

COMPANIES ORDINANCE, 1912-1926.⁽¹⁾

An Ordinance to consolidate and amend Enactments relating to Companies.

BE it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

1.—(1.) This Ordinance may be cited for all purposes as the *Companies Ordinance, 1912-1926*,⁽¹⁾ and is divided into Parts and Divisions as follows:—

Short title and division of Ordinance.
Sub-section (1) amended by No. 2 of 1930, s. 2.

Part I.—Companies and Associations.

Division 1.—Constitution and incorporation.

Division 2.—Distribution of the capital and liability of members.

Division 3.—Management and administration.

Division 4.—Winding-up.

Division 5.—Registration office.

Division 6.—Companies authorized to register.

Division 7.—Actions by unregistered companies.

Part II.—No-liability Mining Companies.

Part III.—General Provisions.

(1) The *Companies Ordinance, 1912-1926*, comprises the *Companies Ordinance, 1912*, as amended by the other Ordinances referred to in the following Table:—

ORDINANCES OF THE LEGISLATIVE COUNCIL FOR THE TERRITORY OF PAPUA.

Short title, number and year.	Date of assent by Lieut.-Gov.	Date notified in Papua Govt. Gaz. as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
<i>Companies Ordinance, 1912</i> (No. 29 of 1912)	16.7.1912	(a)	7.5.1913 (<i>Papua Govt. Gaz.</i> of 7.5.1913)
<i>Companies Ordinance, 1923</i> (No. 14 of 1923)	20.11.1923	2.1.1924	20.11.1923 (<i>Ordinances etc. of Papua, 1923, p. 59</i>)
<i>Companies Ordinance, 1926</i> (No. 4 of 1926)	15.7.1926	3.11.1926	15.7.1926 (<i>Ordinances etc. of Papua, 1926, p. 13</i>)

(a) No notice of non-disallowance has been published in *Papua Govt. Gaz.*

COMPANIES AND BODIES CORPORATE—

Part IV.—Miscellaneous Provisions Applicable to Certain Companies.

Part V.—Foreign Companies.

Commencement.

(2.) This Ordinance shall commence on a day to be fixed by the Lieutenant-Governor by Proclamation published in the *Gazette*.⁽¹⁾

Interpretation.
N.S.W. No. 40
of 1899, s. 2.

2. In this Ordinance and in the Schedules thereto the following terms shall if not inconsistent with the subject-matter or context have the respective meanings hereby assigned to them (that is to say) :—

“Company limited by guarantee”—A company formed or registered under this Ordinance on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound-up.

“Company limited by shares”—A company formed or registered under this Ordinance on the principle of having the liability of its members limited to the amount unpaid on their shares.

“Court” and “Central Court”⁽²⁾—The Central Court⁽²⁾ of the Territory.

“Insurance company” shall include a company that carries on the business of insurance in common with any other business.

“Judge”—A judge of the Central Court.⁽²⁾

“Justice”—A justice of the peace.

“Limited company”—A company formed or registered under this Ordinance wherein the liability of the members is limited either by shares or by guarantee.

“No-liability company”—A company formed or deemed to be formed under Part II. of this Ordinance.

“Registrar”—The Registrar of Joint-stock Companies or any person acting as such.

“Special resolution”—A resolution passed in accordance with the provisions of Section two hundred and thirty-eight of this Ordinance.

(1) See footnote (1) printed on p. 353.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

“Unlimited company”—A company formed or registered under this Ordinance on the principle of having no limit placed on the liability of its members.

“Unregistered company”—Any partnership association or company except railway or tramway companies incorporated by an Ordinance of the Territory consisting of more than seven members and not registered under Part I. of this Ordinance.

3.—(1.) The enactments mentioned in the First Schedule to this Ordinance are hereby repealed.

Repeal.
First Schedule.
N.S.W. No. 40
of 1899, s. 3.

(2.) All persons appointed under or by virtue of the provisions of any enactment hereby repealed and holding office at the commencement of this Ordinance shall remain in office as if this Ordinance had been in force at the time they were appointed and they had been appointed hereunder and this Ordinance shall apply to them accordingly.

(3.) All rules of Court⁽³⁾ made under the authority of any enactment hereby repealed and being in force at the commencement of this Ordinance shall be deemed to have been made under the authority of this Ordinance and references in any such rules to the provisions of any enactment hereby repealed shall be construed as references to the corresponding provisions in this Ordinance.

(4.) All rules regulations and articles of association and every memorandum for registration and every memorandum of association duly made or deemed to have been duly made and all registrations duly effected or deemed to have been duly effected and any other matter or thing duly done under or in accordance with any of the provisions of any enactment hereby repealed and in force and operative at the commencement of this Ordinance shall be deemed to be and to have been duly made effected or done under the corresponding provisions (if any) of this Ordinance.

4. This Ordinance shall apply to companies formed and registered under any of the enactments hereby repealed and existing at the commencement of this Ordinance in the same manner:—

Application of
Ordinance to
companies
formed and
registered under
repealed
enactments.
Imp. 8 Edw.
VII., c. 69,
s. 245.

(a) in the case of a limited company other than a company limited by guarantee as if the company had been formed and registered under this Ordinance 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 Ordinance as a company limited by guarantee;

(3) The only rules of Court in force in the Territory of Papua under the authority of the enactments repealed by the *Companies Ordinance, 1912-1926*, were *The Rules of Court under The Companies Act, 1863* (Queensland, adopted). These rules of Court are printed on p. 478.

COMPANIES AND BODIES CORPORATE—

- (c) in the case of an unlimited company as if the company had been formed and registered under this Ordinance as an unlimited company;
- (d) in the case of a no-liability company as if the company had been formed and registered under this Ordinance as a no-liability company;
- (e) in the case of a mining company (other than a no-liability company) as if the company had been formed and registered under this Ordinance and either as a company limited by shares or as a company limited by guarantee or as an unlimited company according to the nature and effect of its memorandum of association:

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 such one of the repealed enactments as the case may be.

Prohibition of partnerships exceeding certain number.

Imp. 8 Edw. VII., c. 69, s. 1; N.S.W. No. 40 of 1899, s. 4; Q. 27 Vic. No. 4, s. 3.

5. After the commencement of this Ordinance—

- (a) no company association or partnership consisting of more than ten persons shall be formed for carrying on the business of banking; and
- (b) no company association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company association or partnership or by the individual members thereof,

unless it is—

- (i) registered as a company under Part I. of this Ordinance; or
- (ii) formed in pursuance of some other Act of Parliament or Ordinance or of a Royal charter or letters patent; or
- (iii) incorporated as a no-liability company.

PART I.—COMPANIES AND ASSOCIATIONS.

Division 1.—Constitution and Incorporation.

6. Any seven or more persons associated for any lawful purpose may by subscribing their names to a memorandum of association and otherwise complying with the requisitions of this Part of this Ordinance in respect of registration form an incorporated company with or without limited liability.

Memorandum of association. Mode of forming company.

Imp. *Ib.* s. 2; N.S.W. *Ib.* s. 5; Q. *Ib.* s. 5.

7. The liability of the members of a company formed or registered under this Part of this Ordinance may according to the memorandum of association be limited either to—

- (a) the amount (if any) unpaid on the shares respectively held by them; or
- (b) such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound-up.

Mode of limiting liability of members.

Imp. 8 Edw. VII., c. 69, s. 5.
(i) (ii).
N.S.W. No. 40 of 1899, s. 6.
Q. 27 Vic. No. 4, s. 6.

8. The memorandum of association of a company limited by shares shall contain the following things (that is to say)—

- (a) the name of the proposed company with the addition of the word "limited" as the last word in such name;
- (b) the place in the Territory in which the registered office of the company is proposed to be situate;
- (c) the objects for which the proposed company is to be established;
- (d) a declaration that the liability of the members is limited;
- (e) the amount of capital with which the company proposes to be registered divided into shares of a certain fixed amount:

Memorandum of association of company limited by shares.

Imp. *Ib.* s. 3.
N.S.W. *Ib.* s. 7.
Q. *Ib.* s. 7.

Subject to the following regulations:—

- (i) that no subscriber of the memorandum of association shall take less than one share;
- (ii) that each such subscriber shall write opposite to his name the number of shares he takes.

9. The memorandum of association of a company limited by guarantee shall contain the following things (that is to say)—

- (a) the name of the proposed company with the addition of the word "limited" as the last word in such name;
- (b) the place in the Territory in which the registered office of the company is proposed to be situate;
- (c) the objects for which the proposed company is to be established;
- (d) a declaration that each member undertakes to contribute to the assets of the company in the event of the same being wound-up during the time that he is a member or within one year afterwards for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member

Memorandum of company limited by guarantee.

Imp. *Ib.* s. 4;
N.S.W. *Ib.* s. 8;
Q. *Ib.* s. 8.

COMPANIES AND BODIES CORPORATE—

and of the costs charges and expenses of winding-up the company and for the adjustment of the rights of the contributories amongst themselves such amount as may be required not exceeding a specified amount.

Memorandum of unlimited company.

Imp. 8 Edw. VII., c. 69, s. 5. N.S.W. No. 40 of 1899, s. 9. Q. 27 Vic. No. 4, s. 9.

10. The memorandum of association of an unlimited company shall contain the following things (that is to say)—

- (a) the name of the proposed company;
- (b) the place in the Territory in which the registered office of the company is proposed to be situate;
- (c) the objects for which the proposed company is to be established.

Signature and effect of memorandum.

Imp. *Ib.* s. 14. N.S.W. *Ib.* s. 10. Q. *Ib.* s. 10.

11. The memorandum of association shall be signed by each subscriber in the presence of and be attested by one witness at the least and shall when registered bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto and as if there were in the memorandum contained a covenant on the part of himself his heirs executors and administrators to observe all the conditions of such memorandum subject to the provisions of this Ordinance.

Power of company limited by shares to alter memorandum.

Imp. *Ib.* s. 41. N.S.W. *Ib.* s. 11. Q. *Ib.* s. 11.

12. Any company limited by shares may so far modify the conditions contained in its memorandum of association if authorized to do so by its regulations as originally framed or as altered by special resolution in manner hereinafter mentioned as to—

- (a) increase its capital by the issue of new shares of such amount as it thinks expedient; or
- (b) consolidate and divide its capital into shares of larger amount than its existing shares; or
- (c) convert its paid-up shares into stock;

but save as aforesaid and save as is hereinafter provided in the case of a change of name and of reduction of capital and alteration of objects of the company no alteration shall be made by any company in the conditions contained in its memorandum of association.

Alteration of objects of company.

Imp. *Ib.* s. 9. N.S.W. *Ib.* s. 3. Q. *Ib.* s. 4.

13.—(1.) Subject to the provisions of this section a company registered under this Part of this Ordinance 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 attain 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.

(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 who signifies his objection in manner directed by the Court either his consent to the alteration has been obtained or his debt or claim has been discharged or has 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 and may make such order as to costs as it thinks proper.

(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 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 may 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 same and shall certify the registration under his hand and the certificate shall be conclusive evidence that all the require-

COMPANIES AND BODIES CORPORATE—

ments of this Ordinance with respect to the alteration and the confirmation thereof have been complied with and thenceforth the memorandum 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 make 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 Ten pounds for every day during which it is in default.

ARTICLES OF
ASSOCIATION.
Regulations to
be prescribed
by articles of
association.
Imp. 8 Edw.
VII., c. 69,
s. 10;
N.S.W. No. 40
of 1899, s. 12;
Q. 27 Vic. No. 4,
s. 13.

14.—(1.) The memorandum of association may in the case of a company limited by shares and shall in the case of a company limited by guarantee or unlimited be accompanied when registered by articles of association signed by the subscribers to the memorandum of association and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient.

(2.) The articles shall be expressed in separate paragraphs numbered arithmetically and they may adopt all or any of the provisions contained in the table marked A in the Second Schedule hereto.

(3.) In the case of a company whether limited by guarantee or unlimited the articles shall for the purpose of enabling the Registrar to determine the fees payable on registration state—

- (a) where the capital is divided into shares the amount of capital with which the company proposes to be registered;
- (b) where the capital is not divided into shares the number of members with which the company proposes to be registered.

(4.) In a company limited by guarantee or unlimited and having a capital divided into shares each subscriber shall take one share at the least and shall write opposite to his name in the memorandum of association the number of shares he takes.

15. In the case of a company limited by shares if the memorandum of association is not accompanied by articles of association or in so far as the articles do not exclude or modify the regulations contained in the table marked A in the Second Schedule hereto the last-mentioned regulations shall so far as the same are applicable be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association and the articles had been duly registered.

Table A.

Application of
Table A.
Imp. *Ib.* s. 11.
N.S.W. *Ib.* s. 13.
Q. *Ib.* s. 14.

16.—(1.) The articles of association shall be printed and shall be signed by each subscriber in the presence of and be attested by one witness at the least.

Signature and effect of articles.

Imp. 8 Edw. VII., c. 69, ss. 12 and 14. N.S.W. No. 40 of 1899, s. 14. Q. 27 Vic. No. 4, s. 15.

(2.) When registered they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto and there were in such articles contained a covenant on the part of himself his heirs executors and administrators to conform to all the regulations contained in such articles subject to the provisions of this Ordinance.

(3.) All moneys payable by any member to the company in pursuance of any of the conditions and regulations of the company shall be deemed to be a specialty debt due from such member to the company.

17.—(1.) The memorandum of association and the articles of association (if any) shall be delivered to the Registrar who shall retain and register the same.

Registration of memorandum and articles.

Table B.—Fees.

Imp. *Ib.* s. 15. N.S.W. *Ib.* s. 15. Q. *Ib.* s. 16.

(2.) There shall be paid to the Registrar the several fees specified in Table B of the Second Schedule hereto as therein directed or such smaller fee as the Lieutenant-Governor⁽²⁾ may direct.

18.—(1.) Upon the registration of the memorandum of association and of the articles of association in cases where articles of association are required by this Part of this Ordinance or by the desire of the parties to be registered the Registrar shall certify under his hand that the company is incorporated and in the case of a limited company that the company is limited.

Effect of registration.

Imp. *Ib.* s. 16. N.S.W. *Ib.* s. 16. Q. *Ib.* s. 17.

(2.) The subscribers of the memorandum of association together with such other persons as may from time to time become members of the company shall thereupon be a body corporate by the name contained in the memorandum of association capable forthwith of exercising all the functions of an incorporated company and having perpetual succession and a common seal with power to hold lands and to sue and be sued in all Courts but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound-up as is hereinafter mentioned.

(3.) A certificate of the incorporation of any company given by the Registrar shall be conclusive evidence that all the requisitions of this Part of this Ordinance in respect of registration have been complied with.

(2) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

COMPANIES AND BODIES CORPORATE—

Certificate to
be evidence.
N.S.W. No. 40
of 1899, s. 17.

19. Any certificate of the incorporation of a company given by the Registrar shall be received in evidence as if it were the original certificate.

Division 2.—Distribution of Capital and Liability of Members.

Definition of
members.
Imp. 8 Edw.
VII., c. 69,
s. 24.
N.S.W. *Ib.* s. 18.
Q. 27 Vic. No.
4, s. 22.

20. The subscribers of the memorandum of association of any company under this Part of this Ordinance shall be deemed to have agreed to become members of the company whose memorandum they have subscribed and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of a company under this Part of this Ordinance and whose name is entered on the register of members shall be deemed to be a member of the company.

Register of
members.
Imp. *Ib.* s. 25.
N.S.W. *Ib.* s. 19.
Q. *Ib.* s. 24.

21.—(1.) Every company formed or registered under this Part of this Ordinance shall cause to be kept in one or more books a register of its members and there shall be entered therein the following particulars:—

- (a) the names and addresses and the occupations (if any) of the members of the company with the addition in the case of a company having a capital divided into shares of a statement of the shares held by each member distinguishing each share by its number and of the amount paid or agreed to be considered as paid on the shares of each member;
- (b) the date at which the name of any person was entered in the register as a member;
- (c) the date at which any person ceased to be a member.

(2.) Any company acting in contravention of this section and every director or manager of such company who knowingly and wilfully authorizes or permits such contravention shall incur a penalty not exceeding Five pounds for every day during which its default in complying with the provisions of this section continues.

Annual list of
members and
summary.
Imp. *Ib.* s. 26.
N.S.W. *Ib.* s. 20.
Q. *Ib.* s. 25.

22.—(1.) Every company formed or registered under this Part of this Ordinance having a capital divided into shares shall make once at least in every year a list of all persons who on the fourteenth day succeeding the day on which the ordinary general meeting or if there is more than one ordinary meeting in each year the first of such ordinary general meetings is held are members of the company.

(2.) Such lists shall contain a summary specifying the following particulars:—

Companies Ordinance, 1912-1926.

- (a) the names and addresses and occupations of such members and the number of shares held by each of them;
- (b) the amount of the capital of the company and the number of shares into which it is divided;
- (c) the number of shares taken from the commencement of the company up to the date of the summary;
- (d) the amount of calls made on each share;
- (e) the total amount of calls received;
- (f) the total amount of calls unpaid;
- (g) the total amount of shares forfeited;
- (h) the names addresses and occupations of the persons who have ceased to be members since the last list was made and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register of members and shall be completed within seven days after such fourteenth day as is mentioned in this section and a copy shall forthwith be forwarded to the Registrar.

23. If any company formed or registered under this Part of this Ordinance having a capital divided into shares makes default in complying with the provisions of this Part of this Ordinance with respect to forwarding such list of members or summary as is hereinbefore mentioned to the Registrar such company and every director and manager of such company who knowingly and wilfully authorizes or permits such default shall incur a penalty not exceeding Five pounds for every day during which such default continues.

Penalty for not keeping proper register, &c.
Imp. 8 Edw. VII., c. 69, s. 26.
N.S.W. No. 40 of 1899, s. 21.
Q. 27 Vic. No. 4, s. 26.

24. Every company formed or registered under this Part of this Ordinance having a capital divided into shares that has consolidated and divided its capital into shares of larger amount than its existing shares or converted any portion of its capital into stock shall give notice to the Registrar of such consolidation division or conversion specifying the shares so consolidated divided or converted.

Notice of consolidation or conversion of capital into stock.
Imp. *Ib.* s. 42.
N.S.W. *Ib.* s. 22.
Q. *Ib.* s. 27.

25. Where any company formed or registered under this Part of this Ordinance having a capital divided into shares has converted any portion of its capital into stock and given notice of such conversion to the Registrar all the provisions of this Part of this Ordinance which are applicable to shares only shall cease as to so much of the capital as is converted into stock and the register of members hereby required to be kept by the company and the list of members to be forwarded to the Registrar shall show the amount of stock held by each member in the list instead

Effect of conversion of shares into stock.
Imp. *Ib.* s. 43.
N.S.W. *Ib.* s. 23.
Q. *Ib.* s. 28.

COMPANIES AND BODIES CORPORATE—

of the amount of shares and the particulars relating to shares hereinbefore required.

Notice of increase of share capital or of members.

Imp. 8 Edw. VII., c. 69, s. 44.
N.S.W. No. 40 of 1899, s. 24.
Q. 27 Vic. No. 4, s. 33.

26.—(1.) Notice shall be given to the Registrar—

- (a) where a company has a capital divided into shares whether such shares have been converted into stock or not of any increase in such capital beyond the registered capital;
- (b) where a company has not a capital divided into shares of any increase in the number of members beyond the registered number

within fifteen days from the date on which such increase of capital or number of members as the case may be is resolved on or takes place; and the Registrar shall forthwith record the amount of such increase of capital or number of members.

(2.) If such notice is not given within the period aforesaid the company in default and every director and manager of such company who knowingly and wilfully authorizes or permits such default shall incur a penalty not exceeding Five pounds for every day during which such neglect to give notice continues.

(3.) This section shall apply to all companies including companies registered under Part V. of this Ordinance: Provided that in the case of companies whose head office is not in the Territory the notice of increase aforesaid shall be given within fifteen days after the receipt by the company in the Territory of a copy of the resolution or other authority authorizing such increase.

Sub-section (3) added by No. 4 of 1926, s. 2.

Power to keep extra-territorial register.

Imp. *Ib.* s. 34.
N.S.W. *Ib.* s. 25.
Q. 53 Vic. No. 18, s. 32.

27. Any company formed or registered under this Part of this Ordinance whose objects comprise the transaction of business in the United Kingdom or elsewhere may if authorized so to do by its regulations as originally framed or as altered by special resolution cause to be kept in the United Kingdom and in any place elsewhere within His Majesty's Dominions in which it transacts business a branch register of the members there resident.

Notice to Registrar.

Imp. *Ib.* s. 34.
N.S.W. *Ib.* s. 26.
Q. *Ib.* s. 32 (2).

28. Such company shall give the Registrar notice of the situation of every office where any such branch register (in this Ordinance called an extra-territorial register) is kept and of any change therein and of the discontinuance of any such office in the event of the same being discontinued.

Register to be evidence, and how to be kept.

Imp. *Ib.* s. 35.
N.S.W. *Ib.* s. 27.
Q. *Ib.* s. 32 (3)
(4).

29.—(1.) An extra-territorial register shall as regards the particulars entered therein be deemed to be part of the company's register of members and shall be evidence of all particulars entered therein.

(2.) Every such register shall be kept in the manner provided by this Part of this Ordinance except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district wherein the register of members to be closed is kept.

30. Sections two hundred and twenty-three and two hundred and thirty of this Ordinance shall equally apply to entries in extra-territorial registers as to entries in the principal register of the company and the Central Court⁽²⁾ and judges shall have the same jurisdiction in respect of entries in such extra-territorial registers as by those sections is provided with respect to entries in the principal register of members.

Certain sections to apply.
Imp. 8 Edw. VII., c. 69, s. 35;
N.S.W. No. 40 of 1899, s. 28.

31. Such company shall cause to be transmitted to its registered office a copy of every entry in its extra-territorial registers as soon as may be after such entry is made and shall keep at such office entered up from time to time duplicates of such registers and such duplicate shall for all the purposes of this Ordinance be deemed to be part of the register of members of the company.

Duplicates of register.
Imp. *Ib.* s. 35.
N.S.W. *Ib.* s. 29.
Q. 53 Vic. No. 18, s. 32 (4).

32. Subject to the foregoing provisions of this Ordinance with respect to duplicate registers the shares registered in an extra-territorial register shall be distinguished from the shares registered in the principal register and no transaction with respect to shares registered in an extra-territorial register shall during the continuance of the registration of such shares therein be registered in any other register.

Extra-territorial shares to be distinct.
Imp. *Ib.* s. 35.
N.S.W. *Ib.* s. 30.
Q. *Ib.* s. 32 (6).

33. Such company may discontinue any extra-territorial register and thereupon all entries in that register shall be transferred to some other register kept by the company in the same place or district or to the register of members kept at the registered office of the company.

Discontinuance of register.
Imp. *Ib.* s. 35.
N.S.W. *Ib.* s. 31.
Q. *Ib.* s. 32 (7).

34. Subject to the foregoing provisions of this Ordinance any company may by special resolution make such provisions as it thinks fit respecting the keeping of extra-territorial registers.

Companies may make regulations.
Imp. *Ib.* s. 35.
N.S.W. *Ib.* s. 32.
Q. *Ib.* s. 32 (9).

35. In the event of a company formed or registered under this Part of this Ordinance being wound-up every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company and the costs charges and expenses of the winding-up and for the payment of such sums as may be required for the adjustment of the rights of the contributories

LIABILITY OF MEMBERS.
Liability of present and past members.
Imp. *Ib.* s. 123.
N.S.W. *Ib.* s. 33.
Q. 27 Vic. No. 4, s. 37.

(2) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

COMPANIES AND BODIES CORPORATE—

amongst themselves with the qualifications following (that is to say) :—

- (a) No past member shall be liable to contribute if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up.
- (b) No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member.
- (c) No past member shall be liable to contribute unless it appears to the Court or other authority in by or under which the company is being wound-up that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Ordinance.
- (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 contributions shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association.
- (f) Nothing in this Ordinance contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted or whereby the funds of the company are alone made liable in respect of such policy or contract.
- (g) No sum due to any member of a company in his character of a member by way of dividends profits or otherwise shall be deemed to be a debt of the company payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves.

36. Where a company is formed or registered as a limited company the liability of the directors or managers of such company or the managing director may if so provided by the memorandum of association be unlimited.

Directors with unlimited liability.

Imp. 8 Edw. VII., c. 69,

s. 60;

N.S.W. No. 40 of 1899, s. 34.

37. The following modifications shall be made in the thirty-fifth section of this Ordinance with respect to the contributions to be required in the event of the winding-up of a limited company from any director or manager whose liability is unlimited:—

Liability of such directors.
Imp. 8 Edw. VII., c. 69, s. 123 (2).
Q. 27 Vic. No. 4, s. 35.

- (a) Subject to the provisions hereinafter contained any such director or manager whether past or present shall in addition to his liability (if any) to contribute as an ordinary member be liable to contribute as if he were at the date of the commencement of such winding-up a member of an unlimited company.
- (b) No contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company.
- (c) No contribution required from any past director or manager in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company.
- (d) Subject to the provisions contained in the regulations of the company no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member unless the Court deems it necessary to require such contribution in order to satisfy the debts and liabilities of the company and the costs charges and expenses of the winding-up.

38. In the event of the winding-up of a limited company the Court may make to any director or manager thereof whose liability is unlimited the same allowance by way of set-off as under Section one hundred and six of this Ordinance it may make to a contributory where the company is not limited.

Set-off to such director.
N.S.W. No. 40 of 1899, s. 36.

39.—(1.) In any limited company in which the liability of a director or manager is unlimited the director or manager of the company (if any) and the member who proposes any person for election or appointment to such office shall add to such proposal a statement that the liability of the person holding such office will be unlimited and the promoters directors managers and secretary (if any) of such company or one of them shall before

Notice to be given to such director that his liability is unlimited.
Imp. *Ib.* s. 60;
N.S.W. *Ib.* s. 37.

COMPANIES AND BODIES CORPORATE—

such person accepts such office or acts therein give him notice in writing that his liability will be unlimited.

(2.) If any director manager or prospector⁽⁴⁾ makes default in adding such statement or if any promoter director manager or secretary makes default in giving such notice he shall be liable to a penalty not exceeding One hundred pounds and also for any damage which the person so elected or appointed may sustain from such default but the liability of the person elected or appointed shall not be affected by such default.

Existing limited company may make liability of directors unlimited.

Imp. 8 Edw. VII., c. 69, s. 61.
N.S.W. No. 40 of 1899, s. 38.

40.—(1.) Any limited company may by a special resolution if authorized so to do by its regulations as originally framed or as altered by special resolution from time to time modify the conditions contained in its memorandum of association so far as to render unlimited the liability of its directors or managers or of the managing director.

(2.) Such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association and a copy thereof shall be embodied in or annexed to every copy of the memorandum of association which is issued after the passing of the resolution and any default in this respect shall be deemed to be a default in complying with the provisions of the two hundred and fortieth section of this Ordinance and shall be punished accordingly.

REDUCTION OF CAPITAL AND SHARES.

Power of company to reduce capital.

Imp. *Ib.* s. 46.
N.S.W. *Ib.* s. 39.
Q. 53 Vic.
No. 18, s. 8.

41.—(1.) Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association if authorized so to do by its regulations as originally framed or as altered by special resolution as to reduce its capital either by cancelling any shares which at the date of the passing of such resolution have not been taken or agreed to be taken by any person or otherwise.

(2.) No such resolution for reducing the capital of a company except by cancelling shares as aforesaid shall come into operation until an order of the Court is registered by the Registrar as hereinafter mentioned.

(3.) Where any such company reduces its capital by cancelling any shares as aforesaid the provisions of this Ordinance shall not apply to any such reduction of capital.

Construction of "capital" and power to reduce.

Imp. *Ib.* s. 46.
N.S.W. *Ib.* s. 40.
Q. *Ib.* s. 4.

42.—(1.) The word "capital" as used in this Part of this Ordinance shall include paid-up capital and the power to reduce capital conferred by this Part of this Ordinance shall include a power—

(4) The word "prospector" appeared in the original Ordinance. The word "proposer" has now been inserted in its stead by the Second Schedule of the *Ordinances Reprint and Revision Ordinance 1947* of the Territory of Papua-New Guinea.

- (a) to cancel any lost capital or any capital unrepresented by available assets;
- (b) to pay off any capital which may be in excess of the wants of the company.

(2.) Paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company and to the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved anything contained in this Ordinance to the contrary notwithstanding.

43.—(1.) Such company shall after the date of the passing of any special resolution for reducing its capital add to its name until such date as the Court may fix the words "and reduced" as the last words in its name and those words shall until such date be deemed to be part of the name of the company within the meaning of this Ordinance.

Company to add "and reduced" to its name for a period.
Imp. 8 Edw. VII., c. 69, s. 48.
N.S.W. No. 40 of 1899, s. 41.
Q. 53 Vic. No. 18, ss. 5 & 7.

(2.) Where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital it shall not be necessary before the hearing of the petition for confirming the reduction to add and the Court may if it thinks it expedient so to do dispense altogether with the addition of the words "and reduced" as mentioned in this Ordinance.

44. A company which has passed a special resolution for reducing its capital may apply to the Court by petition for an order confirming the reduction and on the hearing of the petition the Court if satisfied that with respect to every creditor who under the provisions of this Ordinance is entitled to object to the reduction either—

Order confirming reduction.
Imp. 1b. s. 50.
N.S.W. 1b. s. 42.
Q. 1b. s. 6.

- (a) his consent to the reduction has been obtained; or
- (b) his debt or claim has been discharged or has determined or has been secured as hereinafter provided;

may make an order confirming the reduction on such terms and subject to such conditions as it deems fit.

45.—(1.) Where a company proposes to reduce its capital every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which if that date were the commencement of the winding-up of the company would be admissible in proof against the company shall be entitled to object to the proposed reduction and to be entered in the list of creditors who are so entitled to object.

Creditors may object to reduction.
Imp. 1b. s. 49.
N.S.W. 1b. s. 43.
Q. 1b. s. 9.

(2.) Where the reduction of the capital of a company does not

COMPANIES AND BODIES CORPORATE—

involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital the creditors of the company shall not unless the Court otherwise directs be entitled to object or required to consent to the reduction.

(3.) The Court shall settle a list of the creditors entitled to object and for that purpose shall ascertain as far as possible without requiring an application from any creditor—

- (a) the names of such creditors; and
- (b) the nature and amount of their debts or claims;

and may publish notices fixing a certain day or days within which creditors who are not entered on the list are to claim to be so entered or to be excluded from the right of objecting to the proposed reduction.

Court may dispense with consent.

Imp. 8 Edw. VII., c. 69. s. 49.
N.S.W. No. 40 of 1899, s. 44.
Q. 53 Vic. No. 18, s. 10.

46. Where a creditor whose name is entered on the list of creditors and whose debt or claim is not discharged or determined does not consent to the proposed reduction the Court may dispense with such consent on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating in such manner as the Court may direct a sum of such amount as hereinafter mentioned that is to say—

- (a) if the full amount of the debt or claim of the creditor is admitted by the company or though not admitted is such as the company is willing to set apart and appropriate then the full amount of the debt or claim shall be set apart and appropriated;
- (b) if the company does not admit or is unwilling to set apart and appropriate such full amount or if the amount is contingent or not ascertained the Court may inquire into and adjudicate upon the validity of such debt or claim and the amount for which the company may be liable in respect thereof in the same manner as if the company were being wound-up by the Court and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated.

Publication of particulars regarding reduction.

Imp. *Ib.* s. 55.
N.S.W. *Ib.* s. 45.

47. The Court may require the company to publish all or any of the following particulars in such manner as it thinks fit:—

- (a) The reasons for the reduction of its capital;
- (b) Such other information in regard to the reduction of its capital as the Court may think expedient with a view to giving proper information to the public

in relation to the reduction of its capital by the company;

(c) The causes which led to such reduction.

48.—(1.) The Registrar upon the production to him of an order of the Court confirming the reduction of the 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 capital of the company as altered by the order—

Registration of order and minute of reduction.
Imp. 8 Edw. VII. c. 69, s. 51. N.S.W. No. 40 of 1899, s. 46. Q. 53 Vic. No. 18, s. 11.

- (a) the amount of such capital;
- (b) the number of shares in which it is to be divided;
- (c) the amount of each share;
- (d) the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid up on each share,

shall register the order and minute and on the registration the special resolution confirmed by the order so registered shall take effect.

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

(3.) The Registrar shall certify under his hand the registration of the order and minute and his certificate shall be conclusive evidence that all the requisitions of this Ordinance with respect to the reduction of capital have been complied with and that the capital of the company is such as is stated in the minute.

49.—(1.) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of association of the company and shall be of the same validity and subject to the same alteration as if it had been originally contained in the memorandum of association.

Minute to form part of memorandum of association.
Imp. *Ib.* ss. 52 and 53; N.S.W. *Ib.* s. 47; Q. *Ib.* s. 12.

(2.) Subject as in this Ordinance mentioned no member of the company whether past or present shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

50.—(1.) If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company is in consequence of his ignorance of the proceedings taken with a view to such reduction or of their nature and effect with respect to his claim not entered on the list of creditors and after such reduction the company is unable within the meaning of the

Saving rights of creditors who are ignorant of proceedings.
Imp. *Ib.* s. 53. N.S.W. *Ib.* s. 48. Q. *Ib.* s. 13.

COMPANIES AND BODIES CORPORATE—

eighty-second section of this Ordinance to pay to such creditor the amount of such debt or claim every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company shall be liable to contribute for the payment of such 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 prior to such registration.

(2.) If the company is wound-up the Court on the application of such creditor and on proof that he was so ignorant as aforesaid may settle a list of such contributories accordingly and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up.

(3.) The provisions of this section shall not affect the rights of the contributories of the company among themselves.

Minute to be embodied in memorandum.
Imp. 8 Edw. VII., c. 69, s. 52.
N.S.W. No. 40 of 1899, s. 49.
Q. 53 Vic. No. 18, s. 14.

51.—(1.) A minute when registered shall be embodied in every copy of the memorandum of association issued after its registration.

(2.) A company which makes default in complying with the provisions of this section and every director and manager of such company who knowingly authorizes or permits such default shall incur a penalty not exceeding One hundred pounds for each copy in respect of which such default is made.

Penalty of concealment of name of creditor.
Imp. *Ib.* s. 54.
N.S.W. *Ib.* s. 50.

52. If any director manager or officer of the company—

- (a) wilfully conceals the name of any creditor who is entitled to object to the proposed reduction; or
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) being a director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid.

he shall be guilty of a misdemeanour.

SUBDIVISION OF SHARES.
Shares may be divided into shares of smaller amount.
Imp. *Ib.* s. 41.
N.S.W. *Ib.* s. 51.
Q. *Ib.* ss. 16 and 17.

53.—(1.) Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association if authorized so to do by its regulations as originally framed or as altered by special resolution as by subdivisions of its existing shares or any of them to divide its capital or any part thereof into shares of smaller amount than is fixed by its memorandum of association.

(2.) In the subdivision of the existing shares the proportion

between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing shares from which the shares of reduced amount are derived.

(3.) The statement of the number and amount of the shares into which the capital of the company is divided contained in every copy of the memorandum of association issued after the passing of any such special resolution shall be in accordance with such resolution and any company which makes default in complying with the provisions of this sub-section and every director and manager of such company who knowingly or wilfully authorizes or permits such default shall incur a penalty not exceeding One pound for each copy in respect of which such default is made.

54.--(1.) If any association about to be formed under this Part of this Ordinance as a limited company proves to the Lieutenant-Governor in Council⁽²⁾—

- (a) that it is formed for the purpose of promoting commerce art science religion charity or any other useful object; and
- (b) that it is its intention to apply its profits (if any) or other income in promoting its objects; and
- (c) that it is its intention to prohibit the payment of any dividend to the members of the association

ASSOCIATION
NOT FOR GAIN.
Special
provisions as to
associations
formed for
purposes not
of gain.
Imp. 8 Edw.
VII., c. 69, s. 20.
N.S.W. No. 40 of
1899, s. 52.
Q. 53 Vic. No.
18, s. 26.

the Lieutenant-Governor in Council⁽²⁾ may direct such association to be registered with limited liability without the addition of the word "limited" to its name.

(2.) Such association may be registered accordingly and upon registration shall enjoy all the privileges and be subject to the obligations by this Ordinance imposed on limited companies with the exception that none of the provisions of this Ordinance that require a limited company—

- (i) to use the word "limited" as any part of its name; or
- (ii) to publish its name; or
- (iii) to send a list of its members directors or managers to the Registrar

shall apply to an association so registered.

(3.) The direction of the Lieutenant-Governor in Council⁽²⁾ may be granted upon such conditions and subject to such regulations as the Lieutenant-Governor in Council⁽²⁾ thinks fit to impose and such conditions and regulations shall be binding on the associa-

(2) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

COMPANIES AND BODIES CORPORATE—

tion and may at the option of the Lieutenant-Governor in Council⁽²⁾ be inserted in the memorandum and articles of association or in one of such documents.

Restriction on holding land.

Imp. 8 Edw. VII., c. 69, s. 19;

N.S.W. No. 40 of 1899, s. 53; Q. 27 Vic. No. 4, s. 20.

55. No association formed as in the last preceding section mentioned shall without the sanction of the Lieutenant-Governor in Council⁽²⁾ hold more than two acres of land:

Provided that the Lieutenant-Governor in Council⁽²⁾ may empower any such association to hold lands in such quantity and subject to such conditions as he may think fit.

CALLS ON SHARES.

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

Imp. *Ib.* s. 39. N.S.W. *Ib.* s. 54. Q. 53 Vic. No. 18, s. 27.

56. Nothing in this Ordinance shall be deemed to prevent any company formed or registered under this Part of this Ordinance if authorized by its regulations as originally framed or as altered by special resolution from doing any one or more of the following things namely—

- (a) making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid;
- (b) accepting from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him either in discharge of the amount of a call payable in respect of any other shares held by him or without any call having been made;
- (c) paying dividends in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

Manner in which shares are to be issued and held.

N.S.W. *Ib.* s. 55. Q. *Ib.* s. 28.

57. Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash unless the mode of such payment has been otherwise determined by a contract duly made in writing and filed with the Registrar at or before the issue of such share:

Provided that any contract made *bona fide* before the commencement of this Ordinance between any company which at the time of such contract had been carrying on business for at least twelve months and any allottee of shares therein and any contract made *bona fide* after the commencement of this Ordinance between any company which at the time of such contract has been carrying on such business for at least twelve months and any allottee of shares therein to the effect in either case that such allottee shall not be liable to pay more than a portion of the whole amount of such shares and that on payment of such agreed amount the

(2) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

shares shall be deemed to be fully paid-up was and shall be valid so that such allottee shall not be liable to pay more than the amount specified in such contract in respect of the shares so allotted to him and that on payment of such amount the shares shall be deemed to be fully paid-up.

58.—(1.) Whenever after the commencement of this Ordinance any shares in the capital of any company credited as fully or partly paid-up shall have been or may be issued for a consideration other than cash and at or before the issue of such shares no contract or no sufficient contract is filed with the Registrar in compliance with the last preceding section the company or any person interested in such shares or any of them may apply to the Central Court⁽²⁾ for relief and the said Court if satisfied that the omission to file a contract or sufficient contract was accidental or due to inadvertence or that for any reason it is just and equitable to grant relief may make an order for the filing with the Registrar of a sufficient contract in writing and directing that on such contract being filed within a specified period it shall in relation to such shares operate as if it had been duly filed with the Registrar aforesaid before the issue of such shares and may include in such relief any shares in respect of which the memorandum of association of such company has been signed by any signatory thereto.

Court empowered to grant relief for non-compliance.

Imp. 60 and 61 Vic., c. 26, ss. 1 and 2; N.S.W. No. 47 of 1900, ss. 1 and 2.

(2.) Any such application may be made in the manner in which an application to rectify the register of members may be made under this Ordinance and either before or after an order has been made or an effective resolution has been passed for the winding-up of such company and either before or after the commencement of any proceedings for enforcing the liability on such shares consequent on the omission aforesaid and notice of any such application shall be served on the company if the application is not made by the company.

(3.) Any such order may be made on such terms and conditions as the Court may think fit and the Court may make such order as to costs as it deems proper and may direct that an office copy of the order shall be filed with the Registrar aforesaid and the order shall in all respects have full effect.

(4.) Where the Court in any such case is satisfied that the filing of the requisite contract would cause delay or inconvenience or is impracticable it may in lieu thereof direct the filing of a memorandum in writing in a form approved by the Court specifying the consideration for which the shares were issued and may direct that on such memorandum being filed within a specified

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

COMPANIES AND BODIES CORPORATE—

period it shall in relation to such shares operate as if it were a sufficient contract in writing within the meaning of the last preceding section and had been duly filed with the Registrar aforesaid before the issue of such shares.

Jurisdiction
cumulative.

(5.) The jurisdiction of this section given to the Court is not by implication to curtail or derogate from its jurisdiction to grant relief in any other case.

TRANSFER OF
SHARES.

Transfer at
request of
transferor.

Imp. 8 Edw.
VII, c. 69,
s. 28;
N.S.W. No. 40
of 1899, s. 56;
Q. 53 Vic. No.
18, s. 30.

59. A company shall on the application of the transferor of any share or interest in the company enter in its register of members the name of the transferee of such share or interest in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

SHARE
WARRANTS TO
BEARER.

Issue of share
warrants to
bearer.

Imp. *ib.* s. 37.
N.S.W. *ib.* s. 57.

60. A company limited by shares if authorized so to do by its regulations as originally framed or as altered by special resolution and subject to the provisions of such regulations may with respect to shares which are fully paid-up or with respect to stock issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified and may provide by coupons or otherwise for the payment of future dividends on the shares or stock included in such warrant hereinafter referred to as a share warrant.

Effect of share
warrant.

Imp. *ib.* s. 37;
N.S.W. *ib.* ss. 58
to 61.

61.—(1.) A share warrant shall entitle the bearer of such warrant to the shares or stock specified in it and such shares or stock may be transferred by the delivery of the share warrant.

(2.) The bearer of a share warrant shall subject to the regulations of the company be entitled on surrendering such warrant 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 its register of members the name of any bearer of a share warrant in respect of the shares or stock specified therein without the share warrant being surrendered and cancelled.

(4.) The bearer of a share warrant may if the regulations of a company so provide be deemed to be a member of the company within the meaning of this Ordinance either to the full extent or for such purposes as may be prescribed by the regulations:

Provided that the bearer of a share warrant shall not be qualified in respect of the shares or stock specified in such warrant

Companies Ordinance, 1912-1926.

to be a director or manager of the company in cases where such a qualification is prescribed by the regulations of the company.

(5.) On the issue of a share warrant in respect of any share or stock the company shall strike out of its register of members the name of the member then entered therein as holding such share or stock as if he had ceased to be a member and shall enter in the register the following particulars:—

- (a) the fact of the issue of the warrant;
- (b) a statement of the shares or stock included in the warrant distinguishing each share by its number;
- (c) the date of the issue of the warrant.

(6.) Until the warrant is surrendered the above particulars shall be deemed to be the particulars which are required by the twenty-first section of this Ordinance to be entered in the register of members of a company.

(7.) On the surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

62. After the issue by the company of a share warrant the annual summary required by the twenty-second section of this Ordinance shall contain the following particulars:—

Particulars re
annual summary.
Imp. 8 Edw.
VII., c. 69, s. 26.
N.S.W. No. 40
of 1899, §. 62.

- (a) the total amount of shares or stock for which share warrants are outstanding at the date of the summary;
- (b) the total amount of share warrants which have been issued and surrendered respectively since the last summary was made;
- (c) the number of shares or amount of stock comprised in each warrant.

63.—(1.) From and after the commencement of this Ordinance every prospectus of a company and every notice inviting persons to subscribe for shares or debentures in any joint-stock company shall disclose truly all such particulars as are within the knowledge of the promoters directors and officers issuing the same or any of them and are material to be made known to any person invited to take shares or debentures in order to enable him to form a judgment as to the expediency of so doing with respect to—

PROSPECTUS.
Specific
requirements
as to
prospectus.
Q. 53 Vic. No.
18, s. 31.

- (a) the property acquired or to be acquired;
- (b) the consideration paid or to be paid;
- (c) the mode in which that consideration has been or is to be applied; and

COMPANIES AND BODIES CORPORATE—

- (d) any arrangement by which the promoter or any person on his behalf or by his aid or connivance derives any benefit or advantage from or conditional on the payment of purchase or other money by the company or out of or conditional on the issue of any shares or debentures by the company

and shall specify the dates and the names of the parties to and shortly describe the substance of any contract entered into by the company or the promoters directors or trustees thereof before the issue of such prospectus or notice whether subject to adoption by the directors or the company or otherwise.

(2.) Any prospectus or notice not complying with the above provision shall be deemed fraudulent on the part of the promoters directors and officers of the company knowingly issuing the same as regards any person taking shares in the company on the faith of such prospectus or notice.

(3.) If any person makes default in the performance of the duty thus imposed on him he shall be liable to make compensation for any loss or damage sustained by reason of the default.

(4.) Any agreement purporting to waive or dispense with the performance of any of the duties imposed by this section shall be void.

Liability for
statements on
prospectus.
Imp. 8 Edw.
VII., c. 69,
s. 84;
Q. 55 Vic. No.
10, s. 6.

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

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

- (b) with respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert that it fairly represented the statement or was a correct and fair copy of or extract from the report or valuation: Provided that the director person named as director promoter or person who authorized the issue of the prospectus shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement report or valuation was competent to make it; and
- (c) with respect to 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 that it was a correct and fair representation of the statement or copy of or extract from the document;

or unless it proved—⁽⁵⁾

- (i) 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
- (ii) 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
- (iii) 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 therefor.

(2.) Where the prospectus contains the name of a person as a director of the company or having agreed to become a director thereof and he has not consented to become a director or has withdrawn his consent before the issue of the prospectus and has not authorized or consented to the issue thereof the directors of the company except any without whose knowledge or consent the prospectus was issued and any other person who authorized the issue thereof shall be liable to indemnify the person named as aforesaid against all damage costs and expenses to which he may

Imp. 8 Edw.
VII., c. 69,
s. 84;
Q. 55 Vic. No.
10, s. 7.
Sub-section (2)
amended by
No. 14 of 1923,
s. 2.

(5) The words "unless it proved" appeared in the original Ordinance. These words have now been omitted and the words "unless it is proved" inserted in their stead by the Second Schedule of the *Ordinances Reprint and Revision Ordinance 1947* of the Territory of Papua-New Guinea.

COMPANIES AND BODIES CORPORATE—

be made liable by reason of his name having been inserted in the prospectus or in defending himself against any action or legal proceedings brought against him in respect thereof.

Imp. 8 Edw.
VII., c. 69, s. 84.
Q. 55 Vic. No.
10, s. 8.
Sub-section (3)
amended by
No. 14 of 1923,
s. 2.

(3.) Every person who by reason of his being a director or named as a director or as having agreed to become a director or of his having authorized the issue of the prospectus becomes liable to make any payment under this section may recover contribution as in cases of contract from any other person who if sued separately would have been liable to make the same payment unless the person who has become so liable was and that other person was not guilty of fraudulent misrepresentation.

Sub-section (4)
amended by
No. 14 of 1923,
s. 2.

(4.) For the purposes of this section—

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;

the expression “expert” includes engineer valuer accountant and any other person whose profession gives authority to a statement made by him;

the expression “prospectus” means any prospectus notice circular advertisement or other invitation offering to the public for subscription or purchase any shares debentures or debenture stock of a company.

Division 3.—Management and Administration.

65. Every limited company shall—

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

PROVISIONS FOR
PROTECTION
OF CREDITORS.
Publication of
name by a
limited company.
Imp. *l*b. s. 63;
N.S.W. No. 40
of 1899, s. 67;
Q. 27 Vic. No. 4,
s. 40.

66.—(1.) Any limited company which does not paint or affix and keep painted or affixed its name in manner directed by this Part of this Ordinance and every director or manager of such company who knowingly and wilfully authorizes or permits such default shall be liable to a penalty not exceeding Five pounds for not so painting or affixing its name and a further penalty not exceeding Five pounds for every day during which such name is not kept so painted or affixed.

Penalties for non-publication of name.
Imp. 8 Edw. VII., c. 69, s. 63.
N.S.W. No. 40 of 1899, s. 68.
Q. 27 Vic. No. 4, s. 41.

(2.) If any director manager or officer of such 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 engraven as aforesaid; or
- (b) issues or authorizes the issue of any notice advertisement or other official publication of such company or signs or authorizes to be signed on behalf of such company any bill of exchange promissory-note indorsement cheque or order for money or goods without its name being mentioned therein in manner aforesaid; or
- (c) issues or authorizes to be issued any bill of parcels invoice receipt or letter of credit of the company without its name being mentioned therein in manner aforesaid

he shall be liable to a penalty of Fifty pounds and shall further be personally liable to the holder of any such bill of exchange promissory-note cheque or order for money or goods for the amount thereof unless the same is duly paid by the company.

67.—(1.) Every limited banking company and every insurance company and deposit provident or benefit society registered under this Ordinance shall before it commences business and also on the first Monday in February and the first Monday in August in every year during which it carries on business make a statement in the form marked C in the Second Schedule hereto or as near thereto as circumstances will admit and a copy of such statement shall be put up in a conspicuous place in the registered office of the company and in every branch or place where the business of the company is carried on.

Certain companies to publish statements.
Imp. 17. s. 108;
N.S.W. 17. s. 69;
Q. 17. s. 43.
Second Schedule, Form C.

(2.) If default is made in compliance with the provisions of this section the company and every director or manager thereof who knowingly and wilfully authorizes or permits such default shall be liable to a penalty not exceeding Five pounds for every day during which such default continues.

COMPANIES AND BODIES CORPORATE—

(3.) Every member and every creditor of any company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding Sixpence.

List of directors to be kept and sent to Registrar.

Imp. 8 Edw. VII., c. 69, s. 75.
N.S.W. No. 40 of 1899, ss. 70 and 71.
Q. 27 Vic. No. 4, ss. 44 and 45.

68.—(1.) Every company formed or registered under this Part of this Ordinance not having a capital divided into shares shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers and shall send to the Registrar a copy of such register and shall from time to time notify to the Registrar any change that takes place in such directors or managers.

(2.) If any such company makes default in respect of any of the matters in the preceding sub-section mentioned such company and every director or manager of such company who knowingly and wilfully authorizes or permits such default shall incur a penalty not exceeding Five pounds for every day during which such default continues.

PROVISIONS FOR PROTECTION OF MEMBERS.

Power to alter articles.

Imp. *Ib.* s. 13.
N.S.W. *Ib.* s. 72.
Q. *Ib.* s. 50.

Second Schedule, Table A.

69.—(1.) Subject to the provisions of this Ordinance and to the conditions contained in the memorandum of association any company formed under this Part of this Ordinance may in general meeting from time to time by passing a special resolution—

(a) alter all or any of the regulations of the company contained in the articles of association or in the table marked A in the Second Schedule where such table is applicable to the company; or

(b) make new regulations to the exclusion of or in addition to all or any of the regulations of the company.

(2.) Any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association and shall be subject in like manner to be altered or modified by any subsequent special resolution.

Declaration in action against members.

Imp. 25 and 26 Vic. c. 89, s. 70;
N.S.W. *Ib.* s. 73.
Q. *Ib.* s. 69.

70. In any action or suit brought by a company against any member to recover any call or other moneys due from such member in his character of member it shall not be necessary to set forth the special matter but it shall be sufficient to allege that the defendant is a member of the company and is indebted to the company in respect of a call made or other moneys due whereby an action or suit has accrued to the company.

71.—(1.) The forms set forth in the Third Schedule hereto or forms as near thereto as circumstances admit shall be used in all matters to which such forms refer.

Alterations of forms.

Imp. 8 Edw. VII., c. 69, s. 118; N.S.W. No. 40 of 1899, s. 74. Q. 27 Vic. No. 4, s. 70.

Second and Third Schedules.

(2.) The Lieutenant-Governor in Council⁽²⁾ may make such alterations in the tables and forms contained in the Second and Third Schedules hereto or such additions to the forms contained in the Third Schedule as he deems requisite; but no such alteration shall increase the amount of fees payable to the Registrar in the Second Schedule mentioned.

(3.) Any such table or form when altered shall be published in the *Gazette*⁽⁶⁾ and upon such publication being made such table or form shall have the same force as if it were included in the Schedule to this Ordinance but no alteration made by the Lieutenant-Governor⁽²⁾ in the table marked A contained in the Second Schedule shall affect any company registered prior to the date of such alteration or repeal as respects such company any portion of such table.

Second Schedule, Table A.

72.—(1.) Any company formed or registered under this Part of this Ordinance may from time to time by writing under its common seal agree to refer and may refer to arbitration in accordance with the provisions of any Ordinance for the time being in force relating to arbitration any existing or future difference question or other matter whatsoever in dispute between itself and any other company or person.

ARBITRATIONS.

Arbitrations between companies and others.

Imp. *Ib.* s. 119. N.S.W. *Ib.* ss. 75 and 76. Q. *Ib.* ss. 71 and 72.

(2.) The parties to the arbitration may delegate to the persons to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by themselves or by their directors or other managing body.

(3.) All the provisions of any such Ordinance as last aforesaid shall be deemed to apply so far as they are applicable to arbitrations in pursuance of this Part of this Ordinance.

73. Every appointment of an arbitrator shall be made—

Appointment of arbitrator.

(a) on the part of such company—

N.S.W. *Ib.* s. 77.

- (i) under its common seal; or
- (ii) under the hand of the manager or secretary or any two directors of the company; or
- (iii) under the hand of the liquidator if the company is in liquidation;

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(6) No alterations or additions to the tables and forms have been published in *Papua Govt. Gaz.*

COMPANIES AND BODIES CORPORATE—

- (b) on the part of any other party under the hand of such party;
- (c) on the part of a corporation aggregate under the common seal of such corporation.

Division 4.—Winding-up.

Jurisdiction in chambers.
N.S.W. No. 40 of 1899, s. 78.
Q. 27 Vic. No. 4, s. 82.

74. Any of the powers vested in the Court by this Division of this Ordinance may be exercised in chambers by a judge of the Central Court.⁽²⁾

Meaning of "contributory."
Imp. 8 Edw. VII., c. 69, s. 124; N.S.W. 1b, s. 79.
Q. 1b, s. 73.

75.—(1.) The term "contributory" shall mean every person liable to contribute to the assets of a company formed or registered under this Part of this Ordinance in the event of the same being wound-up and shall also in all proceedings for determining the persons who are to be deemed contributories and in all proceedings prior to the final determination of such proceedings include any person alleged to be a contributory.

(2.) In the event of an unregistered company being wound-up every person shall be deemed to be a contributory who is liable at law or in equity to pay or contribute to the payment of—

- (a) any debt or liability of such company; or
- (b) any sum for the adjustment of the rights of the members amongst themselves; or
- (c) the costs charges and expenses of winding-up

and every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid.

(3.) In the event of a company registered under the provisions of Division 6 of this Part of this Ordinance being wound-up in addition to the persons liable as contributories under Sub-section one of this section every person shall be a contributory in respect of the debts and liabilities of the company contracted prior to registration who is liable to pay or contribute to the payment of—

- (a) any debt or liability of the company contracted prior to the registration; or
- (b) any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability; or

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

- (c) the costs charges and expenses of winding-up the company so far as relates to such debts or liabilities as aforesaid

and every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid.

76.—(1.) The liability of any person to contribute to the assets of a company in the event of the same being wound-up under this Part of this Ordinance shall be deemed to create a debt of the nature of a specialty accruing due from such person at the time when his liability commenced but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability.

Liability of contributory.
Imp. 8 Edw. VII., c. 69, s. 125.
N.S.W. No. 40 of 1899, s. 80.
Q. 27 Vic. No. 4, s. 74.

(2.) In the case of the insolvency of any contributory or person deemed to be a contributory the estimated value of his liability to future calls as well as calls already made may be proved in his estate.

77. If any contributory or person deemed to be a contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned his executors or administrators shall be liable in a due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory and such executors and administrators shall be deemed to be contributories accordingly.

Contributories in case of death.
Imp. *ib.* s. 126.
N.S.W. *ib.* s. 81.
Q. *ib.* s. 75.

78. If any contributory or person deemed to be a contributory becomes insolvent either before or after he has been placed on the list of contributories his assignee or trustee shall be deemed to represent such contributory for all the purposes of the winding-up and shall be deemed to be a contributory accordingly and may be called upon to admit to proof against the estate of such insolvent or otherwise to allow to be paid out of his assets in due course of law any moneys due from such insolvent in respect of his liability to contribute to the assets of the company being wound-up.

Contributories in case of insolvency.
Imp. *ib.* s. 127.
N.S.W. *ib.* s. 82.
Q. *ib.* s. 76.

79. If any female contributory or female deemed to be a contributory marries either before or after she has been placed on the list of contributories then subject to the provisions of any Ordinance relating to the property and contracts of married women her husband shall during the continuance of the marriage be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married and he shall be deemed to be a contributory accordingly.

Contributories in case of marriage.
Imp. *ib.* s. 128.
N.S.W. *ib.* s. 83.
Q. *ib.* s. 77.

COMPANIES AND BODIES CORPORATE—

WINDING-UP
BY THE COURT.
Circumstances
in which
company may
be wound-up
by Court.

Imp. 8 Edw.
VII., c. 69, s.
129.
N.S.W. No. 40
of 1899, s. 84.
Q. 27 Vic.
No. 4, s. 78.

80. Companies may be wound-up by the Court under this Part of this Ordinance under the following circumstances (that is to say) :—In the case of a company formed or registered under this Part of this Ordinance—

- (a) whenever the company has passed a special resolution requiring the company to be wound-up by the Court;
- (b) whenever the company does not commence its business within a year from its incorporation or suspends its business for the space of a whole year;
- (c) whenever the members are reduced in number to less than seven;
- (d) whenever the company is unable to pay its debts;
- (e) whenever the Court is of opinion that it is just and equitable that the company should be wound-up.

In the case of an unregistered company—

- (f) whenever the company is dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding-up its affairs;

and also under the circumstances set out in Sub-sections (d) and (e) of this section.

Power to refer
winding-up
to Registrar of
Court.

N.S.W. *Ib.* s. 85.

81.—(1.) The Court in making an order under this Part of this Ordinance for winding-up a company may direct all subsequent proceedings for winding-up the same to be had and taken before the Registrar of the Central Court⁽²⁾ and such Registrar shall for such winding-up have all the powers of the Court subject however to appeal to the Court.

(2.) The Registrar of the Central Court⁽²⁾ may refer any matter to the Court which he may think proper to be determined by the Court.

Company when
deemed unable
to pay its debts.
Imp. *Ib.* s. 130.
N.S.W. *Ib.* s. 86.
Q. *Ib.* s. 79.

82. A company shall be deemed to be unable to pay its debts—
In the case of a company formed or registered under this Part of this Ordinance—

- (a) whenever a creditor by assignment or otherwise to whom the company is indebted at law or in equity in a sum exceeding Fifty pounds then due has served on the company by leaving the same at their registered office a demand under his hand requiring the company to pay the sum so due and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum or to secure

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

or compound for the same to the reasonable satisfaction of the creditor;

- (b) whenever execution or other process issued on a judgment decree or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the company is returned unsatisfied in whole or in part;
- (c) whenever it is proved to the satisfaction of the Court that the company is unable to pay its debts.

Imp. 8 Edw.
VII., c. 69,
s. 268.

In the case of an unregistered company—

- (d) under the circumstances set out in Sub-section (a) of this section except that the service required shall be effected by leaving the demand therein mentioned at the principal place of business of the company or by delivery of the same to the secretary or some director or principal officer of the company or in such manner as the Court may approve or direct; or
- (e) under the circumstances set out in Sub-section (b) of this section except that the execution therein mentioned shall further extend to execution or other process issued on a judgment decree or order obtained in any proceeding against any member of the company as such or against any person authorized to be sued as nominal defendant on behalf of the company; or
- (f) under the circumstances set out in Sub-section (c) of this section; or
- (g) whenever—
 - (i) any action suit or other proceeding has been instituted against any member of the company for any debt or demand due or claimed to be due from the company or from him in his character of member of the company; and
 - (ii) notice in writing of the institution of such action suit or other proceeding has been served upon the company by leaving the same at the principal place of business of the company or by delivering it to the secretary or some director manager or principal officer of the company or by otherwise serving the same in such manner as the Court may approve or direct; and

COMPANIES AND BODIES CORPORATE—

- (iii) the company has not within ten days after service of such notice paid secured or compounded for such debt or demand or procured such action suit or other proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against such suit action or other proceeding and against all costs damages and expenses to be incurred by him by reason of the same.

Place of business of unregistered company.

Imp. 8 Edw. VII., c. 69, s. 268; N.S.W. No. 40 of 1899, s. 88.

83. The principal place of business of an unregistered company shall for all the purposes of the winding-up of such company be deemed to be the registered office of the company.

Unregistered company not to be wound-up under this Part.

Imp. *Ib.* s. 263 (ii). N.S.W. *Ib.* s. 88. Q. 27 Vic. No. 4, s. 193 (2).

84. No unregistered company shall be wound-up under this Part of this Ordinance voluntarily or subject to the supervision of the Court.

Application for winding-up to be by petition.

Imp. *Ib.* s. 137. N.S.W. *Ib.* s. 89. Q. *Ib.* s. 81.

85.—(1.) Any application to the Court under this Part of this Ordinance for the winding-up of a company shall be by petition and such petition may be presented—

- (a) by the company; or
- (b) by any creditor or contributory of the company; or
- (c) by all or any of the above parties together or separately.

(2.) Every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

Contributory when qualified to prevent petition.

Imp. *Ib.* s. 137. N.S.W. *Ib.* s. 90. Q. 53 Vic. No. 18, s. 43.

86.—(1.) No contributory of a company under this Part of this Ordinance shall be capable of presenting a petition for winding-up such company unless—

- (a) the members of such company are reduced in numbers to less than seven; or
- (b) 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 a period of at least six months during the eighteen months previously to the commencement of the winding-up or have devolved upon him through the death of a former owner.

(2.) Where a share has during the whole or any part of the six months been held by or registered in the name of—

- (a) the wife of a contributory either before or after her marriage; or
- (b) any trustee for such wife or for the contributory such share shall for the purpose of this section be deemed to have been held by and registered in the name of the contributory.

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

Commencement of winding-up.
Imp. 8 Edw. VII., c. 69, s. 139;
N.S.W. No. 40 of 1899, s. 91;
Q. 27 Vic. No. 4, s. 83.

88.—(1.) The Court may at any time after the presentation of a petition for winding-up and before making an order for winding-up—

Court may grant an injunction.
Imp. *Ib.* s. 140.
N.S.W. *Ib.* s. 92.
Q. *Ib.* s. 84.

- (a) in the case of a company formed under the provisions of this Part of this Ordinance upon the application of the company or of any creditor or contributory of the company restrain further proceedings in any action suit or proceeding against the company;
- (b) in the case of a company registered under the provisions of Division 6 of this Part of this Ordinance or unregistered upon the application of any creditor of the company restrain further proceedings in any action suit or proceeding against any contributory of the company as well as against the company hereinbefore provided

upon such terms as the Court thinks fit.

(2.) The Court may also at any time after the presentation of such petition and before the first appointment of liquidators appoint provisionally an official liquidator of the estate and effects of the company.

89. Upon hearing the petition the Court may dismiss the same with or without costs or may adjourn the hearing conditionally or unconditionally and may make any interim order or any other order that it deems just.

Powers of Court on hearing petition.
Imp. *Ib.* s. 141.
N.S.W. *Ib.* s. 93.
Q. *Ib.* s. 85.

90. When an order has been made under this Part of this Ordinance for winding-up a company no suit action or other proceeding shall except with the leave of the Court and subject to such terms as the Court may impose be proceeded with or com-

Proceedings stayed after order.
Imp. *Ib.* s. 142.
N.S.W. *Ib.* s. 94.
Q. *Ib.* s. 86.

COMPANIES AND BODIES CORPORATE—

menced against such company or if the company is registered under the provisions of Division 6 of this Part of this Ordinance or unregistered against any contributory of such company in respect of any debt of such company.

Certain attachments, &c., to be void. N.S.W. No. 40 of 1899, s. 95.

91. Where any company is being wound-up by the Court or under the supervision of the Court any attachment sequestration distress or execution put in force against the estate or effects of such company after the commencement of the winding-up shall be void to all intents.

Copy of order to be forwarded to Registrar. Imp. 8 Edw. VII., c. 69, s. 143. N.S.W. *Ib.* s. 96. Q. 27 Vic. No. 4, s. 87.

92. When an order has been made under this Part of this Ordinance for winding-up a company a copy of such order shall forthwith be forwarded by the company to the Registrar who shall make a minute thereof in his books relating to the company.

Power of Court to stay winding-up. Imp. *Ib.* s. 144. N.S.W. *Ib.* s. 97. Q. *Ib.* s. 88.

93. The Court may at any time after an order has been made for winding-up a company upon the application of any creditor or contributory of such company and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed make an order staying the same either altogether or for a limited time on such terms and subject to such conditions as it deems fit.

Provisions apply to unregistered companies. N.S.W. *Ib.* s. 98. Q. *Ib.* ss. 191 to 198.

94.—(1.) The general provisions of this Part of this Ordinance with respect to winding-up companies shall apply to unregistered companies and to companies registered under Division 6 of this Part of this Ordinance but subject to the special provisions of this Ordinance with regard to such companies respectively.

(2.) The special provisions in this Ordinance relating to unregistered companies and to companies under Division 6 of this Part of this Ordinance shall be deemed to be made in addition to and not in restriction of such general provisions; and the Court or official liquidator may in addition to any special thing contained in this Part of this Ordinance exercise any powers or do any act in the case of such companies which may be exercised or done by it or him in winding-up companies formed under this Ordinance.

(3.) An unregistered company shall not except with respect to a winding-up be deemed to be a company under this Part of this Ordinance and then only to the extent herein provided.

Effect of order on share capital of company limited by guarantee. N.S.W. *Ib.* s. 99. Q. *Ib.* s. 89.

95. When an order has been made for winding-up a company limited by guarantee and having a capital divided into shares any share capital that may not have been called up shall be deemed to be assets of the company and to be a debt of the nature of a specialty due to the company from each member to the extent of

any sums that may be unpaid on any shares held by him and payable at such time as may be appointed by the Court.

96.—(1.) The Court may as to all matters relating to the winding-up have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence and may if it thinks it expedient direct meetings of the creditors or contributories to be summoned held and conducted in such manner as the Court directs for the purpose of ascertaining their wishes and may appoint a person to act as chairman of any such meeting and to report the result of such meeting to the Court.

Court may have regard to wishes of creditors or contributories.
Imp. 8 Edw. VII., c. 69, s. 145.
N.S.W. No. 40 of 1899, s. 100.
Q. 27 Vic. No. 4, s. 90.

(2.) In the case of creditors regard is to be had to the value of the debts due to each creditor and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

97.—(1.) For the purpose of conducting the proceedings in winding-up and assisting the Court therein there may be appointed by the Court by which the order for winding-up is made persons to be called official liquidators and the Court may appoint such persons either provisionally or otherwise as it thinks fit to the office of official liquidators.

OFFICIAL LIQUIDATORS.
Appointment of official liquidators.
Imp. *Ib.* s. 149.
N.S.W. *Ib.* s. 101.
Q. *Ib.* s. 91.

(2.) In all cases if more persons than one are appointed to the office of official liquidator the Court shall declare whether any act hereby required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons.

(3.) The Court may also determine whether any and what security is to be given by any official liquidator on his appointment.

(4.) If no official liquidator is appointed or during any vacancy in such appointment all the property of the company being wound-up shall be deemed to be in the custody of the Court.

98.—(1.) Any official liquidator may resign or be removed by the Court on due cause shown and any vacancy in the office of an official liquidator appointed by the Court shall be filled by the Court.

Resignation, removal and remuneration.
Imp. *Ib.* s. 149.
N.S.W. *Ib.* s. 102.
Q. *Ib.* s. 92.

(2.) There shall be paid to the official liquidator such salary or remuneration by way of percentage or otherwise as the Court may direct and if more liquidators than one are appointed such remuneration shall be distributed amongst them in such proportions as the Court directs.

COMPANIES AND BODIES CORPORATE—

Style and duties
of official
liquidator.

Imp. 8 Edw.
VII., c. 69, ss.
149, 150.
N.S.W. No. 40
of 1899, s. 103.
Q. 27 Vic.
No. 4, s. 93.

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

(2.) The official liquidator shall take into his custody or under his control all the property effects and choses in action to which such company is or appears to be entitled and shall perform such duties in reference to the winding-up as may be imposed by the Court.

Powers of official
liquidator.

Imp. *Ib.* s. 151.
N.S.W. *Ib.* s.
104.
Q. *Ib.* s. 94.

100.—(1.) The official liquidator shall have power with the sanction of the Court to—

- (a) bring or defend any action suit or prosecution or other legal proceeding in the name and on behalf of the company;
- (b) carry on the business of the company so far as may be necessary for the beneficial winding-up of the same;
- (c) sell the real and personal property effects 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;
- (d) do all acts and execute in the name of and on behalf of the company all deeds receipts agreements of reference or submissions to arbitration and other documents and for that purpose to use when necessary the company's seal;
- (e) prove rank claim and draw a dividend in the matter of the bankruptcy or insolvency of any contributory for any balance against the estate of such contributory and take and receive dividends in respect of such balance in the matter of bankruptcy or insolvency as a separate debt due from such bankrupt or insolvent and rateably with the other separate creditors;
- (f) draw accept make and indorse any bill of exchange or promissory-note in the name and on behalf of the company and raise upon the security of the assets of the company any requisite sums of money; and the drawing accepting making or indorsing of every such bill of exchange or promissory-note as aforesaid on behalf of such company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn accepted made or indorsed by or on behalf of such company in the course of carrying on the business thereof;

Companies Ordinance, 1912-1926.

(g) take out if necessary in his official name letters of administration to any deceased contributory and do in his official name such other acts as may be necessary for obtaining payment of any moneys due from a contributory or from his estate and cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration or otherwise uses his official name for obtaining payment of any moneys due from a contributory such moneys shall for the purpose of enabling him to take out such letters or recover such moneys be deemed to be due to the official liquidator himself;

(h) do and execute all such other things as may be necessary for winding-up the affairs of the company and distributing its assets.

101. The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court and where an official liquidator is provisionally appointed may limit and restrict his powers by the order appointing him.

Discretion of liquidator.
Imp. 8 Edw. VII., c. 69, s. 151;
N.S.W. No. 40 of 1899, s. 105;
Q. 27 Vic. No. 4, s. 95.

102. The official liquidator may with the sanction of the Court appoint a solicitor to assist him in the performance of his duties.

Solicitor.
N.S.W. *Ib.* s. 106.
Q. *Ib.* s. 96.

103. As soon as may be after making an order for winding-up a company the Court shall—

ORDINARY POWERS OF COURT.

(a) settle a list of contributories with power to rectify the register of members in all cases where such rectification is required in pursuance of this Part of this Ordinance; and

Order for collection of assets.
Imp. *Ib.* s. 163.
N.S.W. *Ib.* s. 107.
Q. *Ib.* s. 97.

(b) cause the assets of the company to be collected and applied in discharge of its liabilities.

104.—(1.) 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 being liable for the debts of others.

Representative contributories.
Imp. *Ib.* s. 163.
N.S.W. *Ib.* s. 108.
Q. *Ib.* s. 98.

(2.) It shall not be necessary where the personal representatives of any deceased contributory is placed on the list to add the heirs or devisees of such contributory; nevertheless such heirs or devisees may be added as and when the Court thinks fit.

COMPANIES AND BODIES CORPORATE—

Court may require delivery of property.

Imp. 8 Edw. VII., c. 69, s. 164.
N.S.W. No. 40 of 1899, s. 109.
Q. 27 Vic. No. 4, s. 99.

105. The Court may at any time after making an order for winding-up a company require any contributory for the time being settled on the list of contributories or any trustee receiver banker or agent or officer of the company to pay deliver convey surrender or transfer forthwith or within such time as the Court directs to the official liquidator any sum or balance books papers estate or effects which happen to be in his hands for the time being and to which the company is prima facie entitled.

Court may order payment of debts by contributory.

Imp. *Ib.* s. 165.
N.S.W. *Ib.* s. 110.
Q. *Ib.* s. 100.

106.—(1.) The Court may at any time after making an order for winding-up a company make an order on any contributory for the time being settled on the list of contributories directing payment to be made in manner in the said order mentioned of any moneys due from him or from the estate of the person whom he represents to the company exclusive of any moneys which he or such estate may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this Division of this Part of this Ordinance.

(2.) In making such order when a company is not limited the Court may allow to such contributory by way of set-off any moneys due to him or the estate which he represents from the company on any independent dealing or contract with the company but not any moneys due to him as a member of the company in respect of any dividend or profit.

(3.) When all the creditors of a company whether limited or unlimited are paid in full any moneys due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent calls.

Court may make calls.

Imp. *Ib.* s. 166.
N.S.W. *Ib.* s. 111.
Q. *Ib.* s. 101.

107.—(1.) The Court may at any time after making an order for winding-up a company and either before or after it has ascertained the sufficiency of the assets of the company make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of contributories to the extent of their liability for payment of all or any sums it deems necessary—

- (a) to satisfy the debts and liabilities of the company;
- (b) to satisfy the costs charges and expenses of winding-up; and
- (c) for the adjustment of the rights of the contributories amongst themselves.

(2.) The Court may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

Companies Ordinance, 1912-1926.

- 108.** The Court may order any contributory purchaser or other person from whom money is due to the company being wound-up to pay the same into a bank to be named by the Court to the account of the official liquidator instead of to the official liquidator and such order may be enforced in the same manner as if it had directed payment to the official liquidator.
- 109.** All moneys bills notes and other securities so paid and delivered into such bank shall be subject to such order and regulation for the keeping of the account of such moneys and other effects and for the payment and delivery in or investment and payment and delivery out of the same as the Court may direct.
- 110.** If any person made a contributory as a personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him proceedings may be taken for administering the personal and real estates of such deceased contributory or either of such estates and of compelling payment thereout of the moneys due.
- 111.** Any order made by the Court in pursuance of this Part of this Ordinance upon any contributory shall subject to the provisions herein contained for appealing against such order be conclusive evidence that the moneys (if any) thereby appearing to be due or ordered to be paid are due and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons and in all proceedings whatsoever.
- 112.** The Court may fix a certain day or certain days on or within which creditors of the company being wound-up are to prove their debts or claims or to be excluded from the benefit of any distribution made before such debts are proved.
- 113.** The Court shall adjust the rights of the contributories among themselves and distribute any surplus that may remain amongst the parties entitled thereto.
- 114.** 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 estate of the company being wound-up of the costs charges and expenses incurred in winding-up in such order or priority as the Court thinks just.

Court may order payment into bank.

Imp. 8 Edw. VII., c. 69, s. 167.
N.S.W. No. 40 of 1899, s. 112.
Q. 27 Vic. No. 4, s. 102.

Regulations of account with bank.

Imp. *Ib.* s. 167.
N.S.W. *Ib.* s. 112.
Q. *Ib.* s. 102.

Representative contributory not making payment ordered.

N.S.W. *Ib.* s. 114.
Q. *Ib.* s. 104.

Order conclusive evidence.

Imp. *Ib.* s. 168.
N.S.W. *Ib.* s. 115.
Q. *Ib.* s. 104.

Exclusion of creditors not proving in time.

Imp. *Ib.* s. 169.
N.S.W. *Ib.* s. 116.
Q. *Ib.* s. 106.

Amended by No. 4 of 1926, s. 3.

Court to adjust rights of contributories.

Imp. *Ib.* s. 170.
N.S.W. *Ib.* s. 117.
Q. *Ib.* s. 107.

Court may order costs.

Imp. *Ib.* s. 171.
N.S.W. *Ib.* s. 118.
Q. *Ib.* s. 108.

COMPANIES AND BODIES CORPORATE—

Dissolution order.

Imp. 8 Edw. VII., c. 69, s. 172.
N.S.W. No. 40 of 1899, ss. 119, 121.
Q. 27 Vic. No. 4, ss. 109, 111.

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

(2.) Any order so made shall be reported by the official liquidator to the Registrar who shall make a minute accordingly in his books of the dissolution of such company.

(3.) If the official liquidator makes default in reporting to the Registrar in the case of a winding-up by the Court the order that the company be dissolved he shall be liable to a penalty not exceeding Five pounds for every day during which he is so in default.

Petition constitutes a *lis pendens*.
N.S.W. *Ib.* s. 122.

116. Any petition for winding-up by the Court under this Part of this Ordinance shall constitute a *lis pendens*.

EXTRAORDINARY POWERS OF COURT.

Court may summon persons suspected to have property of company.
Imp. *Ib.* s. 174.
N.S.W. *Ib.* s. 123.
Q. *Ib.* s. 112.

117.—(1.) The Court may after it has made an order for winding-up a company summon before it—

(a) any officer of the company; or

(b) any person known or suspected to have in his possession any of the estate or effects of the company or supposed to be indebted to the company; or

(c) any person whom the Court may deem capable of giving information concerning the trade dealings estate or effects of the company

and may require any such officer or person to produce any books papers deeds writings or other documents in his custody or power relating to the company.

(2.) If any person so summoned after being tendered a reasonable sum for his expenses refuses to come before the Court at the time appointed having no lawful impediment (made known to the Court at the time of its sitting and allowed by it) the Court may cause such person to be apprehended and brought before the Court for examination.

(3.) In cases where any person claims any lien on papers deeds writings or documents produced by him such production shall be without prejudice to such lien and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

Examination before Court.
Imp. *Ib.* s. 174.
N.S.W. *Ib.* s. 124.
Q. *Ib.* s. 113.

118. The Court may examine upon oath either orally or upon written interrogatories any person appearing or brought before them in manner aforesaid concerning the affairs dealings estate or effects of the company and may reduce into writing the answers of every such person and require him to subscribe the same.

119. The Court may at any time before or after it has made an order for winding-up a company upon proof being given that there is probable cause for believing that any contributory is about to quit the Territory or otherwise abscond or to remove or conceal any of his goods or chattels for the purpose of evading payment of calls or for avoiding examination in respect of the affairs of the company cause such contributory to be arrested and his books papers moneys securities for moneys goods and chattels to be seized and him and them to be safely kept until such time as the Court may order.

Power to arrest
absconding
contributory.
Imp. 8 Edw.
VII., c. 69, s.
176.
N.S.W. No. 40
of 1899, s. 125.
Q. 27 Vic. No. 4,
s. 114.

120. Any powers by this Part of this Ordinance conferred on the Court shall be deemed to be in addition to and not in restriction of any other existing powers of instituting proceedings against any contributory or the estate of any contributory or against any debtor of the company for the recovery of any call or other sums due from such contributory or debtor or his estate and such proceedings may be instituted accordingly.

Powers of Court
cumulative.
Imp. *Ib.* s. 177.
N.S.W. *Ib.*
s. 126.
Q. *Ib.* s. 115.

121. All orders made by the Court under this Part of this Ordinance may be enforced in the same manner in which orders of the Court made in any action pending therein may be enforced.

ENFORCEMENT
OF AND APPEAL
FROM ORDERS.
Enforcement of
orders.
Imp. *Ib.* s. 178.
N.S.W. *Ib.*
s. 127.
Q. *Ib.* s. 116.

122. Any order or decision made or given in the matter of a winding-up by the Court may be reheard or appealed from within the same time and in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the Central Court⁽²⁾ in cases within the ordinary jurisdiction of the Central Court.⁽²⁾

Appeal from
orders.
Imp. *Ib.* s. 181.
N.S.W. *Ib.* s.
128.
Q. *Ib.* s. 117.

123.—(1.) Any affidavit affirmation or declaration required to be sworn or made under the provisions or for the purposes of this Division of this Part of this Ordinance may be lawfully sworn or made in any of His Majesty's dominions before any Court judge or person lawfully authorized to take and receive affidavits affirmations or declarations or before any of His Majesty's consuls or vice-consuls in any foreign parts out of His Majesty's dominions.

Affidavits, how
sworn.
Imp. *Ib.* s. 228.
N.S.W. *Ib.*
s. 129.
Q. *Ib.* s. 118.

(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 affirmation or declaration or to any other document to be

(2) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

COMPANIES AND BODIES CORPORATE—

used for the purposes of this Division of this Part of this Ordinance.

**VOLUNTARY
WINDING-UP
OF COMPANY.**

Circumstances
in which
company may
be wound-up
voluntarily.

Imp. 8 Edw.
VII., c. 69, s.
182.
N.S.W. No. 40
of 1899, s. 134.
Q. 27 Vic. No. 4,
s. 119.

124.—(1.) A company formed or registered under this Part of this Ordinance may be wound-up voluntarily whenever—

- (a) the period (if any) fixed for the duration of the company by the articles of association expires or the event (if any) occurs upon the occurrence of which it is provided by the articles of association 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) the company has passed a special resolution requiring the company to be wound-up voluntarily;
- (c) the company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot by reason of its liabilities continue its business and that it is advisable to wind-up the same.

(2.) For the purposes of this Ordinance any resolution shall be deemed to be extraordinary which is passed in such manner as would if it had been confirmed by a subsequent meeting have constituted a special resolution.

Commencement
of voluntary
winding-up.

Imp. *Ib.* s. 183.
N.S.W. *Ib.*
s. 131.
Q. *Ib.* s. 120.

125. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorizing such winding-up.

Effect of
voluntary
winding-up.

Imp. *Ib.* s. 184.
N.S.W. *Ib.* s.
132.
Q. *Ib.* s. 121.

126.—(1.) Whenever a company is wound-up voluntarily the company shall from the date of the commencement of such winding-up cease to carry on its business except in so far as may be required for the beneficial winding-up thereof.

(2.) All transfers of shares except transfers made to or with the sanction of the liquidators or alteration in the status of the members of the company taking place after the commencement of such winding-up shall be void.

(3.) The corporate state and all the corporate powers of such company shall notwithstanding it is otherwise provided by its regulations continue until the affairs of the company are wound-up.

Notice of
resolution.

Imp. *Ib.* s. 185.
N.S.W. *Ib.*
s. 133.
Q. *Ib.* s. 122.

127. Notice of any special resolution or extraordinary resolution passed for winding-up a company voluntarily shall be given by advertisement in the *Gazette*.

128. The following consequences shall ensue upon the voluntary winding-up of a company:—

Consequences
of voluntary
winding-up.

Imp. 8 Edw.
VII., c. 69, s.
186.
N.S.W. No. 40
of 1899, s. 134.
Q. 27 Vic. No. 4,
s. 123.

- (a) The property of the company shall be applied in satisfaction of its liabilities *pari passu* and subject thereto shall unless it be otherwise provided by the regulations of the company be distributed amongst the members according to their rights and interests in the company.
- (b) Liquidators shall be appointed for the purpose of winding-up the affairs of the company and distributing the property.
- (c) The company in general meeting shall appoint such persons as it thinks fit to be liquidators and may fix the remuneration to be paid to them.
- (d) If one person only is appointed all the provisions herein contained in reference to several liquidators shall apply to him.
- (e) Upon the appointment of liquidators all the powers of the directors shall cease except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers.
- (f) When several liquidators are appointed every power hereby given 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.
- (g) The liquidators may without the sanction of the Court exercise all powers by this Part of this Ordinance given to the official liquidator.
- (h) The liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the company and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories.
- (i) The liquidators may at any time after the passing of the resolution for winding-up the company and before they have ascertained the sufficiency of the assets of the company call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company and the costs charges and expenses of winding it up and for the adjustment

COMPANIES AND BODIES CORPORATE—

of the rights of the contributories amongst themselves and the liquidators may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

- (j) The liquidators shall pay the debts of the company and adjust the rights of the contributories amongst themselves.

Effect of voluntary winding-up on share capital of company limited by guarantee.

N.S.W. No. 40 of 1899, s. 135.
Q. 27 Vic. No. 4, s. 124.

129. Where a company limited by guarantee and having a capital divided into shares is being wound-up voluntarily any share capital that may not have been called up shall be deemed to be assets of the company and to be a specialty debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by him and payable at such time as may be appointed by the liquidators.

Power of company to delegate appointment of liquidators.

Imp. 8 Edw. VII., c. 69, s. 190.
N.S.W. *Ib.* s. 136.
Q. *Ib.* s. 125.

130.—(1.) A company about to be or in the course of being wound-up voluntarily may by extraordinary resolution—

- (a) delegate to its creditors or to any committee of its creditors the power of appointing liquidators or any of them and supplying any vacancies in the appointment of liquidators; or
- (b) enter into any arrangement with respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised.

(2.) Any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the company.

Liquidators or contributors may apply to Court.

Imp. *Ib.* s. 193.
N.S.W. *Ib.* s. 137.
Q. *Ib.* s. 128.

131.—(1.) Where a company is being wound-up voluntarily the liquidators or any contributory of the company may apply to the Court—

- (a) to determine any question arising in the matter of such winding-up; or
- (b) to exercise as respects the enforcing of calls or in respect of 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 such question or the required exercise of power will be just and beneficial may accede wholly or partially to such application on such terms and subject to such conditions as the Court thinks fit or it may make such other order or decree on such application as the Court thinks just.

132.—(1.) Where a company is being wound-up voluntarily the liquidators may during the continuance of such winding-up summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution or for any other purposes they think fit.

Liquidators may call general meetings.

Imp. 8 Edw. VII., c. 69, s. 194.
N.S.W. No. 40 of 1899, s. 138.
Q. 27 Vic. No. 4, s. 129.

(2.) In the event of the winding-up continuing for more than one year the liquidators shall summon a general meeting of the company at the end of the first year and of each succeeding year from the commencement of the winding-up or as soon thereafter as may be convenient and shall lay before such meeting an account showing their acts and dealings and the manner in which the winding-up has been conducted during the preceding year.

133.—(1.) If any vacancy occurs in the office of liquidators appointed by the company by death resignation or otherwise the company in general meeting may subject to any arrangement they may have entered into with their creditors fill up such vacancy.

Power to fill vacancy in office of liquidator.

Imp. *Ib.* s. 189.
N.S.W. *Ib.* s. 139.
Q. *Ib.* s. 130.

(2.) A general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators (if any) or by any contributory of the company and shall be deemed to have been duly held if held in manner prescribed by the regulations of the company or in such other manner as may on application by the continuing liquidators (if any) or by any contributory of the company be determined by the Court.

134.—(1.) If from any cause whatever there is no liquidator acting in the case of a voluntary winding-up the Court may on the application of a contributory appoint a liquidator.

Power of Court to appoint liquidators.

N.S.W. *Ib.* s. 140.
Q. *Ib.* s. 131.

(2.) The Court may also on due cause shown remove any liquidator and appoint another liquidator to act in the matter of a voluntary winding-up.

135.—(1.) As soon as the affairs of the company are fully wound-up the liquidators shall make up an account showing the manner in which such winding-up has been conducted and the property of the company disposed of and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidators.

Liquidators' account on conclusion of winding-up.

Imp. *Ib.* s. 195.
N.S.W. *Ib.* s. 141.
Q. *Ib.* s. 132.

(2.) The meeting shall be called by advertisement specifying the time place and object of such meeting and such advertisement shall be published one month at least previously to the meeting in the *Gazette* and in one or more newspapers (if any) circulating in the district in which the registered office of the company is situated.

COMPANIES AND BODIES CORPORATE—

Liquidators to report to Registrar.

Imp. 8 Edw. VII., c. 69, s. 195.
N.S.W. No. 40 of 1899, s. 142.
Q. 27 Vic. No. 4, s. 133.
N.S.W. No. 22 of 1906, s. 18.

136.—(1.) The liquidators shall make a return to the Registrar—

(a) of such meeting having been held; and

(b) of the date at which the same was held.

(2.) On the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved.

(3.) In the event of no quorum being present at such meeting it shall be sufficient compliance with this section for the liquidators to make a return that such meeting has been duly convened and that no quorum was present.

(4.) If the liquidators make default in making such return to the Registrar they shall incur a penalty not exceeding Five pounds for every day during which such default continues.

Costs of voluntary liquidation.

Imp. *Ib.* s. 196.
N.S.W. No. 40 of 1899, s. 143.
Q. *Ib.* s. 134.

137. All costs charges and expenses properly incurred in the voluntary winding-up of a company including the remuneration of the liquidators shall be payable out of the assets of the company in priority to all other claims.

Saving rights of creditors.

Imp. *Ib.* s. 197.
N.S.W. *Ib.* s. 144.
Q. *Ib.* s. 135.

138. The voluntary winding-up of a company shall not be a bar to the right of any creditor to have the same wound-up by the Court if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

Court may adopt proceedings.

Imp. *Ib.* s. 198.
N.S.W. *Ib.* s. 145.
Q. *Ib.* s. 136.

139. Where a company is in course of being wound-up voluntarily and proceedings are taken for the purpose of having the same wound-up by the Court the Court may notwithstanding that it makes an order directing the company to be wound-up by the Court provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

WINDING-UP SUBJECT TO THE SUPERVISION OF THE COURT.

Power of Court.

Imp. *Ib.* s. 199.
N.S.W. *Ib.* s. 146.
Q. *Ib.* s. 137.

140. When a resolution has been passed by a company to wind-up voluntarily the Court may make an order directing that the voluntary winding-up shall continue but—

(a) subject to such supervision of the Court; and

(b) with such liberty for creditors contributories or others to apply to the Court; and generally

(c) upon such terms and subject to such conditions as the Court thinks just.

141. A petition praying wholly or in part that a voluntary winding-up should continue but subject to the supervision of the Court (and which winding-up is hereinafter referred to as a winding-up under 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 the company by the Court.

Petition.
Imp. 8 Edw.
VII., c. 69, s.
200.
N.S.W. No. 40
of 1899, s. 147.
Q. 27 Vic. No. 4,
s. 138.

142.—(1.) The Court may—

- (a) in determining whether a company is to be wound-up altogether by the Court or under the supervision of the Court;
- (b) in the appointment of liquidators; and
- (c) in all other matters relating to the winding-up under supervision

Court may
have regard to
wishes of
creditors.
Imp. *Ib.* s. 201.
N.S.W. *Ib.*
s. 148.
Q. *Ib.* s. 139.

have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

(2.) The Court may direct meetings of the creditors or contributories to be summoned held and regulated in such manner as the Court directs for the purpose of ascertaining their wishes and may appoint a person to act as chairman of any such meeting and to report the result of such meeting to the Court.

(3.) In the case of creditors regard shall be had to the value of the debts due to each creditor and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

143.—(1.) Where any order is made by the Court for a winding-up under the supervision of the Court the Court may in such order or in any subsequent order appoint any additional liquidators.

Court may
appoint and
remove
liquidators.
Imp. *Ib.* s. 202.
N.S.W. *Ib.* s.
149.
Q. *Ib.* s. 140.

(2.) Any liquidators so appointed by the Court shall have the same powers be subject to the same obligations and in all respects stand in the same position as if they had been appointed by the company.

(3.) The Court may from time to time remove any liquidators so appointed by the Court and fill up any vacancy occasioned by such removal or by death or resignation.

144.—(1.) Where an order is made for a winding-up under the supervision of the Court the liquidators appointed to conduct such winding-up may subject to any restrictions imposed by the Court exercise all their powers without the sanction or intervention of the Court in the same manner as if the company were being wound-up altogether voluntarily.

Effect of
supervision
order.
Imp. *Ib.* s. 203.
N.S.W. *Ib.*
s. 150.
Q. *Ib.* s. 141.

COMPANIES AND BODIES CORPORATE—

(2.) Save as aforesaid any order made by the Court for a winding-up under the supervision of the Court shall for all purposes including the staying of actions and other proceedings be deemed to be an order of the Court for winding-up the company by the Court and shall confer full authority on the Court—

- (a) to make calls; or
- (b) to enforce calls made by the liquidators; and
- (c) to exercise all other powers which it might have exercised if an order had been made for winding-up the company altogether by the Court.

(3.) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators the expression “official liquidators” shall be deemed to include the liquidators conducting the winding-up subject to the supervision of the Court.

Voluntary liquidators may be appointed official liquidators.

Imp. 8 Edw. VII., c. 69, s. 204.
N.S.W. No. 40 of 1899, s. 151.
Q. 27 Vic. No. 4, s. 142.

145. Where an order has been made for the winding-up of a company under the supervision of the Court and such order is afterwards superseded by an order directing the company to be wound-up compulsorily the Court may in such last-mentioned order or in any subsequent order appoint the voluntary liquidators or any of them either provisionally or permanently and either with or without the addition of any other persons to be official liquidators.

SUPPLEMENTAL PROVISIONS.

Avoidance of transfers, &c., after commencement of winding-up.

Imp. *Ib.* s. 205.
N.S.W. *Ib.* s. 152.
Q. *Ib.* s. 143.

146. Where a company is being wound-up by the Court or under the supervision of the Court all dispositions of the property effects and choses in action of such company and every transfer of shares or alteration in the status of the members of such company made between the commencement of the winding-up and the order for winding-up shall unless the Court otherwise orders be void.

Books prima facie evidence.

Imp. *Ib.* s. 220.
N.S.W. *Ib.* s. 153.
Q. *Ib.* s. 144.

147. Where a company is being wound-up all books accounts and documents of the company and of the liquidators shall as between the contributories of the company be prima facie evidence of the truth of all matters purporting to be therein recorded.

Disposal of books and documents.

Imp. *Ib.* s. 222.
N.S.W. *Ib.* s. 154.
Q. *Ib.* s. 145.

148.—(1.) Where a company has been wound-up under this Part of this Ordinance and is about to be dissolved the books accounts and documents of such company and of the liquidators may be disposed of in the following way (that is to say)—

- (a) where such company has been wound-up by or under the supervision of the Court in such way as the Court directs; and

(b) where such company has been wound-up voluntarily in such a way as the company by an extraordinary resolution directs.

(2.) After the lapse of five years from the date of such dissolution no responsibility shall rest on the company or the liquidators or any one to whom the custody of such books accounts and documents has been committed by reason that the same or any of them cannot be made forthcoming to any party claiming to be interested therein.

149.—(1.) When an order has been made for a winding-up by or under the supervision of the Court the Court may make such order for the inspection by creditors and contributories of books and papers as the Court thinks just.

Inspection of books.
Imp. 8 Edw. VII., c. 69, s. 221.
N.S.W. No. 40 of 1899, s. 155.
Q. 27 Vic. No. 4, s. 146.

(2.) Any books and papers in the possession of the company being wound-up may be inspected by creditors or contributories in conformity with the order of the Court but not further or otherwise.

150. Any person to whom any thing in action belonging to a company is assigned in pursuance of this Part of this Ordinance may bring or defend any action relating to such thing in action in his own name.

Assignee of chose in action may sue.
N.S.W. *Ib.* s. 156.
Q. *Ib.* s. 147.

151. In the event of a company being wound-up under this Part of this Ordinance all debts payable on a contingency and all claims against such 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 it is possible of the value of all 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.

Debts to be proved.
Imp. *Ib.* s. 206.
N.S.W. *Ib.* s. 157.
Q. *Ib.* s. 148.

152. The liquidators may—

(a) with the sanction of the Court where a company is being wound-up by or under the supervision of the Court; and

(b) with the sanction of an extraordinary resolution of the company where a company is being wound-up altogether voluntarily

General scheme of liquidation may be sanctioned.
Imp. *Ib.* s. 214.
N.S.W. *Ib.* s. 158.
Q. *Ib.* s. 149.

pay any classes of creditors in full or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors or persons having or alleging themselves to have any claim present or future certain or

COMPANIES AND BODIES CORPORATE—

contingent ascertained or sounding only in damages against such company or whereby such company may be rendered liable.

Arrangement
with creditors.
N.S.W. No. 40
of 1899, s. 159.

153.—(1.) Any arrangement entered into between a company about to be or in the course of being wound-up voluntarily and its creditors shall 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 of a company that has entered into any such arrangement with its creditors may within three weeks of the date of the completion of such arrangement appeal to the Court against such arrangement and the Court may thereupon as it thinks just amend vary or confirm the same.

Creditors'
meeting with
view to Court's
sanction of
compromises.

Imp. 8 Edw.
VII., c. 69, s.
120.
N.S.W. *lb.* s.
160.

154.—(1.) Where any compromise or arrangement is proposed between a company in the course of being wound-up either voluntarily or by or under the supervision of the Court and the creditors of the company or any class of such creditors the Court may in addition to any other of its powers on the application in a summary way of any creditor or the liquidator order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court directs.

(2.) If a majority in number representing three-fourths in value of such creditors or class of creditors present either in person or by proxy or attorney at such meeting agree to any arrangement or compromise such arrangement or compromise shall if sanctioned by the order of the Court be binding on all such creditors or class of creditors and also on the liquidator and contributories of the company.

(3.) The Court on the application of the company or of any creditor or person interested in the company before sanctioning any arrangement or compromise under this section may order such meetings to be summoned and inquiries made as it thinks fit and may alter or vary such arrangement or compromise and impose such conditions in the carrying out thereof as it thinks just.

(4.) The word "company" in this section shall include any company association or society entitled or liable to be wound-up under this Part of this Ordinance.

Power to
compromise.

N.S.W. *lb.*
s. 161.
Q. 27 Vic. No. 4,
s. 150.

155.—(1.) The liquidators may—

(a) with the sanction of the Court in the case of a winding-up by or under the supervision of the Court; and

(b) with the sanction of an extraordinary resolution of the company where a company is being wound-up altogether voluntarily

compromise all calls and liabilities to calls debts and liabilities capable of resulting in debts and all claims whether present or future certain or contingent ascertained or sounding only in damages subsisting or supposed to subsist between such company and any contributory or alleged contributory or other debtor or person apprehending liability to such company and all questions in any way relating to or affecting the assets of such company or the winding-up thereof upon the receipt of such sums payable at such times and generally upon such terms as may be agreed upon.

(2.) The liquidators may take any security for the discharge of such debts or liabilities and give complete discharges in respect of all or any such calls debts or liabilities.

156. Where in the course of a winding-up it appears that any past or present director manager liquidator or any officer of the company being wound-up has misapplied or retained in his own hands or become liable or accountable for any moneys 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 any liquidator creditor or contributory of the company notwithstanding that the offence is one for which the offender is criminally responsible examine into the conduct of such director manager or other officer and compel him—

Court may assess damages against delinquent directors, &c.
Imp 8 Edw. VII., c. 69, s. 215.
N.S.W. No. 40 of 1899, s. 162.
Q. 27 Vic. No. 4, s. 166.

- (i) to repay any moneys so misapplied or retained or for which he has become liable or accountable together with interest after such rate as the Court thinks just; or
- (ii) to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication retainer misfeasance or breach of trust as the Court thinks just.

157. If any director officer or contributory of such company destroys mutilates alters or falsifies any books papers writings or securities or makes or is privy to the making of any false or fraudulent entry in any register book of account or other document belonging to such company with intent to defraud or deceive any person every person so offending shall be deemed to be guilty of a crime and upon being convicted shall be liable to imprisonment for any term not exceeding seven years with hard labour.

Penalty on falsification of books.
Imp. *Ib.* s. 216.
N.S.W. *Ib.* s. 163.

158. If it appears in the course of a winding-up that any past or present director manager officer or member of the company being wound-up has been guilty of any offence in relation to the company for which he is criminally responsible—

Prosecution of delinquent directors, &c., on winding-up.
Imp. *Ib.* s. 217.
N.S.W. *Ib.* s. 164.
Q. *Ib.* ss. 168, 169.

- (a) the Court where such company is being wound-up by the Court or under the supervision of the Court may

COMPANIES AND BODIES CORPORATE—

on the application of any person interested in such winding-up or of its own motion direct the liquidator to institute a prosecution for such offence and may order the costs and expenses to be paid out of the assets of the company; and

- (b) the liquidator where such company is being wound-up altogether voluntarily with the previous sanction of the Court may prosecute such offender and all expenses properly incurred by him in such prosecution shall be payable out of the assets of the company in priority to all other liabilities.

Division 5.—Registration Office.

159. The registration of companies shall be conducted as follows that is to say:—

- (a) The Lieutenant-Governor⁽²⁾ may from time to time appoint such registrars assistant registrars clerks and servants as he may think necessary for the registration of companies.
- (b) The Lieutenant-Governor⁽²⁾ may make regulations⁽⁷⁾ with respect to the duties to be performed by any such registrars assistant registrars clerks and servants as aforesaid and may determine the place or places at which offices for the registration of companies are to be established.
- (c) Every person may inspect the documents kept by the Registrar and may require a copy or extract of any document or part of a document to be certified by the Registrar and there shall be paid for such inspection and for such certified copy or extract the respective fees specified in the table marked B in the Second Schedule hereto and such certified copy or extract shall be prima facie evidence of the matters therein contained in all legal proceedings whatever.

Division 6.—Companies Authorized to Register.

160.—(1.) The following regulations shall be observed with respect to the registration of companies under this Division of this Part of this Ordinance (that is to say) :—

- (a) No company having the liability of its members limited by Act of Parliament Ordinance Royal Charter or

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(7) No regulations have been published in *Papua Govt. Gaz.*

Constitution of registration office.

Imp. 8 Edw. VII., c. 69, s. 245.
N.S.W. No. 40 of 1899, s. 166.
Q. 27 Vic. No. 4, s. 172.

Second Schedule, Table B.

Registration of existing companies.

Imp. *Ib.* s. 249.
N.S.W. *Ib.* s. 167.
Q. *Ib.* s. 173.

letters patent and not being a joint-stock company as hereinafter defined shall so register.

- (b) No company having the liability of its members limited by Act of Parliament Ordinance Royal Charter or letters patent shall so register as an unlimited company or as a company limited by guarantee.
- (c) No company that is not a joint-stock company as hereinafter defined shall so register as a company limited by shares.
- (d) No company shall so register unless an assent to its so registering be given by a majority of such of its members as may be present personally or by proxy in cases where proxies are allowed by the regulations of the company at some general meeting summoned for the purpose.
- (e) Where a company not having the liability of its members limited by Act of Parliament Ordinance Royal Charter or letters patent is about to register as a limited company the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present personally or by proxy at such last-mentioned general meeting.
- (f) Where a company is about to register as a company limited by guarantee the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes in the event of the same being wound-up during the time that he is a member or within one year afterwards to contribute to the assets of the company such amount as may be required not exceeding a specified amount—
 - (i) for payment of the debts and liabilities of the company contracted before the time at which he ceased to be a member and of the costs charges and expenses of winding-up the company; and
 - (ii) for the adjustment of the rights of the contributories amongst themselves.

(2.) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company of which he is a member.

COMPANIES AND BODIES CORPORATE—

Companies capable of being registered.
Imp. 8 Edw. VII., c. 69, s. 249.
N.S.W. No. 40 of 1899, s. 168.
Q. 27 Vic. No. 4, s. 174.

161.—(1.) Subject as aforesaid every company existing at the commencement of this Ordinance consisting of seven or more members and any company hereafter formed in pursuance of any Act of Parliament or Ordinance other than this Ordinance Royal Charter or letters patent or being otherwise duly constituted by law and consisting of seven or more members may at any time hereafter register itself under this Part of this Ordinance as an unlimited company or a company limited by shares or a company limited by guarantee.

(2.) No such registration shall be invalid by reason that it has taken place with a view to the company being wound-up.

Definition of "joint-stock company."
Imp. *Ib.* s. 250.
N.S.W. *Ib.* s. 169.
Q. *Ib.* s. 175.

162.—(1.) For the purpose of this Division of this Part of this Ordinance a joint-stock company shall be deemed to be a company having a permanent paid-up or nominal capital of fixed amount—

- (a) divided into shares also of fixed amount; or
- (b) held and transferable as stock; or
- (c) divided and held partly in one way and partly in the other

and formed on the principle of having for its members the holders of shares in such capital or the holders of such stock and no other persons.

(2.) Such company when registered with limited liability under this Part of this Ordinance shall be deemed to be a company limited by shares.

Proviso as to banking companies.
Imp. *Ib.* s. 251.
N.S.W. *Ib.* s. 170.
Q. *Ib.* s. 176.

163.—(1.) No banking company claiming to issue notes shall be entitled to limited liability in respect of such issue but such company shall continue subject to unlimited liability in respect thereof.

(2.) If necessary the assets of such company shall be marshalled for the benefit of the general creditors.

(3.) The members of such company shall be liable for the whole amount of the issue in addition to the sum for which they would be liable as members of a limited company.

Requisites for registration by joint-stock company.
Imp. *Ib.* s. 252.
N.S.W. *Ib.* s. 171.
Q. *Ib.* s. 177.

164. Previously to the registration in pursuance of this Division of this Part of this Ordinance of any joint-stock company there shall be delivered to the Registrar the following documents (that is to say)—

- (a) a list showing the names addresses and occupations of all persons who on a day named in such list and not being more than six clear days before the day of

registration were members of such company with the addition of the shares held by such persons respectively distinguishing in cases where such shares are numbered each share by its number;

- (b) a copy of any Act of Parliament Ordinance Royal Charter letters patent deed of settlement contract of co-partnership or other instrument constituting or regulating the company

and also if any joint-stock company is intended to be registered as a limited company—

- (c) a statement specifying the following particulars (that is to say)—
- (i) the nominal capital of the company and the number of shares into which it is divided;
 - (ii) the number of shares taken and the amount paid on each share;
 - (iii) the name of the company with the addition of the word "limited" as the last word thereof

with the addition in the case of a company intended to be registered as a company limited by guarantee of—

- (iv) the resolution declaring the amount of the guarantee.

165. Previously to the registration in pursuance of this Division of this Part of this Ordinance of any company not being a joint-stock company there shall be delivered to the Registrar—

- (a) a list showing the names addresses and occupations of the directors or other managers (if any) of the company; also
- (b) a copy of any Act of Parliament Ordinance Royal Charter letters patent deed of settlement contract of co-partnership or other instrument constituting or regulating the company

Requisites for registration by other than joint-stock companies.

Imp. 8 Edw. VII., c. 69, s. 253.
N.S.W. No. 40 of 1899, s. 172.
Q. 27 Vic. No. 4, s. 178.

with the addition in the case of a company intended to be registered as a company limited by guarantee of

- (c) the resolution declaring the amount of guarantee.

166. Where a joint-stock company authorized to register under this Part of this Ordinance has had the whole or any portion of its capital converted into stock such company shall as to the capital so converted instead of delivering to the Registrar a statement of shares deliver to the Registrar—

Company may register stock instead of shares.

Imp. *ib.* s. 252.
N.S.W. *ib.* s. 173.
Q. *ib.* s. 179.

COMPANIES AND BODIES CORPORATE—

- (a) a statement of the amount of stock belonging to the company; and
- (b) the names of the persons who were holders of such stock on some day to be named in the statement not more than six clear days before the day of registration.

Verification of particulars.

Imp. 8 Edw. VII., c. 69, s. 254.
N.S.W. No. 40 of 1899, s. 174.
Q. 27 Vic. No. 4, s. 180.

167. The lists of members and directors and any other particulars relating to the company hereby required to be delivered to the Registrar shall be verified by a statutory declaration of the directors of the company delivering the same or any two of them or of any two other principal officers of the company.

Evidence of existence of company.

Imp. *Ib.* s. 255.
N.S.W. *Ib.* s. 175.
Q. *Ib.* s. 181.

168. The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing company is or is not a joint-stock company as hereinbefore defined.

Notice to customers on registration of limited banking company.

Imp. *Ib.* s. 256.
N.S.W. *Ib.* s. 156.
Q. *Ib.* s. 182.

169.—(1.) Every banking company existing at the passing of this Ordinance which registers itself as a limited company shall at least thirty days previous to obtaining a certificate of registration with limited liability give notice that it is intended so to register the same to every person and partnership firm who have a banking account with the company.

(2.) Such notice shall be given either by delivering the same to such person or firm or leaving the same or putting the same as a pre-paid letter into the post addressed to him, or them at such address as shall have been last communicated to or otherwise become known as his or their address by the company.

(3.) In case the company omits to give any such notice as is hereinbefore required to be given then as between the company and the persons only who are for the time being interested in the account in respect of which such notice ought to have been given and so far as respects such account and all variations thereof down to the time at which such notice is given but not further or otherwise the certificate of registration with limited liability shall have no operation.

Exemption from fees.

Imp. *Ib.* s. 257.
N.S.W. *Ib.* s. 177.
Q. *Ib.* s. 183.

170. No fees shall be charged in respect of the registration of any company in pursuance of this Division of this Part of this Ordinance in cases—

- (a) where such company is not registered as a limited company; or

- (b) where previously to its being registered as a limited company the liability of the shareholders was limited by some other Act of Parliament Ordinance or by Royal Charter or letters patent.

171. A company authorized by this Division of this Part of this Ordinance to register with limited liability shall for the purpose of obtaining registration with limited liability change its name by adding thereto the word "limited".

Addition of "limited" to name.
Imp. 8 Edw. VII., c. 69, s. 258.
N.S.W. No. 40 of 1899, s. 178.
Q. 27 Vic. No. 4, s. 184.

172.—(1.) Upon compliance with the requisitions in this Division of this Part of this Ordinance contained with respect to registration and on payment of such fees (if any) as are payable under the table marked B in the Second Schedule hereto the Registrar shall certify under his hand that the company so applying for registration is incorporated as a company under this Part of this Ordinance and in the case of a limited company that it is limited.

Certificate of registration of existing companies.
Imp. *Ib.* s. 259.
N.S.W. *Ib.* s. 179.
Q. *Ib.* s. 185.
Table B.
Second Schedule.

(2.) Thereupon such company shall be incorporated and shall have perpetual succession and a common seal with power to hold lands and to exercise all the functions of an incorporated company.

173.—(1.) A certificate of incorporation given at any time to any company registered in pursuance of this Division of this Part of this Ordinance shall be conclusive evidence—

Certificate to be evidence of compliance with Ordinance.

- (a) that all the requisitions herein contained in respect of registration under this Part of this Ordinance have been complied with; and

Imp. *Ib.* s. 17.
N.S.W. *Ib.* s. 180.
Q. *Ib.* s. 186.

- (b) that the company is authorized to be registered under this Part of this Ordinance as a limited or unlimited company as the case may be.

(2.) The date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this Part of this Ordinance.

174. All such real and personal estate as may belong to or be vested in a company at the date of its registration under this Division of this Part of this Ordinance shall on registration pass to and vest in the company as incorporated under this Division of this Part of this Ordinance.

Vesting of property.
Imp. *Ib.* s. 260.
N.S.W. *Ib.* s. 181.
Q. *Ib.* s. 187.

175. The registration in pursuance of this Division of this Part of this Ordinance of any company shall not affect or prejudice the liability of such company to have enforced against it or its right to enforce any debt or obligation incurred or any contract entered into by to with or on behalf of such company previously to such registration.

Saving existing liabilities.
Imp. *Ib.* s. 261.
N.S.W. *Ib.* s. 182.
Q. *Ib.* s. 188.

COMPANIES AND BODIES CORPORATE—

Continuation of
existing actions.
Imp. 8 Edw.
VII., c. 69, s.
262.
N.S.W. No. 40
of 1899, s. 183.
Q. 27 Vic. No. 4,
s. 189.

176.—(1.) All such actions suits and other legal proceedings as may at the time of registration of any company registered in pursuance of this Division of this Part of this Ordinance have been commenced by or against such company or the public officer or any member thereof may be continued in the same manner as if such registration had not taken place.

(2.) Execution shall not issue against the effects of any individual member of such company upon any judgment decree or order obtained in any action suit or proceeding so commenced as aforesaid; but in the event of the property and effects of the company being insufficient to satisfy such judgment decree or order an order may be obtained for winding-up the company.

Effect of
registration.
Imp. *Ib.* s. 263.
N.S.W. *Ib.*
s. 184.
Q. *Ib.* s. 190.

177.—(1.) When a company is registered under this Division of this Part of this Ordinance all provisions contained in any Act of Parliament Ordinance deed of settlement contract of co-partnership Royal Charter letters patent or other instrument constituting or regulating such company including in the case of a company registered as a company limited by guarantee the resolution declaring the amount of the guarantee shall be deemed to be conditions and regulations of the company in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association.

(2.) All the provisions of this Part of this Ordinance shall apply to such company and the members contributories and creditors thereof in the same manner in all respects as if it had been formed under this Part of this Ordinance subject to the provisions following (that is to say) :—

- (a) Table A in the Second Schedule hereto shall not unless adopted by special resolution apply to any company registered under this Part of this Ordinance in pursuance of this Division thereof.
- (b) The provisions of this Part of this Ordinance relating to the numbering of shares shall not apply to any joint-stock company whose shares are not numbered.
- (c) No company shall have power to alter any provision contained in any Act or Ordinance relating to the company.
- (d) No company shall have power without the sanction of the Lieutenant-Governor in Executive Council⁽²⁾ to alter any provision contained in any Royal Charter or letters patent relating to the company.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

- (e) Nothing herein contained shall authorize any company to alter any such provisions contained in any deed of settlement contract of co-partnership Royal Charter letters patent or other instrument constituting or regulating the company as would if such company had originally been formed under this Part of this Ordinance have been contained in the memorandum of association and are not authorized to be altered by this Part of this Ordinance.

(3.) Nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this Division of this Part of this Ordinance by virtue of any Act of Parliament Ordinance deed of settlement contract of co-partnership Royal Charter letters patent or other instrument constituting or regulating the company.

Division 7.—Actions by Unregistered Companies.

178.—(1.) If any unregistered company has no power to sue and be sued in a common name or if for any reason it appears expedient the Court may by the order made for winding-up such company or by any subsequent order direct that the whole or any part of such real and personal estate as may belong to or be vested in—

Provision in case of unregistered company.
Imp. 8 Edw. VII., c. 69, s. 272.
N.S.W. No. 40 of 1899, s. 185.
Q. 27 Vic. No. 4, s. 197.

(a) the company; or

(b) any person in trust for or on behalf of the company

is to vest in the official liquidator by his official name and thereupon the same or such part thereof as may be specified in the order shall vest accordingly.

(2.) The official liquidator may in his official name or in such name and after giving such indemnity as the Court directs bring or defend any action suit or other proceeding relating to any property vested in him or any action suit or other proceeding necessary to be brought or defended for the purpose of effectually winding-up the company and recovering the property thereof.

PART II.—NO-LIABILITY MINING COMPANIES.

179. In the construction and for the purposes of this Part of this Ordinance and unless the context necessarily requires a different or modified meaning the expression—

Interpretation.
N.S.W. *Ib.* s. 186.

“manager” shall include acting manager;

“secretary” shall include acting secretary.

COMPANIES AND BODIES CORPORATE—

N.S.W. No. 40
of 1899, s. 187.

180.—(1.) In the construction and for the purposes of this Part of this Ordinance the expression—

“contributing capital” shall mean the whole of the nominal capital of the company as stated in the memorandum for registration or increased nominal capital as the case may be excepting and deducting—

(a) such part thereof as is represented by all shares (if any) which for some consideration other than cash are issuable by the company as fully paid-up;

(b) such part thereof as is represented by the paid-up portion of all shares (if any) which for some consideration other than cash are issuable by the company as partly paid-up.

(2.) For the purposes of this section no shares shall be issuable as fully paid-up or partly paid-up for a consideration other than cash unless such consideration shall be fully disclosed by some contract filed with the Registrar at or before the issue of such shares.

No-liability
system.

N.S.W. *Ib.*
s. 188.
Q. 50 Vic.
No. 19,
ss. 4, 9.

Amended by
No. 14 of 1923,
s. 3.

181. Companies may be incorporated by registration under this Part of this Ordinance for the purpose of mining in the Territory or elsewhere and of treating selling and otherwise disposing of ores metals minerals and all products of mining and with all powers necessary for or incidental to carrying on the business of mining in the Territory or elsewhere on a system to be called “the no-liability system” and every company so incorporated shall have as the last two words of its title the words “no-liability”.

Mode of obtaining
registration.

N.S.W. *Ib.*
s. 189.
Q. *Ib.*
s. 11 (1).

182.—(1.) In order to obtain such registration it shall be necessary that ten per centum of the contributing capital shall be paid-up in cash and there must be lodged in the office of the Registrar a memorandum signed by not less than seven persons as intending shareholders of such company.

Fifth Schedule.

(2.) Such memorandum shall be as nearly as possible in the form contained in the Fifth Schedule to this Ordinance and shall be verified by a statutory declaration of some person as the manager or provisional manager of such company in the form or to the effect set forth in the said Fifth Schedule and by such other evidence (if any) as the Registrar may require.

Fifth Schedule.

(3.) Within thirty-five days after the day of such lodgment a copy of the said memorandum and declaration shall be published in the *Gazette* and in at least one newspaper (if any) circulating in the town or district in which the company's registered office is to be situated.

(4.) Within twenty-one days after such publication copies of such *Gazette* and newspapers shall be forwarded to the office of the Registrar to be there retained and filed with the said memorandum.

183. The Registrar shall keep a register book to be entitled the "No-liability Mining Companies Register" and on receipt by him of the said newspapers and *Gazette* and copy of rules (if any) hereinafter mentioned he shall enter the date of such receipt and shall write and sign at the foot of the memorandum for registration a certificate to the effect that the company has been duly registered with the date of such registration and thereupon the said no-liability mining company shall be deemed to be registered under this Part of the Ordinance.

Register book
and registration.
N.S.W. No. 40
of 1899, s. 190.

184.—(1.) A certificate in the form or to the effect in the Fourth Schedule to this Ordinance purporting to be under the hand of the Registrar (who is hereby required to give such certificate to any person applying for the same on payment of the requisite fee) shall be conclusive evidence for all purposes that the company named in such certificate has been duly registered under the provisions of this Part of this Ordinance and of the date of its registration.

Certificate of
registration.
N.S.W. *Ib.*
s. 191.
Fourth Schedule.

(2.) Such certificate shall refer to the *Gazette* and newspapers filed in which the memorandum for registration has been advertised and shall state their respective dates and the date of registration of the company.

185. Upon registration the persons who have signed the memorandum for registration together with such other persons as thereafter from time to time become holders of shares in the company shall be a body corporate by the name contained in the memorandum for registration capable forthwith of exercising all the functions of an incorporated company and having perpetual succession and a common seal with power to hold lands of any tenure for the purpose of the company's business and with such other subsidiary powers not inconsistent with this Ordinance as may be provided by its rules as originally framed and shall be capable of suing and being sued in its corporate name.

Effect of
registration.
N.S.W. *Ib.*
s. 192.

186. The subscribers of the memorandum for registration shall be deemed to be members of the company whose memorandum for registration they have subscribed and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned and every other person who has agreed to become a member of any company registered under this Part of

Who are
members.
N.S.W. *Ib.* s.
193.

COMPANIES AND BODIES CORPORATE—

this Ordinance and whose name is entered on the register of members shall be deemed to be a member of the company.

Members not
liable to calls.
N.S.W. No. 40
of 1899, s. 194.
Q. 50 Vic.
No. 19, s. 10.

187. The acceptance of a share in any company registered under this Part of this Ordinance whether by subscription to the memorandum for registration or by original allotment or by transfer or otherwise shall not be deemed a contract on the part of the person accepting the same to pay any calls in respect thereof or to pay any contribution to the debts and liabilities of the company and such person shall not be liable for any such calls or contributions but he shall not be entitled to receive a dividend upon any share upon which a call is due and unpaid.

Prospectus to
specify date
and names of
parties to
contracts.
N.S.W. *Ib.*
s. 195.

188. Every prospectus of a no-liability company and every notice inviting persons to subscribe for shares in any no-liability company shall specify the names of the parties to and date of any contract relating to the formation of the company or to its capital property or business or to the position pecuniary or otherwise in regard to the company or its promoters or vendors of the directors whether provisional or otherwise or other officers or agents of the company entered into by the company or the promoters directors or trustees thereof before the issue of such prospectus or notice whether subject to adoption by the company or otherwise. And any prospectus not specifying the same shall be deemed fraudulent on the part of the promoters directors and officers of the company knowingly issuing the same as regards any person taking shares in the company on the faith of such prospectus unless he has had notice of such contract.

Company to
keep register.
N.S.W. *Ib.*
s. 196.

189. Every company registered under this Part of this Ordinance shall cause to be kept in one or more books a register of its members and there shall be entered therein the following particulars:—

- (1) The names and addresses of the members of the company with a statement of the shares held by each and the distinguishing numbers of such shares together with the particulars of the amount paid or agreed to be considered as paid on the shares of each member.
- (2) The date at which the name of any person was entered in the register as a member.
- (3) The date at which any person ceased to be a member.

And any company acting in contravention of this section and every director manager or secretary of the company knowingly

and wilfully authorizing or permitting such contravention shall incur a penalty not exceeding One pound for every day during which its default in complying with the provisions of this section continues.

190.—(1.) Any director manager secretary or agent of a company registered under this Part of this Ordinance engaging workmen or ordering goods plant or other articles or necessaries for the purposes of the company shall do so on paper bearing the company's name including the words "no-liability".

Workmen and goods to be engaged or ordered on paper with words "no-liability."
N.S.W. No. 40 of 1899, s. 199.

(2.) If workmen be engaged or goods plant or other articles or necessaries be ordered otherwise than as aforesaid the person engaging such workmen or ordering such goods plant articles or necessaries shall be personally liable in the event of the company failing to pay.

191.—(1.) The calls upon shares in every company registered under this Part of this Ordinance shall be made in such time and manner that they shall become due on the second Wednesday in a month and on that day only: Provided that if such Wednesday is a public holiday they shall become due on the next succeeding weekday which is not a public holiday.

Calls to be due on second Wednesday in any month.
N.S.W. *Ib.* s. 200.

(2.) A notice shall be printed on the face of the company's share certificates stating that the day above-mentioned is the day on which calls fall due.

(3.) When a call has been made not less than seven days' notice of the day when it will fall due and of the place for payment thereof shall be published in one daily newspaper (if any) published in the Territory.

(4.) In addition to the publication of such notices fourteen days' notice of any call shall be served by the company on each member personally or by sending the same through the post (postage prepaid) addressed to such member at his address as entered in the register of members and such notice shall specify the amount of the call and the time and place of payment.

(5.) Such notice shall be deemed to have been duly served if posted in the Territory not less than thirty days prior to the due date of such call.

192. When a call has been made no subsequent call shall be made until after the expiration of fourteen days from the day when the first-mentioned call has become due.

No call till lapse of fourteen days after previous call.
N.S.W. *Ib.* s. 201.

COMPANIES AND BODIES CORPORATE—

Forfeiture of
shares.
N.S.W. No. 40
of 1899, s. 202.

193.—(1.) Any share upon which a call has remained unpaid for thirty days after the due date of such call shall thereupon be absolutely forfeited without any resolution of directors or other proceeding.

(2.) Such share when forfeited shall be sold by public auction notice whereof shall be advertised in a daily newspaper (if any) published in the Territory such advertisement being not less than seven days before the day appointed for the sale.

(3.) Every such advertisement shall state the number in the company's share register of the share so forfeited.

(4.) The proceeds shall be applied in payment of all overdue calls unpaid thereon and of any expenses necessarily incurred in respect of the forfeiture and the balance (if any) shall be paid to such person on his delivering to the company the certificate representing the forfeited share.

(5.) A new certificate may be issued by the directors for such forfeited share in place of the certificate delivered to the company or held by the person whose share has been so forfeited as aforesaid.

(6.) If the amount bid for such forfeited share is not sufficient to satisfy all overdue calls unpaid thereon with such expenses as aforesaid the directors of the company may refuse to sell such share and in such case they may sell such share in such manner as they think fit.

(7.) The directors may at any time before any such forfeited share has been sold annul the forfeiture thereof upon payment of the amount of all overdue calls thereon together with any such expenses as aforesaid.

(8.) Under this section a sale may be made of forfeited shares of various shareholders together or in various parcels.

(9.) In advertising any notice of intended sale under this section of any shares with consecutive numbers it shall be sufficient to state the first and last of the consecutive numbers as follows [numbered from () to () both inclusive].

Balance-sheet.
N.S.W. *Ib.* s.
203.
Second Schedule.
Annexure to
Table A.

194.—(1.) Every company registered under this Part of this Ordinance shall at least once in every year present to the members at a general meeting of the company a balance-sheet in the form annexed to Table A in the Second Schedule to this Ordinance or as near thereto as circumstances will admit and shall within one month after the general meeting of the company at which any such balance-sheet has been presented file with the Registrar a copy thereof.

Companies Ordinance, 1912-1926.

(2.) Any company acting in contravention of this section and every director manager or secretary of the company knowingly and wilfully authorizing or permitting such contravention shall incur a penalty not exceeding One pound for every day during which its default in complying with the provisions of this section continues.

195.—(1.) The memorandum for registration may when lodged be accompanied by rules signed by the persons who signed the memorandum for registration in such form and with such provisions not inconsistent with this Ordinance as such persons deem expedient.

Rules.
N.S.W. No. 40
of 1899, s. 204.

(2.) The rules shall be expressed in separate paragraphs numbered arithmetically and the subscribers to the memorandum for registration may adopt all or any of the provisions contained in the Seventh Schedule to this Ordinance.

196. Such rules when registered shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto and there were in such rules contained a covenant on the part of each member for himself his heirs executors and administrators to conform to and be bound by all the provisions contained in such rules subject to the provisions of this Ordinance.

Effect of rules.
N.S.W. *Ib.* s.
205.

197. If the memorandum for registration is not accompanied by rules as aforesaid or in so far as such rules do not exclude or modify the provisions contained in the Seventh Schedule to this Ordinance the last-mentioned provisions shall so far as the same are applicable be deemed to be the rules of the company to the same extent and in the same manner as if they had been expressed in rules duly signed and registered as aforesaid.

Seventh
Schedule.
N.S.W. *Ib.* s.
206.

198. Subject to the provisions of this Ordinance any company registered under this Part of this Ordinance may from time to time by special resolution alter all or any of the rules of the company or make new rules to the exclusion of or in addition to all or any of the rules of the company and any rules so made by special resolution shall be deemed to be rules of the company of the same validity as if they had been originally registered with the memorandum for registration and shall be subject in like manner to be altered by any subsequent special resolution.

Power to alter
rules.
N.S.W. *Ib.* s.
207.

199. Subject to the provisions in this Ordinance contained any company registered under this Part of this Ordinance may if authorized by its rules as originally framed or as altered by special

Increase of
capital.
N.S.W. *Ib.* s.
208.

COMPANIES AND BODIES CORPORATE—

resolution increase its capital by the issue of new shares of and to such amount and upon such terms as it thinks fit.

Notice thereof.
N.S.W. No. 40
of 1899, s. 209.

200. Notice of the resolution for the increase of capital shall immediately or so soon as practicable after the passing thereof be published in the *Gazette* and in one or more newspapers circulating in the town or district in which the company's registered office is situated; such notice shall be in the form or to the effect of Form A in the Sixth Schedule of this Ordinance.

Sixth Schedule.
Form A.

Procedure on
increase of
capital.
N.S.W. *Ib.* s.
210.

201.—(1.) Before the allotment or issue of any new shares or an increase of capital of any company registered under this Part of this Ordinance ten per centum of the contributing capital (if any) represented by such new shares shall be paid up to the company in cash and a statutory declaration in Form B of the Sixth Schedule to this Ordinance having annexed to it a copy of the advertised notice of resolution to increase shall be made by the manager or secretary of the company and filed with the Registrar.

Sixth Schedule.
Form B.

(2.) Upon the filing of such declaration together with such other evidence (if any) as the Registrar may require to prove that ten per centum of the contributing capital (if any) represented by such new shares has been paid up to the company in cash the Registrar shall issue a certificate in Form C of the Sixth Schedule to this Ordinance and upon the signature of such certificate but not before such new shares may be allotted and issued; and such certificate or any duplicate or duplicates thereof from time to time issued by the Registrar shall be conclusive evidence that such increase was legally and properly made and of the number amount and nature of the new shares.

Sixth Schedule.
Form C.

Shares may be
divided into
different classes.
N.S.W. *Ib.* s.
211.

202. Any company registered under this Part of this Ordinance may if authorized by its rules as originally framed divide the shares in the capital for the time being into several classes and attach thereto respectively any preferential qualified or special rights privileges or conditions.

Power to borrow
and mortgage.
N.S.W. *Ib.* s.
212.

203. Any company registered under this Part of this Ordinance may if authorized by its rules as originally framed or as altered by special resolution have power to borrow or raise money and to secure the payment thereof with interest and other charges and also the payment of any past debt or obligation of the company with interest and other charges by mortgage or charge of or upon the whole of the real and personal property undertaking and rights of the company or any part thereof in such manner as to the company seems fit: Provided that this section shall be read as

Companies Ordinance, 1912-1926.

subject to the provisions of Section two hundred and fifty-three and to the other provisions in this Ordinance contained.

204.—(1.) Any company registered under this Part of this Ordinance shall if authorized by its rules as originally framed or as altered by special resolution have power to sell and dispose of or let and demise the whole of the real and personal property undertaking and rights of the company or any part thereof for such consideration upon such terms and conditions and in such manner in every respect as to the company seems fit and such company may convey transfer assign or otherwise assure the property sold to the purchaser thereof or as such purchaser directs.

Power to sell
or let.
N.S.W. No. 40
of 1899, s. 213.

(2.) Nothing in this section contained shall be deemed to limit the power of any such company to make sales of metals quartz ores or minerals or other products or things in the course of such company's business.

(3.) Every such company shall unless the same is expressly negatived by its rules for the time being have an inherent right to make sales from time to time of such plant or stores as may not be required in connection with the conduct of its business.

205.—(1.) Whenever a resolution has been passed by two-thirds of the members present in person or by proxy at a meeting of any company registered under this Part of this Ordinance all the liabilities of which have been discharged that the company be voluntarily wound-up the company may be wound-up without resort to the Court and the company shall in general meeting appoint a liquidator for the purpose of winding-up the affairs and distributing the property of the company.

Voluntary
winding-up.
N.S.W. *Ib.* s.
214.

(2.) The company shall also in general meeting either on one occasion or from time to time determine the course to be pursued by the liquidator for such purpose as aforesaid and the mode of disposing of the company's property and the mode of disposal of the books of the company and may by resolution determine the remuneration to be allowed to the liquidator for his services in connection with the winding-up.

206. Notice of every such resolution as above for the winding-up voluntarily of any company registered under this Part of this Ordinance and of every appointment of a liquidator shall be filed with the Registrar within twenty-one days from the passing thereof.

Notice to be
filed.
N.S.W. *Ib.* s.
215.

207. A winding-up under Section two hundred and five of this Ordinance shall be deemed to commence at the time of the passing of the resolution authorizing such winding-up.

Commencement
of voluntary
winding-up.
N.S.W. *Ib.* s.
216.

COMPANIES AND BODIES CORPORATE—

Consequence of winding-up.
N.S.W. No. 40 of 1899, s. 217.

208. Whenever a company registered under this Part of this Ordinance is wound-up voluntarily the company shall from the date of the commencement of such winding-up cease to carry on its business except so far as may be required for the beneficial winding-up thereof and upon the appointment of a liquidator all the powers of the directors shall cease except in so far as the company in general meeting or the liquidator sanction the continuance of such powers.

Powers of liquidator.
N.S.W. *lb.* s. 218.

209. Where a company registered under this Part of this Ordinance is being wound-up voluntarily the liquidator may exercise all the powers which under this Ordinance are exercisable by an official liquidator with the sanction of the Court.

Liquidator may apply to Court.
N.S.W. *lb.* s. 219.

210. Where a company registered under this Part of this Ordinance is being wound-up voluntarily the liquidator of the company may apply to the Court to determine any question arising in the matter of such winding-up or to exercise all or any of the powers (except those with regard to calls and contributories) which the Court might exercise if the company were being wound-up under Part I. of this Ordinance as hereinafter provided; and the Court if satisfied that the determination of such question or the required exercise of power will be just and beneficial may accede wholly or partially to such application on such terms and subject to such conditions as the Court thinks fit or it may make such other order or decree on such application as the Court thinks just.

Distribution of surplus assets.
N.S.W. *lb.* s. 220.

211.—(1.) On the winding-up of any company registered under this Part of this Ordinance whether voluntarily under this Part or under Part I. of this Ordinance the surplus assets shall be distributed among all classes of shareholders alike irrespective of the amount called up on the respective shares or classes of shares.

(2.) No member who is in arrear in payment of any call but whose shares have not been actually forfeited shall be entitled to share in such distribution until the amount owing in respect of such call has been fully paid and satisfied.

(3.) Nothing herein contained shall prevent the distribution of such surplus in a different manner from that herein provided where a different mode of distribution is expressly provided for in the rules as originally framed or shall prevent the holder of any share wholly or in part actually paid in advance from sharing in the surplus in respect of every such payment.

212. A company registered under this Part of this Ordinance is to be deemed an unregistered company within the meaning of Part I. of this Ordinance for the purpose of being wound-up by the Court under this Act: ⁽⁸⁾

Company deemed unregistered for purposes of winding-up under Part I.
N.S.W. No. 40 of 1899, s. 221.

Provided that none of the provisions of this Ordinance relating to contributories shall apply to a company registered under this Part of this Ordinance in course of being wound-up under Part I. of this Ordinance.

213. As soon as the affairs of the company are fully wound-up the liquidator shall make up an account showing the manner in which such winding-up has been conducted and the property of the company disposed of and thereupon he shall call a general meeting of the company for the purpose of having the account laid before the members and hearing any explanation which may be given by the liquidator.

Liquidator's final account.
N.S.W. *Ib.* s. 222.

214.—(1.) The liquidator shall make a return to the Registrar of such meeting having been held and of the date at which the same was held and on the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved.

Liquidator to make return to Registrar.
N.S.W. *Ib.* s. 223.

(2.) In the event of no quorum being present at any such meeting it shall be a sufficient compliance with this section for the liquidator to make a return that such meeting has been duly convened.

215. There shall be paid to the Registrar in respect of the several matters mentioned in the Eighth Schedule to this Ordinance the several fees therein specified or such smaller fees as the Lieutenant-Governor ⁽²⁾ may direct.

Fees.
N.S.W. *Ib.* s. 224.
Eighth Schedule.
Amended by No. 4 of 1926, s. 4.

PART III.—GENERAL PROVISIONS.

216.—(1.) Any company registered under Part I. or II. of this Ordinance may with the sanction of a special resolution of the company and with the approval of the Lieutenant-Governor in Council ⁽²⁾ testified in writing under the hand of the Clerk of the Executive Council change its name and upon such change being made the Registrar shall enter the new name on the register in the place of the former name and shall sign a certificate of registration or incorporation altered to meet the circumstances of the case and all certificates of incorporation or registration thereafter issued shall be altered in like manner.

Power of companies to change name.
Imp. 8 Edw. VII., c. 69, s. 8.
N.S.W. *Ib.* s. 225.
Q. 27 Vic. No. 4, s. 12.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(8) The word "Act" appeared in the original Ordinance. The word "Ordinance" has now been inserted in its stead by the Second Schedule of the *Ordinances Reprint and Revision Ordinance 1947* of the Territory of Papua-New Guinea.

COMPANIES AND BODIES CORPORATE—

(2.) No such alteration of name shall affect any rights or obligations of the company or render defective any legal proceedings instituted or to be instituted by or against the company; and any legal proceedings may be continued or commenced by or against the company by its new name that might have been continued or commenced by or against the company by its former name.

Register prima facie evidence.

Imp. 8 Edw. VII., c. 69, s. 33.
N.S.W. No. 40 of 1899, s. 226.
Q. 27 Vic. No. 4, s. 36.

217. The register of members of any company registered under Part I. or II. of this Ordinance shall be prima facie evidence that the persons named therein as members of such company are such members and shall be prima facie evidence of any other matters by this Ordinance directed or authorized to be inserted therein.

Registered office.

Imp. *Ib.* s. 62.
N.S.W. *Ib.* s. 227.
Q. *Ib.* s. 38.

218.—(1.) Every company registered under Part I. or II. of this Ordinance shall have a registered office situated in the Territory to which all communications and notices may be addressed.

(2.) If any company registered under Part I. or II. of this Ordinance carries on business without having such registered office such company and in the case of a no-liability company such company and the manager or secretary thereof respectively shall be liable to a penalty not exceeding Five pounds for every day during which business is so carried on.

Services of notices, &c., on company.

Imp. *Ib.* s. 116.
N.S.W. *Ib.* s. 228.
Q. *Ib.* s. 62.

219.—(1.) Service at the registered office of any company registered under Part I. or II. of this Ordinance of any communication or notice or of any writ declaration summons plaint order or other document proceeding or process whatsoever in any action suit proceeding or matter either by leaving the same at such office or by sending the same through the post postage prepaid (and in the case of a no-liability company also registered) addressed to the company at such office shall be deemed to be service upon the company.

(2.) In the event of there being no registered office the unregistered office or in the case of a no-liability company the intended registered office mentioned in the memorandum for registration shall be deemed to be the registered office of the company for the purposes of this section.

Service by post.

N.S.W. *Ib.* s. 229.
Q. *Ib.* s. 63.

220. Any document to be served by post on any company registered under Part I. or II. of this Ordinance shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof and in proving service of such document it shall be sufficient to prove that such document was properly directed and that it was put into the post office postage prepaid or registered and postage prepaid as the case may be.

221.—(1.) Any summons notice order or proceeding requiring authentication by any company registered under Part I. or II. of this Ordinance shall be sufficiently authenticated if signed by any director manager secretary or other authorized officer of the company and in the case of a no-liability company shall be also sufficiently authenticated if the name of any director manager secretary or other authorized officer of the company is printed thereon.

Authentication of notices.
Imp. 8 Edw. VII., c. 69, s. 117.
N.S.W. No. 40 of 1899, s. 230.
Q. 27 Vic. No. 4, s. 64.

(2.) No such summons notice order or proceeding need be under the common seal of the company and any such summons notice order or proceeding may be in writing or in print or partly in writing and partly in print.

(3.) This section shall not apply to any documents which by this Ordinance are to be filed or lodged with the Registrar which shall be signed or authenticated as by this Ordinance required or in the absence of any such requirement shall be signed or authenticated by the manager or secretary of the company.

222.—(1.) Notice of the situation of the registered office of any company registered under Part I. or II. of this Ordinance and of any change therein shall be given to the Registrar.

Notice of change of registered office.

Imp. *ib.* s. 62.
N.S.W. *ib.* s. 231.
Q. *ib.* s. 39.

(2.) In the case of a no-liability company if such change shall be from one town or district to another such change shall be advertised once at least in the *Gazette* and in one newspaper circulating in the town or district from which the company's registered office has been or is being removed.

(3.) Until such notice is given the company shall not be deemed to have complied with the provisions of this Ordinance with respect to having a registered office.

223.—(1.) If the name of any person is without sufficient cause entered in or omitted from the register of members of any company registered under Part I. or II. of this Ordinance or if default is made or unnecessary delay takes place in entering on the register of members the fact of any person having ceased to be a member of the company the person or member aggrieved or any member of the company or the company itself may by motion in the Court or by application to a judge in chambers or in such other manner as such Court may direct apply for an order that the register may be rectified and such Court or judge may either refuse such application with or without costs to be paid by the applicant or may if satisfied of the justice of the case make an order for the rectification of the register and may direct the company or any other party to such proceeding to pay all the costs of such a motion or

Power of Court to rectify register of members.

Imp. *ib.* s. 32.
N.S.W. *ib.* s. 232.
Q. *ib.* s. 34.

COMPANIES AND BODIES CORPORATE—

application and any damages the party aggrieved may have sustained.

(2.) Such Court or judge may in any proceeding under this section decide any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register whether such question arises between two or more members or alleged members or between any members or alleged members and the company and generally such Court or judge may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register or the adjustment of the rights of the parties thereto.

(3.) Whenever any order has been made rectifying the register of members in the case of a company by Part I. of this Ordinance required to send a list of its members to the Registrar such Court or judge shall direct that due notice of such rectification be given to the Registrar.

224. A copy of the memorandum of association having annexed thereto the articles of association (if any) in the case of a company formed under Part I. of this Ordinance and in the case of a no-liability company a copy of the memorandum for registration of the company and also in any case where the company has rules other than those in the Seventh Schedule to this Ordinance a copy of the company's rules shall be forwarded to every member at his request on payment of the sum of One shilling or such less sum as may be prescribed by the company for each copy and if any company makes default in forwarding a copy of the memorandum of association or memorandum for registration and articles of association or rules as the case may be to a member in pursuance of this section the company so making default shall for each offence incur a penalty not exceeding One pound.

225.—(1.) No company shall be registered under Part I., II. or V. of this Ordinance under a name identical with that by which a subsisting company is already registered or so nearly resembling the same as to be calculated to deceive except in a case where such subsisting company is in the course of being wound-up and testifies its consent in such manner as the Registrar requires.

(2.) If any company through inadvertence or otherwise is without such consent as aforesaid registered by a name identical with that by which a subsisting company is registered or so nearly resembling the same as to be calculated to deceive such first-mentioned company where such company is a no-liability company shall within such time after being served with a notice by the Registrar requiring such company so to do as having regard to the requirements of Section two hundred and sixteen of this

Copies of memorandum, &c., to be given to members.

Imp. 9 Edw. VII., c. 69, s. 18.
N.S.W. No. 40 of 1899, s. 233.
Q. 27 Vic. No. 4, 18.

Prohibition of identical names.

Imp. *Ib.* s. 8.
N.S.W. *Ib.* s. 234.
Q. *Ib.* s. 19.

Sub-section (1) amended by No. 4 of 1926, s. 5.

Companies Ordinance, 1912-1926.

Ordinance the Registrar deems reasonable and where such company is formed or registered under Part I. of this Ordinance may with the sanction of the Registrar change its name and upon such change being made the Registrar shall enter the new name on the register in the place of the former name and shall sign a certificate of registration or incorporation altered to meet the circumstances of the case.

(3.) No such alteration of name shall affect any rights or obligations of the company or render defective any legal proceedings instituted or to be instituted by or against the company and any legal proceedings may be continued or commenced by or against the company by its new name that might have been continued or commenced by or against the company by its former name.

226. The shares or other interest of any member in a company registered under this Ordinance shall be personal property capable of being transferred in manner provided by the rules or regulations of the company and shall not be of the nature of real estate and each share shall be distinguished by its appropriate number.

Shares, personal property.
Imp. 8 Edw. VII., c. 69, s. 22.
N.S.W. No. 40 of 1899, s. 235.
Q. 27 Vic. No. 4, s. 21.

227. Any transfer of the share or other interest of a deceased member of a company so registered made by his personal representative shall notwithstanding that such personal representative may not himself be a member be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Transfer by personal representative.
Imp. *Ib.* s. 29.
N.S.W. *Ib.* s. 236.
Q. *Ib.* s. 23.

228. 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 under Part I. or II. of this Ordinance.

No entry of trusts on register.
Imp. *Ib.* s. 27.
N.S.W. *Ib.* s. 237.
Q. *Ib.* s. 29.

229. A certificate under the common seal of the company specifying any shares or stock held by any member of any company so registered shall be prima facie evidence of the title of the member to the shares or stock therein specified.

Certificate to shares.
Imp. *Ib.* s. 23.
N.S.W. *Ib.* s. 238.
Q. *Ib.* s. 30.

230.—(1.) The register of members commencing from the date of the registration of the company shall be kept at the registered office of the company.

Inspection of register.
Imp. *Ib.* s. 30.
N.S.W. *Ib.* s. 239.
Q. *Ib.* s. 31.

(2.) Except when closed as hereinafter mentioned it shall during business hours but subject to such reasonable restrictions as the company in general meeting may impose so that not less

COMPANIES AND BODIES CORPORATE—

than two hours in each day be appointed for inspection be open to the inspection of any member gratis and to the inspection of any other person on the payment of One shilling or such less sum as the company may prescribe for each inspection.

(3.) Every such member or other person may require in the case of a company registered under Part I. of this Ordinance a copy of the register or any part thereof or of the list or summary of members as is in Part I. of this Ordinance mentioned and in the case of a no-liability company a list of the names and addresses of the members of the company with the number of shares held by each on payment of Sixpence for every hundred words required to be copied.

(4.) If such inspection or copy or list is refused the company and every director manager and secretary of the company who knowingly authorizes or permits such refusal shall incur for each refusal a penalty not exceeding Two pounds and a further penalty not exceeding Two pounds for every day during which such refusal continues.

(5.) In addition to the above penalty any judge sitting in chambers may by an order compel an immediate inspection of the register.

231. Any company registered under Part I. or II. of this Ordinance may upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated close the register of members for any time or times not exceeding in the whole thirty and in the case of a no-liability company sixty days in each year.

232. Contracts on behalf of any company registered under this Ordinance may be made as follows (that is to say) :—

- (1) Any contract which if made between private persons would be by law required to be in writing and under seal may be made on behalf of the company in writing under the common seal of the company and such contract may be in the same manner varied or discharged.
- (2) Any contract which if made between private persons would be by law required to be in writing and signed by the party to be charged therewith may be made on behalf of the company in writing signed by any person acting under the express or implied authority of the company and such contract may in the same manner be varied or discharged.

Power to close register.
Imp. 8 Edw. VII, c. 69, s. 31.
N.S.W. No. 40 of 1899, s. 240.
Q. 27 Vic. No. 4, s. 32.

Contracts, how made.
Imp. *Ib.* s. 76.
N.S.W. *Ib.* s. 241.
Q. *Ib.* s. 47.

- (3) Any 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 the express or implied authority of the company and such contract may in the same way be varied or discharged.

And all contracts made according to the provisions herein contained shall be effectual in law and shall be binding upon the company and its successors and all other parties thereto their heirs executors or administrators as the case may be.

233. Every company formed under Part I. and every company registered under Part II. of this Ordinance shall hold a general meeting within four months after its incorporation and if such meeting is not held the company and every director manager or secretary of the company who knowingly authorizes or permits such default shall be liable to a penalty not exceeding in the case of a company formed under Part I. of this Ordinance Five and in the case of a no-liability company Two pounds a day for every day after the expiration of such four months until the meeting is held.

General meeting to be held within four months after incorporation.
Imp. 8 Edw. VII., c. 69, s. 65.
N.S.W. No. 40 of 1899, s. 242.
Q. 53 Vic. No. 18, s. 34.

234.—(1.) Every limited and no-liability company registered under this Ordinance shall keep a register of all mortgages and charges specifically affecting property or rights of the company and shall enter in such register in respect of each mortgage or charge—

Register of mortgages.
Imp. Ib. ss. 100, 101.
N.S.W. Ib. s. 243.
Q. 27 Vic. No. 4, s. 42.

- (a) a short description of the property or rights mortgaged or charged;
- (b) the amount of charge created;
- (c) the names of the mortgagees or persons entitled to such charge.

(2.) If any property or rights of the company is or are mortgaged or charged without such entry as aforesaid being made every director manager or other officer of the company who knowingly and wilfully authorizes or permits the omission of such entry shall incur a penalty not exceeding Fifty pounds.

(3.) The register of mortgages required by this section shall be open to inspection by any creditor or member of the company in the case of a limited company and in the case of a no-liability company by any person at all reasonable times; and if such inspection is refused any officer of the company refusing the same and every director manager or secretary of the company authorizing or knowingly and wilfully permitting such refusal shall incur a

COMPANIES AND BODIES CORPORATE—

penalty not exceeding Five pounds and a further penalty not exceeding Two pounds for every day during which such refusal continues.

In addition to the above penalty any judge sitting in chambers may by order compel an immediate inspection of the register.

Promissory notes and bills of exchange.

Imp. 8 Edw. VII., c. 69, s. 77.
N.S.W. No. 40 of 1899, s. 244.
Q. 27 Vic. No. 4, s. 46.

235. A promissory-note or bill of exchange shall be deemed to have been made drawn accepted or endorsed by any company registered under this Ordinance if made drawn accepted or endorsed—

- (a) in the name of the company by any person acting under the authority of the company ; or
- (b) by or on behalf or on account of the company by any person acting under the authority of the company.

Prohibition of carrying on business with fewer than seven members.

Imp. *Ib.* s. 115.
N.S.W. *Ib.* s. 245.
Q. *Ib.* s. 48.

236. If any company registered under this Ordinance carries on business when the number of its members is less than seven for a period of six months after the number has been so reduced every person who is a member of such company during the time that it so carries on business after such period of six months and is cognizant of the fact that it is so carrying on business with fewer than seven members shall be severally liable for the payment of the whole debts of the company contracted during such time and may be sued for the same without the joinder in the action or suit of any other member.

Annual meetings.

Imp. *Ib.* s. 64.
N.S.W. *Ib.* s. 246.
Q. *Ib.* s. 49.

237. A general meeting of every company registered under Part I. or II. of this Ordinance shall be held once at least in every year.

Definition of special resolution.

Imp. *Ib.* s. 69 (2).
N.S.W. *Ib.* s. 247.
Q. *Ib.* s. 51.

238.—(1.) A resolution passed by a company registered under Part I. or II. of this Ordinance shall be deemed to be special whenever—

- (a) a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled according to the rules or regulations of the company to vote as may be present in person or by proxy (in cases where by the rules or regulations of the company proxies are allowed) at any general meeting of which notice specifying the intention to propose such resolution has been duly given; and
- (b) such resolution has been confirmed by a majority of such members for the time being entitled according to the rules or regulations of the company to vote as

may be present in person or by proxy at a subsequent general meeting of which notice has been duly given and held at an interval of not less than fourteen days nor more than one month from the date of the meeting at which such resolution was first passed.

(2.) At any meeting mentioned in this section unless a poll is demanded by at least five members a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the same.

(3.) Notice of any meeting shall for the purposes of this section be deemed to be duly given and the meeting to be duly held whenever such notice is given and meeting held in manner prescribed by the rules or regulations of the company.

(4.) In computing the majority under this section when a poll is demanded reference shall be had to the number of votes to which each member is entitled by the rules or regulations of the company.

239. In default of any rules or regulations on the subject—

- (a) every member shall have one vote;
- (b) a general meeting shall be held to be duly summoned when seven days' notice thereof in writing has been served on every member in the manner in which notices are required to be served in the case of the companies formed or registered under Part I. of this Ordinance by the table marked A in the Second Schedule hereto and in the case of no-liability companies by the rules in the Seventh Schedule to this Ordinance;
- (c) five members shall be competent to summon a meeting;
- (d) any person elected by the members present may preside as chairman of a meeting.

Provisions as to meetings and votes.

Imp. 8 Edw. VII., c. 69, s. 67.
N.S.W. No. 40 of 1899, s. 248.
Q. 27 Vic. No. 4, s. 52.

Second Schedule.

Table A.

Seventh Schedule.

240.—(1.) A copy of any special resolution whatever and of any extraordinary resolution for winding-up a company voluntarily under Part I. of this Ordinance which is passed by any company registered under this Ordinance shall be printed and forwarded to the Registrar and be recorded by him.

Registration of special resolutions.

Imp. *Ib.* s. 70.
N.S.W. *Ib.* ss. 249, 250.
Q. *Ib.* ss. 53, 54.

(2.) If such copy is not so forwarded within fifteen days from the date of the confirmation or passing as the case may be of the resolution the company and every director manager and secretary of the company who knowingly and wilfully authorizes or permits

COMPANIES AND BODIES CORPORATE—

such default shall incur a penalty not exceeding Two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded.

(3.) Where articles of association or rules have been registered a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association or rules which may be issued after the passing of such resolution.

(4.) Where no articles of association or rules have been registered a copy of any special resolution shall be forwarded in print to any member requesting the same on payment of One shilling or such less sum as the company may direct.

If any company makes default in complying with the provisions of this section such company and every director manager and secretary of the company who knowingly and wilfully authorizes or permits such default shall incur a penalty not exceeding One pound for each copy in respect of which such default is made.

Appointment of attorney.

Imp. 8 Edw. VII., c. 69, s. 78.
N.S.W. No. 40 of 1899, s. 251.
Q. 27 Vic. No. 4, s. 55.

241. Any company registered under this Ordinance may by instrument in writing under its common seal appoint any person its attorney either generally or in respect of any specified matters in the case of a company formed or registered under Part I. of this Ordinance to execute deeds on its behalf in any place wheresoever situate and in the case of a no-liability company to act in any place wheresoever situate and every deed signed by such attorney on behalf of the company and under his seal shall be binding on the company and have the same effect as if it were under the common seal of the company.

Examination of affairs of company by inspectors.

Imp. *Ib.* s. 109.
N.S.W. *Ib.* s. 252.
Q. *Ib.* s. 56.

242. The Lieutenant-Governor in Council⁽²⁾ may appoint one or more inspectors to examine into the affairs of any company registered under this Ordinance and to report thereon in such manner as the Lieutenant-Governor⁽²⁾ may direct upon the applications following (this is to say) :—

- (a) In the case of a banking company that has a capital divided into shares upon the application of members holding not less than one-third part of the whole shares of the company for the time being issued.
- (b) In the case of any other company that has a capital divided into shares upon the application of members holding not less than one-fifth part of the whole shares of the company for the time being issued.
- (c) In the case of any company not having a capital divided into shares upon the application of members

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members.

243.—(1.) The application shall be supported by such evidence as the Lieutenant-Governor⁽²⁾ may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made and that they are not actuated by malicious motives in instituting the same.

Evidence to support application for examination.
Imp. 8 Edw. VII., c. 69, s. 109.
N.S.W. No. 40 of 1899, s. 253.
Q. 27 Vic. No. 4, s. 57.

(2.) The Lieutenant-Governor⁽²⁾ may also require the applicants to give security for payment of the cost of the inquiry before appointing any inspector.

244.—(1.) All officers and agents of the company shall produce for the examination of the inspectors all books and documents in their custody or power and any inspector may examine upon oath the officers and agents of the company in relation to its business and may administer such oath accordingly.

Production of books, &c.
Imp. *Ib.* s. 109.
N.S.W. *Ib.* s. 253.
Q. *Ib.* s. 58.

(2.) If any officer or agent of the company refuses to produce any book or document hereby directed to be produced or to answer any question relating to the affairs of the company he shall incur a penalty not exceeding Five pounds in respect of each offence.

245.—(1.) Upon the conclusion of the examination the inspectors shall report their opinion to the Lieutenant-Governor⁽²⁾ and such report shall be written or printed as the Lieutenant-Governor in Council⁽²⁾ directs.

Report by inspectors.
Imp. *Ib.* s. 109.
N.S.W. *Ib.* s. 255.
Q. *Ib.* s. 59.

(2.) A copy of such report shall be forwarded by the Government Secretary to the registered office of the company and a further copy shall at the request of the members upon whose application the inspection was made be delivered to them or to any one or more of them.

(3.) All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed: Provided that the Lieutenant-Governor in Council⁽²⁾ may direct the same to be paid out of the assets of the company in which case the same shall become a debt from the company to such applicants and may be recovered by process of law.

246.—(1.) Any company registered under this Ordinance may by special resolution appoint inspectors for the purpose of examining into the affairs of the company and the inspectors so appointed shall have the same powers and perform the same duties as

Company may appoint inspectors.
Imp. *Ib.* s. 110.
N.S.W. *Ib.* s. 256.
Q. *Ib.* s. 60.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

COMPANIES AND BODIES CORPORATE—

inspectors appointed by the Lieutenant-Governor⁽²⁾ but instead of making their report to the Lieutenant-Governor⁽²⁾ they shall make the same in such manner and to such persons as the company in general meeting directs.

(2.) The officers and agents of the company shall incur the same penalties in case of any refusal to produce any book or document hereby required to be produced to such inspectors or to answer any question as they would have incurred if such inspector had been appointed by the Lieutenant-Governor.⁽²⁾

247. A copy of the report of any inspectors appointed under this Ordinance authenticated by the seal of the company into whose affairs they have made inspection shall be admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in such report.

248. All offences under this Ordinance made punishable by any penalty and not thereby declared to be a misdemeanour may be prosecuted summarily before two or more justices of the peace.

248A. The justices imposing any penalty under this Ordinance may direct the whole or any part thereof to be applied in or towards payment of the costs of the proceedings or in or towards the rewarding the person upon whose information or at whose suit such penalty has been recovered and subject to such direction all penalties shall be paid to the Treasurer for the public uses of the Territory.

249. Where a limited or no-liability company is plaintiff in any action suit or other legal proceedings any judge having jurisdiction in the matter may if it appears that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs require sufficient security to be given for such costs and may stay all proceedings until such security is given.

250.—(1.) Every company registered under Part I. or II. of this Ordinance shall cause minutes of all resolutions and proceedings of general meetings of the company and of the directors or managers of the company in cases where there are directors or managers to be duly entered in books to be from time to time provided for the purpose.

(2.) Any such minute as aforesaid if purporting to be signed by the chairman of the meeting at which such resolutions were

Report of inspectors to be evidence.
Imp. 8 Edw. VII., c. 69, s. 111.
N.S.W. No. 40 of 1899, s. 257.
Q. 27 Vic. No. 4, s. 61.

Prosecution of offences.
Imp. *Ib.* s. 276.
N.S.W. *Ib.* s. 258.
Q. *Ib.* s. 65.

Application of penalties.
Imp. *Ib.* s. 277.
Q. *Ib.* s. 66.
Inserted by No. 4 of 1926, s. 6.

Security for costs.
Imp. *Ib.* s. 277.
N.S.W. *Ib.* s. 259.
Q. *Ib.* s. 68.

Minutes of proceedings.
Imp. *Ib.* s. 71.
N.S.W. *Ib.* s. 260.
Q. *Ib.* s. 67.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

passed or proceedings had or by the chairman of the next succeeding meeting shall be received as evidence in all legal proceedings.

(3.) Until the contrary is proved every general meeting of the company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened and all resolutions passed thereat or proceedings had to have been duly passed and had.

(4.) All appointments of directors managers or liquidators shall be deemed to be valid and all acts done by such directors managers or liquidators shall be valid notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

251.—(1.) Where any company registered under this Ordinance is proposed to be or is in the course of being wound-up altogether voluntarily and the whole or a portion of its business or property is proposed to be transferred or sold to another company the liquidator of the first-mentioned company may with the sanction of a special resolution of the company by whom he was appointed conferring either a general authority on the liquidator or an authority in respect of any particular arrangement—

Liquidator may accept shares as consideration for sale of property of company.

Imp. 8 Edw. VII., c. 69, s. 192.
N.S.W. No. 40 of 1899, s. 261.
Q. 27 Vic. No. 4, s. 151.

- (a) receive in compensation or part compensation for such transfer or sale shares debentures policies or other like interests in such other company for the purpose of distribution amongst the members of the company being wound-up; or
- (b) enter into any other arrangement whereby the members of the company being wound-up may in lieu of receiving cash shares debentures policies or like interests or in addition thereto participate in the profits or receive any other benefit from the purchasing company.

(2.) Any sale made or arrangement entered into by the liquidator in pursuance of this section shall be binding on the members of the company being wound-up subject to the provisions hereinafter contained.

(3.) If any member of the company being wound-up who has not voted in favour of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same expresses his dissent from any such special resolution in writing addressed to the liquidator and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed such dissentient

COMPANIES AND BODIES CORPORATE—

member may require the liquidator to do one of the following things as the liquidator may prefer that is to say—

- (a) abstain from carrying such resolution into effect; or
- (b) purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned such purchase money to be paid before the company is dissolved and to be raised by the liquidator in such manner as may be determined by special resolution.

(4.) No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding-up the company or for appointing a liquidator; but if an order be made within a year for winding-up the company by or subject to the supervision of the Court under Part I. of this Ordinance such resolution shall not be of any validity unless it is sanctioned by the Court.

252. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement but if the parties dispute about the same such dispute shall be settled by arbitration under and in accordance with the provisions contained in Part I. of this Ordinance in relation to arbitration.

Mode of determining price of share of dissentient member.
Imp. 8 Edw. VII., c. 69, s. 192.
N.S.W. No. 40 of 1899, s. 262.
Q. 27 Vic. No. 4, s. 152.

Preferences fraudulent.
Imp. *Ib.* s. 210.
N.S.W. *Ib.* s. 263.
Q. *Ib.* s. 165.

253.—(1.) Any such conveyance mortgage delivery of goods payment execution or other act relating to property as would if made or done by or against any individual be deemed to be void or voidable in the event of his insolvency shall if made or done by or against a company be deemed in the event of such company being wound-up under Part I. of this Ordinance to be void or voidable in like manner.

(2.) Any conveyance or assignment made by a company registered under this Ordinance of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents.

254.—(1.) In the winding-up under Part I. of this Ordinance of any company no-liability company or other association or society either voluntarily or by or under the supervision of the Court as the case may be the same rules shall prevail and be observed as regards—

- (a) the respective rights of secured and unsecured creditors; and
- (b) the declaration and distribution of dividends; and

Application of rules of insolvency.
Imp. *Ib.* s. 207.
N.S.W. *Ib.* s. 264.
Q. 56 Vic. No. 24, s. 21.

- (c) the proof and allowance of debts or claims against the assets of the company

as may be in force for the time being under the laws of insolvency with respect to the estates of insolvent debtors.

(2.) In the winding-up under Part I. of this Ordinance of a no-liability company the same rules shall prevail and be observed as regards disclaimer of onerous property by the official liquidator and as regards the consequences and incidents of such disclaimer and as regards fraudulent preferences as may be in force for the time being under the laws of insolvency with respect to the estates of insolvent debtors.

N.S.W. No. 40
of 1899, s. 264.

(3.) For the purposes of this and the last preceding section—

- (a) the presentation of a petition for winding-up a company in the case of a company being wound-up by the Court or under the supervision of the Court; and
- (b) a resolution for winding-up the company in the case of a voluntary winding-up under Part I. of this Ordinance

shall be deemed to correspond with the act of insolvency in the case of an individual.

254A.—(1.) Where the Registrar has reasonable cause to believe that a company registered under Part I., II. or V. of this Ordinance is not carrying on business or in operation he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

Registrar may
strike defunct
company off
register.

Imp. 8 Edw.
VII., c. 69,
s. 242.
Q. 9 Edw. VII.,
No. 13, s. 26.

Section 254A
inserted by
No. 4 of 1926,
s. 7.

(2.) If the Registrar does not within six weeks of sending the letter receive any answer thereto he shall within fourteen days after the expiration of the six weeks 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 six weeks 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 from the company to the effect that it is not carrying on business or in operation or does not within six weeks 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 (in the case of a company registered under Part I. or Part II.) that the company will be dissolved.

COMPANIES AND BODIES CORPORATE—

(4.) If in any case where a company registered under Part I. or Part II. of this Ordinance is being wound-up the Registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound-up and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the Registrar demanding the returns has been sent by post to the company or to the liquidator at his last known place of business the Registrar may publish in the *Gazette* and send to the company a like notice as is provided in the last preceding sub-section.

(5.) At the expiration of the time mentioned in the notice the Registrar may unless cause to the contrary be 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—

(a) if registered under Part I. or Part II. of this Ordinance shall be dissolved: Provided that 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; or

(b) if registered or deemed to be registered under Part V. of this Ordinance shall cease to be a company registered or deemed to be registered under the provisions of that Part.

(6.) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register a judge of the Central Court⁽²⁾ on the application of the company or member or creditor may if satisfied that the company was at the time of the striking off carrying on business or in operation or otherwise that it is just that the company be restored to the register order the name of the company to be restored to the register and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the judge 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.

(7.) A letter or notice under this section may be addressed to the company at its registered office or if no office has been registered to the care of some director officer or registered agent of the company or if there is no director officer or agent of the company whose name and address are known to the Registrar may be sent to each of the persons who subscribed the memorandum addressed to him at the address mentioned in the memorandum.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

255. The Chief Judicial Officer⁽⁹⁾ may make such rules⁽¹⁰⁾ concerning the mode of proceeding to be had for winding-up companies in the Court as may from time to time seem necessary; but the general practice of the Court shall so far as the same is applicable and not inconsistent with this Ordinance or the rules made hereunder apply to all proceedings for or in a winding-up.

Rules.

Imp. 8 Edw.
VII., c. 69,
s. 237.
N.S.W. No. 40
of 1899, s. 265.
Q. 27 Vic. No. 4,
s. 171, 53
Vic. No. 18,
s. 47.

PART IV.—MISCELLANEOUS PROVISIONS APPLICABLE TO
CERTAIN COMPANIES.

256.—(1.) Any past or present member of any joint-stock company may, in respect of any claim or demand which—

Members may
sue and be
sued by
company.

(a) such member may have either solely or jointly with any other person against such company or the funds or property thereof; or

Imp. 1 and 2
Vic. c. 96,
s. 1.
N.S.W. Ib.
s. 278.
Q. 11 Vic. No.
56, s. 1.

(b) such company may have against such member solely or jointly with any other person

sue and be sued by such company in the name of the officer thereto appointed in any action suit or other proceeding.

(2.) No action suit or other proceeding shall be in anywise affected by reason of any party or other person in whom any interest may be averred or who may be in anywise interested or concerned in any such action suit or other proceeding being or having been a member of such company.

(3.) All such actions suits or other proceedings shall be conducted and have effect as if the same had been between strangers.

257.—(1.) Any banking trading or other company which may by any Act or Ordinance sue or be sued in the name of any officer or other person thereto appointed shall on the death resignation or removal of such officer or person proceed with as little delay as possible to elect some other person in his stead.

Officers to be
replaced.
N.S.W. Ib. s.
279.
Q. Ib. s. 1.

(2.) If such election does not take place within one month from the date of such death resignation or removal then all the privileges of the said company whose officer has so died resigned or been removed conferred upon it by any Ordinance shall utterly cease and determine and thenceforth any person may sue or proceed against any individual members of such company so losing its privileges as aforesaid.

(9) See Section 4 of the *Central Court Ordinance*, 1925.

(10) No rules have been published in *Papua Govt. Gaz.* See, however, *The Rules of Court under The Companies Act, 1863* (Queensland, adopted), printed on p. 478. These rules were adopted by *The Courts and Laws Adopting Ordinance (Amended)* of 1889 and were continued in force by the present Section 3(3).

COMPANIES AND BODIES CORPORATE—

No set off.

Imp. 1 and 2
Vic. c. 96,

s. 4.

N.S.W. No. 40
of 1899, s. 280.
Q. 11 Vic. No.
56, s. 2.

258.—(1.) No claim or demand which any member of any joint-stock company may have in respect of—

(a) his share of the capital or joint stock thereof; or

(b) any dividends interest profits or bonus payable or apportionable in respect of such share

shall be capable of being set off against any demand which the company may have against such member on any other account.

(2.) All proceedings in respect of any other matter or thing may be carried on as if no such claim or demand as above-mentioned existed.

Merits
previously
determined may
be pleaded.

Imp. *Ib.* s. 3.
N.S.W. *Ib.*
s. 282.
Q. *Ib.* s. 4.

259. In case the merits of any demand by or against any such company have been determined in any action suit or other proceeding by or against the officer of the company appointed as aforesaid such proceedings may be pleaded in bar of any other action suit or other proceeding by or against the said company or officers for the same demand.

Provisions of
Acts enabling
company to
sue and be
sued in name
of an officer.

Imp. *Ib.* s. 3.
N.S.W. *Ib.*
s. 283.
Q. *Ib.* s. 5.

260. All the provisions of any Act enabling any such company to sue and be sued in the name of an officer thereof relative to actions suits and proceedings commenced or prosecuted under the authority thereof shall be applicable to actions suits and proceedings commenced or prosecuted under the authority of this Part of this Ordinance.

Memorials to
be registered.

N.S.W. *Ib.*
s. 284.
Q. *Ib.* s. 7.

261.—(1.) A memorial of the name of such officer appointed as aforesaid shall be registered in the office of the Registrar; and such memorial so registered shall upon proof that such memorial is signed with the handwriting of the persons whose signatures appear thereto be received in evidence in all proceedings and cases whatever as proof of the appointment and authority of such officer.

(2.) In any action suit or other proceedings brought by any such officer the plaintiff or applicant shall not be nonsuited or fail for want of proof of the registration of such memorial unless it appear that no such memorial has been registered.

PART V.—FOREIGN COMPANIES.

Registration of
foreign
companies.

N.S.W. No. 22
of 1906, s. 7.
Compare Q. 50
Vic. No. 31, s. 3,
and
Imp. 8 Edw.
VII., c. 69,
s. 274.

262.—(1.) Every company incorporated outside the Territory and carrying on business in the Territory shall within six months from the commencement of this Ordinance or before commencing to carry on business in the Territory register—

(a) its name and a copy of its memorandum and articles of association or other like document constituting

and defining the constitution of the company; and if the document is not written in the English language a certified translation thereof;

- (b) a balance-sheet containing a statement of its assets and liabilities at a date not more than twelve months prior to the date of such registration;
- (c) the name and place of abode or business of the person appointed by such company to carry on the business of such company in the Territory;
- (d) the situation of the principal office of such company in the Territory.

The person so registered shall be deemed to be the agent of such company and shall be called the public officer of the company; and such office shall be the registered office of the company for the purposes of this Ordinance.

Every company which fails to comply with this provision and any person carrying on in the Territory the business of any such company which has failed to comply with such provision shall be liable to a penalty not exceeding Five pounds for every day during which business shall be carried on.

(2.) Every such public officer as aforesaid shall be answerable for the doing of all such acts matters and things as are required to be done by such company by virtue of this Ordinance; and shall unless he prove some reasonable excuse be personally liable to all penalties imposed on such company for any contravention of any of the provisions of this Ordinance.

(3.) The registration of the name of such company agent and office shall be effected in the following manner:—The attorney or agent of such company shall make and sign a statutory declaration which shall be accompanied by and shall verify the various documents and particulars referred to in Sub-section one of this section; and such statutory declaration document and particulars shall be filed with the Registrar and be open for inspection at all reasonable times by any person requiring to inspect the same.

263.—(1.) Any company registered as a British company under the provisions of the *British Companies Act of 1886* (Queensland adopted) hereby repealed and in existence at the commencement of this Ordinance shall be deemed to have been registered under this Part of this Ordinance: 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 last-mentioned repealed Act.

Companies registered under Q. 50 Vic. No. 31 deemed to have been registered hereunder.

COMPANIES AND BODIES CORPORATE—

(2.) The registered office of such company shall be deemed to be the registered office of the company for the purposes of this Part of this Ordinance.

(3.) Every such company shall within six months from the commencement of this Ordinance register the name and place of abode of some person appointed by such company to carry on the business of the company in the Territory.

(4.) The person so registered shall be deemed to be the agent of the company and shall be called the public officer of the company and shall have and be subject to the same responsibilities and liabilities for the doing of all acts matters and things by and for penalties imposed on the company as are by the last preceding section declared concerning public officers.

(5.) Every such company which fails to comply with the provisions of this section and every person carrying on in the Territory the business of any such company which has failed to comply with such provisions shall be liable to a penalty not exceeding Five pounds for every day during which the business shall be carried on.

Fees for
registration.
Q. 50 Vic. No.
31, s. 5.

264. The Lieutenant-Governor in Council⁽²⁾ may prescribe⁽¹¹⁾ what fees shall be payable upon registrations under this Part of this Ordinance; but such fees shall not exceed and until prescribed as aforesaid shall be the same as the fees payable under Table B hereto upon the registration of a company under Part I. of this Ordinance.

Effect of
registration.
Q. 59 Vic.
No. 2, s. 7.

265. Any company registered or deemed to be registered under the provisions of this Part of this Ordinance may bring or defend any action suit or other legal proceedings in any Court of justice in the Territory having jurisdiction over the subject-matter as if it were a company formed and incorporated under this Ordinance.

Power of
British
companies to
hold land.
Imp. 8 Edw.
VII., c. 69,
s. 275.
Q. 50 Vic.
No. 31, s. 7.

266. Any company incorporated according to the laws of some part of His Majesty's Dominions other than the Territory—

(a) which at the commencement of this Ordinance is registered under the *British Companies Act of 1886* (Queensland adopted) hereby repealed; or

(b) which is registered under this Part of this Ordinance shall have the same power to hold lands in the Territory as if it were a company incorporated under this Ordinance.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(11) No fees for registration under Part V. have been prescribed by any instrument published in *Papua Govt. Gaz.*

266A. A joint-stock company or other company or society incorporated according to the laws of a country other than His Majesty's dominions and which under the laws of the country of incorporation has perpetual succession and a common seal and which has been registered under the provisions of this Part of this Ordinance upon receiving a licence from the Lieutenant-Governor⁽²⁾ in that behalf but not otherwise shall be competent to take hold convey and transfer land in the Territory for any estate of freehold or less than freehold.

When foreign company may hold land.
Q. 59 Vic. No. 2, s. 9A.
Inserted by No. 4 of 1926, s. 8.

The Lieutenant-Governor⁽²⁾ is hereby empowered to grant any such licence subject to such terms and conditions including the power of revocation for breach thereof as he thinks fit to impose.

267. Every company registered and every company deemed to be registered under this Part of this Ordinance having a capital divided into shares shall in each year make a list containing the following particulars:—

List to be made each year.
N.S.W. No. 9 of 1907, s. 8.

- (a) The names of all persons who on the fourteenth day succeeding the day on which the ordinary general meeting or if there is more than one ordinary general meeting in the year the first of such ordinary general meetings is held are members of such company.
- (b) The number of shares held by each of such members.
- (c) The amount of the capital of the company and the number of shares into which it is divided.
- (d) The number of shares taken from the commencement of the company up to the date of the return.
- (e) The amount of calls made on each share.
- (f) The total amount of calls received.
- (g) The total amount of calls unpaid.
- (h) The total amount of shares forfeited:

Provided that the Registrar may in his discretion by notification in the *Gazette* exempt any such company from making such list or from setting forth in such list any of the particulars aforesaid; and may in like manner revoke or amend any such exemption.

Proviso amended by No. 4 of 1926, s. 9.

268. Any company registered and every company deemed to be registered under this Part of this Ordinance shall once at least in every year make a list showing the number denomination value and due date of all debentures stock or other securities secured on the property of the company. Such list shall state whether such debentures stock or securities are charged on the whole of the

List of debenture and stock holders.
N.S.W. No. 22 of 1906, s. 9.
N.S.W. No. 9 of 1907, s. 4.

(2) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

COMPANIES AND BODIES CORPORATE—

assets of the company or on part only and if so which part of such assets.

Lists and balance-sheet to be filed.
N.S.W. No. 9
of 1907, s. 5.

269. The lists mentioned in the two last-preceding sections of this Ordinance shall respectively be completed within four months of the general meeting at which a balance-sheet is presented or where more than one such meeting is held in a year then within four months of the first of such meetings.

Such lists and balance-sheet so presented shall be forwarded to the Registrar within the period above fixed for the completion of such lists and filed in his office; and the same shall be open for inspection at all reasonable times by any person requiring to inspect the same.

Such balance-sheet shall contain a statement of the assets and liabilities of the company.

Penalty for default in forwarding lists or balance-sheet.
N.S.W. *Ib.* s. 5.

270. If any company makes default in completing or forwarding any such list or balance-sheet as aforesaid such company and every director manager and public officer of such company who knowingly and wilfully authorizes or permits such default shall be liable to a penalty not exceeding Five pounds for every day during which such default continues.

Certificate of registration.
N.S.W. No. 22
of 1906, s. 11.

271.—(1.) A certificate purporting to be under the hand of the Registrar (who is hereby required to give such certificate to any person applying for the same after the registration of the documents and particulars hereinbefore prescribed and upon payment of the prescribed fee) and which shall set forth the name of the company and of the agent and of the principal office of the company in the Territory shall be prima facie evidence in all Courts that such company is incorporated that the person named therein as agent is the agent of such company in the Territory and that the office of such company in the Territory is situated as therein stated; and that such company agent and office have been duly registered under the provisions of this Part of this Ordinance and of the time of registration and of all particulars mentioned in such certificate.

Ninth Schedule.

(2.) Such certificate shall be in the form of the Ninth Schedule hereto or to the like effect.

(3.) A copy of such certificate shall be published in the *Gazette*.

Removal of registered office.
N.S.W. *Ib.* s. 12.

272. When and so often as any such registered office shall be removed or any other person shall be substituted for the registered agent of such company the like declaration and particulars shall

be made and given as is hereinbefore required with reference to the registration of an agent and an office of a company under this Part of this Ordinance; and if the requirements of this section shall not be complied with such company and any person carrying on the business of such company which has failed to comply with such provisions shall be liable to a penalty not exceeding Five pounds for every day during which the business is so carried on.

273. All communications and notices may be addressed to such registered office of such company and service of any notice or legal process at such office or on the agent of the company whose name is registered pursuant to this Part of this Ordinance shall be deemed to be service upon the company.

Service of notices, &c., at registered office.
N.S.W. No. 22 of 1906, s. 13.
Q. 50 Vic.
No. 31, s. 9.

273A. Until the name of a company registered or deemed to be registered under this Part of this Ordinance has been struck off the register under the provisions of this Ordinance service of any notice or legal process at the last registered office or on the last registered agent of the company shall be deemed to be good service notwithstanding such company shall have ceased to carry on business in the Territory.

Service when company ceased to carry on business.
Inserted by No. 4 of 1926, s. 10.

274. The Central Court⁽²⁾ has jurisdiction to wind-up a company registered or deemed to be registered under this Part of this Ordinance so far as it carries on operations within the Territory and so far as concerns its assets and liabilities therein.

Jurisdiction in winding-up.
Q. 1b. s. 12.

275. The provisions of this Part of this Ordinance shall not be construed to diminish or affect any existing jurisdiction or authority of any Court of justice or any existing rights liabilities or disabilities of foreign companies except as far as the same are expressly diminished or affected by the provisions of this Part of this Ordinance.

Saving.
Q. 59 Vic. No. 2, s. 11.

276. The Lieutenant-Governor⁽²⁾ may make regulations⁽¹²⁾ prescribing the forms to be used for the purpose of this Part of this Ordinance and fixing the fees to be paid in respect of the registration of companies and of the various documents and particulars thereunder and providing for the payment and recovery of such fees and generally carrying out the provisions of this Part.

Regulations.
N.S.W. No. 10 of 1907, s. 6.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(12) No regulations have been made.

COMPANIES AND BODIES CORPORATE—

SCHEDULES.

Section 3.

FIRST SCHEDULE.

Date of Enactment.	Title or Short Title.
11 Vic. No. 19 (Queensland adopted)	An Act for facilitating the winding-up of joint-stock companies unable to meet their pecuniary engagements.
11 Vic. No. 56 (Queensland adopted)	An Act to enable any joint-stock company to sue any of its own members and to enable any member of such joint-stock company to sue any such company and for other purposes.
27 Vic. No. 4 (Queensland adopted)	The Companies Act, 1863.
50 Vic. No. 19 (Queensland adopted)	The Mining Companies Act of 1886.
50 Vic. No. 31 (Queensland adopted)	The British Companies Act of 1886.

Section 14.

SECOND SCHEDULE.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES OTHER THAN A NO-LIABILITY COMPANY.

Shares.

1. If several persons are registered as joint holders of any share any one of such persons may give effectual receipts for any dividend payable in respect of such share.
2. Every member shall on payment of One shilling or such less sum as the company in general meeting may prescribe be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid-up thereon.
3. If such certificate is worn out or lost it may be renewed on payment of One shilling or such sum as the company in general meeting may prescribe.

Call on Shares.

4. The directors may from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they think fit provided that twenty-one days' notice at least is given of each call and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.
5. A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.
6. If the call payable in respect of any share is not paid before or on the day appointed for payment thereof the holder for the time being of such share shall be liable to pay interest for the same at the rate of Ten pounds per centum per annum from the day appointed for the payment thereof to the time of the actual payment.
7. The directors may if they think fit receive from any member willing to advance the same all or any part of the moneys due upon the shares held by him beyond the sums actually called for and upon the moneys so paid in advance or so much thereof as from time to time exceeds the amount of the

calls then made upon the shares in respect of which such advance has been made the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Transfers of Shares.

8. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register-book in respect thereof.

9. Shares in the company shall be transferred in the following form:—

I *A.B.* of _____ in consideration of the sum of _____ pounds paid to me by *C.D.* of _____ do hereby transfer to the said *C.D.* the share [or shares] numbered _____ standing in my name in the books of the _____ company to hold unto the said *C.D.* his executors administrators and assigns subject to the several conditions on which I held the same at the time of the execution hereof and I the said *C.D.* do hereby agree to take the said share [or shares] subject to the same conditions. As witness our hands the _____ day of _____

10. The company may decline to register any transfer of shares made by a member who is indebted to them.

11. The transfer-book shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

12. The executors or administrators of a deceased member shall be the only persons recognized by the company as having any title to his share.

13. Any person becoming entitled to a share in consequence of the death bankruptcy or insolvency of any member or in consequence of the marriage of any female member may be registered as a member upon such evidence being produced as may from time to time be required by the company.

14. Any person who has become entitled to a share in consequence of the death bankruptcy or insolvency of any member or in consequence of the marriage of any female member may instead of being registered himself elect to have some person to be named by him registered as a transferee of such shares.

15. The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such shares.

16. The instrument of transfer shall be presented to the company accompanied with such evidence as the directors may require to prove the title of the transferor and thereupon the company shall register the transferee as a member.

Forfeiture of Shares.

17. If any member fails to pay any call on the day appointed for payment thereof the directors may at any time thereafter during such time as the call remains unpaid serve a notice on him requiring him to pay such call together with the interest and any expenses that may have accrued by reason of such non-payment.

18. The notice shall name a further day on or before which such call and all interest and expenses that have accrued by reason of such non-payment are to be paid and shall also name the place where payment is to be made (the place so named being either the registered office of the company or some other place at which calls of the company are usually made payable) and shall also state that in the event of non-payment at or before the time and at the place appointed the shares in respect of which such call was made will be liable to be forfeited.

COMPANIES AND BODIES CORPORATE—

19. If the requisitions of any such notice as aforesaid are not complied with any share in respect of which such notice has been given may at any time thereafter before payment of all calls interest and expenses due in respect thereof has been made be forfeited by a resolution of the directors to that effect.

20. Any shares so forfeited shall be deemed to be the property of the company and may be disposed of in such manner as the company in general meeting thinks fit.

21. Any member whose shares have been forfeited shall notwithstanding be liable to pay to the company all calls owing upon such shares at time of the forfeiture.

22. A statutory declaration in writing that the call in respect of a share was made and notice thereof given and that default in payment of the call was made and that the forfeiture of the share was made by a resolution of the directors to that effect shall be sufficient evidence of the facts therein stated as against all persons entitled to such share and such declaration and the receipt of the company for the price of such share shall constitute a good title to such share and a certificate of proprietorship shall be delivered to a purchaser and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase and he shall not be bound to see to the application of the purchase money nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of Shares into Stock.

23. The directors may with the sanction of the company previously given in general meeting convert any paid-up shares into stock.

24. When any shares have been converted into stock the several holders of such stock may thenceforth transfer their respective interests therein or any part of such interests in the same manner and subject to the same regulations as and subject to which any shares in the capital of the company may be transferred or as near thereto as circumstances admit.

25. The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interests in such stock and such interests shall in proportion to the amount thereof confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company and for other purposes as would have been conferred by shares of equal amount in the capital of the company but so that none of such privileges or advantages except the participation in the dividends and profits of the company shall be conferred by any such aliquot part of consolidated stock as would not if existing in shares have conferred such privileges or advantages.

Increase in Capital.

26. The directors may with the sanction of a special resolution of the company previously given in general meeting increase its capital by the issue of new shares such aggregate increase to be of such amount and to be divided into shares of such respective amounts as the company in general meeting directs or if no direction is given as the directors think expedient.

27. Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital all new shares shall be offered to the members in proportion to the existing shares held by them and such offer shall be made by notice specifying the number of shares to which the member is entitled and limiting the time within which the offer if not accepted will be deemed to be declined and after the expiration of such time or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered the directors may dispose of the same in such manner as they think most beneficial to the company.

Companies Ordinance, 1912-1926.

28. Any capital raised by the creation of new shares shall be considered as part of the original capital and shall be subject to the same provisions with reference to the payment of calls and the forfeiture of shares on non-payment of calls or otherwise as if it had been part of the original capital.

General Meetings.

29. The first general meeting shall be held at such time not being more than four months after the registration of the company and at such place as the directors may determine.

30. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting and if no other time or place is prescribed a general meeting shall be held on the first Monday in February in every year at such place as may be determined by the directors.

31. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

32. The directors may whenever they think fit and they shall upon a requisition made in writing by not less than one-fifth in number of the members of the company convene an extraordinary general meeting.

33. Any requisition made by the members shall express the object of the meeting proposed to be called and shall be left at the registered office of the company.

34. Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition the requisitionists or any other members amounting to the required number may themselves convene an extraordinary general meeting.

Proceedings at General Meetings.

35. Seven days' notice at the least specifying the place the day and the hour of meeting and in case of special business the general nature of such business shall be given to the members in manner hereinafter mentioned or in such other manner if any as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

36. All business shall be deemed special that is transacted at an extraordinary meeting and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend and the consideration of the accounts balance-sheets and the ordinary report of the directors.

37. No business shall be transacted at any general meeting except the declaration of a dividend unless a quorum of members is present at the time when the meeting proceeds to business; and such quorum shall be ascertained as follows that is to say if the persons who have taken shares in the company at the time of the meeting do not exceed ten in number the quorum shall be five if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty and one for every ten additional members after fifty with this limitation that no quorum shall in any case exceed twenty.

38. If within one hour from the time appointed for the meeting a quorum is not present the meeting if convened upon the requisition of the 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 and if at such adjourned meeting a quorum is not present it shall be adjourned *sine die*.

39. The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.

Directors.

52. The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

53. Until directors are appointed the subscribers of the memorandum of association shall be deemed to be directors.

54. The future remuneration of the directors and their remuneration for services performed previously to the first general meeting shall be determined by the company in general meeting.

Powers of Directors.

55. The business of the company shall be managed by the directors who may pay all expenses incurred in getting up and registering the company and may exercise all such powers of the company as are not by the foregoing Ordinance or by these articles required to be exercised by the company in general meeting subject nevertheless to any regulations of these articles to the provisions of the foregoing Ordinance 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 such regulation had not been made.

56. The continuing director⁽¹³⁾ may act notwithstanding any vacancy in their body.

Disqualification of Directors.

57. The office of director shall be vacated—

if he holds any other office or place of profit under the company;

if he becomes bankrupt or insolvent;

if he is concerned in or participates in the profits of any contract with the company.

But the above rules shall be subject to the following exceptions:—That no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is a director; nevertheless he shall not vote in respect of such contract or work and if he does so vote his vote shall not be counted.

Rotation of Directors.

58. At the first ordinary meeting after the registration of the company the whole of the directors shall retire from office and at the first ordinary meeting in every subsequent year one-third of the directors for the time being or if their number is not a multiple of three then the number nearest to one-third shall retire from office.

59. The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the company shall unless the directors agree among themselves be determined by ballot. In every subsequent year the one-third or other nearest number who have been longest in office shall retire.

60. A retiring director shall be re-eligible.

61. The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

(13) The word "director" appeared in the original Ordinance. It has now been omitted and the word "directors" inserted in its stead by the Second Schedule of the *Ordinances Reprint and Revision Ordinance 1947* of the Territory of Papua-New Guinea.

COMPANIES AND BODIES CORPORATE—

62. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up the meeting shall stand adjourned till the same day in the next week at the same time and place and if at such adjourned meeting the places of the vacating directors are not filled up the vacating directors or such of them as have not had their places filled up shall continue in office until the ordinary meeting in the next year and so on from time to time until their places are filled up.

63. The company may from time to time in general meeting increase or reduce the number of directors and may also determine in what rotation such increased or reduced number is to go out of office.

64. Any casual vacancy occurring in the board of directors may be filled up by the directors but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

65. The company in general meeting may by a special resolution remove any director before the expiration of his period of office and may by an ordinary resolution appoint another person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of Directors.

66. The directors may meet together for the despatch of business adjourn and otherwise regulate their meetings as they think fit and determine the quorum necessary for the transaction of business. 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 at any time summon a meeting of the directors.

67. 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 at the time appointed for holding the same the directors present shall choose some one of their number to be chairman of such meeting.

68. 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 them by the directors.

69. A committee may elect a chairman of their meetings. If no such chairman is elected or if he is not present at the time appointed for holding the same the members present shall choose one of their number to be chairman of such meeting.

70. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present and in case of an equality of votes the chairman shall have a second or casting vote.

71. 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 directors or persons 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.

Dividends.

72. The directors may with the sanction of the company in general meeting declare a dividend to be paid to the members in proportion to their shares.

73. No dividend shall be payable except out of the profits arising from the business of the company.

Companies Ordinance, 1912-1926.

74. The directors may before recommending any dividend set aside out of the profits of the company such sum as they think proper as a reserved fund to meet contingencies or for equalizing dividends, or for repairing or maintaining the works connected with the business of the company or any part thereof and the directors may invest the sum so set apart as a reserve fund upon such securities as they may select.

75. The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

76. Notice of any dividend that may have been declared shall be given to each member in manner hereinbefore mentioned and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the company.

77. No dividend shall bear interest as against the company.

Accounts.

78. The directors shall cause true accounts to be kept—
of the stock-in-trade of the company;

of the sums of money received and expended by the company and the matter in respect of which such receipt and expenditure takes place; and of the credits and liabilities of the company.

The books of accounts shall be kept at the registered office of the company; and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting shall be open to the inspection of the members during the hours of business.

79. Once at the least in every year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year made up to a date not more than three months before such meeting.

80. The statement so made shall show arranged under the most convenient heads the amount of gross income distinguishing the several sources from which it has been derived and the amount of gross expenditure distinguishing the expense of the establishment salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year the whole amount of such item shall be stated with the addition of the reason why only a portion of such expenditure is charged against the income of the year.

81. A balance-sheet shall be made out in every year and laid before the company in general meeting and such balance-sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to this table or as near thereto as circumstances admit.

82. A printed copy of such balance-sheet shall seven days previously to such meeting be served on every member in the manner in which notices are hereinafter directed to be served.

Audit.

83. Once at the least in every year the accounts of the company shall be examined and the correctness of the balance-sheet ascertained by one or more auditors.

COMPANIES AND BODIES CORPORATE—

84. The first auditors shall be appointed by the directors; subsequent auditors shall be appointed by the company in general meeting.

85. If one auditor only is appointed all the provisions herein contained relating to auditors shall apply to him.

86. The auditors may be members of the company but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company and no director or other officer of the company is eligible during his continuance in office.

87. The election of auditors shall be made by the company at their ordinary meeting of each year.

88. The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting.

89. Any auditor shall be re-eligible on his quitting office.

90. If any casual vacancy occurs in the office of any auditor appointed by the company the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

91. If no election of auditors is made in manner aforesaid the Registrar may on the application of not less than five members of the company appoint an auditor for the current year and fix the remuneration to be paid to him by the company for his services.

92. Every auditor shall be supplied with a copy of the balance-sheet and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

93. Every auditor shall have a list delivered to him of all books kept by the company and shall at all reasonable times have access to the books and accounts of the company; he may at the expense of the company employ accountants or other persons to assist him in investigating such accounts; and he may in relation to such accounts examine the directors or any other officer of the company.

94. The auditors shall make a report to the members upon the balance-sheet and accounts and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet containing the particulars required by these regulations and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs and in case they have called for explanations or information from the directors whether such explanations or information have been given by the directors and whether they have been satisfactory and such report shall be read together with the report of the directors at the ordinary meeting.

Notices.

95. A notice may be served by the company upon any member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

96. All notices directed to be given to the members shall with respect to any share to which persons are jointly entitled be given to whichever of such persons is named first in the register of members and notice so given shall be sufficient notice to all the holders of such share.

97. Any notice if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notices was properly addressed and put into the post office.

ANNEXURE TO TABLE A.

Dr.

BALANCE-SHEET of the

Company, made up to

, 19 .

Cr.

Capital and Liabilities.				Property and Assets.								
<i>I. Capital</i>	1	Showing— The number of shares.	£	s.	d.	<i>III. Property held by the company</i>	7	Showing— Immovable property distinguishing—	£	s.	d.	
	2	The amount paid per share.						(a) Freehold land.				
	3	If any arrears of calls the nature of the arrear and the names of the defaulters.						(b) Freehold buildings.				
	4	The particulars of any forfeited shares.						(c) Leasehold.				
	5	Showing— The amount of loans on mortgages or debenture bonds.						8	Movable property distinguishing—			
	6	The amount of debts owing by the company distinguishing—							(d) Stock-in-trade.			
<i>II. Debts and liabilities of the company</i>		(a) Debts for which acceptances have been given.				<i>IV. Debts owing to the company</i>	9	Showing— Debts considered good for which the company hold bills or other securities.				
		(b) Debts to tradesmen for supplies of stock-in-trade or other articles.					10	Debts considered good for which the company hold no security.				
		(c) Debts for law expenses.					11	Debts considered doubtful and bad.				
		(d) Debts for interest on debentures or other loans.						Any debt due from a director or other officer of the company to be separately stated.				

457

Companies Ordinance, 1912-1926.

[Section 194.]

ANNEXURE TO TABLE A—continued.
Company, made up to

Dr.

BALANCE-SHEET of the

, 19 .

Cr.

Capital and Liabilities.				Property and Assets.			
		£	s. d.	£	s. d.		
	(e) Unclaimed dividends.					V. Cash and investments	
	(f) Debts not enumerated above.					12	Showing— The nature of investment and rate of interest.
VI. Reserve fund ..	Showing— The amount set aside from profits to meet contingencies.					13	The amount of cash where lodged and if bearing interest.
VII. Profit and loss ..	Showing— The disposable balance for payment of dividends, &c.						
Contingent liabilities ..	Claims against the company not acknowledged as debts. Moneys for which the company is contingently liable.						

458

COMPANIES AND BODIES CORPORATE—

Companies Ordinance, 1912-1926.

TABLE B.

Sections 17
and 264.

TABLE OF FEES TO BE PAID TO THE REGISTRAR IN RESPECT OF COMPANIES FORMED OR REGISTERED UNDER PART I. OF THE ORDINANCE.		£	s.	d.	
For registration of a company whose nominal capital does not exceed £1,000 a fee of .. .. .	.. .. .	5	0	0	Fees to be paid by companies having a capital divided into shares other than no-liability companies.
For registration of a company whose nominal capital exceeds £1,000 the above fee of £5 with the following additional fees regulated according to the amount of nominal capital (that is to say)—					
	£ s. d.				
For every £1,000 of nominal capital or part of £1,000 after the first £5,000 up to £100,000 ..	..	0	5	0	
For every £1,000 of nominal capital or part of £1,000 after the first £100,000 .. .. .	.. .. .	0	1	0	Fees to be paid by companies not having a capital divided into shares.
For registration of any increase of capital made after the first registration of the company the same fees per £1,000 or part of £1,000 as would have been payable if such increased capital had formed part of the original capital at the time of registration.					
Provided that no company shall be liable to pay in respect of nominal capital on registration or afterwards any greater amount of fees than £50 taking into account in the case of fees payable on an increase of capital after registration the fees paid on registration.					
For registration of a company whose number of members as stated in the articles of association does not exceed twenty ..	..	2	0	0	
For registration of a company whose number of members as stated in the articles of association exceeds twenty but does not exceed one hundred .. .. .	.. .. .	5	0	0	
For registration of a company whose number of members as stated in the articles of association exceeds one hundred but is not stated to be unlimited the above fee of £5 with an additional 5s. for every fifty members or less number than fifty members after the first hundred.					
For registration of a company in which the number of members is stated in the articles of association to be unlimited a fee of ..	..	20	0	0	
For registration of any increase on the number of members made after the registration of the company in respect of every fifty members or less than fifty members of such increase ..	..	0	5	0	
Provided that no one company shall be liable to pay on the whole a greater fee than £20 in respect of its number of members taking into account the fee paid on the first registration of the company.					
For registration of any existing company except such companies as are by this Ordinance exempted from the payment of fees in respect of registration under this Ordinance the same fee as is charged for registering a new company.					
For registering any document hereby required or authorized to be registered other than the memorandum of association ..	..	0	5	0	
For making a record of any fact hereby authorized or required to be recorded by the Registrar .. .. .	.. .. .	0	5	0	
For every search for or in connexion with any memorandum of association or for or in connexion with any document filed having reference to any document .. .. .	.. .. .	0	1	0	
For every certified copy of or extract from any document not exceeding six folios .. .. .	.. .. .	0	5	0	
For each additional folio after the first six folios .. .. .	.. .. .	0	0	8	

COMPANIES AND BODIES CORPORATE—

Section 67.

FORM C.

FORM OF STATEMENT REFERRED TO IN DIVISION 3 OF PART I. OF THIS ORDINANCE.

* The 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 have 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 £

* If the company has no capital divided into shares the portion of the statement relating to capital and shares must be omitted.

Section 71.

THIRD SCHEDULE.

FORM A.

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES.

1st. The name of the company is "The Eastern Steam-packet Company (Limited)".

2nd. The registered office of the company will be situate in Port Moresby.

3rd. 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."

4th. The liability of the members is limited.

5th. The capital of the company is two hundred thousand pounds divided into one thousand shares of two hundred pounds 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. John Jones of , merchant	200
2. John Smith of , "	25
3. Thomas Green of , "	30
4. John Thompson of , "	40
5. Caleb White of , "	15
6. Andrew Brown of , "	5
7. Caesar White of , "	10
Total shares taken	325

Dated the day of , 19

Witness to the above signatures—

A.B., [address and occupation].

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY
GUARANTEE AND NOT HAVING A CAPITAL DIVIDED INTO SHARES.

Memorandum of Association.

1st. The name of the Company is "The Mutual Marine Association (Limited)".

2nd. The registered office of the company will be situate in Port Moresby.

3rd. The objects for which the company is established are "the mutual insurance of ships belonging to members of the company and the doing all such other things as are incidental or conducive to the attainment of the above objects".

4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound-up during the time that he is a member or within one year afterwards for payment of the debts and liabilities of the company contracted before the time at which 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 Ten pounds.

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. John Jones of | , merchant. |
| 2. John Smith of | , " |
| 3. Thomas Green of | , " |
| 4. John Thompson of | , " |
| 5. Caleb White of | , " |
| 6. Andrew Brown of | , " |
| 7. Cæsar White of | , " |

Dated the _____ day of _____, 19 ____.

Witness to the above signatures—

A.B., [address and occupation].

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF
ASSOCIATION.

1. The company for the purpose of registration is declared to consist of five hundred members.

2. The directors hereinafter mentioned may whenever the business of the association requires it register an increase of members.

Definition of Members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

4. The first general meeting shall be held at such time not being more than three months after the incorporation of the company and at such place as the directors may determine.

COMPANIES AND BODIES CORPORATE—

5. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting and if no other time or place is prescribed a general meeting shall be held on the first Monday in February in every year at such place as may be determined by the directors.

6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

7. The directors may whenever they think fit and they shall upon a requisition made in writing by any five or more members convene an extraordinary general meeting.

8. Any requisition made by the members shall express the object of the meeting proposed to be called and shall be left at the registered office of the company.

9. Upon the receipt of such requisition the directors shall forthwith proceed to convene a general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition the requisitionists or any other five members may themselves convene a meeting.

Proceedings at General Meetings.

10. Seven days' notice at the least specifying the place the day and the hour of meeting and in case of special business the general nature of such business shall be given to the members in manner hereinafter mentioned or in such other manner if any as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting and all that is transacted at an ordinary meeting with the exception of the consideration of the accounts balance-sheets and the ordinary report of the directors.

12. No business shall be transacted at any meeting except the declaration of a dividend unless a quorum of members is present at the commencement of such business; and such quorum shall be ascertained as follows that is to say:—If the members of the company at the time of the meeting do not exceed ten in number the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty and one for every ten additional members after fifty with this limitation that no quorum shall in any case exceed thirty.

13. If within one hour from the time appointed for the meeting a quorum of members is not present the meeting if convened upon the requisition of the members shall be dissolved. In any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present it shall be adjourned *sine die*.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman or if at any meeting he is not present at the time of holding the same the members present shall choose one of their own number to be chairman of such meeting.

16. The chairman may with the consent of the meeting adjourn any 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.

17. At any general meeting unless a poll is demanded by at least five members a declaration by the chairman that a resolution has been carried and an entry to that effect in the book of proceedings of the company shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

Companies Ordinance, 1912-1926.

18. If a poll is demanded in manner aforesaid the same shall be taken in such manner as the chairman directs and the result of such poll shall be deemed to be the resolutions of the company in general meeting.

Votes of Members.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or a person of unsound mind he may vote by his committee or other legal curator.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. Votes may be given either personally or by proxies. A proxy shall be appointed in writing under the hand of the appointer or if such appointer is a corporation under its common seal.

23. No person shall be appointed a proxy who is not a member and the instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following terms:—
Company (Limited).

I of being a member of the
Company (Limited) hereby appoint of
my proxy to vote for me and on my behalf at the ordinary [or extra-
ordinary *as the case may be*] general meeting of the company to be
held on the day of and at any adjourn-
ment thereof to be held on the day of next
[or at any meeting of the company that may be held in the year
].

As witness my hand this day of
Signed by the said in the presence of

Directors.

25. The number of directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed the subscribers of the memorandum of association shall for all the purposes of the Ordinance be deemed to be directors.

Power of Directors.

27. The business of the company shall be managed by the directors who may exercise all such powers of the company as are not hereby required to be exercised 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 such regulation had not been made.

Election of Directors.

28. The directors shall be elected annually by the company in general meeting.

Business of Company.

[Here insert rules as to mode in which business of insurance is to be conducted.]

Accounts.

29. The accounts of company shall be audited by a committee of five members to be called the audit committee.

COMPANIES AND BODIES CORPORATE—

30. The first audit committee shall be nominated by the directors out of the body of members.

31. Subsequent audit committees shall be nominated by the members at the ordinary general meeting in each year.

32. The audit committee shall be supplied with a copy of the balance-sheet and it shall be their duty to examine the same with the accounts and vouchers relating thereto.

33. The audit committee shall have a list delivered to them of all books kept by the company and they shall at all reasonable times have access to the books and accounts of the company. They may at the expense of the company employ accountants or other persons to assist them in investigating such accounts and they may in relation to such accounts examine the directors or any other officer of the company.

34. The audit committee shall make a report to the members upon the balance-sheet and accounts and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet containing the particulars required by these regulations of the company and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs; and in case they have called for explanation⁽¹⁴⁾ or information from the directors whether such explanations or information have been given by the directors and whether they have been satisfactory and such report shall be read together with the report of the directors at the ordinary meeting.

Notices.

35. A notice may be served by the company upon a member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

36. Any notice if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

Winding-up.

37. The company shall be wound-up voluntarily whenever an extraordinary resolution as defined by the *Companies Ordinance*, 1912⁽¹⁵⁾ is passed requiring the company to be wound-up voluntarily.

Names addresses and descriptions of subscribers.

1. John Jones of	,	merchant.
2. John Smith of	,	"
3. Thomas Green of	,	"
4. John Thompson of	,	"
5. Caleb White of	,	"
6. Andrew Brown of	,	"
7. Caesar White of	,	"

Dated the day of , 19 .

Witness to the above signatures—

[A.B., address and occupation.]

(14) The word "explanation" appeared in the original Ordinance. The word "explanations" has now been inserted in its stead by the Second Schedule of the *Ordinances Reprint and Revision Ordinance* 1947 of the Territory of Papua-New Guinea.

(15) Now the *Companies Ordinance*, 1912-1926.

FORM C.

Section 71.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY
GUARANTEE AND HAVING A CAPITAL DIVIDED INTO SHARES.

Memorandum of Association.

1st. The name of the company is "The Royal Hotel Company (Limited)."

2nd. The registered office of the company will be situate in Port Moresby.

3rd. The objects for which the company is established are "the providing hotels for the accommodation of travellers and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound-up during the time that he is a member or within one year afterwards for payment of the debts and liabilities of the company contracted before the time at which he ceased 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 Twenty pounds.

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. John Jones of | , merchant. |
| 2. John Smith of | , " |
| 3. Thomas Green of | , " |
| 4. John Thompson of | , " |
| 5. Caleb White of | , " |
| 6. Andrew Brown of | , " |
| 7. Caesar White of | , " |

Dated the day of , 19 .

Witness to the above signatures—

[A.B., address and occupation.]

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF
ASSOCIATION.

1. The capital of the company shall consist of five hundred thousand pounds divided into five thousand shares of one hundred pounds each.

2. The directors may with the sanction of the company in general meeting reduce the amount of shares.

3. The directors may with the sanction of the company in general meeting cancel any shares belonging to the company.

4. All the articles of Table A shall be deemed to be incorporated with these articles and to apply to the company.

We the several persons whose names and addresses are subscribed agree

COMPANIES AND BODIES CORPORATE—

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. John Jones of , merchant	200
2. John Smith of , "	25
3. Thomas Green of , "	30
4. John Thompson of , "	40
5. Caleb White of , "	15
6. Andrew Brown of , "	5
7. Caesar White of , "	10
Total shares taken	325

Dated this day of , 19 .

Witness to the above signatures—

[A.B., address and occupation.]

FORM D.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY
HAVING A CAPITAL DIVIDED INTO SHARES.

Memorandum of Association.

- 1st. The name of the company is "The Patent Stereotype Company".
- 2nd. The registered office of the company will be situate in Port Moresby.
- 3rd. The objects for which the company is established are "the working of a patent method of founding and casting stereotyped plates of which method John Smith of London is the sole patentee".

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. John Jones of , merchant.
2. John Smith of , "
3. Thomas Green of , "
4. John Thompson of , "
5. Caleb White of , "
6. Andrew Brown of , "
7. Abel Brown of , "

Dated the day of , 19 .

Witness to the above signatures—

[A.B., address and occupation.]

Capital of the Company.

The capital of the company is two thousand pounds divided into twenty shares of one hundred pounds each.

Application of Table A.

All the articles of Table A shall be deemed to be incorporated with these articles and to apply to the company.

Companies Ordinance, 1912-1926.

We the several persons whose names and addresses are subscribed 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. John Jones of , merchant	1
2. John Smith of , "	5
3. Thomas Green of , "	2
4. John Thompson of , "	2
5. Caleb White of , "	3
6. Andrew Brown of , "	4
7. Abel Brown of , "	1
Total shares taken	18

Dated the _____ day of _____ 19 ..
 Witness to the above signatures—
 [A.B., address and occupation.]

FORM E (1) as required by Section 22 of the Ordinance.

Summary of capital and shares of the _____ company made up to the _____ day of _____ :—

(1) Nominal capital £ _____ divided into _____ shares of
 £ _____ each. viz.— Issue shares = £ _____
 " " = £ _____
 " " = £ _____
 Total £ _____

(2) Number of shares taken up to the _____ day of _____, 19 _____, viz.— Issue shares
 " "
 " "
 Total

(3) There has been £ _____ per share called up on _____ shares of issue = £ _____
 " " " " " " = £ _____
 " " " " " " = £ _____
 (a) Total £ _____

(4) { Amount of calls received £ _____
 { Amount of calls unpaid £ _____
 (a) Total £ _____

(5) Total amount (if any) agreed to be considered as paid on _____ shares as per agreement dated the _____ day of _____, 19 } (b) £ _____

(6) { Number of shares forfeited since date of last return
 { Total number of shares forfeited
 { Total amount paid on forfeited shares £ _____

Dated at _____ this _____ day of _____, 19 ..
 } Directors.
 } Manager or Secretary.

(a) The totals of Nos. 3 and 4 should agree.
 (b) No. 5 applies only to shares issued as fully paid-up or partly paid-up for a consideration other than cash.
 N.B.—Every alteration or erasure must be initialed.

-COMPANIES AND BODIES CORPORATE-

Sections 22 and 71.

FORM E (2) as required by Section 22 of the Ordinance.

List of persons holding shares in _____ on the _____ day of _____, 19____, and of persons who have held shares therein at any time during the year immediately preceding the said _____ day of _____, showing their names and addresses and occupations and an account of the shares so held:—

Folio in share register.	Names addresses and occupations.(a)				Account of shares.(b)						Remarks.											
	Surname.	Christian name.	Address.	Occupation.	Shares held by existing members on the day of _____ and total amount paid, or deemed to be paid, thereon.		Particulars of shares transferred during the preceding year.(c)					Shares forfeited during the preceding year.(e)										
					Number of shares.(c)	Amount paid or deemed to be paid.	By members who have sold a portion of their shares, but still retain a portion.		By persons who have sold the whole of their shares.			Number of shares.	Date of forfeiture.									
							Number of shares.(d)	Date of registration of transfer.	Number of shares.(d)	Date of registration of transfer.												
											£	s.	d.									
																						Carried forward

Manager or Secretary.

- (a) Christian names addresses and occupations should be given in full.
- (b) "Number of shares" means the aggregate not the distinctive number.
- (c) This column should be added up. The total should agree with the number of shares stated in the summary to have been taken up.
- (d) The list should include all transfers since the date of the last list and the date of registration of each transfer should be given as well as the number of shares transferred. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee.
- (e) Should there have been no transactions under these headings since last list the word "nil" should be written across each column and initialed.

Section 184.

FOURTH SCHEDULE.

PAPUA.

Certificate of Registration of a No-liability Company.

This is to certify that a mining company called "*_____*, no-liability" has been duly registered under the *Companies Ordinance, 1912*, a memorandum for registration pursuant to the said Ordinance having been duly lodged in the office of the Registrar of Joint-Stock Companies and published in the *Gazette* of the _____ day of _____ and in the _____ newspaper of the _____ day of _____ [if any other newspaper mention it] and copies of the said *Gazette* and newspaper [if a copy of rules has been forwarded add] and also copy of rules of the company] have been duly forwarded to the said office. The date of registration of the said company is _____ the _____ day of _____.

Given under my hand this _____ day of _____.

A.B.,

Registrar of Companies.

FIFTH SCHEDULE.

Section 182.

MEMORANDUM FOR REGISTRATION OF A NO-LIABILITY COMPANY.

- (1) The name of the company is to be " , no-liability."
- (2) The first place of operations (or intended operations) is at .
- (3) The first registered office of the company will be situated at .
- (4) The value of the company's intended property (or property held in trust for the company *as the case may be*) including the plant and machinery is .
- (5) The amount of money at the credit of the company or any person on its behalf is £ and the total liability of the company or which the company is intended to assume or undertake is .
- (6) The nominal capital of the company is in shares of each.
- (7) The number of contributing shares subscribed for is .
- (8) The name of the provisional [or first] manager is .
- (9) Ten per centum of the contributing capital has been duly paid up in cash.
- (10) The only contracts entered into on behalf of this company are those of which the particulars are stated hereunder.

Dated this day of , 19 .

We the persons whose names and addresses are subscribed hereby apply to register [*here insert name of company*] as a no-liability company.

[*Witnesses.*]

[*Signatures.*]

Declaration Verifying Memorandum for Registration.

I, A.B. do hereby solemnly declare and affirm that—

- (1) I am the manager [or provisional manager] of the said intended company.
- (2) The above statements are to the best of my belief and knowledge true in every particular.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act of 1867*.⁽¹⁶⁾

Declared before me this day of , 19 .

A.B.,

Manager [or Provisional Manager].

SIXTH SCHEDULE.

Section 200.

FORM A.

[*Name of Company.*]

I, the undersigned hereby give notice that an increase in the capital of the above-named company was on the day of , resolved on by the issue of new shares of each in addition to the shares theretofore existing in the company [*if any of the new shares are preference shares or fully paid-up shares or partly paid-up shares so state; and state also the terms upon which they are issued*].

Ten per centum of the contributing capital represented by such new shares has been duly paid up to the company in cash [*if no contributing capital is represented by such new shares notice to so state and this paragraph to be omitted*].

Dated this day of , 19 .

A.B.,

Manager [or Secretary].

(16) The *Oaths Act of 1867* (Queensland) was repealed and replaced in the Territory of Papua by the *Oaths Ordinance, 1912*.

COMPANIES AND BODIES CORPORATE—

Section 201.

FORM B.

I, A.B. of do hereby solemnly declare and affirm that—

- (1) I am the manager [or secretary] of the above-named company.
- (2) The statements contained in the annexed copy notice are to the best of my knowledge and belief true in every particular.

And I make [follow form of statutory declaration in Fifth Schedule].

Section 201 (2).

FORM C.

Certificate of Registrar of Increase of Capital.

This is to certify that an increase in the capital of [name of company] no-liability by the issue of new shares of each in addition to the shares theretofore existing in the company has been legally and properly made and such new shares may now be allotted and issued.

[If any of the new shares are preference shares or fully paid-up or partly paid-up shares the certificate to so state.]

Section 197.

SEVENTH SCHEDULE.

Members.

1. When two or more persons are registered as the joint holders of any shares any notice required by these rules to be served on a member may be served on any of such holders and such notice shall be deemed to be served on all the holders of the shares. Any one of such joint holders may give effectual receipts for any dividends payable in respect of such shares.

2. The company shall be entitled to treat the registered holder of any shares as the absolute owner thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person save as herein provided.

Shares.

3. The certificates for shares shall be issued under the common seal of the company and signed by two directors and countersigned by the manager or secretary or some other person appointed by the directors for that purpose.

4. Every member shall be entitled to one certificate for the shares registered in his name or to several certificates each for a part of such shares and for the purpose of this rule several joint holders shall be deemed one member: Provided that the sum of Sixpence may be charged by the company for every certificate after the first in any case where a member requires more than one certificate.

5. If any such certificate be defaced then upon production thereof to the directors they may order the same to be cancelled and may issue a new certificate in lieu thereof; and if any certificate be lost or destroyed then upon proof thereof to the satisfaction of the directors and on such indemnity as the directors shall deem sufficient being given a new certificate in lieu of the one lost or destroyed shall be given to the person entitled to such lost or destroyed certificate.

6. The certificate for shares registered in the names of two or more persons may be delivered to any of such persons.

Transfer of Shares.

7. The instrument of transfer of any share shall be signed both by the transferor and transferee; the transferor shall be deemed to remain the holder of such share until the name of the transferee is entered in the register in respect thereof.

Companies Ordinance, 1912-1926.

8. The instrument of transfer of shares shall be in the following form or as near thereto as circumstances will admit:—

I, *A.B.* of _____ in consideration of the sum of _____ paid to me by *C.W.* of _____ [hereinafter called transferee] do hereby transfer to the said transferee the share or shares numbered _____ standing in my name in the register of the _____ no-liability to hold unto the said transferee his executors administrators and assigns subject to the conditions on which I held the same immediately before the execution hereof; and I the said transferee do hereby agree to take the said share or shares subject to the said conditions. As witness our hand this _____ day of _____

9. Every instrument of transfer shall be left at the office for registration accompanied by a certificate of the shares to be transferred and such other evidence (if any) as the directors may require to prove the title of the transferor or his right to transfer the shares.

Transmission of Shares.

10. The executors or administrators of a deceased member shall be the only person recognized by the company as having any title to his or her shares.

11. Any person becoming entitled to any shares in consequence of the death insolvency or bankruptcy of any member or in consequence of the marriage of any female member may be registered as a member upon such evidence being produced as may from time to time be required by the directors.

12. Any person becoming entitled to any shares in consequence of the death insolvency or bankruptcy of any member or in consequence of the marriage of a female member may instead of being himself registered elect to have some person named by him registered as a transferee of such shares.

Calls.

13. The directors may from time to time subject to the provisions of the Ordinance make such calls upon the members in respect of all moneys paid upon their shares as they shall think proper: Provided always that no such call shall exceed one-tenth of the nominal value of the share.

14. A resolution authorizing a call shall fix the amount of the call and the date of its payment.

15. A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.

16. The notice of a call required by the Ordinance to be given to each member shall specify the person to whom the call is payable.

General Meetings.

17. The first general meeting of the company shall be held at such time not being more than four months after the registration of the company and at such place as the directors shall determine. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting and if no time or place is prescribed as aforesaid then at such time and place as the directors shall determine.

18. The above-mentioned general meetings shall be called ordinary meetings; all other meetings of the company shall be called extraordinary meetings.

19. The directors may whenever they shall think fit and they shall upon a requisition made in writing by not less than one-twelfth in number of the members of the company convene an extraordinary general meeting.

COMPANIES AND BODIES CORPORATE—

20. Any such requisition shall express the object of the meeting required and shall be signed by the members making the same and shall be left at the office of the company. The meeting shall be convened for the purpose specified in the requisition and (if convened otherwise than by the directors) for those purposes only.

21. In case the directors shall for fourteen days after such requisition has been so left at the office as aforesaid fail to convene an extraordinary meeting to be held within twenty-one days of such leaving the members making the requisition or any other members being not less than one-twelfth in number of the members may themselves convene a meeting to be held within six weeks of the date of leaving the requisition at the office as aforesaid.

22. Seven clear days' notice at the least of every general meeting specifying the place day and hour of meeting and in case of special business the general nature of such business shall be given to the members as hereinafter provided; but the accidental omission to give such notice to any of the members or the non-receipt of such notice by any member shall not invalidate any proceedings at any such meeting.

Proceedings at General Meetings.

23. The business of an ordinary meeting shall be to receive and consider the profit and loss account and the balance-sheet and the reports of the directors and auditors; to elect directors and other officers in the place of those retiring by rotation; to authorize and declare dividends and to transact any other business which under the rules of the company ought to be transacted at an ordinary meeting and any business which is brought under consideration by the report of the directors issued with the notice convening such meeting. All other business transacted at an ordinary meeting and all business transacted at an extraordinary meeting shall be deemed special.

24. No business shall be transacted at any general meeting except the declaration of a dividend unless a quorum of members is present at the time the meeting proceeds to business. Such a quorum shall be ascertained as follows that is to say—if the persons who hold shares in the company at the time of the meeting do not exceed ten in number the quorum shall be five; if they exceed ten there shall be added to the number of the above quorum one for every five additional members up to fifty and one for every ten additional members after fifty provided that no quorum shall in any case exceed twenty: Provided also that in ascertaining whether a quorum is present at any general meeting all members represented by proxy shall be counted.

25. 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; but in any other case it shall stand adjourned till the same day in the next week at the same time and place; and if at such adjourned meeting a quorum as hereinbefore provided is not present those members who are present shall be a quorum and may transact the business for which the meeting was called.

26. The chairman of the directors shall be entitled to take the chair at every general meeting or if there be no such chairman or if at any meeting he shall not be present within fifteen minutes after the time appointed for holding such meeting the members present shall choose another director as chairman; and if no director be present or if all the directors present decline to take the chair then the members present shall choose one of their number to be chairman.

27. Every question submitted to a meeting shall be decided in the first instance by a show of hands and in the case of an equality of votes the chairman shall both on the show of hands and at the poll have a casting vote in addition to the votes to which he may be entitled as a member.

28. At any general meeting unless a poll is demanded by at least three shareholders a declaration by the chairman that a resolution has been carried or carried by a particular majority or lost or not carried by a particular majority and an entry to that effect in the book 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.

29. If a poll is demanded as aforesaid it shall be taken in such a manner and at such time and place as the chairman of the meeting directs and either at once or after an adjournment and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

30. The chairman of a general meeting may with the consent of the meeting adjourn the same 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.

31. Any poll duly demanded on the election of a chairman or on any question of adjournment shall be taken at the meeting and without adjournment.

Votes of Members.

32. Every member shall have one vote for every share held by him up to ten; he shall have an additional vote for every five shares beyond the first ten shares up to one hundred and an additional vote for every fifteen shares beyond the first hundred shares.

33. If any member is a lunatic or person of unsound mind he may vote by his committee or other legal curator.

34. If two or more persons are jointly entitled to any shares the member whose name stands first on the register of members as one of the holders of such shares and no other shall be entitled to vote in respect of the same.

35. No member shall be entitled to vote at any general meeting unless all calls payable on his shares have been paid.

36. Votes may be given either personally or by proxy.

37. The instrument appointing a proxy shall be in writing or print under the hand of the appointer or his attorney or if such appointer be a corporation under its common seal. No person shall be appointed a proxy who is not a member in the company and entitled to vote.

38. The instrument appointing a proxy and the power of attorney (if any) under which it is executed shall be deposited at the office of the company not less than twenty-four hours before the time of holding the meeting at which the person named in such instrument purposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution unless it purports to appoint a proxy to act for the appointer during his absence from the Territory of Papua.

39. Any instrument appointing a proxy shall be as nearly as circumstances will permit in the form or to the effect following:—

Name of Company.

I, _____ of _____ being a member in the
no-liability hereby appoint _____ of _____ my proxy to vote for
me and on my behalf at the [ordinary or extraordinary] general meeting
of the company to be held on the _____ day of _____ and at
any adjournment thereof [or at any meeting of the company that may
be held in the year _____ or during my absence from the Territory
of Papua].

As witness my hand this _____ day of _____

Witness—

COMPANIES AND BODIES CORPORATE—

Directors.

40. No person shall be qualified to be a director who is not a member in the company.

41. The number of the directors shall be not less than three or more than seven until otherwise determined by a general meeting.

42. The first directors of the company shall be appointed by the subscribers to the memorandum for registration and failing and until such appointment the subscribers to the memorandum for registration shall be the first directors of the company and at the first general meeting of the company after the incorporation of the company the whole of the first directors of the company shall retire from office and new directors shall be elected and at the first ordinary meeting in every subsequent year reckoned from 1st January to 1st January one-third of the directors for the time being or if their number is not a multiple of three then the number nearest to one-third (but not exceeding one-third) shall retire from office.

43. The one-third or other number as aforesaid to retire at the first general meeting at which directors are to retire shall be determined by lot; in every subsequent year the one-third or other nearest number who have been longest in office shall retire. As between two or more who have been in office an equal length of time the director to retire shall in default of agreement between them be determined by lot. The length of time a director has been in office shall be computed from his last election or appointment where he has previously vacated office.

44. A retiring director shall be eligible for re-election.

45. The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of members to be directors and may fill up other vacancies.

46. If at any meeting at which an election of directors ought to take place the places of the retiring directors are not filled up subject to article number twenty-five of these presents the meeting shall stand adjourned till the same day in the next week at such hour and place as the majority of members present at the meeting shall decide; and if at such adjourned meeting the places of the retiring directors are not filled up the retiring directors or such of them as have not had their place filled up shall continue in office until the ordinary meeting in the next year and so on from time to time until their places are filled up.

47. The company may by special resolution remove any director before the expiration of his period of office and may by ordinary resolution appoint another qualified person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

48. Any casual vacancy occurring among the directors may be filled by the directors but any person so chosen shall retain his office only so long as the vacating director would have retained the same if no vacancy had occurred.

49. The office of director shall be vacated—

- (a) if he become insolvent or suspend payment or assign his estate for the benefit of his creditors;
- (b) if he be found or declared or become lunatic or of unsound mind;
- (c) if he absent himself from the meetings of the directors during a period of three calendar months without special leave of absence from the directors;
- (d) if by notice in writing to the company he resigns his office.

50. The continuing directors may act notwithstanding any vacancy in their body but so that if the number fall below the minimum above fixed the directors shall not except for the purpose of filling vacancies act so long as the number is below the minimum.

Companies Ordinance, 1912-1926.

Proceedings of Directors.

51. The directors may meet together for the despatch of business adjourn and otherwise regulate their meetings as they think fit and may determine the quorum necessary for the transaction of business. Until otherwise determined two directors shall form a quorum. Questions arising at any of the meetings shall be decided by a majority of votes. In case of equality of votes the chairman shall have a second or casting vote.

52. A director may at any time and the manager or secretary shall at the request of any two directors convene a meeting of directors.

53. 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 at the appointed time for holding the same the directors present shall choose some one of their number to be chairman of such meeting.

54. All acts done by any meeting of the 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 directors or persons acting as aforesaid or that they or any of them were or was disqualified be as valid as if every such person had been duly appointed and was qualified to be a director.

Powers of Directors.

55. The management of the business of the company shall be vested in the directors who may exercise all such powers and do all such acts and things as may be exercised or done by the company and are not by these rules or by the Ordinance directed or required to be exercised or done by the company in general meeting but subject to the provisions of the Ordinance and of these said rules and to any regulations from time to time made by the company in general meeting: Provided that no regulation so made shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Remuneration of Directors.

56. The remuneration of the directors shall be determined by the company in general meeting.

The Seal.

57. The directors shall provide for the safe custody of the common seal and the said seal shall not be used except by the authority of the directors previously given and every instrument to which the seal is affixed shall be signed by two directors and countersigned by the manager or secretary or some other person appointed by the directors.

Dividends.

58. The directors may declare dividends to be paid to the members in proportion to their shares and dividends shall be paid on all shares alike irrespective of the amount paid-up thereon.

59. No dividend shall be payable except out of the profits arising from the business of the company.

60. The directors may before declaring any dividend set aside out of the profits of the company such sum as they may think proper as a reserve fund to meet contingencies or for equalizing dividends for repairing or maintaining the works and machinery connected with the business of the company or any part thereof and the directors may invest the sum so set apart upon such securities as they may select.

COMPANIES AND BODIES CORPORATE—

61. Notice of any dividend that may have been declared shall be given to each member in manner hereinafter provided for giving notices and all dividends unclaimed for four years after having been declared may be forfeited by the directors for the benefit of the company.

62. The directors may deduct from the dividends payable to any member the amount of any call payable on his shares.

63. No dividend shall bear interest as against the company.

Accounts.

64. The directors shall cause true accounts to be kept of the sums of money received and expended by the company and of the matter in respect of which such receipt and expenditure takes place and of the assets credits and liabilities of the company.

65. The books of account shall be kept at the registered office of the company and subject to any reasonable restrictions as to time and manner of inspecting the same that may be imposed by the company in general meeting shall be open to the inspection of the members during the hours of business.

66. At each of the ordinary meetings the directors shall lay before the company a profit and loss account and a balance-sheet containing a summary of the property and liabilities of the company made up to a date not more than two calendar months before the meeting from the time when the last preceding account and balance-sheet were made or in the case of the first account and balance-sheet from the incorporation of the company.

Audit.

67. Once at least in every year the accounts of the company shall be examined and the correctness of the balance-sheet ascertained by one or more auditor or auditors.

68. The auditors shall be appointed and their remuneration fixed by the company in general meeting in each year. If one auditor only is appointed all the provisions herein contained relating to auditors shall apply to him. The first auditor or auditors may be appointed by and their remuneration fixed by the directors.

69. Any auditor quitting office shall be eligible for re-election.

70. The auditors may be members but no person shall be eligible as an auditor who is interested otherwise than as a member in any transaction of the company and no director or other officer of the company shall be eligible during his continuance in office.

71. The auditors shall be supplied with copies of the profit and loss account and balance-sheet intended to be laid before the company in general meeting ten days at least before the meeting to which the same are to be submitted and it shall be their duty to examine the same with the accounts and vouchers relating thereto and to report to the company in general meeting thereon.

72. The auditors shall have a list delivered to them of all books kept by the company and shall at all reasonable times have access to the books and accounts of the company and they may examine the directors manager and officers of the company in relation to such accounts.

Notice.

73. Any notice may be served by the company upon any member either personally or by sending it through the post in a prepaid envelope addressed to such member at his address as entered in the register of members.

Companies Ordinance, 1912-1926.

74. All notices to be given to the members shall with respect to any share to which persons are jointly entitled be given to whichever of such persons is named first in the register of members and notice so given shall be sufficient notice to all the holders of such share.

75. Any notice sent by post shall be deemed to have been served on the day after the same shall have been posted and in proving such service it shall be sufficient to prove that the notice was properly addressed and that it was put into the post office (postage prepaid).

EIGHTH SCHEDULE.

Section 215.

FEEs CHARGEABLE UNDER THE ORDINANCE IN RESPECT OF NO-LIABILITY COMPANIES.

	£	s.	d.
For registration of a company	1	0	0
For certificate of registration of a company	0	5	0
For certificate of increase of capital	0	5	0
For any other certificate required under the Ordinance	0	5	0
For registering notice of liquidation and of appointment of liquidator	0	5	0
For registration of any document required by the Ordinance to be registered or tendered for registration (other than as herein is specified)	0	5	0
For every search for or in connexion with any memorandum for registration of any company or for or in connexion with any document filed having reference to any company	0	1	0
For having examined copy of any document not exceeding six folios	0	5	0
For each additional folio after the first six folios	0	0	4
For every extract from any document per folio	0	0	4

NINTH SCHEDULE.

Section 271.

PAPUA.

Amended by No. 14 of 1923, s. 4.

Certificate of Registration of a Foreign Company.

I, Registrar of Companies of the Territory of Papua hereby certify that [*name of company*] duly incorporated on [*date of incorporation*] under the laws of [*country of incorporation*] has this day been registered in the office of the Registrar of Companies of the Territory of Papua in accordance with the provisions of Part V. of the *Companies Ordinance, 1912*, as a foreign company: And I further certify that [*name of agent*] is the agent of the said company and that the principal office of the company in the Territory is situated at [*situation of the registered office*].

Given under my hand at Port Moresby, this
day of , 19 .

Registrar.