



REPORT  
OF THE  
COMPANY LAW  
REFORM COMMITTEE  
1958

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### APPENDIX A

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\* *Part II* Regulations for the management of a private company limited by shares.

APPENDIX B Memorandum issued to certain organisations and individuals.

APPENDIX C Organisations and individuals who submitted statements of their views and gave oral evidence.

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The estimated cost of this Report is £842, of which £156 represents the cost of printing and publishing.

REPORT OF THE COMPANY LAW REFORM  
COMMITTEE.

To :

ANDREAS O'KEEFFE, S.C.,  
*The Attorney General*

Sir,

PRELIMINARY

1. In March, 1951, your predecessor, Mr. Charles F. Casey, S.C. (subsequently the Honourable Mr. Justice Casey), appointed this Committee to report on the reform of company law. He appointed the late Mr. H. Vaughan Wilson, S.C., to be Chairman of the Committee. The General Council of the Bar of Ireland nominated Mr. Henry J. Moloney, S.C., and the late Mr. Robert L. Leonard, Q.C., to the Committee: The Incorporated Law Society of Ireland nominated Mr. Arthur Cox and Mr. George A. Overend: the Institute of Chartered Accountants in Ireland nominated Mr. Gabriel Brock and Mr. H. E. Addy and the Society of Incorporated Accountants in Ireland nominated Mr. Mervyn Bell and the late Mr. William L. White. The Attorney General appointed Mr. John Kenny, barrister-at-law, to be Honorary Secretary of the Committee.

2. In April, 1952, Mr. W. L. White died and the Society of Incorporated Accountants appointed Mr. R. L. Reid to the Committee in his place. We wish to express our appreciation of Mr. White's valuable assistance while serving on the Committee.

3. In August, 1952, Mr. H. E. Addy, to our regret, resigned from the Committee for reasons of health and the Institute of Chartered Accountants in Ireland nominated Mr. Partick Butler in his place. Mr. Addy, who practises in Belfast, had attended all the meetings of the Committee until his resignation.

4. Our Chairman, Mr. H. Vaughan Wilson, was incapacitated by illness for a considerable period. He then resumed work but died suddenly in May, 1956. He had presided at all our meetings and had given much of his time to the work of the Committee and we wish to express our sense of loss and regret at his death.

5. In March, 1957, Mr. Arthur Cox was appointed as Chairman of the Committee to succeed Mr. Vaughan Wilson.

6. In June, 1957, Mr. Robert L. Leonard, Q.C., died. Mr. Leonard's learning and his experience of the operation of the Companies Acts was of great assistance to the members of the Committee. He had been a member of the Bar since 1899 and was familiar with the difficulties and problems of the Companies Act, 1908.

7. Before we commenced our inquiry, we issued a memorandum to such individuals, institutions and corporations as we

thought best able to assist us. In addition, we published advertisements in the Press inviting suggestions from any persons or bodies interested in the subject. This memorandum is printed as Appendix B to this Report: the names of those who sent suggestions and gave oral evidence are printed as Appendix C. We received a large number of careful and helpful suggestions and these were supplemented by the oral evidence of witnesses. We wish to express our appreciation of the help which we have received from those who submitted written suggestions and from those who attended to give evidence.

8. We have held 57 meetings at 15 of which we heard oral evidence. We have also held a considerable number of meetings in connection with the preparation of this Report. We set up a sub-committee consisting of Messrs. Cox, Overend and Kenny, to report to us on the provisions of the Companies Act (Northern Ireland), 1932; this sub-committee held 6 meetings and presented a report to us.

9. Our terms of reference relate to the entire system of company law. The Act now in force in this State is the Companies (Consolidation) Act, 1908, which was enacted by the British Parliament. As the economic circumstances in this State are very different to those prevailing in Great Britain, we felt compelled to examine the entire system of company law and the changes which have been made in that system in Great Britain and in Northern Ireland. We have considered all the Acts and the Reports of the Committees which have dealt with the subject since 1908 and the desirability of introducing similar legislation in this State. The views expressed in the submissions made to us varied in many important respects. Our task has, therefore, been a very heavy one and this with the fatalities mentioned above, will explain the delay in the presentation of this Report.

10. We desire particularly to thank Mr. John Kenny, our Honorary Secretary, who has spared neither time nor effort and to whom our obligation is indeed very great.

## HISTORICAL SUMMARY

11. While co-operation in one sense or another has of necessity always been a feature of every civilisation, companies, as we know them to-day, are the consequence of and also the creators of the complex trading and industrial society in which we live. In their origin, they are the product of the co-operation essential to any business undertaking and while no doubt primarily aimed at the advantage and protection of those engaged in them, they are, in one form or another, the irreplaceable tool of any activity other than that of the State itself, directed towards either the production of or exchange of goods and commodities. They are essential to any modern community and are the product of an advanced civilisation. It is an interesting consideration to reflect on how

they might have evolved from our own system of pre-conquest law, but their development in this country has been as a part of the English legal system in which our State has in historical fact participated. It is, therefore, necessary that we should trace briefly the development of company law as it arose in England.

12. Companies in this country and in Great Britain have a common legal history up to the establishment of the Irish Free State. The conception of a juridical corporate body as distinct from the individuals participating in it derives from the medieval interpretations of the Roman law but in these countries the growth of company law is closely connected with the development of the law relating to partnerships. Partnerships, which are now regulated by the Partnership Act, 1890, and the Limited Partnership Act, 1907, developed under the Common Law. Each partner was liable for the debts of the partnership. The idea that some of the partners in a partnership could have their liability limited to the amount of their investment in the partnership upon condition that they did not take an active part in the management of the partnership business had been adopted on the Continent, in the United States of America and in the 18th century in Ireland. A statute of the Irish Parliament (21 and 22 Geo. III Cap. 46) made provision for limited partnerships and required that they should be registered. Very few partnerships were registered under this Act and it was subsequently repealed. Historically this statute is, however, of interest as being one of the instances in which legal development in Ireland preceded, rather than followed, that in England. In England limited partnerships did not exist until the passing of the Limited Partnership Act, 1907, which extended also to Ireland but very few partnerships have been registered under this Act either here or in England.

13. The history of company law is a notable instance of the development and evolution of the law evoked by the constantly changing nature of the civilisation in which we live. From the 16th century onwards companies were from time to time incorporated in England and Ireland by Royal Charter or less frequently by special statutes. These companies were incorporated for public and, in some cases, for commercial purposes. Incorporation (in the sense that the company became a separate legal person distinct from its members) lay in the gift of the Crown or Parliament and conferred the considerable advantage that the members of the company could not be made personally liable for the debts of the company: they were liable only for the amount which was unpaid on their shares or stock in the company. In law these companies were regarded as legal persons and their legal existence was distinct from that of their members. It was not, however, until the middle of the 19th century that the ordinary commercial or trading concern was enabled to obtain the privilege of incorporation by registration without special Government intervention.

14. In the 17th century the development of trade and commerce made necessary the raising of capital from the public and this led to the formation of large partnerships which became known as joint stock companies. This development occurred at the same time in the leading commercial countries of the European continent. These joint stock companies resembled the modern company in that their capital was divided into shares which a partner could transfer freely without the consent of his co-partners but they were not corporate bodies and did not have a legal existence distinct from that of their members. They were subject to the law relating to partnerships and all the members were jointly and severally liable in full for the debts of the joint stock company. These joint stock companies issued shares which were often the subject of speculation and widespread losses to the members of the public often followed. An Act (commonly referred to as "The Bubble Act") was passed in 1719 by the British Parliament as a result of the immense losses entailed by the collapse of the South Sea Company, a collapse analogous to that caused by the operations of John Law in France and by the Patterson scheme in Scotland. This Act, which was intended to prohibit the creation of joint stock companies, influenced the recognition and treatment of companies by the law. Similar legislation does not seem to have been passed in Ireland where the exhaustion and devastation following on invasion and war had militated against commercial expansion and the building up of capital resources.

15. The modern company with limited liability incorporated under the Companies Acts is the direct descendant of the joint stock company, rather than of partnership or the company incorporated by Royal Charter or by Special Act.

16. Despite the Bubble Act, joint stock companies continued to be formed in England and the commercial interests pressed for their recognition as companies and for the privilege of limited liability. Many Parliamentary and other committees reported on the matter. The great commercial advantage of the company as a legal institution was that it made it possible to secure large sums of capital for enterprises which required substantial capital investment. Moreover, while the joint stock company was originally the product of trade or commercial expansion, the growth of industries and especially of the railway and canal systems and the large sums which these required, coupled with the developments in banking and insurance, made it necessary to pass numerous Acts of Parliament granting incorporation to companies and it was difficult to justify the grant of incorporation to one type of company and to refuse it to another.

17. In 1844 the Joint Stock Companies Act was passed. This was the first Act which gave the privilege of incorporation by registration and without a Royal Charter or a special Act of Parliament. Under this Act, partnerships in which the capital was

divided into shares transferable without the consent of the co-partners, partnerships in which there were more than 25 members and assurance companies were all required to register and on the completion of registration and on filing a Deed of Settlement these partnerships or associations became incorporated and acquired a separate legal existence distinct from that of their members. Thus, for the first time, it became possible for a partnership to obtain incorporation as of right by fulfilling prescribed conditions. The Deed of Settlement corresponded broadly to the modern Memorandum and Articles of Association. Notwithstanding the privilege of incorporation which the Act of 1844 gave, the partnerships or associations registered and incorporated under this Act were treated as being similar to partnerships in one most important respect; the Act provided that every shareholder could be made liable for the debts of the company as if it had not been incorporated but a creditor of the company could not sue a member for a debt due by the company unless he had first attempted and failed to levy execution against the property of the company as such.

18. In 1852 a Mercantile Law Commission which was appointed by the British Parliament to report whether any alteration should be made in partnership law so as to give limited liability to partners reported that such limited liability would not be beneficial. In the following year, however, the House of Commons passed a resolution as a result of which the Limited Liability Act, 1855, was passed. This Act was an amendment of the Joint Stock Companies Act, 1844, and made it possible for joint stock companies to limit the liability of all their members to the amounts due on their shares provided that certain conditions were observed.

19. The Joint Stock Companies Act, 1856, followed. Under it seven or more persons were entitled to register a company with limited liability without any minimum subscription. An annual return had to be filed giving information about the capital of the company and its shareholders, but the filing of a balance sheet with the Auditor's report attached (which had been made compulsory in 1844) was no longer necessary.

20. The Companies Act, 1862, consolidated the provisions of the Act of 1856 and of other Acts relating to joint stock, banking and assurance companies. It also made provision for companies limited by guarantee. It required the objects of the company to be stated and prohibited their alteration and thus introduced the doctrine of *ultra vires*. The principal features of the modern system of company law will be found in the Act of 1862.

21. The advantages of the system of companies with limited liability are considerable but in its early form it possibly offered opportunities for fraudulent enrichment to the promoters of companies and between 1862 and 1900 a number of Acts dealing with specific reforms in the system of company law were passed.

22. In 1895 a Committee under the Chairmanship of Lord Davey recommended amendments in the Companies Acts. The collapse which had followed the over-optimism of the railway boom had produced a number of failures of public companies in the years before this Committee reported and in some of those the promoters and the directors had made substantial profits out of these companies before they failed. The Companies Act, 1900, made provision for a number of matters which had to be stated in every prospectus and imposed new obligations and liabilities on directors of companies. It also re-introduced the compulsory audit of a company's accounts. This had appeared in the Act of 1844 but had been omitted from subsequent Acts.

23. In 1905 a Committee under the Chairmanship of Sir Robert Reid (subsequently Lord Loreburn, L.C.) was set up to inquire what amendments were necessary in the Acts relating to joint stock companies. This Committee recommended that every company should be obliged to file periodically a statement of its affairs in the form of a balance sheet which would be available for inspection by every member of the public. It also made recommendations in relation to the recognition of the special position of "family" companies called private companies. It had been held by the House of Lords in *Saloman and Saloman and Company Ltd.* (1897 A.C. 2) that there was nothing in the companies Acts which prohibited the registration of a company with 7 members, 6 of whom held a small number of shares on behalf of the seventh, who owned the rest of the shares. The advantages of incorporation and limited liability were so great that many family businesses had been converted into companies and, in most of them, the Articles of Association imposed restrictions on the free transfer of the shares in the company. This feature, the restriction on transfer of shares, was and is the main characteristic of private companies. Private companies had, in fact, come into existence long before 1907 but the Act of 1907 which was passed as a result of the Report of the Loreburn Committee made statutory provision for them by providing that a private company could be registered with two members only and that it should be exempt from the obligation to file a balance sheet for public inspection. The Act of 1907 imposed an obligation on companies to file a balance sheet for public inspection but exempted private companies from this obligation. The private company was defined as being a company in which restrictions were imposed by the Articles of Association on the transfer of shares, in which the number of members of the company did not exceed 50 and in which the shares and debentures of the company had not been offered to the public. Many of the smaller limited companies previously incorporated availed of this legislation by converting themselves into private companies.

24. The two main developments of company formation since 1907 have been, firstly, the remarkable increase in the number of

private companies registered in this State and in Great Britain and, secondly, the development of the "holding company" as distinct from the operating company. The holding company was, in the main, the child of the operations of financiers interested in the development of the Diamond Fields in South Africa before and after the Boer War.

25. All the Acts from 1862 to 1907 were consolidated by the Companies (Consolidation) Act, 1908. This Act was amended and added to in minor details by the Companies Act, 1913, the Companies (Foreign Interests) Act, 1917, the Companies (Particulars of Directors) Act, 1917, and the Companies (Re-constitution of Records) Act, 1924, which was the first company law statute passed by the Oireachtas. These Acts now constitute the statutory provisions governing companies in this country, apart from certain special cases. The Act of 1924 dealt merely with the reconstitution of records consequent on the destruction of the Companies Registration Office when the Customs House in Dublin was burned.

26. In March, 1927, the Minister for Industry and Commerce appointed a Committee to investigate the law and procedure relating to bankruptcy and the winding up of companies in Saorstát Éireann. Our colleague, Mr. Gabriel Brock, was a member of this Committee.

27. In April, 1928, the Committee issued its first interim report dealing with the reform of the law relating to bankruptcy arrangements and made detailed suggestions for amendments of the law. The law relating to bankruptcy in this country is contained in the Irish Bankrupt and Insolvent Act, 1857, the Bankruptcy (Ireland) Amendment Act, 1872, and the Debtors (Ireland) Act, 1872. These Acts were passed at a time when commercial conditions were very different to what they are now. There is no branch of the law which more urgently requires reform than the law relating to bankruptcy and it is a matter of great regret that no legislation of any description was introduced as a result of the Report of the Committee on the law of bankruptcy.

28. In February, 1930, the Committee presented its final report in relation to the winding up of companies and societies. The Committee recommended that the Companies Act, 1929, which had been enacted in Great Britain should be adopted in this country. Detailed recommendations as to the improvement of the law relating to the winding up of companies were made by this Committee.

29. No legislation was introduced as a result of the recommendations of this Committee.

30. In January, 1925, the President of the Board of Trade in the United Kingdom appointed a Committee to consider and report what amendments were desirable in the Companies Acts.

1908 to 1917. This Committee recommended a number of far-reaching changes in company law. Mr. Wilfrid Greene (subsequently Lord Greene) was the Chairman of the Committee and the report is frequently referred to as "the Greene report". It is referred to under this name in our report.

31. Most of the recommendations of the Greene report were embodied in the Companies Act, 1928, and the existing law and the changes made by the Act of 1928 were consolidated in the Companies Act, 1929. This Act did not apply to Northern Ireland.

32. In 1932 the Companies (Northern Ireland) Act was passed. This Act was based on the British Act of 1929. The Act of 1932 is the Companies Act which is now in force in Northern Ireland. It appears to operate satisfactorily and we understand that there has been no significant demand for its alteration.

33. In 1939 the British Parliament passed the Prevention of Fraud (Investments) Act, 1939, the main objects of which were the regulation of the business of dealing in securities, and the prevention of fraud in connection with dealings in investments. It does not apply to Northern Ireland.

34. In June, 1943, the President of the British Board of Trade appointed a Committee under the chairmanship of Mr. Justice Cohen (subsequently Lord Cohen) to consider and report what major amendments were desirable in the Companies Act, 1929, and in particular to review the requirements prescribed in relation to the formation and affairs of companies and the safeguards afforded for investors and for the public interest. The report of this Committee (usually referred to as "the Cohen Report") recommended a number of major alterations in the system of company law. Some of these were not accepted and do not appear in the Companies Act, 1947, which followed this report and which was a preliminary step to the Companies Act, 1948. The Companies Act, 1948, is an immense Act containing 33 sections and 18 schedules and taking up 363 pages in the Statute Book. It is the legislation now in force in Great Britain governing company law.

35. In 1952 the President of the Board of Trade appointed a Committee to consider whether it was desirable to amend the Companies Act, 1948, so as to permit the issue of shares of no par value. This Committee, under the Chairmanship of Mr. Montague L. Gedge, reported in favour of the introduction of shares of no par value but legislation to make this change in the law has not yet been introduced.

36. The foregoing brief summary of the development of company law is the barest outline of the subject. Since 1800 many Committees, Special Committees and Parliamentary Inquiries have reported on this branch of the law. In addition, legislation not dealing expressly with company law has affected the develop-

ment of company law and the economic structure of the company institution. In this State the Control of Manufactures Acts, 1932 and 1934, and the provisions of the Finance (No. 2) Act, 1947, in relation to the 25% stamp duty and the Acts amending the Act of 1947 have affected the company law and practice in an indirect but noticeable manner.

37. Conditions in this country since the achievement of independence have required the direct intervention and participation by the State in many activities of great national importance for which private capital was not forthcoming or which were considered to be of a nature calling for public ownership. In these cases, a separate corporate status was, for many reasons, essential. This problem has been solved in two different ways. One has been the establishment of statutory undertakings such as the Electricity Supply Board and Bórd na Móna, having many of the features of a company but of a completely different character. Such bodies are clearly wholly outside our terms of reference. The other solution has been the creation of companies registered under the Companies Acts but largely governed by special Acts. Examples of these are the Dairy Disposal Company Limited, Mianraí Teoranta, and Ceimici Teoranta. Such companies are of an indefinite character and it is probably fair to say that the Legislature in creating them has availed itself of a convenient expedient but has produced bodies of a hybrid character partaking simultaneously of the nature of limited companies and of the nature of statutory undertakings.

38. Sir Horace Plunkett and his fellow workers in the Co-operative Movement, made an ingenious use of the Industrial and Provident Societies Acts to incorporate as legal persons the co-operative societies which now play so large a part in our economy. These societies, while essentially very much of the same nature as limited companies, are not governed by the Companies Acts. The legislation under which they exist and function has unavoidably been considerably strained. Such societies are also outside our terms of reference but we think it right to state that it does appear that the time has long since come in which fresh legislation for their governance is very necessary and we are glad that a Committee has been appointed to report on this important matter. It is, we believe, true that no great inconvenience has resulted from this use of statutes designed for quite different purposes but it would appear that in many respects the working of such societies could be much simplified and greatly improved by appropriate amending legislation. Such societies to-day play a part in our national life only second to that of limited companies.

39. In the course of our inquiry, we have not neglected to give consideration to the varying forms of company law in countries other than those in which, as in Ireland, the law has evolved out of what is known as the Common Law. In general, there are certain noticeable differences in the company laws of the various

European countries. In these, the root is to be found in the Civil Law and in the Code Napoleon, both of which, descended from the Roman Law, have formed the basis of the law of most European States. Such systems may be as good as or superior to ours. In our opinion, however, the system as it has existed here for so many generations is so essentially a part of the general set-up of our community that it would be wholly undesirable to consider at this stage any radical departure into new fields. Any such change would cause inconvenience and give rise to innumerable difficulties without any compensating advantages. In our opinion, the main structure of the system as it now exists is sound and has worked satisfactorily and any major or fundamental alteration is wholly undesirable: any such change would create very great difficulties alike to businessmen, accountants, lawyers and the revenue authorities.

#### COMPANIES IN THE STATE

40. The increase in the number of companies registered and in the paid-up share capital of these companies since the establishment of the State has been remarkable. In the following table we show the total number of companies with a share capital which were on the register on the dates mentioned, together with the amount of the paid-up capital of these companies. The figures for the number of companies do not include companies incorporated under special Acts or friendly societies or societies incorporated under the Industrial and Provident Societies Acts or companies in course of liquidation or removal from the register. The figures for paid-up capital include the amounts which have been treated as having been paid in respect of shares which were issued on the sale of a business or undertaking to a company.

As at 31st December in each year	Number of Companies	Paid-up Share Capital
		£
1925	1,456	36,073,772
1930	1,741	37,917,567
1935	2,359	43,357,139
1940	2,929	51,730,656
1945	3,849	63,827,971
1950	5,734	91,036,904
1955	7,486	133,213,092
1956	7,757	140,664,101

This table shows that between 1925 and 1956 the number of companies having a share capital increased by 400% approximately and that the amount of paid-up capital of these companies increased in the same period by 300% approximately. A consider-

able percentage of the private companies formed in this period would appear to be companies incorporated to meet conditions imposed by the Control of Manufactures Acts, the Finance (No. 2) Act, 1947, and to deal with taxation and death duty problems.

41. The formation of private companies has been the cause of the remarkable increase in the total number of companies registered. The following table shows that between 1925 and 1956 the number of public companies having a share capital has scarcely changed while the number of private companies having a share capital has considerably increased. The figures for 1925, 1930 and 1935 are estimates, as prior to 1937 separate particulars for public and private companies were not published.

As at 31st December	Public Companies	Private Companies
1925	368	1,088
1930	361	1,380
1935	359	2,000
1940	362	2,567
1945	336	3,513
1950	357	5,377
1955	375	7,111
1956	372	7,385

42. In 1937 the amount of the paid-up share capital of public companies was £25 million approximately, while the amount of the paid-up share capital of private companies was £22 million approximately. In 1956, the last year for which figures are available, the amount of the paid-up share capital of public companies was £56 million approximately and the amount of the paid-up share capital of private companies was £85 million approximately.

43. None of the figures given in either of the Tables includes companies incorporated outside the State which have returned particulars to the Registrar of Companies or which have established a place of business in the State, nor do they include licence companies, guarantee companies or unlimited companies not having a share capital.

44. We are convinced that all company legislation in this country should be based primarily on a recognition of the fact that the great majority of companies in this State are small private companies and that elaborate legislation involving heavy and expensive professional and clerical work should not be introduced unless a strong case for its introduction is made. We have not heard any such case. We deal with this aspect in greater detail in the subsequent paragraph, which contains a statement of the general principles upon which we have acted.

45. We have found no evidence of any very substantial abuses of the law of companies as at present existing in this country. In broad outline the existing legislation would seem to have operated in a satisfactory way but since the Companies (Consolidation) Act, 1908, came into force public attention has been drawn to certain aspects of company law :—

(a) *Private Companies.*

There has been some public discussion whether the exemption of private companies from the obligation to file a balance sheet with the Registrar of Companies for public inspection should be abolished or modified.

(b) *Subsidiary Companies.*

Many public companies and a number of private companies have formed subsidiary companies which are always private companies. In these subsidiary companies the parent company holds most of the shares and appoints all the directors. The subsidiary company has not any obligation to file accounts with the Registrar of Companies and the form and contents of the balance sheet and profit and loss account of the parent company do not usually give much information in relation to the subsidiary company.

(c) *Accounts.*

The Act of 1908 does not specify the items which have to be shown in the balance sheet of a company. The practice of grouping together a number of different items in one lump sum makes it virtually impossible for a shareholder or a creditor to obtain an accurate view of the financial strength and position of the company in which he is interested. The accounts of some public companies in this country have shown in recent years a marked improvement in presentation following the precedents established by the British Companies Act, 1948, and influenced by the desire of both directors and auditors to produce more informative accounts. The same, however, cannot be said of the accounts of private companies and, in many cases, the accounts of such companies do not give any information of any real value to the shareholders.

(d) *Minority Shareholders in Companies.*

The position of a minority shareholder in a private company may frequently be an unfortunate one, particularly if the majority shareholders apply the greater part of the profits of the company either as directors' fees or as salaries. This is a particularly acute problem in this country where the profits which are available for distribution are very often paid out as directors' fees or salaries and not as dividends.

(e) *Loans to Directors.*

Some companies make loans to their directors often without charging interest on them. In some cases a company has given a debenture to one or more of its directors for monies ostensibly previously owing. The company then orders goods for which it does not pay. When the goods are delivered, a receiver is appointed by the debenture holder. The receiver then takes possession of the goods, sells them and pays the proceeds to the debenture holder and the creditor gets nothing.

(f) *Winding-up.*

The winding-up of companies is an expensive and slow procedure and the creditors have little control, particularly in the case of a voluntary winding-up. Moreover, the winding-up of a company by the Court at times discloses instances of fraudulent and dishonest behaviour by the directors and the Court does not seem to have power to impose suitable penalties.

(g) *Employees' Shares.*

A number of companies in Great Britain have established bonus or profit sharing schemes for their employees. In many of these schemes the company issues shares in its capital to trustees and the dividends on these shares are used to supplement the earnings of the employees, who thereby share in the prosperity of the company. Express provision in aid of such schemes is made by the British Companies Act, 1948, and the Companies Act (Northern Ireland), 1932.

46. The public approach to companies has changed during the last 40 years. While this has not led to a demand for any specific reforms, it alters the climate of public opinion. The "laissez faire" approach to economic matters has been abandoned and State direction, supervision and control of the production and distribution of wealth have become a feature of modern life. A company is no longer considered to be the business and property of the shareholders alone. Many companies find themselves regarded and treated as "public utilities". The State has, to a considerable extent, assumed the obligation to guard the interests of those who are employed by the company and in a number of cases, particularly those of manufacturing companies, has, by the grant of a greater or lesser degree of protection or of tax concessions or other benefits, forwarded the interests of those who have invested in the company. In return, the State claims that it is entitled to exercise measures of control over the activities of the company. We are not concerned to pass judgment on this development. The fact is that the State tends to exercise these functions and this in its turn leads to a demand for more public information as to the affairs of companies.

## GENERAL PRINCIPLES

47. We think that we should state the general principles which we have followed in our recommendations.

- (a) The system of company law in force in this country has been developed by a gradual process of growth in response to commercial needs. The company is a more satisfactory commercial organisation than the partnership. The corporate form and the principle of limited liability make it possible for companies to obtain capital from members of the public and those who invest in the company can, in most cases, look forward to a reasonable return from the monies which they have invested. We consider that the system of company law in force in this country is generally satisfactory. It is well understood by and familiar to the public. This is particularly so in the case of the commercial and trading community. Alterations should be made only when a reasoned case is established.
- (b) The attractions of the company as a commercial organisation are shown by the steady increase in the number of private companies in this State. The number of public companies is small. There have been comparatively few instances of losses to investors by failures of public companies. This we attribute in large part to the care and vigilance of the members of the Stock Exchange and in smaller part to the comparative smallness of the State. As the small private company occupies such a dominant position the commercial life of this State, company legislation should not, merely in order to block possible but rare abuses, impose unnecessarily heavy expense for professional or clerical work or for documentation. Many of the complex provisions of the British Companies Act, 1948, are, in our opinion, not appropriate here. The system of company law here should be as simple and flexible as possible, consistent with adequate protection for the public, employees, creditors and shareholders.
- (c) We are satisfied that the great majority of companies in this State are honestly conducted and managed. Cases in which fraud and dishonesty occur in the management of companies receive wide publicity. This, unfortunately, tends to produce an impression that there may be something inherently disreputable in the company as a form of commercial organisation. There is undoubtedly a tendency, especially in the case of private companies, to disregard or to be careless about the obligations which the law imposes as to the making of annual returns or even as to the keeping of books of account. Such laxity often arises from indolence in complying with requirements mistakenly regarded as mere technical details.

- (d) Much of the public discussion on company matters and some of the evidence given to us shows that there is a belief that losses to those who give credit to companies or who take shares in companies can be avoided by sections in Acts of Parliament. We think that the remarks of the members of the Loreburn Committee on this topic are as apposite now as they were 52 years ago :

"Limited companies, it is hardly necessary to say, enjoy no immunity from insolvency and when a limited company becomes insolvent, its unsecured creditors undoubtedly often sustain heavy losses. But such losses (whether the result of misconduct or misfortune on the insolvents' part) are incident to all dealings with traders whether incorporated or unincorporated. The Legislature cannot insure against such losses. It cannot, in the case of trading companies, secure skilful management or success in speculative enterprises. Those who choose to deal with limited companies must take the risk of doing so, must make their own inquiries and act on their own judgment".

- (e) Company legislation in this country should not depart too far in its general principles from Company legislation in Great Britain and in Northern Ireland. The encouragement of outside investors is part of our public policy and we think that a system of company law which corresponds broadly with that in force in other countries is a material inducement to investment in this country. There is already a large volume of British investment in industry in this country and any major alterations in company law might affect the volume of this. The trading connections between this State and Great Britain and Northern Ireland are so close that a common philosophy of company law is desirable. Moreover, company law as it exists in Great Britain is familiar to business and commercial circles in the United States and in the countries of Continental Europe. Further, there is a scarcity of Irish textbooks on company law and accountancy. This is due entirely to the very small market for such books so that authors and publishers find it difficult to meet the expenses of publication. The legal and accountancy professions here must rely largely upon English textbooks, the value of which would be considerably diminished if the two systems of law did not correspond in broad outline.
- (f) Early in our deliberation we considered whether we would recommend changes in the Companies (Consolidation) Act, 1908, or whether we would recommend the introduction of a new Act which would repeal the Act of 1908. We recommend strongly that the new legislation should not be

by way of amendment of the Act of 1908, but that an entirely new Act should be introduced. The advantages of having the statute law in one Act are considerable and, indeed, we are glad to note that in a number of recent statutes of a consolidatory character this principle has been recognised. As we have recommended that a new consolidating Act should be introduced, we have not in this Report dealt with alterations of a purely minor character. We have found Part 2 of the Green Report very helpful in this respect.

- (g) We have regarded the questions of general economic and social policy as outside our terms of reference. We have not made any recommendations in relation to the Control of Manufactures Acts or stamp duties or the statutory requirements affecting the nationality or residence of directors or shareholders.

48. We would emphasise that we consider the enforcement of the requirements of the Companies Acts as a matter of major importance. In most cases in which prosecutions for offences under the Companies Acts are brought, there is a tendency to regard the offences as being trivial or technical. Incorporation is a privilege and the terms upon which it is granted should be observed. It is necessary in the public interest that compliance with the requirements of the Acts should be enforced. We recommend that minimum fines should be provided by the new Act.

## RECOMMENDATIONS

### CONSTITUTION AND INCORPORATION

#### MEMORANDA OF ASSOCIATION

19. Section 2 of the Companies (Consolidation) Act, 1908, provides that persons who wish to form a company must sign their names to a Memorandum of Association and Section 3 provides that in the case of a company limited by shares the Memorandum must state the objects of the company. Section 7 provides that a company may not alter the conditions contained in its Memorandum except in accordance with the provisions of the Act. Section 9 allows a company to alter the provisions of its Memorandum with respect to the objects of the company. The alteration has to be carried out by a special resolution and has then to be confirmed by the Court. The objects of a company are confined to those expressly mentioned in the Memorandum or such as may be implied therefrom. Any contract or transaction not authorised by the Memorandum is *ultra vires* the Company, does not bind it and does not create any legal obligation. This principle was originally intended to protect the shareholders of the company. It was thought that the shareholders should be informed of the type of business the company intended to carry on, so that

the directors would be unable to endanger the shareholders' monies by carrying on other types. The principle was also intended to protect those who deal with the company. Any person who dealt with the company was regarded as having notice of the contents of the Memorandum and dealt with the company on the basis that it was his duty to ascertain whether the proposed transaction was within the powers of the company. It was subsequently held that a contract or transaction which was not authorised by the Memorandum was void and could not be ratified or adopted by the shareholders of the company. Because of this principle it is now customary to draft the objects of a company in the very widest terms and to confer on the company powers to carry on almost any type of business or activity. This has resulted in the objects clause in Memoranda of Association being drafted with undue prolixity. Thus, the purpose of the doctrine of *ultra vires* has been largely defeated. It does not now give any protection to the shareholders or the creditors of the company and becomes waste of time and paper. There is much in favour of the view that the doctrine should now be wholly abolished and that every company should have the same powers as an individual whether these are conferred by the Memorandum or not.

50. We have decided, however, although with hesitation, not to recommend the abolition of the doctrine. Such a recommendation was made by the Cohen Committee in 1945 to the President of the Board of Trade but was not adopted by the British Parliament and we must assume that there were strong reasons for this decision. The doctrine is part of the law of Great Britain and of Northern Ireland; it has been a distinctive feature of company law for a considerable period. On the other hand, however, we are satisfied that the necessity to obtain the approval of the Court to the alteration in the objects should be abolished. The making of the application to the Court has to be advertised, it involves legal expenses and the application necessarily takes time. We consider that a company should have power by special resolution to alter its objects and, if our recommendation in a later portion of this Report, that the passing of a special resolution should require one meeting only, be adopted, the proposed method of alteration will be carried out more quickly and with little expense. Our experience is that objections to the alterations in the objects of a company are never made, but we think that provision should be made that the holder or holders of, in the aggregate, not less than 15% of the issued share capital of the company should have a right to apply to the Court within 14 days after the resolution is passed to disallow the alteration and that, on such application, the Court should be given power to make any Order which it thought fit, provided that any shareholder who has consented to or voted in favour of the resolution should not be entitled to make or join in making such application. We strongly recommend, accordingly, that provisions corresponding to those in Section 5 of the Companies Act, 1948, should be adopted.

#### POWER OF COMPANY TO HOLD LAND

51. We are aware that doubt exists whether a company incorporated in the late United Kingdom of Great Britain and Ireland but outside the State or in the present United Kingdom of Great Britain and Northern Ireland has power to hold lands in the State. We are of opinion that a company incorporated before 6th December, 1922, in any part of the late United Kingdom of Great Britain and Ireland now has and always had power to acquire and hold lands in the State and we recommend that a section be introduced in the new Act declaring this to be the law. We are also aware that doubts exist as to whether a company which is not incorporated in this State but which has returned particulars to the Irish Companies Office under Section 274 of the Act of 1908 has power to hold land in the State. Many of these difficulties have been removed by the Mortmain (Repeal of Enactments) Act, 1954, but we consider it desirable that there should be a section in the new Act giving express power to companies incorporated outside the State which return particulars to the Companies Registration Office to acquire and hold lands in the State.

#### ARTICLES OF ASSOCIATION

52. A company may adopt as its regulations all or any of the Articles of Association in Table A, which is in the First Schedule to the Act of 1908. Many of the Articles in Table A in the Act of 1908 are unsuited to modern conditions and it has become customary to exclude the whole of Table A and to adopt a new set of Articles. This involves heavy printing expenses and as we attach considerable importance to the provision of a new and up-to-date set of Articles appropriate to both public and private companies, we have drafted a set of Articles of Association for consideration by the Parliamentary Draftsman. These are contained in appendix A to this Report.

53. As presumably the statute will be introduced and passed in the English language it would seem desirable that the Irish version of these Articles should be included in the statute itself and not left merely to the translation which is of no statutory effect and in that event we would suggest that the Table A in the Irish language should be termed Tábhle AA.

#### NAMES OF COMPANIES

54. Limited liability companies are characterised by the word "Limited" at the end of the name. The practice has grown up of using the word "Teoranta" in the same sense. For this there is no statutory authority. There should be express provision that the word "Teoranta" in the name of a company has the same effect as the word "Limited".

55. A few companies with a name in the English language have adopted the practice of using an Irish translation of their

name. There should be statutory provision that a company may trade under no name other than its name as actually registered. Where it is desired to substitute a name in Irish for a name in English or *vice versa* the normal procedure for change of name should be followed. No company should use more than one name.

56. Section 8 of the Act of 1908 provides that a company may not be registered by a name identical with that by which a company in existence is already registered or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and consents to its name being used. There is nothing in the Act of 1908 which prevents the promoters of a new company adopting a name similar to that of a well-known American or British company or adopting the name of a friendly society or an industrial and provident society formed in this country. The Registrar of Companies has no power to refuse registration of such names. There have been cases where small companies have been formed in this State with a name similar to those of well-known and established British and American companies. In such cases, the company the name of which has been used may bring an action in the Irish Courts against the company which has been incorporated under this name. Such an action is expensive and, as the company formed in this country usually has a small paid-up capital, the company taking the action is not able to recover its costs of the proceedings. The main consideration, however, is that there is a serious risk that the members of the public will believe that there is some connection between the company formed in this State and the well-known company which is not so formed and will be thereby misled. In addition, we know that companies with a very small paid-up share capital have been formed with names which contain words such as "insurance" or "assurance": the use of these words undoubtedly suggests to those who are not familiar with financial matters that the company has a large paid-up capital.

57. We recommend that the Registrar of Companies should have discretion to reject any name which he considers is calculated to mislead. In addition, we recommend that a company should not be permitted to use the words "insurance" or "assurance" in its name without the consent of the Minister for Industry and Commerce and we consider that a similar restriction should be imposed on the use of the equivalent words in Irish in the names of companies. We recommend that there should be an appeal to the High Court against the decision of the Registrar of Companies not to permit the use of a particular name and that on the hearing of such an appeal, the Registrar and any other persons interested should be permitted to appear. The onus of proving that the suggested name is not calculated to mislead the public should lie on the appellant. The rules made under the Act should provide for

the advertisement of the hearing of the appeal so that all interested parties may have an opportunity of appearing.

## SHARE CAPITAL

### REDEEMABLE PREFERENCE SHARES

58. A company cannot issue redeemable preference shares under the Act of 1908 as the redemption of shares is a reduction of the company's capital. If a company wishes to redeem any of its shares, it has to bring the appropriate proceedings for reducing its capital. We think that the power to issue redeemable preference shares should be given to all companies provided that the Articles of Association make due provision for this and that proper safeguards are adopted. The Majority Report of the Commission of Inquiry into Banking, Currency and Credit, 1938, recommended in paragraph 621 that legislation should be passed to enable companies to create and issue redeemable preference shares. The power to issue such shares should be conferred on all companies which have or take the necessary powers in their Articles.

59. We recommend that the following safeguards should be introduced :

- (a) Redemption should be allowed solely out of profits which would otherwise be available for dividend or out of the proceeds of a new issue of shares made expressly for the purposes of their redemption;
- (b) Such shares should be redeemable only when they are fully paid;
- (c) When such shares are redeemed otherwise than out of the proceeds of a new issue, a sum equal to the nominal amount of the shares redeemed should be transferred out of profits which are available for distribution as dividend to a reserve fund to be called "the capital redemption reserve fund". This capital redemption reserve fund should be capable of being converted into fully or partly paid shares but whether so converted or not should be treated as if it were share capital of the company and the provisions of the Act in relation to the reduction of the share capital of the company should apply to it.
- (d) The balance sheet of the company should state how much of the issued share capital of the company consists of redeemable preference shares. We deal with this matter in more detail in our recommendations in relation to accounts.
- (e) Any premium which may be payable on redemption should be provided out of the profits of the company available for distribution or out of the company's share premium

account. Our recommendations in relation to the company's share premium account appear in paragraph 79 hereof.

60. The section dealing with redeemable preference shares should provide that the redemption of such shares by a company is not a reduction of the amount of the company's authorised share capital. It should also provide (as is stated in the preceding paragraph) that the capital redemption reserve fund may be applied by the company in paying up unissued shares of the company on capitalisation and that when a company has redeemed any preference shares it should have power to issue shares up to the nominal amount of the shares redeemed as if the redeemed shares had never been issued. Redeemable preference shares do not fit easily into the scheme of capital stamp duties. In order to remove doubt we suggest that the section should provide that when a company redeems any preference shares and issues shares in place of those redeemed, the share capital of the company should not be deemed to be increased for the purposes of Capital Stamp Duty.

### ISSUE OF SHARES AT A DISCOUNT

61. The issue of shares at a discount has been discussed in many of the Reports of the various committees which dealt with company law. The original view was that payment in full for shares issued is the price of limited liability. When a company was permitted to pay a commission to those who procured subscription for its shares, the company was, in fact though not in name, issuing shares at a discount because the obligation of the company to pay a commission meant that the company did not have available the full amount paid for the shares. The evidence which we have heard suggests that the issue of shares at a discount is a desirable reform. So long as shares have a nominal value we find it difficult to justify in principle the issue of shares at a discount but we are influenced by the evidence which we have received on this point and by the fact that in Great Britain and Northern Ireland shares may now be issued at a discount. In a later part of this Report we recommend that the legislation to be introduced should make provision for shares of no par value and thus the importance of the nominal value of the share capital will be diminished. The arguments in favour of and against the issue of shares at a discount will be found in the Reports of other committees on company law, and we do not propose to repeat them here. It is important, however, that stringent safeguards should be provided to avoid an inflation of the nominal share capital of the company.

62. We recommend that every company should be given power to issue at a discount shares of a class which have already been issued. The safeguards which we suggest are :—

- (a) The issue of the shares at a discount must be authorised by a special resolution of the company and must be sanctioned by the Court.
- (b) The resolution must specify the maximum rate of discount at which the shares are to be issued.
- (c) Such issue must not be made within three years after the date on which the company (if it is a public company) was entitled to commence business or, in the case of a private company, after the date of incorporation.
- (d) The shares to be issued at a discount must be issued within 6 months after the date upon which the issue is sanctioned by the Court.
- (e) The balance sheet and the annual return should state in clear terms the discount which has been given and, in the case of a prospectus, the discount which is being given.
- (f) A substantial minimum penalty should be provided for any company and every director, manager and secretary thereof which issues shares at a discount without complying with the requirements of the section.

#### SHARES OF NO PAR VALUE

63. Since the Companies Act, 1862, every share in a company limited by shares (as distinct from a company the liability of whose members is not limited) and which is registered under the Companies Acts must have a fixed nominal value attached to it. Section 3 of the Act of 1908 provides that in the case of a company limited by shares the memorandum must state the amount of the share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount. An ordinary share in a company is, however, a defined proportion of the equity or surplus assets of a company. If the undertaking of the company has prospered and if the shareholders have retained a substantial proportion of the profits in the company instead of distributing them as dividends, the value of the share considered as a proportion of the equity of the company increases. This is not due to any mystery of company law or finance but to the fact that the profits retained have increased both the value and the earning power of the business of the company and the value of the share may thus be greater than its nominal value. Moreover, the decline in the value of money and the great changes which have occurred in price levels may have considerably increased the value of the company's assets expressed in terms of money. As an ordinary share represents a certain proportion of the equity of the company the price of the ordinary share will tend to rise when the value of the company's assets is inflated by the change in the value of money. It has, therefore, been suggested that the giving of a nominal value to an ordinary share in a company is misleading. A

share of no par value has not any nominal value attached to it and, therefore, avoids the misleading effect created by the share having a nominal value and by the dividend being stated as a percentage of nominal capital.

64. In the United States of America the issue of shares of no par value has been permitted since 1912 and in Canada the issue of such shares has been permitted since 1918. The same is the case under the company laws of certain continental countries. Shares of no par value in such companies are dealt in on the Dublin and London and other Stock Exchanges. The introduction of shares of no par value in this State was strongly urged on us as a desirable reform by one of the members of the Dublin Stock Exchange who gave evidence before us. We have also considered the report of the Committee on shares of no par value issued in January, 1954. We are aware from public speeches that it is part of the public policy of the State to encourage investment in this country from the United States of America and from Canada and we believe that the introduction of shares of no par value would act as a considerable inducement to such investors.

65. We consider that a very strong case for the introduction of shares of no par value has been made and we recommend that companies in this State should be permitted to create and issue such shares. If our recommendation be accepted, it will be necessary to make a number of consequential amendments in the Companies Acts. In addition, it will be necessary to amend a number of sections in the Control of Manufactures Acts, 1932 and 1934, in the Acts imposing stamp duties on the transfer of land and in the Agricultural Produce (Cereals) Acts. Appropriate provisions as to the duty payable on the capital would also be required.

66. We recommend that the Companies Acts should be amended so as to allow the issue of ordinary shares of no par value but this should not extend to shares which have a fixed dividend element or a fixed element of repayment of capital or to shares which confer a right to a fixed dividend and a right, in addition, to participate in profits. Companies should be given powers to convert by special resolution their ordinary shares having a nominal value into shares of no par value and where there is more than one class of share, the approval of the holders of each such class should be obtained by extraordinary resolution. Companies should be allowed by special resolution to convert their fully paid shares of no par value into shares having a par value.

67. The ordinary share capital of a company should be required to be wholly either in the form of shares having a nominal value or in the form of shares of no par value: no company should be allowed to have ordinary shares of both these descriptions at the same time.

68. Shares of no par value may be partly paid, but in that event, this should be stated clearly on the share certificate, in the balance sheet, in the annual return and in other relevant documents.

69. All companies (public and private) should be allowed to issue shares of no par value on the terms we have stated.

70. If a company issues shares of no par value, the whole of the proceeds of the issue of shares (whether it is a first or subsequent issue) should be carried to a stated capital account. In the case of an issue for a consideration other than cash, a sum equal to the value of the consideration as assessed by the directors should be carried to the stated capital account. Where a company having ordinary shares of a nominal value converts them into shares of no par value, the whole of its paid-up capital (whether ordinary or preference) together with its share premium account should be carried to a stated capital account. Similarly where a company converts its shares of no par value into shares having a nominal value the stated capital should be carried to paid-up share capital account.

71. The transfer of reserves and other sums to a stated capital account (the equivalent of capitalisation) and the splitting of shares of no par value should require the approval of the company by special resolution.

72. We wish to emphasise that shares of no par value will not involve any loss to the Revenue in any way. Although the dividend on such shares is stated in terms of a money sum and not as a percentage, income tax will be deducted from the dividend at the appropriate rate.

#### FINANCIAL ASSISTANCE BY A COMPANY FOR THE PURCHASE OF ITS OWN SHARES

73. A company limited by shares may not purchase its own shares because such a purchase necessarily involves a reduction of the capital of the company and a reduction of capital is permissible with the sanction of the Court only. Although a company cannot purchase its own shares, doubt exists whether a company is entitled to give financial assistance for the purchase of its shares. Such a transaction is certainly against the spirit of the Companies Acts. We are aware that in a number of cases, companies have given substantial loans to the directors to enable them to take up on allotment or to purchase shares in the capital of the company: in some cases the company has guaranteed the repayment of loans incurred by directors and other shareholders for the purpose of acquiring shares in the capital of the company. We think it essential that transactions such as this should be prohibited in the clearest terms.

74. A more subtle method is for a company to arrange that its subsidiary company will purchase shares in its capital. In such cases, the parent company subscribes for shares in the subsidiary company and the money received by the subsidiary company is immediately applied in taking up shares in the holding company: the paid-up share capital of both companies is increased by this method. This method of inter-company finance should be prohibited.

#### EMPLOYEES SHARES

75. As a company cannot purchase its own shares, it is impossible for companies in this State to provide bonus or profit sharing schemes for their employees under which shares in the capital of the company are held by trustees upon trust to distribute the dividends received among the employees. In such schemes the company sets aside some portion of its profits and uses them to pay up in full shares in its own capital which are held by the trustees. Another method is for the company to pay a proportion of its profits to trustees who then apply the moneys in taking up shares in the capital of the company. Such forms of bonus schemes are highly desirable and the representatives from the trade union organisation in the course of their most helpful evidence informed us that they were in favour of them. The social and economic advantages of such schemes are so well known that we do not consider it necessary to deal with them in any detail.

76. We have dealt with employees bonus schemes separately from the purchase by the company of its own shares because we consider that the importance of the subject justifies separate treatment. The two subjects are, however, closely connected. Our recommendations in relation to the two headings are that the Act should provide that it should not be lawful for a company to give, whether directly or indirectly, whether by means of a loan, guarantee, provision of security or otherwise any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person for any shares in the company or, where the company is a subsidiary company, in its parent company. This general rule should not apply to two cases. The first relates to the provision of money for the purchase of or subscription for fully paid shares in the company or its parent company when the purchase or subscription is by trustees for shares to be held by or for the benefit of employees or ex-employees of the company including directors and ex-directors. The second is that where the lending of money is the main business of a company, the section should not prohibit loans to persons other than directors or shareholders even if such loans should prove to be used for the purchase of or subscription for shares in the company.

77. In this part of our Report we do not deal with the definitions of parent and subsidiary companies. This is discussed

in detail in the paragraphs of this Report dealing with the obligation to file accounts with the Registrar of Companies and in those dealing with the contents of a company's accounts. In subsequent paragraphs we recommend that one definition of subsidiary company should be adopted for all sections of the Act and that a company is a subsidiary company if another company is a member of it and controls the composition of the Board of Directors or if another company holds more than one half in number or in nominal value of its equity share capital or shares having voting rights.

#### ISSUE OF SHARES AT A PREMIUM

78. A company may issue shares in its capital at a price equal to the nominal value of the shares or it may issue shares at a price greater than the nominal amount. When shares are issued at a premium the premium is not part of the capital of the company for any purpose but may be capitalised and converted into shares. The directors are, as the law now stands, entitled to pay the premium to the shareholders by way of dividend or to apply it as income. We consider that any such payment is undesirable: the person subscribing for shares who pays a premium does not draw a distinction between the amount paid in respect of the nominal value of the share and the premium and we think that the premium should be regarded as part of the capital of the company.

79. We recommend that when a company issues shares at a premium, a sum equal to the amount of the premiums received should be transferred in the balance sheet to an account to be called "The share premium account" and that the provisions in relation to reduction of capital should apply to the share premium account as if it were part of the paid-up capital of the company.

80. The Act should provide that the amount standing to the credit of the share premium account may be applied by the company in paying up unissued shares of the company which are to be issued on a capitalisation or that it may be used to pay any premium payable on the redemption of redeemable preference shares or of any debentures of the company.

81. The application of these provisions in relation to premiums received on the issue of shares made before the passing of the Act would cause great difficulty. In some cases, companies which have issued shares at a premium have carried the premium to a share premium account. We recommend that the new provisions in relation to premiums on shares should apply only to shares issued at a premium after the date upon which the new Act comes into force. It will also be necessary to provide that the provisions in relation to share premiums shall not apply to shares of no par value as these have not a nominal value.

#### NUMBERING OF SHARES

82. Section 22, sub-section (2) of the Act of 1908, provides that each share in a company having a share capital shall be distinguished by its appropriate number. In public companies the obligation to number each share creates a considerable amount of clerical work in the keeping of the Share Register of a company and the issuing of share certificates. The vendor of 200 shares in a company who sells them on the Stock Exchange will rarely have 200 shares with consecutive numbers: his 200 shares will probably consist of four or five blocks of shares. When a transfer by such a vendor is presented to the Company for registration, a number of entries have to be made in the Share Register and the numbers of the shares have to be copied on to the share certificate. The obligation to number shares may be avoided by converting the shares into stock but companies are not always willing to do this. There are some advantages in having a number attached to each share in the capital of a company but we consider that, in the case of a public company, the expense and delay which numbering creates outweigh any advantages.

83. We recommend that the requirement that each share in a company having a share capital should be distinguished by its appropriate number should be retained but that an exception should be made for shares in a public company. In such a company, the obligation to number shares should not apply if all issued shares in the company or all the issued shares therein of a particular class are fully paid up and rank *pari passu*.

84. We appreciate that if this change in the law be made, some public companies may elect to retain the numbering. Certain Acts (such as the Finance Act, 1957, which grants certain tax concessions not available to shares issued prior to 4th August, 1932) contain provisions compliance with which is rendered simpler by the retention of numbering. However, we are of opinion that such retention should be a matter of choice and not of obligation.

#### CERTIFICATION OF TRANSFERS

85. In the last twenty years a practice called "certification of transfers" has developed on the transfer of shares. When a vendor sells shares in a company, he has to deliver to the purchaser a transfer of the shares together with a stock or share certificate relating to them. In some cases, however, the certificate which the vendor has cannot be delivered to the purchaser. If, for example, 100 shares are bought on the Stock Exchange, the vendor may be the holder of some 500 shares for which he holds one certificate and he will not be prepared to give the certificate relating to the 500 shares to the purchaser. If he applies to the company for the issue to him of two new certificates, one relating to the 400 shares which he is retaining and the other relating to the 100 shares which he is selling, there will be some delay and

expense. Similarly, if he is selling 500 shares and sells 100 to one purchaser, 100 to another, and 300 to a third, it will be necessary for him to get three new certificates. The practice of certification of transfers has been evolved to get over this difficulty. When a vendor sells some of the shares the subject matter of one share certificate, he lodges the certificate relating to all the shares which he holds, together with a transfer relating to some of them, with the company and the company certifies on the transfer that a certificate relating to the number of shares dealt with by the transfer has been deposited with it. This certified transfer is accepted by the purchaser who does not require the delivery to him of a share certificate relating to the shares which he has purchased. The purchaser subsequently receives from the company a certificate for the shares which he has purchased and the vendor receives one relating to the shares which he has retained. The Courts have decided that when an official of the company with authority to certify the transfers does so without the share certificate having been lodged with the company, he is not acting within the scope of his authority and his certificate does not bind the company or render it liable for damages to the buyer. The purchaser cannot make inquiries as to the authority of the official of the company who places the certificate on the transfer and we do not see any reason why the company should not be liable under the certificate which the official has given.

86. We recommend that when a company certifies a transfer in the above manner, the certification should be treated as a representation by the company to any person acting on the faith of it that there has been produced to the company such documents as show a *prima facie* title to the shares or debentures in the transferor named in the instrument of transfer. When a certification has been given by a company and when a person acts on it, the company should be under the same liability to him as if the certification had been made fraudulently. The company, however, should not be taken as representing that the transferor has title to transfer the shares.

#### REGISTER OF MEMBERS

87. Section 30 of the Act, 1908, provides that the Register of Members should be kept at the registered office of the company where it is to be available for inspection. When the company is a public company, the duty of keeping a Register of Members or Share Register involves considerable clerical work, and the company often delegates the keeping of the register to its accountants or to firms which are prepared to act as registrars. When this happens the Register of Members is not kept at the registered office of the company. We think that the commercial practice of keeping the Register of Members at an office which is not the registered office of the company should be recognised by

the law, as we are satisfied that it results in a saving of time and expense.

88. We recommend that the Register of Members should be kept at the registered office of the company or at some other office of the company if the work of keeping the Register is done at that office or at the office of some person who has undertaken the work of keeping the Register for the company. This, however, should be subject to a provision that the Register must be kept in the State and that the company should send notice to the Registrar of Companies of the place where the Register is kept and of any change of that place and is also subject to our recommendation as to foreign registers in paragraph 102.

#### REDUCTION OF CAPITAL

89. Although the present law and practice in relation to the reduction of the capital of a company is complicated, we consider that it is generally satisfactory and should not be altered. It is essential that a reduction of capital should receive wide publicity so that those who may be affected by it will have an opportunity of opposing the reduction and so that the Court sanctioning the reduction may be made aware of all the relevant facts. Under Section 48 of the Act of 1908 a company which proposes to reduce its capital must add the words "and reduced" to its name from the date when the petition to the Court to confirm the reduction is presented. In most cases, the Court dispenses with the further use of these words when it is confirming the reduction. We consider that the obligation to add the words "and reduced" to the name of a company when the petition is presented should be abolished, but that the Court should be given power to direct, if it so thinks proper, that the words "and reduced" be added to the name of the company for such period as the Court thinks fit.

90. When the company seeking the reduction has a large number of creditors, the obligation to prepare a list of creditors is often an onerous task. We consider that the Court should have a discretion to dispense with the preparation of a list of creditors.

91. Under Section 40 of the Act of 1908, a company which has accumulated a sum of undivided profits may, by a special resolution, return this sum or part of it to the shareholders in reduction of the paid-up capital of the company and the unpaid capital is correspondingly increased. It is not necessary to get the sanction of the court to this. The section has been severely criticised: its meaning is obscure and the power which it gives of reducing the paid-up capital of the company without the sanction of the Court and without any publicity is undesirable. We recommend that Section 40 of the Act of 1908 be repealed and that a corresponding section should not be introduced in the new Act.

## MODIFICATION OF RIGHTS CLAUSES

92. When the capital of a company is divided into different classes of shares, the Articles of Association generally provide for the alteration or modification by the company of the rights attached to any class of shares with the sanction of a specified majority of the holders of the class of shares the rights of which are being affected. In some cases, the modification of the rights of shareholders may benefit the holders of the ordinary shares. Those who hold ordinary shares in the capital of a company frequently hold preference shares, and they will use their votes as preference shareholders in support of the modification, though it may not benefit the preference shareholders. It is necessary that a company should have power to modify the rights of the various classes of shares. We think, however, that when the rights or privileges of any class are altered and when this modification can be carried out only with the sanction of a certain majority of the holders of shares of that class, there should be a right given to the holder or holders of, in the aggregate, not less than 10% of the issued shares of that class to apply to the Court to have the resolution disallowed. One or more of such holders should be entitled to bring the proceedings on behalf of the others and when such an application is made, the resolution should not take effect until it has been confirmed by the Court. Such an application should be brought within twenty-eight days after the passing of the resolution at the meeting of the class of shareholders whose rights are being affected.

93. We recognise that it is desirable that the matter should be speedily decided and, therefore, that it would be desirable that the decision of the Court should be final and conclusive.

## REORGANISATION OF SHARE CAPITAL AND ARRANGEMENTS

94. Section 120 of the Act of 1908 provides that where a compromise or arrangement is proposed between a company and its creditors or between a company and its members or any class of them, the Court may sanction the compromise or arrangement if a certain majority of the creditors or members support the compromise or arrangement. The effect of the Court Order is to make the compromise or arrangement binding on all the creditors or members. Section 45 of the Act of 1908 provides that a company limited by shares may, by special resolution confirmed by the Court, modify the provisions of its Memorandum of Association so as to reorganise its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes. This can, however, be done only when the approval of a very substantial majority of the shareholders whose rights are being affected has been obtained. Almost everything that may be done under Section 45 may also be done under Section 120 and it is often a matter of difficulty to decide which procedure should be adopted. Section 15 should be wholly

repealed and Section 120 should be amended so that all cases which may now be brought under Section 45 may be brought under Section 120.

95. When a company brings proceedings to obtain the approval of the Court to a compromise with its creditors, there is considerable delay before the approval is obtained, as meetings of creditors have to be summoned and held. In the interval between the issue of the proceedings and the granting of the approval, a creditor may get judgment against the company and execute it and thus get paid in full. We recommend that when a company has issued proceedings to obtain the approval of the Court to a compromise with creditors, the Court should be given power to stay all proceedings against the company until the application to the Court has been finally determined.

96. A prosperous company, the business of which is expanding, sometimes decides that it would be in its interests either to acquire all the shares in another company or to amalgamate (as it is commonly called) with another company. The principal feature of such a scheme or contract is that one company buys all the issued shares of the other company. The great majority of the shareholders whose shares are being acquired may support the scheme and indicate that they are prepared to sell their shares to the acquiring company, but a small minority may not be prepared to do this or some of the shareholders may be dead and representation may not have been taken out to their estates so that there is no person capable of transferring the shares. We think that when such a scheme or contract has been approved by the holders of more than 80% of the shares the transfer of which is involved, the company which is acquiring the shares should be given power to compel those who are not prepared to sell their shares or those who have not given any indication of their wishes, to sell the shares which they hold to the acquiring company. The drafting of such a section is a matter of some difficulty but we have considered Section 209 of the Companies Act, 1948, and it seems to us to deal satisfactorily with the matters which we think should be provided for in such an amendment.

## PROSPECTUSES AND OFFERS FOR SALE

97. When the directors of a company decide to offer shares in the capital of the company to members of the public generally, they may do this in either of two ways. The company may offer the shares to the public for subscription: in that event, a document called a Prospectus, giving details of the number of shares offered and information in relation to the company, is published. The company may, however, instead of offering the shares to the public, allot the shares to an issuing house or to a firm of merchant bankers or to a syndicate which then offers them for sale to the public. Share certificates in respect of the shares

allotted are not issued to the issuing house but a letter of allotment is issued by the company and this is renounced in favour of the persons who accept the offer for sale. This method of offering shares to the public is called "An offer for sale". The documents which are issued by the persons making the offer for sale to the public are not a prospectus because they are not issued by or on behalf of the company whose shares are being offered or by or on behalf of anyone who has been engaged in or interested in the formation of the company.

98. Many of the sensational frauds in the last century and in the earlier part of this century related to the matters stated and not stated in prospectuses and the Companies Acts have imposed increasingly stringent regulations as to the matters which must be disclosed by a prospectus. The matters which a prospectus must now contain are detailed in Section 81 of the Act of 1908. The law in relation to the contents of a prospectus is generally satisfactory and affords an adequate safeguard for investors. There are, however, certain aspects of it which could with advantage be amended.

(A) Paragraph (a) of sub-section 1 of section 81 provides that a prospectus must state the contents of the memorandum with the names, descriptions and addresses of the signatories and the number of shares subscribed for by them respectively. This seems to us to be unnecessary; the memorandum is always a lengthy document and we are convinced that it does not give any information of any value to an investor and that few (if any) of those who subscribe for shares in the company read it. Moreover, it is a document of public record.

(B) Paragraph (d) requires the minimum subscription on which the directors may proceed to allotment to be stated. The minimum subscription was originally introduced as a safeguard to ensure that an adequate amount of capital would be subscribed so that the company might carry on its business with a reasonable prospect of profit. The minimum subscription may, however, be fixed by the Articles of Association and it has now become the practice to fix a low minimum subscription, usually £7, and the safeguard has been rendered valueless. We recommend that the obligation to state a minimum subscription in the prospectus should be repealed. It is, however, important that when shares are offered to the public, they should not be allotted to those who offer to take them unless the company obtains by the offer of its shares sufficient capital to enable it to carry on its business. We recommend that a prospectus must contain particulars of the minimum amount which, in the opinion of the directors, must be raised by the issue of shares in order to provide

(i) the purchase price of any property purchased or to be purchased when the purchase price is to be provided in whole or in part out of the proceeds of the issue;

(ii) the expenses of the issue;

(iii) the working capital of the company.

When these items are to be provided out of some other source, the prospectus should state the amount to be provided and the sources from which such amounts are to be provided. There should be a provision that if the minimum amount is not obtained by the issue to the public, the company should be under an obligation to refund to each person who subscribes for shares the total amount subscribed by him and to cancel any allotment of shares made to him under the application which he made.

(C) Section 81 does not impose on the company an obligation to disclose the amount of the dividends which it has paid in the years preceding the issue of the prospectus or the amount of its profits during preceding years. We recommend that every prospectus should disclose either by a statement or by an auditor's report included in the prospectus for each of the five financial years immediately before the date of its issue

(i) the rates of the dividends paid by the company in respect of each class of its shares;

(ii) the assets and liabilities of the company and its profits and losses;

(iii) the profits and losses of each of the subsidiaries (if any) or the profits and losses of all the subsidiaries (if any) considered as a group.

(D) We consider that auditors and accountants whose reports form part of a prospectus should be liable to those who subscribe for shares in the same way and with the same incidents as directors of the company, unless they establish that they acted *bona fide* and without negligence.

(E) The practice of issuing an abridged prospectus should be made illegal unless it is issued under a certificate of exemption duly granted by the Committee of the Dublin Stock Exchange.

99. In some cases the method of making an offer for sale instead of issuing a prospectus is adopted to avoid the strict requirements of the law in relation to a prospectus but we are satisfied that in the great majority of cases the method of making an offer for sale is adopted because it is a convenient method of underwriting the issue and ensures that the shares will be taken up. We think that a distinction should be drawn between the

cases in which the offer for sale is made by arrangement with the company and those in which it is not so made. When the offer for sale is made by arrangement with the company, the offer should be treated as a prospectus issued by the company and all the relevant provisions of the Companies Acts and the law relating to the contents of and liability for statements in and omissions from prospectuses should apply to the offer for sale. This extension of the law in relation to prospectuses should apply only when the company allots or agrees to allot shares or debentures or debenture stock in contemplation of an offer of such shares, debentures or debenture stock being made to the public and an allotment should be regarded as having been made in contemplation of such an offer when the offer is made within 24 months of the allotment or agreement to allot or the entire consideration for the shares, debentures or debenture stock has not been paid or satisfied at the date when the offer for sale is made.

#### UNDERWRITING COMMISSION

100. It has been suggested that there should be some statutory limit on the amount of underwriting commission which a company should be permitted to pay to underwriters. In most cases, the Articles of Association of the company impose a limit on the amount of underwriting commission and we do not consider it desirable to impose any statutory limit on the amount of the underwriting commission which may be paid.

#### FOREIGN REGISTER

101. Section 34 of the Act of 1908 enables a company whose objects include the transaction of business in a colony, to keep in the colony a branch register of its members resident there, and such register is declared to be part of the company's Register of Members.

102. We recommend that every company incorporated in this country which has a share capital should be given power to keep in any country in which it transacts business a branch register (to be called "a foreign register") of its members resident in that country. The company should be obliged to keep at its registered office a copy of every entry in the foreign register and to keep a duplicate of each foreign register. Transfers of shares registered in the foreign register should be exempt from Irish Stamp duty unless executed in the State by one or more parties. A number of companies incorporated in Great Britain have branch registers in this country, and we do not see any reason why Irish companies should not have the same advantage.

#### NOMINEE SHARE-HOLDINGS

103. Section 25 of the Act of 1908 requires a company to keep a Register of its Members and to show in such register the names,

addresses and occupations of its members and the number of shares held by each member, and the date upon which each person was entered in the register as a member and upon which he ceased to be a member. Section 27 of the same Act provides that in the case of companies registered in England or Ireland no notice of any trust is to be entered on the register. It is fundamental in the scheme of company law as we know it that a purchaser of shares may treat the person registered as owner of the shares as the absolute owner and need not inquire whether he is the beneficial owner or a trustee for or a nominee of some other person. This principle has been extended in this country and elsewhere to the law relating to estates in land and applies to land the title to which is registered under Registration of Title Acts.

104. Since the first Companies Act was passed investors have frequently had shares and securities registered in the names of nominees and a number of companies have been formed to act as nominees. It would be difficult to deal with the many reasons why it is expedient that shares should be registered in the names of nominees. In some cases the shares are so registered as a method of giving security to a lender: shares cannot be mortgaged by a deed of legal mortgage and if they are registered in the name of the lender or in the name of a nominee acting on his direction, a lender of money who has advanced it on the security of the shares is able to control the dealing in the shares and to receive the purchase moneys if they are sold. In some cases, executors and trustees find it more convenient to have shares to which they are entitled as executors and trustees registered in the names of nominee companies. In other cases, they are registered in this manner because a bank has undertaken the work of collecting the dividends. For those who are not resident in this country the system has many advantages and for others anonymity has attractions.

105. It has been urged that the system of nominee registration permits a director to make use of confidential information about the company as he is able to conceal his dealings in the shares of the company by dealing through nominees. It has also been suggested that this practice enables those who control a company to conceal this from their fellow shareholders and the public.

106. We are convinced that in the great majority of cases, shares are registered in the names of nominees for legitimate commercial purposes. A prohibition of the practice would seriously reduce the attraction of shares as an investment and as security. Moreover, it is almost impossible to frame a satisfactory definition of beneficial ownership. For example, if shares are held by trustees upon trust for a person for his life and after his death for some other person, the beneficial ownership is divided between the life tenant and those who become entitled to the shares on his death. The life tenant is never registered as owner of the shares

because registration of the life tenant as owner of the shares would create great problems for the trustees and would indeed produce an impossible and intolerable situation, as the life tenant could sell the shares and get the proceeds. The registration of the life tenant, together with those entitled after his death, would create like difficulties.

107. It has also been suggested that though registration in the names of nominees should not be prohibited, an obligation should be imposed on every member of the company to disclose to the company the beneficial ownership of the shares of which he is registered as owner and that the company should keep a register in which the beneficial ownership would be shown. This suggestion found favour with the members of the Cohen Committee, but was not accepted by the British Parliament. The principal argument against a system of disclosure of the beneficial ownership is the impossibility of devising a satisfactory definition of it. Moreover, such a system would impose a large amount of clerical work on each company and the questions involved are so difficult that constant recourse to the company's legal advisers would be necessary. A number of companies incorporated in this country have taken power in their Articles of Association to require the shareholders to disclose to the directors of the company the beneficial ownership of shares held by them so that the directors are able to ensure that the company's shareholding complies with the Control of Manufactures Acts or with the Finance Acts where the income tax concession has been granted. These powers are rarely used. If the directors of a company decide that these powers are necessary, they may adopt them, but we do not think it desirable that a general legal obligation should be imposed on all companies to make inquiries into and to keep records of the beneficial ownership of its shares. Indeed, any such provisions, however carefully drafted, would be easy of evasion and, therefore, would fail to check such abuses (if any) as may exist.

108. The argument that some control of the system of nominee registrations is necessary to prevent directors making profits by dealings in the company's shares is met by our suggestion in a later part of this Report that every company must keep a record of the dealings in its shares by its directors.

## PRIVATE COMPANIES

### PRIVILEGES

109. We have already referred to the history of the development of the private company and to the dominant position which this institution holds in the legal framework and commercial life of this State. The Companies Acts give certain privileges and immunities to private companies. (1) Such a company need not file a balance sheet with the Registrar of Companies; (2) it may be

formed by two persons instead of seven signing the Memorandum of Association; (3) on its formation, consents by directors to act need not be filed nor need a list of persons who have consented to act as directors be delivered to the Registrar; (4) it need not obtain a minimum subscription before it allots its shares; (5) it may commence business immediately after registration, and has not to get a certificate entitling it to commence business; (6) it need not file the report for the statutory meeting; (7) it is exempt from the provisions of Section 114 of the Act of 1908, which gives to the holders of preference shares, debentures and debenture stock the same right as ordinary shareholders to receive and inspect the balance sheets of the company and the reports of the auditors and other reports.

### EXEMPTION OF PRIVATE COMPANIES FROM OBLIGATION TO FILE A BALANCE SHEET

110. The exemption of private companies from the obligation to include a copy of their last balance sheet in the annual return made to the Registrar of Companies is the most important and the most controversial of the privileges given to private companies. In a subsequent part of this report we recommend that a profit and loss account should be attached to the balance sheet of every company, that the balance sheet and profit and loss account must contain many details which are in this State not now customarily included in these documents and that public companies having subsidiary companies should prepare group accounts which will show the position of the parent company and its subsidiaries viewed as one enterprise. The filing of these documents for public inspection would make private companies almost equivalent to public companies and would make available a considerable amount of information about the trading activities of private companies to their trade competitors. The objections to imposing an obligation on private companies to file their accounts for public inspection are so considerable that the arguments which are advanced in support of the abolition of the privilege have to be carefully examined.

111. The first argument advanced is that the growth of the practice of forming subsidiary companies has destroyed the "private" character of such private companies. The subsidiary company of a public company is almost invariably a private company. In some cases companies have a subsidiary company because they have purchased the business of another company and the most economical and convenient manner of carrying out the transaction was to buy all the shares in the other company. In other cases, companies have formed subsidiary companies when they wish to start a new type of business, or when they consider it wise to put one type of business into a separate department. The management and administration of various types of business is more efficiently carried on through a series of subsidiary com-

panies, and it is convenient to have separate accounting systems in each company. We are satisfied that there are substantial commercial advantages to be gained by the formation and operation of subsidiary companies.

112. It is said that the directors of the parent company are usually directors of the subsidiary company and that they are thereby enabled to pay themselves directors' remuneration which is not disclosed to the shareholders in the parent company. If our recommendations in relation to accounts and group accounts be accepted, a public company having subsidiary companies will have to prepare its balance sheet and profit and loss account in such a manner that the financial position of the subsidiary companies will be shown in the accounts of the parent company and these will also show the assets and liabilities of the parent company and the subsidiary company as one unit. If the parent company is a public company, its accounts will have to be filed: if it is a private company, each shareholder in the private company will, if our recommendations be adopted, receive both a balance sheet and a profit and loss account, and will have the right to be furnished with a copy of the balance sheet and profit and loss account of each subsidiary.

113. No figures are available to show the extent to which the practice of forming subsidiary companies has developed. We understand that the number of subsidiary companies does not at most exceed 750 out of the total number of 7,385 private companies on the Register. Much of the discussion on this matter is based on an exaggerated idea of the number of subsidiary companies and on the suggestion that the formation or acquisition of subsidiary companies has something sinister in it.

114. The Cohen Committee recommended that private companies with a small number of members carrying on business of no great size and in which no other company was the beneficial owner of any of the shares should not be obliged to file their accounts. We are convinced that the great majority of private companies in this State are companies with a small number of members carrying on small businesses and in which other companies are not to any extent the beneficial owners of shares. The conditions in Great Britain in which approximately forty per cent. of the private companies are, in one sense or another, subsidiaries of other companies are entirely different to the conditions here. The growth of the subsidiary company does not, in our opinion, give any support to the argument that the exemption of private companies from the obligation to file their accounts should be abolished or restricted.

115. The next argument advanced is that all private companies should be required to file their accounts for public inspection because the information thereby disclosed would be of

assistance to those who have to frame the general economic policy of the State and to trade unions in formulating wage claims for their members. The information required for these purposes would not be given by the type of accounts we recommend. Company accounts do not and should not disclose the amount of the turnover of the company or the expenses of production, distribution, administration and management. The trade union officials who gave evidence before us emphasised that the figures for turnover and for expenses of production were those in which they were interested and which they thought should be disclosed by the accounts of a company. Information for general economic planning may be obtained under the Statistics Acts, 1926 and 1946: indeed, a number of the witnesses who gave evidence to us complained of the cost and labour of supplying the information required by the forms issued by the Statistics Office and used this as an argument against an obligation to prepare more detailed accounts. If an obligation to disclose information for the purposes of economic planning or wage negotiations is to be imposed, we consider that it should be imposed by an Act passed for this purpose and that an obligation should not be imposed by the Companies Act for a purpose unconnected with those Acts. The trade union officials also complained that one of the semi-State concerns had formed subsidiaries and that they were unable to get any information about the profits of these when wage claims were being negotiated. The desirability of semi-State concerns promoting private companies as subsidiary companies is a matter of general economic and, perhaps, constitutional policy, which we regard as being outside our terms of reference.

116. Another argument advanced in support of an obligation on private companies to file their accounts is that preference shareholders and holders of debentures and debenture stock of a company are not entitled to receive copies of the company's accounts unless the Articles of Association provide for this and that, in most cases, the Articles of Association do not impose an obligation on the company to send copies of their accounts to them. In a subsequent part of our report we recommend that every company, whether public or private, should be obliged to send a copy of its balance sheet and profit and loss account to all preference shareholders and to all holders of debentures and debenture stock.

117. It has also been suggested that those who are considering giving credit to a company would be better able to decide the financial strength of the company and its credit-worthiness if they could inspect the accounts of the company and that the benefit of limited liability would be guarded from abuse by the filing of accounts. Every company has to make an annual return to the Companies Registration Office which may be inspected by the public. Although it gives a considerable amount of information about the capital of the company, our experience is that very few

of those who give credit to companies take advantage of the information which it gives. The major risk to a person giving credit to a company is that the company has given a debenture and that the debenture holder may appoint a receiver over the assets of the company and so gain priority for his debt but the existence of a debenture charged on the assets of the company is disclosed by the company's file in the Companies Registration Office. Although an inspection of the accounts of a company might be of some assistance to a creditor or to those thinking of giving credit to the company, we consider that the advantages which it would confer are completely outweighed by the serious objections to imposing an obligation on private companies to file their accounts for public inspection.

118. The publication of the accounts of small companies might disclose valuable information to trade competitors. If the trade competitors are large concerns, the small company does not gain any benefit from such publication. If the trade competitor is an individual or a partnership, the small company does not get any information from the accounts of the individual or the partnership because these have not to be filed. If there are two businesses in competition in a country town and one is a company and the other is not, it would be impossible to justify a law which imposed on the company the obligation to make available to the public information about its finances and its profits and which did not impose the same obligation on the other. Moreover, if the small company sustains a loss in any year, its credit will be seriously affected if the amount of the loss becomes widely known. If partnerships and individuals carrying on business were obliged to publish their accounts there might possibly be more reason for a similar obligation being imposed on private companies, but until such an obligation is imposed on partnerships and individuals, we consider that such an obligation should not be imposed on private companies.

119. Lastly, the obligation imposed by the British Companies Act, 1948, on private companies to file their accounts for public inspection does not apply to the small family business incorporated as a company and it became necessary to define the companies which were exempt from the obligation to do so. The statement of the conditions giving exemption from the obligation to file accounts for public inspection is in the Seventh Schedule to the Act of 1948. It is extremely complex as provision had had to be made for the cases where shares were held by executors, trustees, banks and finance companies. The difficulty in framing any definition of the small private company may well be illustrated by the following quotation from the Seventh Schedule to the Act of 1948, which Schedule deals with the case of shares in one private company held by a second private company :

"6 (1) The first of the basic conditions shall be subject to an exception for shares held by another private company which is itself an exempt private company :

Provided that this exception shall not apply if, taking all the following companies together, that is to say—

- (a) The company whose exemption is in question (hereafter in this Schedule referred to as "the relevant company");
- (b) any company holding shares to which this exception has to be applied in determining the relevant company's right to be treated as an exempt private company; and
- (c) any further company taken into account for the purposes of this proviso in determining the right to be so treated of any company holding any such shares as aforesaid; the total number of persons holding shares in those companies is more than 50, joint shareholders being treated as a single person and the companies themselves and (subject to sub-paragraph (4) of this paragraph) their employees and former employees being disregarded."

There have been many complaints in recent years of the obscure language in which the legislation of all Parliaments is expressed. This is, of course, primarily due to the complexity of the matters with which such legislation and, particularly, Revenue legislation must perforce deal. The notion of the small family company as distinct from the subsidiary company is one which must receive accurate definition if the law is to be enforced and we are satisfied that any attempt to differentiate the small private company from the subsidiary necessarily involves the type of provision quoted above.

120. We recommend that the exemption of private companies from the obligation to file their accounts with the Registrar of Companies should be continued and that the exemption should apply to all private companies.

#### RIGHT OF SHAREHOLDERS TO RECEIVE COPIES OF THE ACCOUNTS

121. Under Section 144 of the Act of 1908, the holders of preference shares and debentures of a company have the same right to receive the balance sheets of the company and the reports of the auditors as the holders of ordinary shares in the company : this section does not, however, apply to a private company. We consider this to be unsatisfactory and we recommend that all shareholders and debenture holders of a company should be given

the right to receive a free copy of the balance sheet, the profit and loss account and the auditors' and directors' reports and that the company should be obliged to send these to them.

#### RESTRICTIONS ON THE TRANSFER OF SHARES

122. The Articles of Association of a private company must contain provisions restricting the transfer of shares. In most cases the directors of a company are given the right to refuse to register any transfer of shares and provided they act *bona fide*, their refusal to register a transfer is final. "It is well settled that under such an Article as this" (the Article in question provided that the directors might, in their absolute and uncontrolled discretion and without assigning any reason, refuse to register any transfer of shares) "the directors may refuse to register a transfer. It is equally well settled that the directors' power in this regard is a fiduciary one and must be exercised in the interest of the company as a whole. They must not exercise it arbitrarily, capriciously or corruptly. They are not bound to assign their reasons, and the Court is not entitled to infer merely from their omission to do so that their reasons were not legitimate", per Black, J., in *re Hafner, Olhausen v. Powderly* 1943 I.R. 426, at page 439. The directors of a company are usually the principal shareholders and, in some cases, they exercise their power to refuse to register a transfer to persons who are not members, with the object of compelling the person transferring the shares to sell them to the directors: unfortunately, this is often very difficult to prove. Cases of hardship do sometimes occur, particularly when the personal representatives of a deceased shareholder wish to sell shares in a private company in order to secure monies to pay death duties. The only possible amendment in the law is that an appeal should lie to the Court from a decision of the directors not to register a transfer, but we do not recommend this. Commercial considerations may be, and very often are, very different from legal considerations and the factors which might considerably influence a board of directors might not carry the same weight in a Court. The Courts do not exist to tell directors how to run the companies which they control. The restriction on transfers is a means of preventing the trade rivals of the company from acquiring shares in the company and of excluding those from membership who might be undesirable members. It is also valuable as a means of keeping a family business under the control of the family and we do not recommend its removal. In cases where the power to refuse to register transfers is used in an oppressive fashion the shareholders concerned will be given a further remedy if our suggestions in paragraph 123 are adopted.

#### OPPRESSION OF MINORITIES

123. In most of the small private companies which make up the great majority of companies registered in this country, the

principal shareholders are the directors and the profits which it is decided to distribute are paid to them as directors' remuneration or bonus. The result is that the dividends (if any) paid on the shares are very small. The holder of a small number of shares in the capital of the company may receive practically nothing and usually finds it difficult to get any information about the trading or the financial condition of the company as the Articles of Association do not usually impose on the directors the duty of sending copies of the accounts to the shareholders. If one of the directors dies and his relatives do not take an active part in the conduct of the business, the surviving directors may continue to divide the profits among themselves in the form of directors' remuneration. If those who have inherited shares in a company try to sell them the directors may possibly refuse to approve the transfer, with the object of compelling the shareholder to sell the shares to the directors at a low price. In such cases, the shareholder may bring an action to restrain the payment of the profits to the directors as remuneration on the ground that the directors are not acting in the best interests of the company and that they are committing a fraud on the minority of shareholders. The result of such an action often depends on highly technical considerations, such as the application of the well-known rule in *Foss and Harbottle v. The British and Foreign Marine Insurance Co. Ltd.* 1843 12 M. & W. 189. A minority shareholder who is being oppressed by the majority may present a petition for the winding up of the company but an element of risk attaches to this remedy as the malicious presentation of a winding up petition is a legal wrong.

124. We consider that the best solution of this difficult problem is to give the High Court power to impose a settlement of the dispute on the parties when it is proved that the affairs of the company are being conducted in an oppressive manner. We consider it undesirable that the powers of the Court should be fettered in any way but, to remove doubt, it should be provided that the Court should have power in an appropriate case to compel some of the shareholders to purchase the shares held by other members. The Court should also be given express power to make a Winding Up Order on the ground that it is just and equitable despite the existence of the remedy which we recommend. The existence of such a remedy and the threat of its use will produce a more generous treatment of the minority shareholders. We have considered Section 210 of the British Companies Act, 1948, and we recommend its adoption.

#### APPOINTMENT OF DIRECTORS

125. A private company need not (at present) appoint even one director or a secretary. If our recommendations be accepted, the new Act will impose greater responsibilities on the directors of companies and we recommend that a private company should be obliged by law to appoint at least two directors and a secretary who may, however, himself be a director.

## FRAUD IN THE MANAGEMENT OF PRIVATE COMPANIES

126. Almost all the cases involving fraudulent management of companies which have come before the Courts in the last 20 years have related to private companies. Some of these "failures" have done great damage to the commercial reputation of this country. We appreciate that it is difficult to promote honesty by legislation. In other parts of this Report we suggest alterations which will impose a personal liability on directors and shareholders who have taken part in fraudulent trading and our recommendations relating to debentures will, if accepted, reduce the number of commercial frauds which are carried out by the issue of debentures at a date suitable to the fraudulent purpose. The most potent deterrent to company frauds is, however, the likelihood of criminal prosecution and we recommend that in every case in which instances of fraud, fraudulent trading or breaches of the provisions of the Companies Acts come to the attention of any Court, the Judge or Justice should be obliged to send a report to the Attorney-General for consideration by him and this obligation should apply whether an appeal from the decision of the Court is lodged or not. We also recommend that all indictable offences under the Act should be prosecuted in the Central Criminal Court. In many cases the institution of criminal proceedings for offences against the Companies Acts is impossible because there is a time limit on the prosecutions. We recommend that all time limits on prosecutions brought by the Attorney-General, the Minister for Industry and Commerce or the Registrar of Companies for offences under the Companies Acts should be greatly extended and we repeat our recommendation that substantial minimum fines should be imposed for all such offences.

## MEETINGS

### SPECIAL RESOLUTIONS

127. Under the Companies Acts certain resolutions are effective only if they are passed as special resolutions. A special resolution requires two meetings: at the first the resolution must be passed by a majority consisting of three-fourths of the members present and at the second meeting has to be confirmed by a simple majority of the members present. The second meeting is usually a formality and it is often difficult to get a quorum to attend. If the resolution has been passed by a three-fourths majority at the first meeting it is certain to be passed by a simple majority at the second meeting. The necessity to hold two meetings causes delay and expense.

128. We recommend that a special resolution should require one meeting only and that at that meeting a majority of three-fourths of the members entitled to vote who are present in person or by proxy (where proxies are allowed) and vote should be

sufficient. The notice convening the meeting should state that the resolution will be proposed as a special resolution. The minimum length of the notice convening the meeting should be 14 days, unless all the members entitled to vote consent in writing to shorter notice.

### ADJOURNMENT OF MEETINGS

129. Resolutions passed at any adjourned meeting are in law regarded as having been passed on the day on which the original meeting was held. We recommend that every resolution should be deemed to have been passed on the actual day when it was in fact passed.

### PROXIES

130. There is nothing in the Companies Acts dealing with proxies. Table A has clauses about them but the Articles of most companies provide, contrary to the Standard Articles in Table A, that a shareholder can appoint as his proxy a fellow shareholder only. It is often impossible for a minority shareholder to find among his fellow shareholders a proxy who is prepared to express his views. In many cases, the shareholder who wishes to appoint a proxy thinks that his professional adviser would be the person most suitable to represent him and best able to get a hearing. We consider that a company should not be allowed to impose restrictions on the persons who may be appointed proxies.

131. We recommend that, notwithstanding anything in the Articles of Association of a company, a member entitled to attend and vote at a meeting of the company may appoint any person (whether a member of the company or not) as his proxy to attend and vote for him and that the proxy may speak at the meeting. Companies should be required to state in notices convening meetings that shareholders may appoint proxies (whether members of the company or not) to attend meetings on their behalf and to vote thereat.

132. The efficacy of the provisions in relation to proxies is often reduced by a provision in the Articles of Association of the Company that documents appointing proxies must be handed in at the registered office of the company at least 48 hours before the meeting.

133. We recommend that the Act should provide that notwithstanding anything in the Articles of Association of the Company, the documents appointing proxies may be handed in at any time not less than 24 hours before the meeting, unless the day preceding the meeting be a Sunday or a public holiday, in which case the time should be 48 hours.

#### VOTING BY NOMINEES

134. We have already referred to the common practice of having shares registered in the names of nominees. In many cases shares in a company are registered in the name of the nominee company of the bank of which the shareholder is a customer. If a nominee company holds shares for a number of shareholders, different instructions as to how the voting rights conferred by the shares are to be exercised may be given to the nominee company. There is doubt whether a shareholder may use some of his voting power in favour of a resolution and some of it against the same resolution and we suggest that the Act should provide that a shareholder may, if he wishes, either when completing a proxy form or when voting himself on a poll at a meeting, direct that some of his votes should be cast for the resolution and some against it or may use only some of the votes to which he is entitled.

#### ANNUAL RETURN AND ANNUAL GENERAL MEETING

135. Section 26 of the Act of 1908 requires every company having a share capital to file an annual summary or return with the Registrar. This summary is to contain a list of all the persons who are members of the company and of those who have ceased to be members since the date of the last return. It must show the names, addresses and occupations of all the present and past members mentioned in the list and the number of shares held by each of the existing members and must contain a number of prescribed details relating to the share capital of the company. The list of members is to be made up as of the fourteenth day after the first or only ordinary general meeting in the year. In the case of a public company, the return must include a balance sheet but need not contain a profit and loss account. The list of members and summary must be contained in a separate part of the Register of Members and a copy (signed by the Secretary) of both the list and summary must be filed within seven days after the expiry of the said fourteen day period.

In the case of a public company, the preparation of an annual list of members is a laborious task and is rarely inspected. The requirement that the list should show the occupations of the shareholders is unnecessary. We do not see why the Register of Members should contain the list of members and the summary. We think that a company should not be obliged to file the list or the annual summary in the year in which it is incorporated. We recommend:

- (a) A public company should be under liability to file a list of its members once in every five years and in the interval between the filing of the last list and the date when the next list should be filed, the company should be obliged to file only an annual list showing the names of those who have ceased to be members and of those who have become members and any changes in the shareholdings.

- (b) When all or any of the shares of a company have been converted into stock, it should be sufficient to show the amount of stock held by each member without showing the number of shares formerly held.
- (c) It should not be obligatory for the list to show the occupations of the shareholders.
- (d) If our recommendations in relation to the issue of shares at a discount be accepted, the annual summary should show the amount of discount (if any) allowed on each issue.
- (e) The annual summary should show the total amount of debt due by the company in respect of all mortgages and charges, whether these are given in respect of property in the State or property outside the State.
- (f) The balance sheet which a public company is obliged to include in the summary should be a balance sheet prepared in accordance with the provisions of the Act and should be accompanied by a profit and loss account.
- (g) The requirement that the list of members in the summary should be contained in the Register of Members should be repealed.
- (h) The time within which the company is obliged to file the list and summary should be extended. Under the existing law, the company has a period of 21 days from the date upon which the ordinary general meeting is held, in which to prepare and file the summary. It is difficult to prepare these documents in that time and the time prescribed by the Act (within which these have to be filed) is so short that the idea has become general that the list and summary may be filed when it is convenient to do so. We think that the list and summary should be filed within two calendar months after the date of the holding of the first or only ordinary general meeting in the year: the obligation to file the return should be rigorously enforced.
- (i) The company should not be required to file the list and summary in the year of its incorporation.

If our recommendations in relation to the issue of shares of no par value be accepted, the section prescribing the contents of the summary will require revision as it should show the price at which these shares have been issued.

136. Section 65 of the Act of 1908 requires every company to hold a general meeting in every calendar year and not more than 15 months after the holding of the last preceding general meeting. As the requirement is to hold a general meeting in every calendar

year, a company incorporated on 29th December has to hold a general meeting in that year. We think that it would be sufficient if a company were obliged to hold its first annual general meeting within 18 months of its incorporation and that if it does this, it should not be obliged to hold an annual general meeting in the year of its incorporation or in the following year.

137. A company should be obliged to state in the notice convening the annual general meeting that the meeting is the annual general meeting. A number of companies which are dormant do not hold any general meeting. The fact that an annual general meeting has not been held does not dispense the company from the obligation to file the list and annual summary, but this is not generally known. We think that a section should be inserted in the new Act providing that the list and annual summary should be filed whether an annual general meeting has been held or not.

#### DIRECTORS

138. Under the existing law, there is no obligation on a company to have directors or a secretary. We have already recommended that every company should be obliged to have at least two directors and a secretary who may, however, be himself a director.

139. Under the Bankruptcy (Ireland) Amendment Act, 1872, anyone adjudicated bankrupt has certain legal disabilities until he obtains a certificate of conformity from the Court. As a condition of the granting of a certificate of conformity, the person adjudged bankrupt must have paid a dividend of 10/- in the £ on his debts or must satisfy the Court that his failure to do so was due to circumstances for which he should not justly be held responsible, or must induce his creditors to pass a resolution that a certificate of conformity be granted to him. In popular speech, an uncertificated bankrupt is invariably referred to as "an undischarged bankrupt". We think it highly undesirable that an uncertificated bankrupt should be allowed to act as a director of or take part in or be concerned in the management of any company without the permission of the High Court and we recommend that a person who has been adjudicated a bankrupt and who has not obtained a certificate of conformity should not be allowed to act as director of or take part in or be concerned in the management of any company without the leave of the High Court. The commercial connections between this country and Northern Ireland and between this country and Great Britain are so close that it can happen that persons who are undischarged bankrupts in one or other of those jurisdictions act as directors of companies in this State and we recommend that the prohibition against uncertificated bankrupts acting as directors of or taking part or being concerned in the management of companies should be extended to persons who are undischarged bankrupts under bankruptcy proceedings in any part of Great Britain or Northern Ireland and that

such persons should not be allowed to act as directors of or take part or be concerned in the management of companies without the leave of the Court. The section should provide for imprisonment or a large fine as the penalty for any breach of it.

140. We have already referred to the damage done by a number of recent company failures to the commercial reputation of this country. All of them feature breaches of duty by the directors usually associated with a complete disregard of the requirements of the Companies Acts. We think it imperative that the Courts should have the widest powers to restrain persons who have been so involved from acting as directors of or taking part in the management of companies. The most effective remedy to protect the public and those dealing with companies from this type of conduct is to give the Courts power to debar a person from acting as a director or from being concerned in or taking part in the management of any company for a lengthy period. We are satisfied that it would not be sufficient to give this power to the Court only when a conviction has taken place or when the facts come to the notice of the Court in a winding up. When there are no assets available for creditors, Court proceedings for the winding up of a company will probably not be taken. We recommend that whenever it appears in the course of any proceedings before the High Court or Circuit Court that any person, while acting as a director or officer of a company has been guilty of any fraud in relation to the company or that any business of the company has been carried on with intent to defraud creditors or for any fraudulent purpose whatever and whether such person is a party to the action or not and whether such proceedings are criminal or civil, the High Court or the Circuit Court should have power, on the application of any complainant, whether a party to the action or not, to make an Order that the person involved should not, without the leave of the High Court, be a director of or in any way directly or indirectly be concerned in or take part in the management of a company for such period as the Court making the Order thinks fit. The Rules made under the Act should prescribe that the person applying for the Order should be obliged to give 10 days' notice of his intention to apply for the Order to the person against whom the Order is sought. A term of imprisonment or a substantial fine should be prescribed as the penalty for breach of any such Order.

141. The election or re-election of a number of directors is frequently carried out by one resolution so that the shareholders are called on to elect or reject the number proposed for office. Some of those proposed may be desirable persons to elect and some may not, but the method of election usually adopted deprives the shareholders of an opportunity to choose between those whom they wish to elect and those whom they wish to reject. We consider that any member should have the right to insist that the shareholders should vote on the election of each director individu-

ally, unless all the shareholders present at the meeting unanimously agree to an omnibus resolution for the appointment of a number of directors. We recommend that a section be inserted in the new Act providing that at a general meeting of the company a resolution for the appointment of two or more persons as directors of the company by a single resolution shall not be made unless all those present at the meeting expressly consent to this being done. We have considered Section 183 of the British Companies Act, 1948, and we recommend its adoption.

#### FINANCIAL RELATIONS BETWEEN A COMPANY AND ITS DIRECTORS

142. Shareholders sometimes complain that the fees and salaries paid to directors are excessive. We do not think it possible to devise any method of measuring or controlling directors' fees or salaries. Our examination of the accounts of public companies incorporated in the State shows that normally the fees paid to their directors do not appear to be excessive.

143. In recent years the practice has grown of subsidiary companies paying remuneration to the directors which is not disclosed in the accounts of the parent company. We consider that the shareholders are entitled to the fullest information about the fees and salaries paid to the directors and, in the section of this report dealing with accounts, we recommend that the accounts of every public company shall disclose the amount of fees, salaries and other remuneration paid to the directors of the company and of its subsidiaries, if any.

144. Loans to directors and officers of the company present a difficult problem. If a loan be made without interest (as it often is) a benefit is given to the director at the expense of the shareholders. There are objections also to the company giving guarantees in connection with loans to its directors or officers. We have considered a number of possible provisions to deal with the problem. One suggestion is that all loans made by a company to its directors or officers should require the approval of a general meeting of the company. A second suggestion is that the Act should prohibit all loans to directors of the company or, if the company is a subsidiary company, all loans by the parent company. This second suggestion found favour with the members of the Cohen Committee, except in the case of an exempt private company. A third suggestion is that all loans made by a company to its directors or officers should carry interest at a minimum rate to be specified in the Act. We recommend in a later part of this Report that the accounts of a company should give detailed information about loans made to directors and other officers of the company. We do not favour a general prohibition of such loans, as it could be easily evaded by making the loan to some relative of the director or in other ways.

145. We have come to the conclusion that the practice of companies making loans to their directors and officers is so frequent, especially in the case of private companies, that we should not recommend its prohibition. The necessity to get the approval of the shareholders to such a loan would make the administration of the affairs of a company cumbersome and, in the case of a public company, the expense of summoning general meetings is considerable. The suggestion that every loan by a company to a director should carry interest at a specified minimum rate is attractive, but it could be evaded so easily that we do not recommend it. We are convinced that elaborate provisions and safeguards which are easily evaded bring the law into disrepute. We do not, accordingly, recommend any provisions relating to loans by companies to directors other than the requirement that these should be fully disclosed in the accounts.

146. The payment of directors' remuneration free of income tax or calculated by a reference to the amount of their income tax or the standard rate of income tax has been condemned by the Wrenbury Committee and by the Cohen Committee. The objections to such a contract are numerous and we recommend that the practice should be prohibited. We have considered Section 189 of the British Companies' Act, 1948, and we recommend its adoption.

147. When one company is being taken over by another or when the undertaking of a company is being purchased, the arrangement between the shareholders whose shares are being purchased and the purchaser is generally negotiated by the directors of the two companies. If all the shares of a company are being purchased, the directors will usually be required to retire from office and the bargain between the parties usually provides for the payment to them of compensation for loss of office either by the company of which they were directors or by the purchasers. We consider that there should not be any restriction on the payment to a director of compensation for loss of office or as consideration for his retirement from office as a director, provided that this is disclosed to the members of the company and is approved by the company in general meeting. We recommend that Section 145 of the Companies Act (Northern Ireland), 1932, should be adopted.

148. The right of a director to take part in the discussion of or to vote on a contract or transaction with the company in which he is personally interested is usually regulated by the Articles of Association. When the company has shares which are quoted on the Stock Exchange, the Articles prohibit the director from voting on such an arrangement or transaction. Modern Articles of Association of a private company require the director to disclose his interest to his fellow directors, but allow him to vote. We think it would be desirable that an obligation should be imposed on all directors who are in any way interested in a contract or

transaction with the company to disclose the nature of their interest at a meeting of the directors of the company. The advantage of imposing such an obligation by legislation is that the failure to carry out the obligation becomes an offence and we think that this is desirable.

149. The information which a director gets as director makes it possible for him to deal profitably in the company's shares. The fact that negotiations are going on for the purchase of the company's shares will become known to him before the shareholders become aware of it. A director who makes profits by the use of information which he has obtained as a director is acting in a disreputable and, probably, dishonest fashion. This method of making profits is made easier by the practice of registering shares in the names of nominees. We do not recommend that the registration of shares in the names of nominees should be prohibited, but we think it necessary to prescribe some safeguard against directors taking advantage of confidential information which they have obtained as directors. We have considered a number of suggestions and we think that an obligation should be imposed on all directors to disclose to the board of the company their holdings of and dealings in the shares and debentures of the company and of its subsidiaries and parent company. This obligation should extend to shares or debentures which are held in trust for the director or which are held by his wife or of which he has any right to become the holder. In some cases, all the directors of a company may be the nominees or agents of the principal shareholder who is not a director and, accordingly, provision should be made that in this case the term a "director" is to include a person in accordance with whose directions or instructions the directors of a company are accustomed to act. The information disclosed by each director to the board of the company about his holdings and dealings in the company's shares and debentures should be entered by the company in a register to be called the "Register of Directors' Shareholdings", which every company should be obliged to keep. This register should be open to the inspection of any member of the company for three weeks before the company's annual general meeting and for three days after the date upon which the annual general meeting is held and the Court should be given power to compel an inspection of the register. The obligation to keep this register should not apply to a company in which all the shareholders are directors.

150. It has become standard practice in the drafting of Articles of Association to provide that a director is entitled to be indemnified by the company against all costs, losses and expenses which he may incur by reason of any act done by him as a director or in discharge of his duties and that he is not to be liable to the company for anything which he does unless it happens through his wilful default or dishonesty. We are satisfied that the majority of

those who become members of companies do not realise the wide degree of protection which this gives to directors. The shareholders are entitled to expect that those who act as directors will possess some degree of prudence and care. The Articles of Association of a company are a contract between the members, but, like so many other contracts in the modern world, the contracting parties more often than not do not read them and the importance of this wide exempting clause is realised only when the loss has occurred. We recommend that any contract or provision, whether in the company's Articles of Association or otherwise, whereby a director, manager or other officer of the company is to be indemnified against or excused from the liability which attaches to him under the general law of negligence or breach of duty or breach of trust or contract should be declared void. As a corollary to this, we suggest that the power of the Court (now contained in Section 279 of the Act of 1908) to relieve directors from liability for negligence or breach of trust or duty should be extended.

151. Our recommendations in relation to fraudulent trading by the directors of the company will be found in the section of this Report dealing with winding up. We have already recommended in the section of this Report dealing with private companies that an obligation should be imposed on every Court to make a report to the Attorney General when it appears by evidence given in the Court that the provisions of the Companies Act have not been observed or that there has been a breach of any obligations or duties imposed on directors or other persons in connection with the company.

152. It may be that methods will be found of evading the obligations which we suggest should be imposed on directors. Anything which tends to impress on directors that they are trustees for the shareholders and that the position of trustee calls for qualities of prudence, honesty and personal integrity is to be encouraged. On the other hand, it is right that we should say that we have been impressed by the general high level of probity in the conduct of companies in this country.

## MORTGAGES AND DEBENTURES

153. Section 93 of the Act of 1908 provides that five types of mortgages or charges created by a company must be registered in the Companies Registration Office within 21 days after their execution if they are to confer any priority. If such a mortgage or charge is not registered, it is void against the liquidator and any creditor of the company in so far as it gives any security on the company's property or undertaking. There are other types of mortgages and charges which have become important in recent years and which should be registered for the protection of the creditors of the company. A charge given by a company on calls

made but not paid, a charge on a ship or any share in a ship and charge on the goodwill of a company should require registration. We have considered the case of charges or pledges of goods in bond or bonded stores by the deposit of documents of title or bond receipts but we are satisfied that registration of such charges or pledges would be unduly onerous and would interfere with a long and recognised trade practice. Patents and trade marks are an important item in the assets and property of a company and a practice of giving charges on these has developed. We recommend that a charge created by a company on a patent or on a licence under a patent or on a trade mark should require registration within 21 days after execution, and that failure to register any of these within that time should render the charges void against the liquidator and any creditor of the company in so far as they confer any priority.

154. The Judgment Mortgage Act, 1850, created a form of security peculiar to Ireland. A creditor who has recovered judgment for a sum of money may convert the judgment into a mortgage affecting any lands owned by the debtor. A creditor who carries out the formalities prescribed by the Act is given the same powers, rights and remedies as if the lands had been mortgaged to him by deed. A judgment creditor who wishes to convert the judgment which he has obtained into a mortgage must file in the Court in which he obtained judgment an affidavit containing the matters prescribed by the Act of 1850 and must, in addition, register an office copy of this affidavit in the Registry of Deeds. When the title to the lands to be affected by the mortgage has been registered under the Registration of Title Act, 1891, the copy affidavit has to be registered in the Registration of Title Act Office and not in the Registry of Deeds. Under the existing law all the mortgages and charges which have to be registered in the Companies Registration Office are mortgages and charges created deliberately by the company. A judgment mortgage, however, is not created by the company and the company may be unaware that a judgment against it has been converted into a mortgage. We consider that a strong case for the registration of judgment mortgages in the Companies Registration Office has been established. We recommend that a section should be inserted in the new Act requiring every creditor who converts a judgment obtained by him against a company into a judgment mortgage to present a copy of the affidavit by which the judgment mortgage was created to the Companies Registration Office within 21 days after this affidavit has been filed in the Court in which the judgment was obtained, and the Registrar of Companies should enter the judgment mortgage in the Register of Charges kept in the Companies Registration Office.

155. If a company agrees to purchase property which is subject to a mortgage or charge, the agreement for sale may provide that

the vendor is selling the property subject to the mortgage, and that the purchasing company is to assume liability for repayment of the mortgage. Under the existing law, such a mortgage or charge does not require registration in the Companies Registration Office because the mortgage was not created by the company. The Register of Charges kept in the Companies Registration Office may, therefore, be misleading to a creditor as mortgages and charges which affect the property of the company may not be shown in it. When a company acquires property which is subject to a charge of such a type that if it had been created by the company after the acquisition of the property it would have been required by the Act to be registered, the company should be obliged to register the charge in the Companies Registration Office within 21 days after the date upon which the property was conveyed to the company. The result of non-registration of a mortgage or charge of the type specified in Section 93 of the Act of 1908 is to make it void against the liquidator and any creditor of the company. If property subject to a valid mortgage or charge is acquired by a company, it would be highly illogical and unjust that the charge should be invalidated by the omission on the part of the company to register it with the Registrar of Companies. We recommend that the failure by a company to register a charge subject to which it acquired property should not invalidate the charge but should be an offence under the Act. This provision should, however, not extend to transactions prior to the passing of the Act.

156. The time within which the mortgages and charges referred to in Section 93 have to be registered is 21 days from the date of the creation of the mortgage. The High Court has power to extend the time for registration when the failure to register was due to inadvertence or other sufficient cause: a considerable number of applications to extend the time for registration have to be made. Some of these applications were made necessary by the refusal of the officials in the Companies Registration Office to accept for registration any mortgage unless it had first been adjudged duly stamped by the Revenue Commissioners. The adjudication of a document as duly stamped frequently requires considerable time, especially nowadays, when there are so many points for inquiry by the Stamp Office. The practice of requiring a mortgage presented for registration in the Companies Registration Office to be adjudged duly stamped has now been discontinued. We wish to emphasise that documents presented for registration as mortgages or charges should be accepted for registration without requiring them to be adjudged duly stamped and that the interests of the Revenue can be adequately safeguarded by obtaining from the solicitor presenting the document for registration a personal undertaking that the document will be submitted for adjudication and that all the stamp duties payable on it will be paid. The failure to register a mortgage or charge created by a company within 21

days is invariably due to inadvertence on the part of the lenders professional advisers and as the application to the Court involves delay and expense we have given much consideration to suggestions for a change in this aspect of the law. We think that the duty of deciding whether a case had been made out for the extension of the time for registration of a mortgage or charge should not be imposed on the Registrar of Companies. It is essential that a mortgage created by a company should be registered in the shortest possible time, so that those dealing with the company will be aware that there is a secured creditor who will take precedence over them. We do not recommend any extension of the time for registration of mortgages created by a company. While the present system for obtaining an extension of time has many disadvantages (disadvantages which have been forcibly pointed out by the Judges who deal with these applications), we cannot recommend any reforms or changes which would improve the present position.

157. Section 104 of the Act of 1908 gives a company power to re-issue debentures which have been redeemed by the company. We think that this Section was drafted primarily to deal with one of the methods by which companies incorporated in England gave security to their bankers. Companies frequently give security to their bankers by depositing debentures for a specific sum with them, and it was important to provide that these debentures should not cease to be effective as security if the company's account with the bank came into credit. It is also a common and even more frequent practice for the bank to take a deed of charge from the company which is seeking accommodation, by which some of its property is specifically mortgaged to the bank and a floating charge on the rest of the company's property is created. Whatever be the explanation, Section 104 of the Act of 1908 has been the cause of debate since the Act was passed. We have discussed it on a number of occasions and acute differences of opinion as to its meaning have become apparent. We recommend that it should be amended so that it will be made clear that a company may re-issue debentures which have been redeemed unless by special resolution or by entry of satisfaction at the Companies Registration Office or otherwise the company has done some act cancelling the debentures, that the re-issued debentures should have the same priorities as if they had never been redeemed and that the practice of transferring the debentures to a nominee of the company to keep them alive so that they could be re-issued in the future (a practice which was referred to in *The Revenue Commissioners v. Switzer & Co., Ltd.*, 1915 I.R. 378) should be rendered unnecessary by a provision that a transfer to a nominee should not be necessary to keep debentures alive.

158. Section 212 of the Act of 1908 provides that when a company is being wound up, a floating charge on the property of

the company created within three months from the commencement of the winding up is to be invalid except in relation to any moneys paid to the company at the time of or subsequently to the creation of the charge, together with interest thereon. A director or creditor may get priority for a debt which has already been incurred by getting a debenture from the company when it seems likely that the company will go into liquidation in the near future. We consider that the period of three months referred to in the section is much too short and that the period of 3 months should be extended to 12 months when the debenture is given to a director or to any member of the company or to a director or member of the company's holding company or to the wife of a director or member or to any nominee of or trustee for such director or member or his wife. The period of 3 months should be extended to 6 months in every other case.

159. A method of evading Section 212 of the Act of 1908 has been used on a number of occasions. A director who has advanced money to a company without getting a debenture secured by a floating charge arranges with the company, when a winding up is imminent, that the company will repay the advance to him, that he will make a new advance of the same amount to the company and that the new advance will be secured by a floating charge. Such a floating charge would not seem to be invalid as money is paid to the company at the time of the creation of the floating charge. We recommend that such a charge should be declared to be invalid.

160. Section 212 provides that the charge is invalid except in relation to moneys paid to the company at the time of or subsequently to its creation. Does this mean that in relation to monies advanced prior to the creation of the charge it becomes wholly invalid or becomes invalid in so far only as it confers security? The personal liability of a receiver appointed under such a charge before the company goes into liquidation depends upon whether it is wholly or partly invalid. If it be wholly invalid, the receiver who has acted *bona fide* may be personally liable to the liquidator for all the monies he has received and may not be entitled to credit for the monies he has paid. We recommend that the section be redrafted to make it clear that the charge is invalid in so far as it confers security only and that anything done *bona fide* under the charge should not be affected by the subsequent liquidation of the company.

161. The combined effect of Sections 107 and 209 of the Act of 1908 is that some debts of the company have to be paid in priority to the claims of the debenture holders when a receiver is appointed, or when the debenture holders take possession of any property comprised in the charge. The effect of these sections was discussed by the Supreme Court in *McIntosh & Co., Ltd., v. Thompson & Co. (Carriers), Ltd.*, 1932 I.R. 45 and 1934 I.R. 392.

The preference given to some debts, particularly those due to the State, in a winding up of a company is discussed in the later part of this Report dealing with Winding-up. In this part of the Report it is sufficient to recommend that the priority given to the State for one year's tax over the holders of debentures should be repealed and the priority given by Section 38, sub-section 2 of the Finance Act, 1924, to debts due to the Central Fund over simple contract creditors of the company produces serious injustice and great hardship to creditors of the company. We do not know of any legal principle by which this remarkable precedence given to debts due to the Central Fund can be justified. The history of this priority has been dealt with by Mr. Justice Kingsmill Moore in *The Irish Employers' Mutual Insurance Association* 1955 I.R. 176, where the origin of the privilege is traced to the position of legal pre-eminence of the British King. Section 38, sub-section 2 of the Finance Act, 1924, attached this privilege to monies due to the Central Fund.

#### RECEIVERS AND MANAGERS

162. A receiver for debenture holders may be appointed over the assets and undertaking of a company under the powers contained in the debenture deed or as a result of an application to the Court. The Act of 1908 provides that notice of the appointment of a receiver has to be given to the Registrar of Companies within 7 days of the appointment and that any receiver who has been appointed under the powers in any instrument and who has taken possession of property of the company is to file in each half year with the Registrar an abstract of his receipts and payments while he remains in possession. A receiver appointed by the Court accounts in such manner as the Court directs and obtains his discharge from the Court.

163. There are no restrictions on the persons who may be appointed receivers over the property and assets of a company and as the receiver has wide powers, for the exercise of which he may be personally accountable, we think it highly undesirable that a body corporate should be appointed to act as receiver by a debenture holder. Substantial objections exist also to the appointment of persons as receivers who are uncertificated bankrupts under the bankruptcy laws of this State or who are undischarged bankrupts under the bankruptcy code in Great Britain. We recommend, accordingly, that there should be an absolute prohibition on the appointment of a body corporate or of an uncertificated or undischarged bankrupt as receiver or manager over the assets and property of any company. We have already recommended that uncertificated or undischarged bankrupts should not be eligible to be appointed directors of a company and even greater objections exist to such persons as receivers.

164. We have received a number of complaints about the difficulty which creditors of a company have in obtaining information about the financial position of the company when a receiver has been appointed over its assets. A receiver who is appointed by the debenture holders deals with the assets of the company in the interests of the debenture holders only; the creditors of the company have, however, a direct interest in the way in which he performs his duties as the only fund from which they can obtain payment of their debts is the surplus which remains after the assets have been realised and the claims of the debenture holders satisfied in full. A creditor may obtain an order for the winding up of the company, but the receiver is entitled to remain in possession of the assets of the company and to dispose of them after such a Winding-up Order has been made. The price at which the receiver can so sell cannot be challenged unless bad faith or negligence amounting to bad faith can be proved. Moreover, the creditors have no control over the remuneration of the receiver and as this is payable out of the assets of the company, the payment of excessive remuneration reduces the amount which the creditors will receive.

165. We have recommended that private companies should not be obliged to file their balance sheets and profit and loss accounts for public inspection. We consider, however, that an obligation should be imposed on every receiver and manager appointed over the assets of a private company to file with the Registrar of Companies a copy of the last balance sheet and profit and loss account of the company made up before his appointment. The abstract of receipts and payments which the receiver is obliged to file does not give sufficient information to the creditors, and we consider that a receiver appointed by the holders of any debentures of the company should be obliged to file for public inspection a statement as to the affairs of the company over which he has been appointed receiver. This statement should show the company's assets, debts and liabilities at the date of the appointment of the receiver, the names and addresses of its creditors, the securities held by them respectively, the dates when the securities were given and any other information which may be prescribed either by statutory instrument made by the Minister for Industry and Commerce or by the rules made under the Act. This statement should be prepared by the directors and secretary of the company over which the receiver has been appointed. They should be required to prepare it within 28 days after the receiver has notified them of his appointment and to send it to him. Where necessary, the receiver should be under obligation to afford them access to the books of the company (if in his possession) for the purpose of preparing such statement. There should be power to the Court to extend this time in a case in which difficulty arises.

166. A liquidator in a voluntary winding up may apply to the Court for directions as to the mode in which he is to carry out his

duties or for the approval of the Court of any step to be taken by him. A receiver appointed by debenture holders cannot do this and we are aware that the absence of such a jurisdiction is embarrassing for receivers. We recommend that a receiver or manager of the property of a company who is appointed under the powers contained in a debenture deed should be given the right to apply to the High Court for directions in relation to any particular matter arising in connection with the performance of his duties as receiver.

167. It is important that all those dealing with a company over the assets and property of which a receiver has been appointed should be informed of the appointment of the receiver. We recommend that every invoice, order for goods or business letter issued by or on behalf of a company over the assets of which a receiver has been appointed should contain a statement that a receiver has been appointed.

168. A receiver appointed by the Court is personally liable in respect of orders given by him unless he stipulates that he is not to be personally liable. Such a receiver appointed by the Court has a right to indemnity out of the assets of the company in respect of any liabilities which he incurs and the Court is careful to ensure that the receiver is fully indemnified. A receiver appointed by debenture holders without the assistance of the Court is invariably the agent of the company over which he has been appointed. As the receiver is not the agent of the debenture holders, they cannot be made liable for goods which he has ordered or liabilities which he has incurred, and as he orders goods and incurs liabilities in the name of the company over which he has been appointed and not in his own name, he is not personally responsible for debts which he incurs unless the creditor is astute enough to insist on the receiver ordering the goods in his own name. This leads to the remarkable position that the receiver may order goods and may sell them at a profit and the proceeds of sale are used to satisfy the debenture debt while the persons who supply the goods are postponed to the claim of the debenture holders. We strongly recommend that a receiver, however appointed, should be made personally liable on any contracts entered into by him subsequent to his appointment, whether these contracts were made in the name of the company over which he was appointed receiver or in his own name unless he expressly stipulates that he is not personally liable.

169. We have already indicated that the creditors and shareholders of a company have no control over the amount of the receiver's remuneration. We consider that the Court should be given power to fix the amount to be paid as remuneration to any receiver appointed without the assistance of the Court, and that this power should be exercisable even when the remuneration of the receiver has been fixed by the deed appointing him. The

section should provide that the application to fix the remuneration may be made either by the liquidator of the company (if it is in liquidation) or by any creditor or shareholder of the company.

## ACCOUNTS

170. The Act of 1862, which was the first general Companies Act, did not contain compulsory provisions in relation to audit or accounts. The Act of 1908 provides that in the case of public companies a statement in the form of a balance sheet audited by the company's auditors is to be included in the annual summary. This statement or balance sheet is to show the share capital, liabilities and assets of the company, and the general nature of those liabilities and assets, and is to show how the value of the fixed assets has been arrived at. This balance sheet need not be accompanied by a statement of profit and loss. Section 113 of the Act of 1908 requires the auditors of the company to make a report to the shareholders on the accounts examined by them and on every balance sheet, and the report has to state whether the auditors have obtained all the information and explanations which they require and whether, in their opinion, the balance sheet is drawn up so as to show a true and correct view of the state of the company's affairs as shown by the books of the company. These scanty provisions have been the subject of severe criticism. Unfortunately, while there is general agreement that company law must be changed so as to impose on companies an obligation to prepare more detailed accounts, the nature, function and contents of these accounts have been the subject of a great difference of opinion and prolonged controversy between our members and also between the various persons who have given evidence to us or who have made written submissions. The principal argument used in Great Britain in support of more detailed accounts has always been the existence (real or alleged) of "secret" or "hidden" reserves. We wish to emphasise again our conviction that economic conditions in this country and in Great Britain are very different and that there is no valid argument for enacting similar provisions in this country.

171. Under the existing law there is no obligation on a company or on its directors to keep proper accounts, proper records or proper books of account. The result is that in many small companies the books which are kept give no information about the business of the company and in some cases, particularly when a winding-up is imminent, the books have been kept or not kept with the object of concealing the transactions of the company. We consider that every company should be obliged to keep such books of account and records as are reasonably necessary to give a true and fair view of the state of the company's affairs and to explain its transactions. It is impossible to specify what books or what system of bookkeeping should be adopted as the practice varies widely

and the nature of the company's business determines the type and number of books which should be kept. We consider, however, that the books of account which a company should be obliged to keep should disclose as a minimum all sums of money received and expended by the company, the matters in respect of which the receipts and expenditure have taken place, all sales and purchases of goods and services by the company, and the assets and liabilities of the company. In many compulsory liquidations, the liquidator appointed by the Court has been unable to obtain information in relation to the transactions of the company because of the absence of books of account or the misleading entries made in them. We consider it a matter of public importance that every director and the secretary of a company should be obliged to ensure that the company is keeping the necessary books of account, and that the punishment for failure to comply with this obligation should be a substantial minimum fine and a term of imprisonment if the Court is satisfied that the omission was wilful.

172. The Act of 1908 does not impose on the directors of a company an obligation to have a profit and loss account of the company prepared or to send a balance sheet or profit and loss account to the shareholders. Article 106 of Table A in the Act of 1908 (when it or corresponding provisions apply to the company) requires the directors, once at least in every year, to submit to a general meeting of the company a profit and loss account for the period since the last account. This profit and loss account is to be made up to a date not more than six months before such meeting. Article 107 of Table A provides that a balance sheet is to be made up in every year and submitted to a general meeting of the company. It has also to be made up to a date not more than six months before such meeting. This balance sheet is to be accompanied by a report of the directors as to the state of the company's affairs and the amount which they recommend should be paid as dividend and the amount which they propose to carry to a reserve fund. We consider that the provisions of Articles 106 and 107 of Table A should be incorporated as a matter of obligation in the new Act and that the directors should be obliged to have a profit and loss account and a balance sheet prepared and submitted to a general meeting of the company in every calendar year and that the balance sheet and profit and loss account should be made up to a date not more than nine months before the date of the meeting. A copy of this balance sheet and profit and loss account should be sent to each shareholder entitled to receive notice of the meeting with the notice convening the meeting and should be sent to every other shareholder and every debenture holder at least one week before the date fixed for the meeting. In the case of a company not trading for profit, an income and expenditure account and a balance sheet should be prepared and sent.

173. The amount of information given by the accounts of companies incorporated in this State varies considerably. We are

satisfied, however, that the accounts issued by the directors of very many companies do not give sufficient or sufficiently detailed information to the shareholders. We are of opinion that the position of auditors would be strengthened if the Act laid down a minimum amount of information to be disclosed by all balance sheets and profit and loss accounts. We are satisfied that it is necessary to prescribe by legislation a minimum amount of information to be disclosed by the balance sheets and profit and loss accounts. We accept with considerable reluctance the view that the new Act must prescribe the minimum amount of information which should be disclosed. We have adopted the principle that the amount of information which should be disclosed is that reasonably required by the shareholders and creditors to enable them to form a correct judgment of the way in which the directors have managed the company and the solvency of the company. We have not accepted the suggestion made to us that the accounts of every company should be prepared in such a manner that they will disclose details of turnover and the expenses of production, sale, distribution and management. Information required for general economic purposes, for wage negotiations or for the fixing of prices or profit margins should be obtained through the various Statistics Acts and not through the machinery of the Companies Acts. The purpose of a company's accounts is to give information to shareholders and creditors in a form which they will readily understand, but, in this, as in so many other matters, too much information may be as misleading as too little.

#### BALANCE SHEET

174. Misconceptions about the function and nature of a balance sheet are widespread. It is not intended to show the net value of a business or undertaking at any particular date or the present realisable value of the land, buildings, plant, machinery and good-will owned by the company. It is not intended to show the surplus of the assets over the liabilities, so as to enable a valuation of shares to be made. Its function is to show the share capital, reserves and liabilities of a company at the date at which it is prepared and the way in which the monies representing them are distributed between the several types of assets. It is a document showing historically the way in which the assets of the company have been dealt with. It is not intended to be the basis of an up-to-date valuation of the company. If the balance sheet were intended to give a basis for a valuation of the net assets or the net worth of the undertaking of the company, it would be necessary to make frequent valuations of the assets and the difficulty of making a market valuation of items such as good-will and the benefit of pending contracts is very great and, indeed, very often insuperable.

175. A balance sheet should give as a minimum, the information and detail which we now proceed to specify.

- A. The authorised share capital, issued share capital, liabilities and assets and the general nature of the liabilities and assets should be shown. It should also show whether any part of the issued capital consisting of redeemable preference shares has been issued and whether any shares of no par value forming part of the capital have been issued, and if they have, the price of issue. It should also show the amount standing to the credit of the share premium account and the amount of any redeemed debentures which the company has power to re-issue.
- B. Separate figures should be given for (i) the preliminary expenses, (ii) expenses incurred in connection with any issue of share capital or debentures, (iii) sums paid by way of commission in respect of any shares or debentures, (iv) sums allowed as discount in respect of any debentures and (v) the amount of any discount allowed on any issue of shares at a discount. The obligation in the case of (i) and (ii) should end once the expenses have been written off.
- C. The reserves, provisions, liabilities and fixed and current assets should be classified under appropriate headings and the method or basis of valuation (i.e. cost or otherwise) used to arrive at the amount of the value of the fixed and current assets should be stated.
- D. Separate figures should be given for the aggregate amount of the company's investments, for the amount (until written off) of the good-will and patents and trade marks, for outstanding loans made to employees to enable them to purchase shares in the capital of the company, for outstanding loans to directors, for the total amount of outstanding advances made by banks to the company and for the net amount required for the payment of any dividend which it is recommended should be made. Separate figures in respect of the company's investments should be given so as to distinguish the amount invested in shares which are dealt in on a stock exchange in the State from shares which are not so dealt in and loans made by the company to any of its subsidiaries should be shown separately.
- E. The existence of any charge on the assets of the company to secure the liabilities of the company or of any other company or persons and the amount secured, and the general nature of any outstanding contingent liabilities should be shown.
- F. There should be a note on the balance sheet disclosing the approximate amount of outstanding capital commitments.

- G. A balance sheet should also give for each item in it the corresponding amounts in the balance sheet prepared to show the position of the company at the end of the immediately preceding financial year. This obligation should not, however, apply to the first balance sheet prepared after the date of the commencement of this Act.

176. We do not consider it advisable to recommend the uniform adoption of any method of arriving at the value of any fixed or current assets. The most usual method adopted is to take the difference between the cost of the asset (or, if it stands in the company's books at a valuation, the amount of the valuation) and the total amount provided or written off since the date of acquisition for depreciation or diminution in value. Other methods, however, exist and we consider that the important matter is that the method used to arrive at the amount or value of the fixed assets under each heading should be stated.

177. When the company has subsidiaries the problem of consolidated or group accounts arises and we deal with this subsequently.

#### PROFIT AND LOSS ACCOUNT

178. The profit and loss account should show as a minimum :
- A. the amount charged to revenue for depreciation, renewals or diminution in value of fixed assets;
  - B. the amount of the interest paid on the company's debentures;
  - C. the amount of the charge or provision for taxation;
  - D. the amount (if any) which it is proposed to set aside to or withdraw from the reserves;
  - E. the amount provided for the redemption of share capital and loans;
  - F. the gross amount of income from investments;
  - G. the aggregate amount of the directors' emoluments, distinguishing between emoluments in respect of services as members of the Board of Directors and other emoluments;
  - H. the aggregate amount of directors' or past directors' pensions;
  - I. the aggregate amount of compensation to directors or ex-directors in respect of loss of office;
  - J. the remuneration of the auditors;

K. the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account.

179. The requirements as to the minimum amount of information disclosed by a balance sheet and profit and loss account, respectively, should apply to all companies save that special provision must be made in the case of banking companies and for assurance and insurance companies. Special considerations apply in such cases. It would clearly be contrary to the public interest that banking companies should be under obligation to disclose their reserves and provisions or to show transfers to and from such accounts and not dissimilar considerations arise in the case of assurance and insurance companies.

#### CONSOLIDATED ACCOUNTS

180. In paragraph 111 we referred to the progressive increase in the number of subsidiary companies in this State. The advantages gained by the formation of those companies are so many that the tendency will probably continue and it may be strengthened by the growing popularity of "take over" bids for shares. In recent times, a company which wishes to acquire the business of another company frequently does so by purchasing all the issued shares of the latter company from its shareholders; in this way, the purchasing company becomes a holding company and the company the shares in which have been purchased becomes a subsidiary company. Moreover, a company which is carrying on a number of different types of business finds that it is more convenient and economical to have different companies carrying on the different businesses. The balance sheet of the holding company will show the shares in the subsidiary company as an asset and they will probably be shown at their purchase price. The profit and loss account of the holding company will show the amount of the dividends which have been received from the subsidiaries. Apart from these matters, the accounts of the holding company will not give the shareholder any information about the subsidiaries or how they are being managed. The information to which the shareholders in the holding company should be entitled would be information as to the financial position and trading of all the associated companies considered as a group. There has, therefore, been a demand that a holding company should prepare a consolidated balance sheet and a consolidated profit and loss account which will show the financial position of all the companies taken together as a group and as if the businesses of all the companies were being carried on by a single company. These accounts are generally referred to as "consolidated" or "group" accounts. A small number of companies incorporated in this country already send their shareholders a consolidated balance sheet. We have examined the consolidated accounts of a number of companies

incorporated in Great Britain and in the United States of America and in Canada.

181. There are two methods by which the shareholders in a holding company may be given the information about the holding company and its subsidiaries which they require to enable them to form an adequate view of the financial position and trading of all the companies considered in the group. The first is a consolidated or group account. The other is the issue of the balance sheet and profit and loss account of each subsidiary company with the accounts of the holding company. As some of the public companies in this country have a considerable number of subsidiary companies, the accounts of the holding company which have to be sent to the shareholders would become very bulky and complex if the individual accounts of each company had to be attached to them. We consider, not without hesitation, that the case for the introduction of consolidated accounts of public companies has been established.

182. We recommend that, subject to what is said below, an obligation should be imposed on all public companies to prepare a consolidated balance sheet and a consolidated profit and loss account which will show the financial position and trading results of the holding company and all its subsidiaries considered as a group. This obligation should not be imposed on private companies. We consider that the interests of the shareholders in a private holding company will be adequately safeguarded by giving them the right to receive on demand and without any charge, a copy of the most recent balance sheet and profit and loss account of each of the subsidiary companies of a private company which is a holding company and we recommend that an obligation to furnish these accounts on such request should be imposed on every private company which has subsidiary companies.

183. The definition of a subsidiary company for the purposes of consolidated accounts offers difficulties. We consider, however, that the main characteristic of a subsidiary company is the element of control. If one company controls the composition or election of the board of directors of another or if it controls more than half in nominal value of the issued equity share capital or more than half in nominal value of the shares carrying voting rights, it should be considered a holding company and the other company should be considered a subsidiary company. It is also necessary, however, to make provision for the case where a subsidiary company controls another company so that the latter is a subsidiary of the holding company. We realise that it is impossible to frame a perfect definition. We have considered Section 154 of the British Companies Act, 1948, and, although we deplore its complexity, we recommend its adoption. A slight amendment to it will be necessary because of our recommendation

of the additional provision that a company should be regarded as a subsidiary company if another company holds more than half in nominal value of its share capital carrying voting rights.

184. In some cases, it may be impossible for a holding company to prepare consolidated accounts and, moreover, consolidated accounts may be misleading. We consider that a company should not be obliged to issue consolidated or group accounts when the directors of the company are of opinion that the result would be misleading or prejudicial to the business of the company or any of its subsidiaries or when the businesses of the holding company and its subsidiaries are so different that they cannot reasonably be treated as a single undertaking or when the preparation of such accounts would be impracticable. The directors who form this opinion should, however, be required to satisfy the auditors of the company of the correctness of their view and we recommend in a subsequent paragraph that the auditors should be required to certify that, in their opinion, the reasons for not preparing group accounts are valid.

185. In such a case, however, there should be an obligation on the holding company to issue the balance sheet and profit and loss account of each subsidiary with its own balance sheet and profit and loss account.

186. We recommend the application to public companies of Sections 150 to 155 of the British Companies Act, 1948, and of Part II of the Eighth Schedule to that Act.

187. We have already recommended that banking and assurance and insurance companies should have certain exemptions from the requirements in relation to balance sheets and profit and loss accounts. A similar exemption must be given to them in relation to consolidated balance sheets and to consolidated profit and loss accounts.

188. As we have recommended consolidated accounts for public companies, we consider that the form of these accounts should follow closely the forms made statutory in Great Britain, so that the Irish student and practitioner will not be wholly deprived of text books on this difficult and complicated subject.

#### LOOSE LEAF REGISTERS

189. Section 25 of the Act of 1908 provides that every company shall keep in one or more books a register of its members. Article 75 of Table A in the Act of 1908 (which applies to many companies) provides that the directors of a company shall cause minutes to be made in books provided for the purpose of all resolutions and proceedings at all meetings of the company and of the directors and of committees of directors. A number of companies

keep the register of members in loose leaf registers and the growing mechanisation of clerical work has had the result that accounting records and accounts are not always kept in books. In *The Hearts of Oak Assurance Co., Ltd., v. Flower and Sons* 1936 Ch. 76, Mr. Justice Bennett held that a loose leaf minute book was not a book within the meaning of Section 120 of the British Companies Act, 1929. We are aware that even since this decision very many well run companies in this country have continued to use such books. We do not wish to express any view as to the correctness of the decision, but it does indicate that doubts exist whether loose leaf registers and loose leaf books are books for the purposes of company law. It is highly undesirable that there should be any legal obstacle to the use of modern methods in clerical work and we recommend that a section similar to Section 436 of the British Companies Act, 1948, should be adopted, by which loose leaf registers and books are declared to be a compliance with the obligation of the company to keep books provided that adequate safeguards against abuses are adopted.

#### AUDITORS

190. Our recommendations in relation to accounts and the form and contents of the auditors' certificate which we subsequently recommend will impose onerous duties and obligations on auditors. Since 1908, the office of auditor to a company has become of increasing importance: he has frequently unpleasant duties to perform, particularly when there is any clash between the interests of the directors and the interests of the shareholders. He has been described as "the watch-dog of the shareholders": it has also been said that he is a watch-dog and not a bloodhound. As he is subject to conflicting pressures, we consider that any reform in the law which strengthens his independence is desirable. Our recommendations are intended primarily to strengthen his position against the directors and to enable him to safeguard the interests of the shareholders without fear of removal from office by the directors.

191. Sections 112 and 113 of the Act of 1908 do not provide that the auditors of a company are to have any professional qualification. The legal members of the committee strongly support the view that only qualified auditors should be eligible for appointment to the office of auditor of a company and that a qualified auditor should be defined as being an individual who is a member of a body of accountants established in Ireland or in Great Britain and for the time being recognised for the purpose of auditing the accounts of a company by the Minister for Industry and Commerce. The members of the Institute of Chartered Accountants who gave evidence before us informed us, however, that such a provision would not be in the interests of their members and that they were opposed to any such provision. We

accept the view that, subject to considerations of public policy, the professions should regulate matters belonging to their particular sphere and, accordingly, we do not recommend any restriction on the eligibility of persons to be appointed auditors of a company by reference to membership of any body of accountants or by reference to recognition by a government authority.

192. Section 112 of the Act of 1908 provides that a director or officer of a company shall not be capable of being appointed auditor of that company. We recommend that, in addition, a body corporate should not be eligible to be appointed auditor of a company and that a person who is a partner of or in the employment of an officer of the company should not be eligible to be appointed auditor of the company when the company is a public company. This recommendation does not apply in the case of a private company. Anyone who is not eligible to be appointed auditor of a company should not be eligible for appointment as auditor of a subsidiary company of that company. Conversely, anyone who is not eligible for appointment as auditor of a subsidiary company should not be eligible for appointment as auditor of the holding company of that subsidiary.

193. Section 112 of the Act of 1908 provides that the remuneration of the auditors of a company is to be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill a casual vacancy, may be fixed by the directors. The remuneration of the auditors is rarely fixed at a general meeting: it is usually fixed by the directors. We think that the general practice by which the remuneration of the auditors is fixed by the directors should be recognised, provided that the general meeting of the company authorises the directors to fix the remuneration of the auditors. We recommend a provision that the remuneration of the auditors should be fixed by the company in general meeting or in such manner as the company in general meeting determines.

194. Under the existing law, auditors are not entitled to attend a general meeting of the company unless when invited to attend by the directors. We think that the auditor of any company, whether public or private, should be given the right to receive notice of and to attend and speak at all general meetings of the company and to send to all or any of the shareholders a statement of his views or an explanation without obtaining the approval or sanction of the directors of the company to this.

195. Section 113 of the Act of 1908 provides that the auditors are to make a report to the shareholders on the accounts examined by them and on every balance sheet laid before the company in general meeting and that the report is to state whether or not they have obtained all the information and explanations they have required and whether, in their opinion, the balance sheet referred

to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company. They are not required to report on the profit and loss account. We recommend that the auditors of every company should be required to make a report to the members on the accounts examined by them and on every balance sheet, profit and loss account and on all group accounts laid before the company in general meeting. The report of the auditors has, under the Act of 1908, to state whether the balance sheet has been drawn up so as to exhibit a true and correct view of the state of the company's affairs as shown by the books of the company and the auditors have not, under that Act, to state whether the books of the company have been correctly kept. Fortunately, auditors have not followed this literal interpretation of the Act. These provisions require amendment. The auditors' report should state, as a minimum :

- (a) whether they have obtained all the information and explanations which, to the best of their knowledge and belief, were necessary for the purposes of their audit;
- (b) whether, in their opinion, proper books of account have been kept by the company so far as appears from their examination of those books;
- (c) whether the company's balance sheet and profit and loss account are in agreement with the books of account;
- (d) whether, in their opinion, and to the best of their information and according to the explanations given to them, the said accounts give the information required by the Act in the manner required by the Act and whether they give a true and fair view (i) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year and (ii) in the case of the profit and loss account, of the profit or loss for its financial year or a true and fair view of these matters subject to the non-disclosure of any matters to be indicated in the report which, by virtue of the Act, are not required to be disclosed, (iii) in the case of a holding company for which group accounts have been prepared, whether, in their opinion, the group accounts have been properly prepared in accordance with the provisions of the Act so as to give a true and fair view of the state of affairs and profit and loss of the company and its subsidiaries as far as concerns the members of the company, or, as the case may require, so as to give a true and fair view thereof subject to the non-disclosure of any matters to be indicated in the report which, by virtue of the Act, are not required to be disclosed.

196. In paragraph 150 we refer to the standard article in the Articles of Association which provides that a director is entitled to be indemnified by the company against all costs, losses and expenses which he may incur by reason of any act done by him as a director or in discharge of his duties and that he is not to be liable to the company for anything which he does, unless it happens through his wilful default or dishonesty. This Article frequently provides a similar protection for the auditors of the company. The wide degree of protection which this Article gives was not fully realised until the decision in *The City Equitable Case* (1925) Ch. 407. We think it highly undesirable that the auditors of a company should have this wide protection and we recommend that any contract or provision, whether in the company's Articles of Association or elsewhere, whereby the auditor is to be indemnified against or excused from the liability which attaches to him under the general law of negligence or breach of duty or breach of trust or contract should be declared void and that this provision should be incorporated in the section which we recommend in paragraph 150 of this Report. The power given to the Court (now contained in Section 279 of the Act of 1908) to relieve directors from liability for negligence or breach of trust or duty when they have acted honestly and reasonably should be extended to include auditors.

#### WINDING-UP

197. The law relating to the compulsory and voluntary winding-up of companies has been frequently and severely criticised. We have considered whether there is justification for this criticism. After prolonged consideration, we have to report that we have found unanimity impossible on this point. What follows in paragraphs 197a to 197c of this Report is, therefore, not a unanimous recommendation, but represents the conclusion of only some of our members. In view of the great importance of the matter we have thought it imperative to state in detail the two views.

197a. Although the winding-up of a company is necessarily a complicated and slow process, the delays in the completion of the winding-up of insolvent companies, whether in liquidation under the Court or in voluntary liquidation, are, or appear to be, unduly prolonged. In the case of a voluntary liquidation, the creditors have hitherto had little control over the conduct of the liquidation even if the company be insolvent. The major cause of the delays in the completion of compulsory liquidations is the absence of an official receiver. Under Section 146 of the Act of 1908, the official receiver attached to the Court for bankruptcy purposes had considerable control over liquidations of companies by the Court in England but, for some reason, no provision was made for an official receiver in Ireland. The result is that the

conduct of the liquidation of a company by the Court in Ireland is entrusted to a liquidator (almost invariably an accountant) who acts under the control of the Court. The Examiners attached to the Court hold the Inquiries which are directed but the Court processes can be set in motion by the liquidator only. There is not a whole-time official in charge of the liquidation such as the Official Assignee in bankruptcy. The liquidator gets his remuneration out of the property and funds which he succeeds in recovering: if the amount of available assets is small it is understandable that the liquidator, who is usually a busy man, does not carry on the liquidation with ardour. But it is the cases in which there are no available assets which require the most searching investigation, as these are the very cases in which assets have been misappropriated by the directors. In recent years the Courts have made a number of Orders discharging the liquidator who has been appointed before completion of the liquidation and directing that no further proceedings be taken in the liquidation without a Court Order: most of these have been cases which seemed to call for an investigation of the company's affairs and the institution of proceedings against directors or other persons but, as there was no fund from which the liquidator could be remunerated and his costs paid, the liquidation was, for all practical purposes, terminated.

197b. There should be an official receiver attached to the Court. Such official receiver should be a whole-time official attached to the Bankruptcy Office or to a new office to be established and to be known as "The Companies Winding-up Office". The Official Assignee in bankruptcy should be the official receiver, provided that it is understood that the Official Assignee himself, having already quite enough to do, will not be required to discharge personally any duties under the Companies Act, but that a new official to perform these duties will be appointed to serve under him. It is highly desirable that the official appointed should have a legal or accountancy training and should have some experience of the practice of winding-up. If this results in any increase in the expenditure of public money, we consider that the expenditure will be fully justified by the results.

197c. There should be a provision in the new Act that the official receiver should, by virtue of his office, be the official liquidator and should continue to act as liquidator until another person is appointed liquidator by the Court and that the official receiver should have power to summon meetings of the creditors and of the members of the company for the purpose of deciding whether or not an application should be made to the Court for appointing a liquidator in the place of the official receiver. When a Winding-up Order has been made, an obligation should be imposed on the directors of the company to prepare and send to the official receiver a statement as to the affairs of the company, giving details of its assets, debts and liabilities, the names of the

creditors, the securities held by them, the dates when the securities were given and any further information which may be prescribed by the Rules made under the Act or which the official receiver may require. This statement of affairs should be verified by an affidavit of one of the directors or the secretary or such person as the official receiver may nominate and should be sent to the official receiver within 14 days after the Order for winding-up of the company has been made or within such extended time as the official receiver or the Court may appoint. There should be a substantial fine imposed for failure to submit the statement or for a false statement in it. The form of the statement of affairs should be prescribed by the Rules made under the Act. Sections 233 to 236 of the Companies Act, 1948, should be adopted.

198. As already stated, the views expressed in paragraph 197a to c, inclusive, are not the views of all our members. The contrary views are expressed in the following paragraph 198a to e, inclusive.

198a. Section 146 of the Act of 1908 confined the term "official receiver" to England, where it meant (in the words of the Act) "the official receiver, if any, attached to the Court for bankruptcy purposes, or, if there is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board of Trade". Section 149 (1) of the same Act provided that "For the purpose of conducting the proceedings in winding-up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a liquidator or liquidators" and Section 149 (2) proceeds: "the Court may make such an appointment provisionally at any time after the presentation of a petition and before (where the proceedings are in Scotland or Ireland) the first appointment of liquidators". In a winding-up in Scotland or Ireland the said Act provided that the liquidator was to be styled "The official liquidator" (Section 149 (9) (b)); the Court might determine whether any and what security was to be given by him on his appointment (Section 149 (5)); he might resign or, on cause shown, be removed by the Court (Section 149 (6)); any vacancy in the office of a liquidator appointed by the Court was to be filled by the Court (Section 149 (7)); and his remuneration was to be such as the Court might direct (Section 149 (8)). Sections 150 and 151 of the same Act prescribed his duties and powers as official liquidator. Most of the duties and powers might be exercised only with the sanction of the Court but the Court might, by Order, sanction the exercise by the official liquidator of almost all of such powers.

198b. Accordingly, in this State the Court has, under the Act of 1908, complete control in a compulsory winding-up, the proceedings therein being pursuant to Rules of the Supreme Court.

The appointment of the official liquidator, whether on the petition of a creditor or of a member or of the company itself, is at the discretion of the Court, which will make such appointment as seems best to it in the interests of the parties concerned. Frequently the carrying out of the liquidation involves the immediate provision and attendance of supervisory staff, usually with considerable accounting and organising experience, and wherever the headquarters and branches (if any) of the company are. It is understandable, therefore, that a member in public practice of the accountancy profession has usually been appointed the official liquidator.

198c. The nature of a liquidation is such that its completion often takes a long time and the suggestion (paragraph 197a of this Report) is not accepted that "the major cause of the delays in the completion of compulsory liquidations is the absence of an official receiver". The Examiner of the High Court is usually fully aware of the obstacles confronting an official liquidator, and of the necessity, where the disposal of property or stocks is involved, to avoid realisation at an undervalue. On the other hand, the interest and anxiety of the official liquidator is to have the liquidation completed at as early a date as possible. The appointment of an "official receiver" would not obviate delays in winding-up nor would such an appointment be likely to lessen expenses. On the contrary, it might well have the opposite effects.

Where it is found that the company is without assets or that assets have been fraudulently disposed of, the Court should have discretion to invoke the aid of the Attorney General.

198d. The Committee which was appointed in March, 1927, by the Minister for Industry and Commerce and which submitted its Final Report on "the winding-up of companies and societies" in February, 1930, stated in Paragraphs 85 to 87 of their Report:

"85. We have had considerable evidence on the desirability of taking away this discretionary power of appointment, and of appointing one official to whom would be entrusted the winding-up of all companies in respect whereof a compulsory Order is made. Such officer would, if appointed, be closely analogous to the Official Assignee in bankruptcy and we were pressed with the contention that, in all probability, similar beneficial results would follow from the appointment of one official to take charge of all companies being wound up through the Court, to those which undoubtedly followed from the practice of appointing one official to control the winding-up of all bankrupts' Estates."

"86. We are not, however, satisfied that the change suggested should be made, and we do not recommend the same. In

the first place, the number of companies compulsorily wound up through the Courts is very small when compared with the number wound up voluntarily, while the Official Assignee has charge of all bankruptcies as well as of all private arrangements effected through the Court, and he has a trained staff to assist him in his duties."

"Secondly, in normal times, we do not think there would be sufficient work to occupy the time of an official liquidator who had no other duties to perform, while should there at any time occur a large number of cases coming within his department, it would not be possible for a single official personally to take charge of and to conduct all such liquidations, and it would be necessary for him to employ assistant liquidators, while the question of the remuneration of a sole official liquidator, or of any such assistant liquidators presents many difficulties."

"87. We are of opinion that the present system of the appointment of an official liquidator by the Court in each case is the best possible, and that no change should be made in this respect."

It is claimed that the foregoing paragraphs would present a fair assessment to-day of the position generally with regard to compulsory liquidations. It is further claimed that, with the adoption of the reforms suggested throughout our Report in regard to the keeping of proper books and records, the conduct of both voluntary and compulsory liquidations and the obligations to be imposed on directors and liquidators, the time involved in the completion of a liquidation should be materially shortened.

198e. Neither in Northern Ireland under the Companies Act (Northern Ireland), 1932, nor in Scotland under the Companies Act, 1948, has it been found necessary to provide for the appointment of an official receiver to conduct windings-up which remain virtually in the same position as under the Act of 1908.

199. We have been unable to reach a unanimous opinion on the matters discussed in the foregoing paragraphs 197a to c and 198a to c, inclusive.

200. A further reason for the unsatisfactory features in the law of winding-up is the close connection between this law and the bankruptcy law. In Paragraph 27 of this Report we referred to the urgent necessity for the reform of the bankruptcy law. So long as the bankruptcy law is archaic, the winding-up of companies will continue to be unsatisfactory. Recommendations as to the reform of the bankruptcy law are outside our terms of reference but there is one type of abuse which has become so common

in the winding-up of companies that we consider that it should be dealt with by the new Act. If the directors of a company have guaranteed the company's bank account and if that account is overdrawn, the directors may apply all the monies received by the company for some months before the liquidation in reducing the bank overdraft and so relieving themselves of liability on their guarantees. In these circumstances, neither the directors nor the bank to whom the money was paid can be made liable to refund these monies or to make any payment to the company in liquidation, as the payment to the bank is not a fraudulent preference. We are aware of a number of cases in recent years where this has happened and, as a result, the creditors (other than the banks) have not received any dividend in respect of their debts. Section 210 of the Act of 1908 provides that any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against the company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors and be invalid accordingly. The presentation of a petition for a winding-up or a resolution for winding-up is deemed to correspond with the individual's act of bankruptcy. The relevant section in the bankruptcy law is Section 53 of the Bankruptcy (Ireland) (Amendment) Act, 1872. It provides that every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own monies in favour of any creditor or any person in trust for any creditor with a view to giving such creditor a preference over the other creditors shall be deemed fraudulent and void against the assignees of such bankrupt if the person making the transfer or payment become bankrupt within 3 months after he made it. The amendment which we consider should be made in respect of payments made in case of a surety would be the addition of the words "or any surety or guarantor for the debt due to such creditor" between the words "such creditor" and the words "a preference over the other creditors" in Section 53. We have also considered whether the period of 3 months referred to in Section 53 of the Act of 1872 should be extended to 12 months in all cases. While there may be much to be said in favour of this we feel, however, that such a provision might, in many cases, entail a disturbing doubt in ordinary commercial transactions. A company is in debt. Its creditor sues it and is paid. The creditor is in perfect good faith. There must also be many cases in which a company, while in financial difficulties, purchases goods. If the law were to provide that all such transactions might be capable of being set aside and re-opened and refunds by the creditor ordered, much uncertainty would inevitably result. Where, however, the charge to the director is only for the amount which the director has paid in to the funds of the company or personally guaranteed on behalf

of the company simultaneously with the issue of the charge, the foregoing considerations would not appear to apply and in such case the charge given to cover monies so paid or guaranteed should not be avoided.

201. We recommend in paragraph 140 of this Report that the Courts should have power to debar a person from acting as a director or from being concerned in or taking part in the management of any company if there had been a breach of duty by him as a director. This remedy is not, however, sufficient. In some cases which have been before the Courts the directors have given one of their number a debenture to secure monies previously lent by him to the company: the company then orders goods and sells them and the proceeds of sale are applied by the company in satisfying the debenture: the unfortunate creditor who supplied the goods is not paid and has to take his place in the queue of unsecured creditors who get nothing. It is imperative that the Courts should have the widest powers to deal with this type of dishonesty. It has been made possible by the privilege of limited liability and the most suitable punishment is the removal of this privilege from the directors who were responsible or who connived at what was done. We recommend that when, in the course of the winding-up of a company by the Court, it appears that the business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent or dishonest purpose, the Court should have power to declare that any persons who were knowingly concerned in the carrying on of the business in that manner should be personally responsible, without any limitation of liability, for all the debts or other liabilities of the company and that the Court should have power to make this Order on the application of the liquidator or of any creditor or member of the company. We have already recommended in paragraph 126 that an obligation should be imposed on every Court to notify the Attorney General of any case where it appears from evidence given in the Court that there has been a breach or a disregard of the provisions of the Companies Acts: we have also recommended that the period of 3 months mentioned in Section 212 of the Act of 1908 in relation to debentures secured by a floating charge should be extended to 6 months and, in some cases, to 12 months.

202. Section 209 of the Act of 1908 deals with the debts which are to be paid in priority in a winding-up. Four general types of debt are directed to be paid in priority to all other debts and in priority to the claims of holders of debentures secured by a floating charge created by the company. The priority given by Section 209 for some debts over the claims of holders of debentures relates to the claims of such holders against assets which are subject to a floating charge: if there be a specific mortgage or charge these debts do not obtain priority over the specific charge. The four types of debt specified are:

- (1) All rates due by the company at the date of the commencement of the winding-up which became due and payable within 12 months before that date and all assessed income tax assessed on the company up to the 5th April next before the date of winding-up but not exceeding, in the whole, one year's assessment.
- (2) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the winding-up, but not exceeding £50.
- (3) All wages of any workman or labourer in respect of services rendered to the company during 2 months before the date of winding-up, but not exceeding 25, and
- (4) Sums due in respect of Workmen's Compensation.

This list has been added to by subsequent legislation. The Insurance (Intermittent Unemployment) Act, 1942, the Social Welfare Act, 1952, and other Acts have conferred similar priority in respect of sums due under those Acts. While these debts have to be paid in priority to all other debts, the effect of Section 38, sub-section 2, of the Finance Act, 1924, is that all sums due by the company to the Central Fund rank in priority before the sums due to the other creditors of the company. In a winding-up of a company by the Court now the debts specified in Section 209, as amended, have to be paid first and subject only thereto all sums due to the Central Fund are payable in full in priority to the unsecured creditors. The balance (if any) of the assets which remains is then available for payment of the unsecured creditors (see the decisions in *McIntosh & Co., Limited v. Thompson & Co., Ltd.* 1932 I.R. 45: *The Irish Aero Club* 1939 I.R. 204 and *The Federated Employers' Mutual Insurance Society* 1955 I.R. 176).

203. We recommend that the list of debts specified in Section 209 should be amended, that the priority given to sums due to the State by Section 209 of the Act of 1908 should be abolished and that sums due to the Central Fund which are not within Section 209 should rank equally with the other debts of the company for payment. If the company is solvent no question of priorities can arise: if the company is insolvent the priority given to sums due to the Central Fund inflicts hardship and injustice on many small creditors: it cannot be seriously contended that small traders are in a better financial position to bear the loss than is the Central Fund. We cannot see any reason why any taxes (other than Schedule A income tax) should be given priority and we recommend that the priority given by Section 209 to one year's taxes should be repealed. We would make a similar recommendation in relation to rates due to a local authority were it not for the great difficulties in title and conveyancing which the abolition of this preference would cause. We also recommend that the wages

or salary of any clerk, servant, workman or labourer in respect of services rendered to the company during four months before the date of liquidation should be given priority up to a maximum of £200 for each claimant. We also recommend that the various priorities referred to in paragraph 202 of this Report should be codified.

204. The law in relation to the voluntary liquidation of insolvent companies is unsatisfactory. When the company is insolvent the shareholders have no direct financial interest in the winding-up unless their shares are not fully paid-up. The shareholders appoint the liquidator, fill up vacancies in his office, fix his remuneration and receive his accounts: the winding-up is treated as being a process which concerns them and not the creditors and the creditors find difficulties in obtaining information. Moreover, as the liquidator has been appointed by the company, he may be reluctant to take proceedings against the directors or officers of the company when there may appear to have been some misapplication or misappropriation of the company's assets.

205. In most cases of voluntary liquidation the company is insolvent. We consider that the creditors should have control of the winding-up of an insolvent company. We recommend that when it is proposed to wind up a company voluntarily, the directors of the company or a majority of them should be given the power to make a statutory declaration that they have investigated the affairs of the company and that, having done this, they are of opinion that the company will be able to pay its debts in full within a period not exceeding two years from the commencement of the winding-up. This declaration should be made within the two months immediately preceding the date of the passing of the resolution for winding-up and should be delivered to the Registrar of Companies for registration before the date of the meeting at which the resolution to wind up is to be proposed. It should contain a statement of the company's assets and liabilities as at a date not more than three months before the date upon which the declaration is made. Penalties should be imposed on any director who makes a declaration without having reasonable grounds for the view that the company will be able to pay its debts in full within the period of two years. A liquidation in which this declaration is made and delivered to the Registrar of Companies should be referred to as "a members' voluntary winding-up" and a liquidation in which such a declaration is not made and delivered to the Registrar should be referred to as "a creditors' voluntary winding-up". When a creditors' voluntary winding-up takes place, an obligation should be imposed on the company to call a meeting of the creditors of the company for the day or the day following that on which the meeting to pass the resolution to wind up is to be considered and notice of the meeting of creditors should be sent to every creditor of the company at the same time as the

notice convening the meeting to pass the resolution to wind up is sent to the shareholders. The directors of the company should be obliged to prepare a statement of the position of the company's affairs and a list of the creditors of the company showing the amount of their debts and to submit this to the creditors' meeting. The creditors and the company should be given the right to nominate a person to be liquidator for the purpose of the winding-up and, if the creditors and the company nominate different persons, the person nominated by the creditors should be the liquidator. The creditors should be given power, without recourse to the Court, to appoint a Committee of Inspection consisting of not more than five persons and if the creditors appoint a Committee of Inspection the company should be entitled to appoint three persons to be members of the Committee of Inspection. The powers given to a liquidator by Section 151 of the Act of 1908 should not be exercisable by the liquidator in a creditors' voluntary winding-up without the sanction either of the Court or of the Committee of Inspection and the power of fixing the remuneration of the liquidator should be vested in the Committee of Inspection, with a right of appeal to the Court.

206. Considerable loss of time and expense in voluntary liquidations is sometimes caused by the difficulty which a liquidator has in tracing persons to whom debts are due or to whom money is due in respect of shares in the company. The liquidator cannot complete the winding-up of the company until he has made provision for these. The Irish Courts have found a convenient solution to this difficulty by holding that the liquidator is a trustee and is entitled to pay these moneys into Court under the Trustee Act (see *In the matter of The Cathedral Savings Bank, Limited* 78 I.L.T.R. 154) but this involves delay and unnecessary expense. We recommend that there should be an account at the Head Office of the Bank of Ireland to be called "the Companies Liquidation Account" and that a liquidator should have power to pay any money representing the amounts due to creditors whom he cannot trace or any monies representing unclaimed or undistributed assets of the company or any other sum due to any person as a member of the company to the credit of this account which should be under the general control of the Minister for Industry and Commerce. Anyone claiming to be entitled to be paid out of this account should be entitled to apply for payment to the Minister for Industry and Commerce with a right of appeal to the High Court. The payment by the liquidator to the credit of this account should be an effectual discharge to him in respect of the monies so paid.

207. Not infrequently a shareholder, whether by reason of change of address or otherwise, fails to cash warrants of a company for dividends to which he is entitled. We recommend that, on a winding-up, dividends unclaimed for more than six years

before the date of winding-up, should not be provable as a debt due by the company.

208. Unfortunately, company liquidations very often take much more time than is anticipated at the beginning. A creditor may find difficulty in getting information about the liquidation and we recommend that when a company is being wound up voluntarily and the liquidation has not been concluded within two years, the liquidator should be obliged once in every year until the winding-up is concluded to send to the Registrar of Companies a statement showing the position of the liquidation. The contents of this statement should be prescribed by the Rules made under the Act. Section 224 of the Act of 1908 makes provision for such a statement in liquidation in England, but there is no provision for such a statement in Ireland.

209. In addition to the remedy recommended by us in paragraph 123 of this Report, we recommend that the new Act should provide that the Court should have power to order a company to be wound up when a petition is presented seeking winding up on the ground of oppression.

210. Section 122 of the Act of 1908 provides that the winding-up of a company may be either :—

- (i) By the Court, or
- (ii) voluntary, or
- (iii) subject to the supervision of the Court.

Section 199 of the same Act provides that when a company has by special or extraordinary resolution resolved to wind up voluntarily, the Court may make an Order that the voluntary winding-up shall continue but subject to such supervision of the Court and with such liberty for creditors, members or others to apply to the Court and generally on such terms and conditions as the Court thinks just. Winding-up subject to the supervision of the Court is very rare. The majority of our members recommend that, as such winding-up subject to the supervision of the Court has become in practice obsolete, provision for it should not be continued in the new Act.

211. We recommend that there should be a means of revoking a resolution for voluntary winding-up and that there should be a provision in the new Act that a company in voluntary liquidation should have power, with the sanction of the Court, to revoke the winding-up resolution and to be restored to the position it was in before the resolution to wind up was passed. We further recommend that in the case of a compulsory winding-up the Court should have the like power as it now has under Section 144 of the Act of 1908.

212. Section 180 of the Act of 1908 provided that an Order made by a Court in England in the winding-up of a company was to be enforced in Ireland as if it had been made by an Irish Court and that an Order made by a Court in Ireland in the winding-up of a company was to be enforced in England and Scotland as if it had been made by an English or Scottish Court. This section ceased to be effective in 1921. Many Irish companies have property outside the State and many British companies have property in the State. The speedy and efficient conduct of company liquidations is in the interests of all States and modern legislation shows a marked tendency towards recognising the Orders of Courts outside the country : Part IV of the Arbitration Act, 1954, is an example of this. We would hope that provision might be made for reciprocal legislation in such matters.

213. In paragraph 126 we recommended that in every case in which instances of fraud, fraudulent trading or grave breaches of the provisions of the Companies Acts come to the attention of any Court, the Judge or Justice should be obliged to send a report to the Attorney General for consideration by him with a view to a prosecution. We consider that a similar obligation should be imposed on every liquidator and that the liquidator should be obliged to furnish to the Attorney General all information and documents in his possession with regard to any breach of the provisions of the Companies Act. A remedy must be provided for breach of this obligation by the liquidator. We think it would be undesirable to make the failure of the liquidator to make the necessary report to the Attorney General a criminal offence. We recommend, however, that if the liquidator should neglect or refuse to perform this obligation, the Court should have power, on the application of any member or creditor of the company, to direct the liquidator to perform this obligation and that when such an application is made, the Court should have power to direct that the costs thereof be paid by the liquidator personally unless he establishes that his neglect or refusal was, in all the circumstances, reasonable.

## INVESTIGATIONS

214. Section 109 of the Act of 1908 provides that the Minister for Industry and Commerce may appoint an Inspector to investigate the affairs of any company and to report thereon when an application for an investigation is made by members of the company holding at least one-tenth of the issued shares. The application to the Minister is to be supported by such evidence as the Minister may require for the purpose of showing that the applicants have good reason for and are not actuated by malicious motives in requiring the investigation and the Minister may require the applicants for the investigation to give security for payment of the costs of the Inquiry. All the expenses of and

incidental to the investigation are to be defrayed by the applicants unless the Minister directs these to be paid by the company.

215. An investigation by the Minister was intended to be one of the sanctions to ensure the observance of the provisions of the Companies Acts and the prevention of fraud, dishonesty and breaches of duty in the management of companies. Few investigations have been held, primarily because the applicants for an investigation are always required to give security for the payment of the costs of the inquiry and also because the applicants render themselves liable to pay the costs of the investigation. We consider that there are too many obstacles to an investigation by the Minister for Industry and Commerce. The requirement that the applicants should show that they are not actuated by malicious motives in requiring the investigation should be deleted and a statutory limit of £50 to the amount of security required from the applicants should be imposed. The Minister should be given power to order that the costs of the investigation should be borne by any director or directors or officers of the company if it be established in the course of the investigation that such director, directors or officer has been guilty of any grave breaches of the provisions of the Companies Acts or has been guilty of any fraud, dishonesty or breach of duty. If such an Order as to the costs of the investigation be not made the Minister should be given power to order that the costs of the investigation should be borne by the company unless there were no reasonable grounds for the demand for the investigation, in which event the costs should be borne by the applicants. If the report of the inspector discloses the commission of any criminal offence by any directors or officers of the company or by any other person, a copy of the inspectors' report should be sent to the Attorney General, together with a transcript of the evidence given at the investigation if such a transcript was made.

#### COMPANIES ESTABLISHED OUTSIDE THE STATE

216. Section 274 of the Act of 1908 provides that every company incorporated outside the United Kingdom which establishes a place of business within the United Kingdom is to file with the Registrar of Companies a certified copy of its Memorandum and Articles of Association, a list of the directors of the company and the names and addresses of some one or more persons resident in the United Kingdom who are authorised to accept service of documents on behalf of the company. There has not been any general statutory adaptation in this country of the term "United Kingdom". Section 3 of the Adaptation of Enactments Act, 1922, provides that for the purpose of the construction of any British Statute the name "Ireland", whether used alone or in conjunction with the expression "Great Britain" or by implication as being included in the expression "United Kingdom", is to mean

Saorstát Éireann. The result is that the expression "outside the United Kingdom", when used in a pre-1921 statute, means outside the State, England, Wales and Scotland. The general belief that the expression "outside the United Kingdom" in every pre-1921 statute now means "outside the State" is inaccurate. In *The Attorney General v. Rutledge and Doyle* (unreported), the Supreme Court decided that the expression "outside the United Kingdom" had the meaning which we have indicated when that term is used in the Larceny Act, 1916. We consider it necessary that the new Act should impose an obligation on every company incorporated outside the State which has established or establishes a place of business within the State to file the documents now referred to in Section 274 of the Act of 1908.

217. A difficulty arises in the choice of the appropriate expression to describe these companies. In the British Companies Act of 1948 they are described as "oversea companies", but this expression is inappropriate to describe companies incorporated in Northern Ireland. The expression "foreign companies" is equally inappropriate for such companies. We suggest that these companies be described as "External Companies". Section 274 of the Act of 1908 provides that if the charter, statutes or memorandum and articles of the company are not written in the English language, a certified translation thereof should be filed. This should be amended to provide that if these documents are not written in the English or Irish languages, a certified translation thereof should be filed.

218. In paragraph 51 of this report we recommended that there should be a section in the new Act giving express power to companies incorporated outside the State which return particulars to the Companies Registration Office to acquire and hold lands in the State.

#### COMPANIES NOT FORMED UNDER THE COMPANIES ACTS

219. Part VII of the Act of 1908 deals with companies authorised to register under the Act of 1908. Companies which have a permanent paid-up or nominal share capital of fixed amount divided into shares also of a fixed amount or held and transferable as stock may register under the Act of 1908. Many bodies corporate have been incorporated by or under other Acts of Parliament or of the Oireachtas. In some cases, these Acts contain provisions corresponding to those usually contained in the Memorandum and Articles of Association of a company. Being statutory they can be altered only by an amending Act. It has been suggested to us that all bodies corporate in the State, whether having a capital or not, should be authorised to register under the new Act. Although this would make it easier to repeal provisions

in the incorporating Act which are now out of date, we do not recommend it. Most of the companies incorporated by Acts of Parliament or of the Oireachtas were incorporated for public purposes and any amendment of the Acts relating to them should be made by the Oireachtas and not by the members. Similar objections exist to the registration as companies of bodies corporate incorporated by Charter.

220. We do not recommend any amendment of Part VII of the Act of 1908, except such amendments as the establishment of the State has made necessary.

#### MISCELLANEOUS

221. Section 70 of the Act of 1908 provides that a copy of every special and extraordinary resolution passed by a company is to be printed and forwarded to the Registrar of Companies within 15 days from its confirmation as a special resolution or, in the case of an extraordinary resolution, from the date upon which the resolution is passed. The cost of printing has increased considerably and the necessity to have the resolution printed makes it difficult to send a printed copy to the Registrar within the period of 15 days. We recommend that the copies of the special and extraordinary resolutions passed by private companies to be sent to the Registrar of Companies should be either printed or typed. Moreover, "printing" should be defined in the Act to include printing by lithographic process.

222. A number of companies incorporated outside the State, which carry on business in the State, keep their records and books of account at offices outside the State. Difficulties arise when, in the course of legal proceedings, it becomes necessary to prove any fact by the production of these books or records or when information is sought in relation to matters recorded in these books or records. Although it is undesirable that these books and records relating to business transacted in the State should be kept outside the State, an obligation should not be imposed on companies incorporated outside the State to keep any of their books in the State, as this would lead to duplication of records and increased administrative expenses.

223. Proof of the incorporation of a company incorporated outside the State has created difficulties in the administration of the criminal law and it has been suggested to us that provision should be made by which proof of incorporation of a company incorporated outside the State would be made easier. This problem arises particularly when it becomes necessary to prove the incorporation of companies and bodies corporate established by Acts of the British Parliament: the British Transport Commission is an

example of this. The decision of the late President of the High Court (Gavan Duffy, P.) in the *Attorney General v. George Smith* 1947 I.R. 32 has removed many of these difficulties. In that case it was held that on a charge of conspiracy to defraud a limited liability company incorporated outside the State it is not necessary to put the certificate of incorporation of the company in evidence but that evidence that the company acted and carried on business as an incorporated company was sufficient proof of incorporation. We recommend that provision be made in the new Act that a British Stationery Office copy of any Act of the British Parliament passed after 6th December, 1921, by which a body corporate is incorporated should be sufficient evidence of such incorporation and that a certified copy of a certificate of incorporation of a company incorporated in Great Britain certified by any Companies Registration Office in Great Britain should be sufficient evidence of the incorporation of such company without proof being required of the signature of the person who signed it or that he occupies the position of Registrar of Companies.

224. The Bankers' Books Evidence Act, 1879, requires amendment. This Act makes copies of entries in bankers' books evidence in all proceedings without production of the originals. It applies only to banks as defined in that Act as amended by 45 and 46 Victoria cap. 72. The returns to which both Acts refer are not now made. We recommend that, for the purposes of the Act of 1879, a bank should be defined as a bank which has obtained a banking licence under the Central Bank Act, 1942, or a Savings Bank certified under the Acts relating thereto or a Post Office Saving Bank proved to be such by the certificate of the Minister for Posts and Telegraphs or one of his Secretaries.

225. The representatives of the Insurance Institute of Ireland gave us most helpful evidence, in the course of which they informed us that the necessity to prepare the accounts and returns prescribed by the Assurance Acts, 1909 and 1936, and the more detailed accounts which we might recommend would impose heavy expenses on assurance and insurance companies. The accounts prescribed by the Assurance Acts and those which we recommend have different purposes. Amendments to those Acts are outside our terms of reference: we have made provision that assurance and insurance companies are not to be obliged to disclose certain matters in their accounts but recommendations in relation to the Assurance Acts are outside our terms of reference.

226. We are aware that a number of companies incorporated in the State are trading under names different to those by which they were incorporated. In some cases the company has registered a business name under the Registration of Business Names Act, 1916, and is carrying on business under that name. We consider that these practices are misleading and we recommend that a

company should not be allowed to carry on business under any name except that by which it is incorporated. This prohibition should not, however, apply to any case where, at the date of the passing of the new Act, a company was a partner in a business the ownership of which had been and continues to be registered under the Registration of Business Names Act, 1916. Neither should it prevent the use by a company of abbreviations or slogans when clearly associated with the proper name of the company.

227. We have recommended that a number of matters are to be prescribed by Rules to be made under the Act. Some of these are matters which will not be the subject of Court proceedings. We wish to emphasise how important it is that the new Rules which our recommendations will make necessary should come into force at the same time as the new Act. We understand that the Superior Courts Rules Committee are drafting an entirely new code of Rules for the High and Supreme Courts. This is a heavy task. The Rules which the new Companies Act will require should not be left to await the new High Court Rules. We suggest that a comprehensive code of Rules for the whole of the new Companies Act should be drafted at the same time as the new Act and that the new Act and the new Rules should come into force on the same date.

(Signed) A. COX, Chairman  
MERVYN BELL  
G. BROCK  
P. BUTLER  
H. J. MOLONEY  
G. A. OVEREND  
R. L. REID  
JOHN KENNY, Honorary Secretary

27th February, 1958.

## APPENDIX A

### TABLE A

#### PART I

#### REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES, NOT BEING A PRIVATE COMPANY

##### *Interpretation*

1. In these regulations :

“the Act” means the Companies Act, 195 .

“the directors” means the directors for the time being of the company or the directors present at a meeting of the board of directors and includes any person occupying the position of director by whatever name called.

“the Register” means the Register of Members to be kept as required by section — of the Act.

“Secretary” means any person appointed to perform the duties of the Secretary of the company and includes any person appointed to perform such duties temporarily.

“the office” means the registered office for the time being of the company.

“the seal” means the common seal of the company.

“the State” means the Republic of Ireland.

“the United Kingdom” means England, Scotland, Wales, the Channel Islands and the Isle of Man.

Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography and any other modes of representing or reproducing words in visible form.

Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

##### *Share Capital and Variation of Rights*

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in the company may be issued with such preferred, deferred or other special rights or such restrictions whether in regard to dividend, voting, return of capital or otherwise, as the company may from time to time by ordinary resolution determine.

3. Subject to the provisions of section — of the Act, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are liable or, at the option of

the company, are liable to be redeemed on such terms and in such manner as the company, before the issue of the shares, may by special resolution determine.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and so that any holder of shares of the class present in person or by proxy may demand a poll.

5. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

6. The company may exercise the powers of paying commission conferred by section — of the Act, provided that the rate per cent. or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section and the rate of the commission shall not exceed the rate of 10% of the price at which the shares in respect whereof the same is paid are issued or any amount equal to 10% of such price (as the case may be). Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other. The company may also, on any issue of shares, pay such brokerage as may be lawful.

7. Except as required by law, no person shall be recognised by the company as holding any share upon any trust, and the company shall not be bound by or compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any interest in any fraction or part of a share, or (except only as by these regulations or by law otherwise provided), any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder. This shall not preclude the company from requiring the members to furnish the company with information as to the beneficial ownership of any share when such information is required by the company for the purposes of the Control of Manufactures Acts, 1932 and 1934, or for the Finance (No. 2) Act, 1947, or the Finance Acts, 1932, 1934 and 1957, or any legislation amending the same, respectively.

8. Every person whose name is entered as a member in the Register shall be entitled, without payment, to receive, within 2 months after allotment or lodgment of the transfer or within such other period as the conditions of issue shall provide, one certificate for all his shares or several certificates each for one or more of his shares, upon payment of 2/6d. for every certificate after the first or such less sum as the directors shall from time to time determine. Every certificate shall be under the seal and shall specify the share to which it relates and the amount paid up thereon. Provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

9. If a share certificate be defaced, lost or destroyed, it may be renewed on payment of a fee of 2/6d. or such less sum and on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investigating evidence as the directors think fit.

10. The company shall not give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company, nor shall the company make a loan for any purpose whatsoever on security of its shares or those of its holding company, but nothing in this regulation shall prohibit the transactions mentioned in the proviso to section — of the Act.

#### *Lien*

11. The company shall have a first and paramount lien on every share (not being a fully paid share) for all monies (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a first and paramount lien on all shares (other than fully paid shares) standing registered in the name of a single person for all monies presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.

12. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of

the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

13. To give effect to any such sale, the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

14. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

#### *Calls on Shares*

15. The directors may from time to time make calls upon the members in respect of any monies unpaid on their shares (whether on account of the nominal value of the shares or on account of amounts payable on shares of no par value or by way of premium) and not by the conditions of allotment thereof made payable at fixed times, provided that no call shall exceed one-fourth of the nominal value of the share or be payable less than one month from the date fixed for the payment of the last preceding call, and each member shall (subject to receiving at least fourteen days' notice specifying the time or times and place of payment) pay to the company at the time or times and place so specified the amount called on his shares. A call may be revoked or postponed as the directors may determine.

16. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.

17. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

18. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum on the day appointed for payment thereof to the time of actual payment at such rate not exceeding 6% per annum as the directors may determine, but the directors shall be at liberty to waive payment of such interest wholly or in part.

19. Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or in respect of sums payable on shares of no par value or by way of premium, shall, for the purpose of these regulations, be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable, and in case of non-payment all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise, shall apply as if such sum had become payable by virtue of a call duly made and notified.

20. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

21. The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the monies uncalled and unpaid upon any shares held by him and upon all or any of the monies so advanced may (until the same would, but for such advance become payable) pay interest at such rate not exceeding (unless the company in general meeting shall otherwise direct) 6% per annum as may be agreed upon between the directors and the member paying such sum in advance.

#### *Transfer of Shares*

22. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the Register in respect thereof.

23. Subject to such of the restrictions of these regulations as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve.

24. The directors may decline to register the transfer of a share (not being a fully paid share) to a person of whom they shall not approve, and they may also decline to register the transfer of a share on which the company has a lien. The directors may also decline to register any transfer of shares which, in their opinion, may imperil or prejudicially affect the status of the company in Ireland or which may imperil any tax concession or rebate to which the members of the company are entitled or which may involve the company in the payment of any additional stamp or other duties on any conveyance of any property to the company.

25. The directors may also decline to recognise any instrument of transfer unless :

- (a) a fee of 2/6d., or such lesser sum as the directors may from time to time require, is paid to the company in respect thereof;
- (b) the instrument of transfer is accompanied by the certificate of the share to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and
- (c) the instrument of transfer is in respect of one class of share only.

26. If the directors refuse to register a transfer they shall, within two months after the date upon which the transfer was lodged with the company, send to the transferee notice of the refusal.

27. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine, provided always that such registration shall not be suspended for more than thirty days in any year.

28. The company shall be entitled to charge a fee not exceeding 2/6d. on the registration of every probate, letters of administration, certificate of death or marriage, power of attorney or other instrument.

#### *Transmission of Shares*

29. In case of the death of a member the survivor, or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

30. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death or bankruptcy, as the case may be.

31. If the person so becoming entitled shall elect to be registered himself, he shall deliver or send to the company a notice

in writing signed by him stating that he so elects. If he shall elect to have another person registered he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the member had not occurred, and the notice or transfer were a transfer signed by that member.

32. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company—

Provided always that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within thirty days the directors may thereafter withhold payment of all dividends, bonuses or other monies payable in respect of the share until the requirements of the notice have been complied with.

#### *Forfeiture of Shares*

33. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

34. The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

35. If the requirements of any such notices aforesaid are not complied with, any share in respect of which the notice has been given may, at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

36. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

37. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all monies which, at the date of forfeiture, were payable by him to the company in respect of the shares, but his liability shall cease if and when the company shall have received payment in full of all such monies in respect of the shares.

38. A statutory declaration in writing that the declarant is a director or secretary of the company, and that his share in the company has been duly forfeited on a date stated in the declaration shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share and shall not be bound to see the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.

39. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or in respect of shares of no par value or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

#### *Conversion of Shares into Stock*

40. The company may, by ordinary resolution, convert any paid-up shares into stock and re-convert the stock into paid-up shares of any denomination.

41. The holders of stock may transfer the same or any part thereof in the like manner as and subject to the same regulations as and subject to which the shares from which the stock arose might, previously to conversion, have been transferred, or as near thereto as circumstances permit; and the directors may from time to time fix the minimum amount of stock transferable, but so that such minimum shall not exceed the nominal amount of the shares from which the stock arose if the shares have a nominal amount.

42. The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in

the dividends and profits of the company and in the assets on winding-up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

43. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder".

#### *Alteration of Capital*

44. The company may, from time to time, by ordinary resolution, increase the share capital by such sum, to be divided into shares of such amount as the resolution shall prescribe or by the creation of shares of no par value.

45. The company may by ordinary resolution—

- (a) consolidate or divide all or any of its share capital into shares of larger amount than its existing shares;
- (b) subdivide or split any of its shares of no par value;
- (c) subdivide its existing shares or any of them into shares of smaller amount than is fixed by the Memorandum of Association;
- (d) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

46. The company may, by special resolution, reduce its share capital, any capital redemption reserve fund, or any share premium account in any manner and with, and subject to, any incident authorised, and consent required, by law.

#### *General Meetings*

47. The company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of the company and that of the next, provided that so long as the company holds its first annual general meeting within eighteen months after its incorporation it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the directors shall appoint.

48. All general meetings other than annual general meetings shall be called extraordinary general meetings.

49. The directors may, whenever they think fit, convene an extraordinary general meeting and extraordinary general meetings shall also be convened on such requisition or, in default, may be

convened by such requisitionists as provided by Section of the Act. If at any time there are not within the State or Northern Ireland or the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

#### *Notice of General Meetings*

50. An annual general meeting shall be called by ten days' notice in writing at the least and a meeting of the company, other than an annual general meeting, shall be called by fourteen days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the date for which it is given and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business, and shall be given in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company;

Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this regulation, be deemed to be duly called if it is so agreed by all the members entitled to attend and vote thereat.

51. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

#### *Proceedings at General Meetings*

52. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of and the fixing of the remuneration of the auditors.

53. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members present in person shall be a quorum.

54. If, within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the directors may determine, and if, at the adjourned meeting, a quorum is not present within half an hour from the

time appointed for the meeting, the members present shall be a quorum.

55. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or, if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

56. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

57. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

58. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded

- (a) by the chairman; or
- (b) by at least two members present in person or by proxy; or
- (c) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
- (d) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

Unless a poll be so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.

59. Except as provided in regulation 61, if a poll be duly demanded it shall be taken in such manner as the chairman directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

60. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

61. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll is being demanded may be proceeded with pending the taking of the poll.

#### *Votes of Members*

62. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person shall have one vote, and on a poll every member shall have one vote for each share of which he is the holder.

63. In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register.

64. A member of unsound mind or in respect of whom an Order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, guardian or other person in the nature of a committee or guardian appointed by that Court, and any such committee or guardian may, on a poll, vote by proxy.

65. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

66. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

67. On a poll votes may be given either personally or by proxy.

68. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing or, if the appointer is a corporation, either under seal or

under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

69. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the office of the company or at such other place within the State as is specified for that purpose in the notice convening the meeting not less than twenty-four hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote unless the day preceding the meeting be a Sunday or public holiday, in which case the time should be forty-eight hours and in default the instrument of proxy shall not be treated as valid.

70. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

I/We \_\_\_\_\_ of \_\_\_\_\_ LIMITED  
in the County of \_\_\_\_\_  
being a member/members of the above-named company hereby  
appoint \_\_\_\_\_ of \_\_\_\_\_ or failing him  
\_\_\_\_\_ as my/our proxy to vote  
for me/us on my/our behalf at the (annual or extraordinary as the  
case may be) general meeting of the company to be held on the  
day of \_\_\_\_\_, 19\_\_\_\_, and at any adjournment thereof.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

71. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

I/We \_\_\_\_\_ of \_\_\_\_\_ LIMITED  
in the County of \_\_\_\_\_  
being a member/members of the above-named company hereby  
appoint \_\_\_\_\_ of \_\_\_\_\_ or failing him  
\_\_\_\_\_ as my/our proxy to vote  
for me/us on my/our behalf at the (annual or extraordinary as the  
case may be) general meeting of the company to be held on the  
day of \_\_\_\_\_, 19\_\_\_\_, and at any adjournment thereof.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

This form is to be used\* in favour of  
against the resolution.

Unless otherwise instructed, the proxy will vote as he thinks fit.

\* Strike out whichever is not desired.

72. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

73. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed or the transfer of the share in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

#### *Corporations Acting by Representatives at Meetings*

74. Any corporation which is a member of the company may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

#### *Directors*

75. Unless otherwise determined by a general meeting, the number of the directors shall not be less than two or more than seven.

76. The names of the first directors shall be determined in writing by the subscribers of the Memorandum of Association or a majority of them.

77. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.

78. The shareholding qualification for directors may be fixed by the company in general meeting and unless and until so fixed no qualification shall be required.

79. A director of the company may be or become a director or other officer of, or otherwise interested in, any company promoted by the company or in which the company may be interested as shareholder or otherwise, and no such director shall be accountable

to the company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company, unless the company otherwise direct.

#### *Borrowing Powers*

80. The directors may exercise all the powers of the company to borrow money, and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, and to issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the company or of any third party; provided that the amount for the time being undischarged of monies borrowed or secured by the directors as aforesaid (apart from temporary loans obtained from the company's bankers in the ordinary course of business) shall not at any time, without the previous sanction of the company in general meeting, exceed the nominal amount of the share capital of the company for the time being issued, but nevertheless no lender or other person dealing with the company shall be concerned to see or enquire whether this limit is observed. No debt incurred or security given in excess of such limit shall be invalid or ineffectual except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was thereby exceeded.

#### *Powers and Duties of Directors*

81. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company and may exercise all such powers of the company as are not, by the Act, or by these regulations, required to be exercised by the company in general meeting, subject, nevertheless, to any of these regulations, to the provisions of the Act and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

82. The directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these regulations) and for such period and subject to such conditions as they may think fit and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing

with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

83. The company may exercise the powers conferred by section of the Act with regard to having an official seal for use abroad and such powers shall be vested in the directors.

84. The company may exercise the powers conferred upon the company by sections — to — (both inclusive) of the Act with regard to the keeping of a foreign register and the directors may (subject to the provisions of these sections) make and vary such regulations as they may think fit respecting the keeping of any such register.

85. A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall declare the nature of his interest at a meeting of the directors in accordance with section — of the Act.

86. A director shall not vote in respect of any contract or arrangement in which he is so interested and if he shall do so his vote shall not be counted nor shall he be counted in the quorum present at the meeting, but neither of these prohibitions shall apply to—

- (a) any arrangement for giving any director any security or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the company; or
- (b) any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or
- (c) any contract by a director to subscribe for or underwrite shares or debentures of the company; or
- (d) any contract or arrangement with any other company in which he is interested only as an officer of the company or as a holder of shares or other securities;

and these prohibitions may be at any time suspended or relaxed to such extent and either generally or in respect of any particular contract, arrangement or transaction, by the company in general meeting.

87. A director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with his office of director for such period and on such terms as to remuneration and otherwise as the directors may determine and

no director or intending director shall be disqualified by his office from contracting with the company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract, or any contract or arrangement entered into by or on behalf of the company in which any director is in any way interested, be liable to be avoided, nor shall any director so contracting or being so interested be liable to account to the company for any profit realised by any such contract or arrangement by reason of such director holding that office or of the fiduciary relation thereby established.

88. A director, notwithstanding his interest, may be counted in the quorum present at any meeting whereat he or any other director is appointed to hold any such office or place of profit under the company or whereat the terms of any such appointment are arranged, and he may vote on any such appointment or arrangement other than his own appointment or the arrangement of the terms thereof.

89. Any director may act by himself or his firm in a professional capacity for the company, and he or his firm shall be entitled to remuneration for professional services as if he were not a director; provided that nothing herein contained shall authorise a director or his firm to act as auditor to the company.

90. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for moneys paid to the company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the directors shall from time to time, by resolution, determine.

91. The directors shall cause minutes to be made in books provided for the purpose—

- (a) of all appointments of officers made by the directors;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) of all resolutions and proceedings at all meetings of the company and of the directors and committees of directors.

92. The directors, on behalf of the company, may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

### *Disqualification of Directors*

93. The office of director shall be vacated if a director—
- (a) ceases to be a director by virtue of section — of the Act; or
  - (b) is adjudicated a bankrupt or makes any arrangement or composition with his creditors; or
  - (c) is adjudicated a bankrupt in Northern Ireland or has a receiving order made against him by any Court in the United Kingdom; or
  - (d) becomes prohibited from being a director by reason of any Order made under section — of the Act; or
  - (e) becomes of unsound mind; or
  - (f) resigns his office by notice in writing to the company; or
  - (g) is convicted of an indictable offence (other than an offence under the Road Traffic Act, 1933, or any Act or Acts amending it) unless the directors otherwise determine; or
  - (h) shall for more than six months have been absent without permission of the directors from meetings of the directors held during that period.

### *Rotation of Directors*

94. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third shall retire from office.

95. The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless they otherwise agree amongst themselves) be determined by lot.

96. A retiring director shall be eligible for re-election.

97. The company, at the meeting at which a director retires in manner aforesaid, may fill the vacated office by electing a person thereto and in default the retiring director shall, if offering himself for re-election, be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

98. No person other than a director retiring at the meeting shall, unless recommended by the directors, be eligible for election

to the office of director at any general meeting unless not less than three nor more than twenty-one days before the day appointed for the meeting there shall have been left at the office of the company notice in writing signed by a member duly qualified to attend and vote at the meeting for which such notice is given of his intention to propose such person for election and also notice in writing signed by that person of his willingness to be elected.

99. The company may from time to time, by ordinary resolution, increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

100. The directors shall have power at any time and from time to time to appoint any person to be a director either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these regulations. Any director so appointed shall hold office only until the next following annual general meeting and shall then be eligible for re-election, but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

101. The company may, by ordinary resolution, remove any director before the expiration of his period of office notwithstanding anything in these regulations or in any agreement between the company and such director. Such removal shall be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.

102. The company may, by ordinary resolution, appoint another person in place of a director removed from office under the immediately preceding regulation and, without prejudice to the powers of the directors under regulation 100, the company, in general meeting, may appoint any person to be a director either to fill a casual vacancy or as an additional director. A person appointed in place of a director so removed or to fill such a vacancy shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

### *Proceedings of Directors*

103. The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary, on the requisition of a director, shall, at any time Kingdom.

summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from the State, Northern Ireland or the United Kingdom.

101. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

105. The continuing directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

106. The directors may elect a chairman of their meeting and determine the period for which he is to hold office; but if no such chairman is elected or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

107. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit: any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

108. A committee may elect a chairman of its meetings: if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

109. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present and in the case of an equality of votes the chairman shall have a second or casting vote.

110. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

111. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors,

shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

#### *Managing Director*

112. The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. A director so appointed shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall be automatically determined if he ceases, from any cause, to be a director.

113. A managing director shall receive such remuneration (whether by way of salary, commission or participation in profits, wholly or partly in one way or partly in another) as the directors may determine.

114. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers and may, from time to time revoke, withdraw, alter or vary all or any such powers.

#### *Secretary*

115. The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

#### *The Seal*

116. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of directors authorised by the directors in that behalf, and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

#### *Dividends and Reserve*

117. The company, in general meeting, may declare dividends, but no dividend shall exceed the amount recommended by the directors.

118. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

119. No dividend shall be paid otherwise than out of profits.

120. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit. The directors may also, without placing the same to reserve, carry forward any profits which they think prudent not to distribute.

121. Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purpose of this regulation as paid on the shares. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid: but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.

122. The directors may deduct from any dividend payable to any member all sums of money (if any) presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

123. Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets and in particular of paid-up shares, debentures or debenture stock of any other company or in any one or more of such ways, and the directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient and, in particular, may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the directors.

124. Any dividend, interest or other monies payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses or other monies payable in respect of the shares held by them as joint holders.

125. No dividend shall bear interest against the company.

#### *Accounts*

126. The directors shall cause proper books of account to be kept with respect to—

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the company; and
- (c) the assets and liabilities of the company.

Proper books shall not be deemed to be kept if there are not kept such books of accounts as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

127. The books of account shall be kept at the office of the company or, subject to section — of the Act, at such other place or places as the directors think fit and shall always be open to the inspection of the directors.

128. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by the Act or authorised by the directors or by the company in general meeting.

129. The directors shall from time to time, in accordance with sections — and — of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss

accounts, balance sheets, group accounts (if any) and reports as are referred to in those sections.

130. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditor's report shall, not less than ten days before the date of the meeting, be sent to every member of and every holder of debentures of the company and to every person registered under regulation 31. Provided that this regulation shall not require a copy of those documents to be sent to any person of whose address the company is not aware or to more than one of the joint holders of any shares or debentures.

#### *Capitalisation of Profits*

131. The company in general meeting may, upon the recommendation of the directors, resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the share premium account or to the credit of the profit and loss account or otherwise available for distribution and, accordingly, that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying of any amounts for the time being unpaid on any shares held by such members, respectively, or paying up in full unissued shares or debentures of the company to be allotted and distributed, credited as fully paid-up to and amongst such members in the proportion aforesaid, or partly in the one way and partly in the other and the directors shall give effect to such resolution: provided that a share premium account and the capital redemption reserve fund may, for the purpose of this regulation, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

132. Whenever such a resolution as aforesaid shall have been passed, the directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto with full power to the directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorise any person to enter on behalf of all the members entitled thereto into an agreement with the company providing for the allotment to them, respectively, credited as fully paid-up, of any further shares or deben-

tures to which they may be entitled upon such capitalisation, or (as the case may require), for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

#### *Audit*

133. Auditors shall be appointed and their duties regulated in accordance with Sections to of the Act.

#### *Notices*

134. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within the State or Northern Ireland or the United Kingdom) to the address, if any, within the State or Northern Ireland or the United Kingdom supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying and posting a letter containing the notice and to have been effected in the case of a notice of a meeting at the expiration of twenty-four hours after the letter containing the same is posted and in any other case at the time at which the letter would be delivered in the ordinary course of post.

135. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register in respect of the share.

136. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a pre-paid letter addressed to them by name or by the title of representatives of the deceased or official assignee in bankruptcy or by any like description at the address, if any, within the State, Northern Ireland and (the United Kingdom) supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

137. Notice of every general meeting shall be given in any manner hereinbefore authorised to—

- (a) every member except those members who (having no registered address within the State or Northern Ireland or the United Kingdom) have not supplied to the company an address within the State, Northern Ireland or the United Kingdom for the giving of notices to them;
  - (b) every person upon whom the ownership of a share devolves by reason of his being a legal personal representative or an official assignee in bankruptcy of a member where the member, but for his death or bankruptcy, would be entitled to receive notice of the meeting; and
  - (c) the auditor for the time being of the company.
- No other person shall be entitled to receive notices of general meetings.

#### *Winding-up*

138. If the company shall be wound up the liquidator may, with the sanction of an extraordinary resolution of the company and any other sanction required by the Act, divide amongst the members in specie or kind the whole or any part of the assets of the company (whether they shall consist of property of the same kind or not) and may, for such purpose, set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members. The liquidator may, with a like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with a like sanction, shall think fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

#### *Indemnity*

139. Every director, managing director, agent, auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in relation to his acts while acting in such office in which judgment is given in his favour or in which he is acquitted or in connection with any application under Section of the Act in which relief is granted to him by the Court.

## PART II

### REGULATIONS FOR THE MANAGEMENT OF A PRIVATE COMPANY LIMITED BY SHARES

1. The regulation contained in Part I of Table "A" (with the exception of regulations 24, 53, 86, 129 and 130) shall apply.
2. The company is a private company and accordingly—
  - (a) the right to transfer shares is restricted in the manner hereinafter prescribed;
  - (b) the number of members of the company (exclusive of persons who are in the employment of the company and of persons who, having been formerly in the employment of the company, were, while in such employment and have continued after the determination of such employment, to be members of the company) is limited to fifty. Provided that where two or more persons hold one or more shares in the company jointly they shall, for the purpose of this regulation, be treated as a single member;
  - (c) any invitation to the public to subscribe for any shares or debentures of the company is prohibited;
  - (d) the company shall not have power to issue share warrants to bearer.
3. The directors may, in their absolute discretion and without assigning any reason therefor, decline to register any transfer of any share, whether or not it is a fully paid share.
4. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business: save as herein otherwise provided, two members present in person or by proxy shall be a quorum.
5. Subject to the provisions of this Act, a resolution in writing, signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.
6. A director may vote in respect of any contract or arrangement in which he is interested and he shall be counted in the quorum present at the meeting.
7. The directors may exercise the voting power conferred by the shares of any other company held or owned by the company

in such manner in all respects as they think fit, including the exercise in favour of any resolution appointing the directors or any of them as directors or officers of such other company or voting or providing for the payment of remuneration to the directors or officers of such other company. Any director of the company may vote in favour of the exercise of such voting rights in manner aforesaid, notwithstanding that he may be or may be about to become a director or officer of such other company and as such or in any other manner is or may be interested in the exercise of such voting rights in manner aforesaid.

8. Any director may from time to time appoint any person who is approved by the majority of the directors or alternate or substitute directors to be an alternate or substitute director. The appointee, while he holds office as an alternate director, shall be entitled to notice of meetings of the directors and to attend and vote thereat as a director and shall not be entitled to be remunerated otherwise than out of the remuneration of the director appointing him. Any appointment so made may be revoked at any time by the appointer or by a majority of the other directors and any appointment or revocation under this article shall be affected by notice in writing to be delivered to the secretary of the company.

9. Any minutes of any meeting of the company or of the directors or of any committee thereof, if purporting to be signed by the chairman of such meeting, or by the chairman of the next succeeding meeting of the company, or of the directors, or of any committee thereof, as the case may be, shall be receivable as *prima facie* evidence of the matters therein stated.

10. The directors shall from time to time, in accordance with sections — and — of the Act, cause to be prepared and to be laid before the company in general meeting a profit and loss account and balance sheet and the reports which are referred to in those sections.

11. A copy of the balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditor's report, shall, not less than seven days before the date of the meeting, be sent to every member of and every holder of debentures of the company. Provided that this regulation shall not require a copy of those documents to be sent to any person of whose address the company is not aware or to more than one of the joint holders of any shares.

## APPENDIX B

### MEMORANDUM ISSUED TO CERTAIN ORGANISATIONS AND INDIVIDUALS

A committee has been appointed by the Attorney-General to consider and advise what alterations are desirable in company law and in particular in the Companies (Consolidation) Act, 1908. Your views (which may be published) are invited as to whether any and what changes in the existing law are desirable in regard to all or any of the following matters. You are requested to state your views so far as possible under the headings indicated, but it is not desired that you should deal with all the matters referred to unless you are interested therein—

#### 1. *Constitution and Incorporation*

- (a) Form and contents of Memorandum and Articles of Association;
- (b) restrictions on name of company;
- (c) power of company to alter
  - (i) its objects;
  - (ii) other provisions in its memorandum;
- (d) effect of certificate of incorporation;
- (e) preliminary expenses;
- (f) miscellaneous.

#### 2. *Share Capital*

- (a) Reduction of capital;
- (b) issue of shares at a discount;
- (c) underwriting commission;
- (d) rights of preference shareholders;
- (e) shares of no par value;
- (f) power to issue redeemable preference shares;
- (g) distinguishing numbers of shares;
- (h) miscellaneous.

#### 3. *Issues and Offers of Shares and Debentures*

- (a) Contents of prospectus;
- (b) liability for statements in prospectus;

(c) offers for sale, circulars, advertisements issued to comply with Stock Exchange requirements and other press notices;

(d) statement in lieu of prospectus;

(e) minimum subscription;

(f) miscellaneous.

#### 4. *Mortgages and Charges*

(a) Registration and rights of inspection;

(b) floating charges;

(c) preferential payments;

(d) restrictions on rights of secured creditors;

(e) miscellaneous.

#### 5. *Directors*

(a) Qualification shares;

(b) remuneration, including payment of fees free of tax;

(c) liability for negligence and indemnity clause in articles;

(d) compulsory age of retirement;

(e) loans, contracts and other transactions between a company and its directors;

(f) election;

(g) miscellaneous.

#### 6. *Accounts*

(a) Obligation to keep;

(b) form and contents, including matters to be disclosed with a view to protecting shareholders or intending shareholders and creditors;

(c) filing;

(d) rights of shareholders to inspect;

(e) accounts of holding companies and their subsidiaries;

(f) consolidated group accounts;

(g) secret reserves;

form and content of balance sheets and profit and loss account;

miscellaneous.

#### *Relations of Holding and Subsidiary Companies*

(a) Definition of subsidiary company;

(b) disclosure of information as to subsidiary companies;

(c) accounts of holding and subsidiary companies.

#### *Ascertained and Divisible Profits, including payment of Dividends out of Capital*

##### *Auditors*

(a) Rights of auditors to demand information and inspection;

(b) duties of auditors with regard to—

(i) inspection of securities, etc.;

(ii) calling the attention of shareholders to matters which it is desirable they should know (such as loans to officers of the company);

(iii) generally;

(c) indemnity clauses in Articles;

(d) miscellaneous.

#### 0. *Re-organisation*

(a) schemes of arrangement;

(b) reconstruction;

(c) rights of minorities;

(d) power to make compulsory levy on shareholders;

(e) miscellaneous.

#### 1. *Winding-up*

(a) voluntary;

(b) compulsory;

(c) under supervision;

(d) miscellaneous.

Under these headings some or all of the following matters may call for consideration :

circumstances in which a company may be wound up; jurisdiction, powers and duties of courts; appointment and powers and duties of liquidators and committee of inspection; Official Receiver; powers of Department of Industry and Commerce; avoidance of transfer of shares; dispositions of property, executions, etc.; proof of debts and rights of secured and unsecured and preferential creditors; dissolution and removal of defunct companies from the register; accounts, audits, unclaimed funds; information about pending liquidations.

#### 12. *Private Companies*

- (a) trading by individuals under the name of a private company;
- (b) exemption from filing accounts and other privileges;
- (c) conversion into public companies;
- (d) restrictions on transfer of shares;
- (e) restrictions and requirements on formation;
- (f) form and contents of annual return to be made to the Companies Registration Office;
- (g) miscellaneous.

#### 13. *Friendly Societies and Co-operative Societies*

#### 14. *Companies established outside the Republic of Ireland*

If there are any other matters in relation to which you consider some major amendments in the existing Company Law desirable and to which you think the attention of the Committee should be directed, you are invited to do so under

#### 15. *Miscellaneous*

### APPENDIX C

Organisations and individuals who submitted statements of their views and gave oral evidence :

The Registrar of Companies

The Registrar of Friendly Societies

The Institute of Chartered Accountants in Ireland

The Society of Incorporated Accountants in Ireland  
The Association of Certified and Corporate Accountants  
The Society of Public Accountants  
The Irish Banks Standing Committee  
The Irish Institute of Secretaries  
The Dublin Chamber of Commerce  
The Committee of the Dublin Stock Exchange  
The Industrial Development Authority  
The Congress of Irish Unions  
The Irish Trade Union Congress  
The Insurance Institute of Ireland  
The Chartered Institute of Secretaries  
The Industrial Credit Company, Ltd.  
Maurice Abrahamson, Esq.  
C. J. F. MacCarthy, Esq.  
Eamon McNerney, Esq.  
Michael R. Heffernan, Esq.

The members of the Committee are deeply indebted to many others for assistance and suggestions, but desire to give special thanks to the Honourable Mr. Justice Kevin Dixon and Mr. E. H. Marker.