  
301 of 1987  
26 of 1988  
109 of 1988  
133 of 1988  
173 of 1988  
233 of 1988  
14 of 1989  
39 of 1989  
101 of 1989  
137 of 1989  
77 of 1990  
225 of 1990  
226 of 1990  
245 of 1990  
58 of 1991  
174 of 1991  
240 of 1991  
45(I) of 1992  
115(I) of 1992  
38 (I) of 1993  
103(I) of 1994  
103(I) of 1995  
51(I) of 1996  
53(I) of 1996  
70(I) of 1997  
81(I) of 1997  
95(I) of 1997  
61(I) of 1998  
49(I) of 1999  
50(I) of 1999  
56(I) of 1999  
145(I) of 1999  
155(I) of 1999  
162(I) of 1999  
67(I) of 2000  
76(I) of 2000.
- (4) Every person who, on the date of the entry into force of this Law was duly authorized by the Minister of Finance, by virtue of section 46 of the Income Tax Law to act as an independent auditor for the purposes of the said law, shall continue to have the same rights as provided for by the said law."

12. The Companies (Amendment) Law, 2003 (L.70(I)/2003) published in the Official Gazette of the Republic, Supplement I, dated 11.7.2003, contains the following provision.

---

<sup>9</sup> Note: The Income Tax Law 1961, (L.58/1961) as amended, was repealed and replaced by the Income Tax Law, 2002 (L.118(I) of 2002, as amended).

"Entry into force.  
Transitional  
Provisions.

37. (1) Without prejudice to subsection (2) herein below, this Law shall come into force upon its publication in the Official Gazette of the Republic.

(2) The provisions of section 69A as this section has been incorporated into the principal law by virtue of section 23 of this Law, shall not apply to acts done prior to the entry into force of this Law.

(3) (a) Companies that have been incorporated as public companies and have received a certificate referred to in subsection (4) of section 104, as this section has been renumbered and amended by section 24 of this Law, prior to the entry into force of this Law, shall have to adjust their capital within a time-limit of two years from the date of the entry into force of this Law, to the levels provided for in section 4A as this section has been incorporated into the principal law by section 4 of this Law.

(b) Companies which do not comply with the requirements of paragraph (a) shall be wound up upon application to the Court submitted by any person having a legitimate interest or by the Registrar.

(4) Public companies existing on the date of the coming into force of this Law shall have to comply with the provisions of subparagraph (ii) of paragraph (a) of section 4 within a term of two years, from the date of the coming into force of this Law."

13. The Companies (Amendment) (No. 2) Law, 2003 (L.167 (I)/2003) published in the Official Gazette of the Republic, Supplement I(I), dated 31.10.2003, contains the following provision:

"Amendment of  
transitional  
provisions  
contained  
in the  
Companies  
(Amendment)  
Law, 2001.  
L.76(I) of 2001.

23. Section 3 "Transitional provisions" of the Companies (Amendment) Law, 2001 is hereby amended by the deletion of subsection (4) thereof, the renumbering of subsections (2) and (3) to subsections (4) and (5), respectively, and the addition of the following new subsections (2) and (3):

(2) Every person who on the 4<sup>th</sup> of May 2001 was duly authorized by the Minister of Finance to act as an independent auditor for the purposes of the Income Tax Laws and by proof was engaged in the practice of the profession of independent auditor as self-employed on the 4<sup>th</sup> of May, 2001, upon an application to the Minister of Commerce, Industry and Tourism and notwithstanding the provisions of section 155 of the principal law, shall be entitled to a licence by which he shall be considered as having the qualifications to be appointed as auditor of companies, for the purposes of the principal law:

Provided that the relevant application shall be submitted within one year from the date of the entry into force of the Companies (Amendment) (No.2) Law, 2003.

(3) Within one year from the date of granting a licence by the Minister of Commerce, Industry and Tourism in accordance with the provisions of subsection (2) hereinabove, every person who is entitled to a licence as hereinabove, must communicate his name and address to the Registrar of Companies."

14. The Companies (Amendment) Law, 2004 (L.92(I)/2004) published in the Official Gazette of the Republic Supplement I(I), dated 29.4.2004, contains the following provision in section 2 thereof.

“2.The proviso to subsection (2) of section 3 of the Companies (Amendment) Law, 2001 as amended by the Companies (Amendment) (No.2) Law, 2003, is hereby repealed and replaced by the following new proviso:

“Provided that the relevant application shall be submitted until the 30<sup>th</sup> April, 2004”.

15. The Companies (Amendment) Law, 2005 (L.24(I)/2005), published in the Official Gazette of the Republic Supplement I(I), dated 18.3.2005, contains the following provision:

“Entry into force of this Law. 3. This Law shall be considered to have entered into force as from the 11<sup>th</sup> July, 2003”.

16.(a) The Companies (Amendment) Law, 2009 (L.41(I)/2009), published in the Official Gazette of the Republic, Supplement (I), dated 30.4.2009, contains the following provision:

“Entry into force of this Law. 9. This Law shall come into force on a date to be fixed by the Minister of Commerce, Industry and Tourism by a notification published in the Official Gazette of the Republic”.

(b) By a notification of the Minister of Commerce, Industry and Tourism published in the Official Gazette of the Republic, Supplement III(I), dated 21.4.2011 (P.I.153/2011), Law 41(I)/2009 came into force upon publication of this notification, that is on 21.4.2011.