

or body corporate for the debentures of the debenture holders, or to consent to the cancellation of the debentures in consideration of the issue to the debenture holders of shares credited as fully paid in the company or any other body corporate.

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t deed.

281.—(1) A public company shall, before issuing any of its debentures, execute a trust deed in respect of the debentures and procure the execution thereof by a trustee.

(2) No trust deed may cover more than one class of debentures, whether or not the trust deed is required by this section to be executed.

(3) Where a trust deed is required by this section to be executed in respect of any debentures issued by a public company but a trust deed has not been executed, the court may, on the application of a holder of any debenture issued by the company

(a) order the company to execute a trust deed in respect of those debentures;

(b) direct that a person nominated by the court be appointed a trustee of the trust deed, and

(c) give such consequential directions as the court thinks fit regarding the contents of the trust deed and its execution by the trustee.

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ntures.

282.—(1) Debentures belong to different classes if different rights attach to them in respect of

(a) the rate of interest or the dates for payment of interest;

- (b) the dates when, or the installments by which, the principal of the debentures will be repaid, unless the difference is solely that the class of debentures will be repaid during a stated period of time and particular debentures will be repaid at different dates during that period according to selections made by the company or by drawings, ballot or otherwise;
- (c) any right to subscribe for or convert the debentures into other shares or other debentures of the company or any other body corporate; or
- (d) the powers of the debenture holders to realise any security interest.

(2) Debentures belong to different classes if they do not rank equally for payment when

- (a) any security interest is realised, or
- (b) the company is wound-up.

that is to say, if, in those circumstances, the security interest or the proceeds thereof, or any assets available to satisfy the debentures, is or are not to be applied in satisfying the debentures strictly in proportion to the amount of principal, premiums and arrears of interest to which the holders of them are respectively entitled.

283. A debenture is covered by a trust deed if the debenture holder is entitled to participate in any money payable by the company under the trust deed, or is entitled by the trust deed to the benefit of any security interest, whether alone or together with other persons.

Cover of
trust deed.

tion. 284. Sections 281 to 283 do not apply to debentures issued before the commencement date, or to debentures forming part of a class of debentures some of which were issued before that date.

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eed. 285. (1) Every trust deed, whether required by section 281 or not, shall state

- (a) the maximum sum that the company can raise by issuing debentures of each specific issue;
- (b) the maximum discount that can be allowed on the issue or re-issue of the debentures, and the maximum premium at which the debentures can be made redeemable;
- (c) the nature of any assets over which a security interest is created by the trust deed in favour of the trustee for the benefit of the debenture holders equally, and, except where such an interest is a floating charge or a general floating charge, the identity of the assets subject to it;
- (d) the nature of any assets over which a security interest has been, or will be, created in favour of any person other than the trustee for the benefit of the debenture holders equally, and, except where such an interest is a floating charge or a general floating charge, the identity of the assets subject to it;
- (e) whether the company has created or will have to create any security interest for the benefit of some, but not all, of the holders of debentures issued under the trust deed;

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- (f) any prohibition or restriction on the power of the company to issue debentures or to create any security interest on any of its assets ranking in priority to, or equally with, the debentures issued under the trust deed;
 - (g) whether the company will have power to acquire debentures issued under the trust deed before the date for their redemption and to re-issue the debentures;
 - (h) the dates on which interest on the debentures issued under the trust deed will be paid, and the manner in which payment will be made;
 - (i) the dates on which the principal of the debentures issued under the trust deed will be repaid, and, unless the whole principal is to be repaid to all the debenture holders at the same time, the manner in which redemption will be effected, whether by the payment of equal instalments of principal in respect of each debenture or by the selection of debentures for redemption by the company, or by drawing, ballot or otherwise;
 - (j) in the case of convertible debentures, the dates and terms on which the debentures can be converted into shares and the amounts that will be credited as paid upon those shares, and the dates and terms on which the debenture holders can exercise any right to subscribe for shares in right of the debentures held by them;
 - (k) the circumstances in which the debenture holders will be entitled to realise any

security interest vested in the trustee or any other person for their benefit, other than the circumstances in which they are entitled to do so by this Act;

- (l) the power of the company and the trustee to call meetings of the debenture holders, and the rights of debenture holders to require the company or the trustee to call meetings of the debenture holders;
- (m) whether the rights of debenture holders can be altered or abrogated, and, if so, the conditions that are to be fulfilled, and the procedures that are to be followed, to effect an alteration or an abrogation; and
- (n) the amount or rate of remuneration to be paid to the trustee and the period for which it will be paid, and whether it will be paid in priority to the principal, interest and costs in respect of debentures issued under the trust deed.

(2) If debentures are issued without a covering trust deed being executed, the statements required by subsection (1) shall be included in each debenture or in a note forming part of the same document, or endorsed thereon; and in applying that subsection, references therein to the trust deed are to be construed as references to all or any of the debentures of the same class.

(3) Subsection (2) does not apply if

- (a) the debenture is the only debenture of the class to which it belongs that has been or that can be issued, and

- (b) the rights of the debenture holder cannot be altered or abrogated without his consent.

(4) This section does not apply to a trust deed executed or to debentures issued before the commencement date.

286.—(1) Every debenture that is covered by a trust deed shall state either in the body of the debenture or in a note forming part of the same document or endorsed thereon

Contents of
debentures.

- (a) the matters required to be stated in a trust deed by paragraphs (a), (b), (f), (h), (i), (j), (l) and (m) of subsection (1) of section 285;
- (b) whether the trustee of the covering trust deed holds the security interest vested in him by the trust deed in trust for the debenture holders equally, or in trust for some only of the debenture holders, and, if so, which debenture holders; and
- (c) whether the debenture is secured by a general floating charge vested in the trustee of the covering trust deed or in the debenture holders.

(2) A debenture issued by a company shall state on its face in clearly legible print that it is unsecured if no security interest is vested in the holder of the debenture or in any other person for his benefit as security for payment of principal and interest.

(3) This section does not apply to debentures issued before the commencement date.

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liquidation.

287. (1) Debenture holders are entitled to realise any security interest vested in them or in any other person for their benefit, if

- (a) the company fails, within 1 month after it becomes due, to pay
 - (i) any installment of interest,
 - (ii) the whole or part of the principal, or
 - (iii) any premium,owing under the debentures or the trust deed covering the debentures;
- (b) the company fails to fulfil any of the obligations imposed on it by the debentures or the trust deed;
- (c) any circumstances occur that by the terms of the debentures or trust deed entitle the holders of the debentures to realise their security interest; or
- (d) the company goes into liquidation.

(2) Debenture holders whose debentures are secured by a general floating charge vested in themselves or the trustee of the covering trust deed or any other person are additionally entitled to realise their security interest, if

- (a) any creditor of the company issues a process of execution against any of its assets or commences proceedings for winding-up of the company by order of any court of competent jurisdiction;

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- (b) the company ceases to pay its debts at they fall due;
 - (c) the company ceases to carry on business;
 - (d) the company incurs, after the issue of debentures of the class concerned, losses or diminution in the value of its assets that in the aggregate amount to more than one-half of the total amount owing in respect of
 - (i) debentures of the class held by the debenture holders who seek to enforce their security interest, and
 - (ii) debentures whose holders rank before them for payment of principal or interest; or
 - (e) any circumstances occur that entitle debenture holders who rank for payment of principal or interest in priority to the debentures secured by the general floating charge to realise their security interest.

(3) At any time after a class of debenture holders become entitled to realise their security interest, a receiver of any assets subject to such security interest or in favour of the class of debenture holders or the trustee of the covering trust deed or any other person may be appointed

- (a) by the trustee;
- (b) by the holders of debentures in respect of which there is owing more than

half of the total amount owing in respect of all the debentures of the same class; or

- (c) by the court on the application of any trustee or debenture holder of the class concerned.

(4) A receiver appointed pursuant to subsection (3) has, subject to any order made by the court, power

- (a) to take possession of the assets that are subject to the security interest and to sell those assets, and
- (b) if the security interest extends to that property,
 - (i) to collect debts owed to the company,
 - (ii) to enforce claims vested in the company,
 - (iii) to compromise, settle and enter into arrangements in respect of claims by or against the company,
 - (iv) to carry on the company's business with a view to selling it on the most favourable terms,
 - (v) to grant or accept leases of land and licences in respect of patents, designs, copyright, or trade, service or collective marks, and

- (vi) to recover capital unpaid on the company's issued shares.

(5) The remedies given by this section are in addition to, and not in substitution for, any other powers and remedies conferred on the trustee under the trust deed or on the debenture holders by the debentures or the trust deed; and any power or remedy that is expressed in any instrument to be exercisable if the debenture holders become entitled to realise their security interest is exercisable on the occurrence of any of the events specified in subsection (1), or, in the case of a general floating charge, in subsections (1) and (2); but a manager of the business or of any of the assets of a company may not be appointed for the benefit of debenture holders unless a receiver has also been appointed and has not ceased to act.

(6) This section applies to debentures issued before as well as after the commencement date.

(7) No provision in any instrument is valid that purports to exclude or restrict the remedies given by this section.

Division C: Receivers and Receiver-Managers

288.—(1) A person may not be appointed a receiver or receiver-manager of any assets of a company, and may not act as such a receiver or receiver-manager, if the person

Disqualified
receivers.

- (a) is a body corporate,
- (b) is an undischarged bankrupt; or
- (c) is disqualified from being a trustee under a trust deed executed by the company, or would be so disqualified if a trust deed had been executed by the company.

(2) If a person who was appointed to be a receiver or receiver-manager becomes disqualified under sub-section (1) or under any provision contained in a debenture or trust deed, another person may be appointed in his place by the persons who are entitled to make the appointment, or by the court; but a receivership is not terminated or interrupted by the occurrence of the disqualification.

(3) This section applies to a person appointed to be a receiver or receiver-manager whether so appointed before or after the commencement date.

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289. A receiver of any property of a company may, subject to the rights of secured creditors, receive the income from the property, pay the liabilities connected with the property, and realise the security interest of those on behalf of whom he is appointed; but, except to the extent permitted by the court, he may not carry on the business of the company.

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nagers.

290. A receiver of a company may, if he is also appointed manager of the company, carry on any business of the company to protect the security interest of those on behalf of whom he is appointed.

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291. When a receiver-manager of a company is appointed by the court or under an instrument, the powers of the directors of the company that the receiver-manager is authorised to exercise may not be exercised by the directors until the receiver-manager is discharged.

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292. A receiver or receiver-manager of a company appointed by the court shall act in accordance with the directions of the court.

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rument.

293. A receiver or receiver-manager of a company appointed under an instrument shall act in accordance with

that instrument and any directions of the court given under section 295.

294. A receiver or receiver-manager of a company appointed under an instrument shall Duty of care.

- (a) act honestly and in good faith; and
- (b) deal with any property of the company in his possession or control in a commercially reasonable manner.

295. Upon an application by a receiver or receiver-manager of a company, whether appointed by the court or under an instrument, or upon an application by any interested person, the court may make any order it thinks fit, including, Directions by court.

- (a) an order appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;
- (b) an order determining the notice to be given by any person, or dispensing with notice to any person;
- (c) an order declaring the rights of persons before the court or otherwise, or directing any person to do, or abstain from doing, anything;
- (d) an order fixing the remuneration of the receiver or receiver-manager;

- (e) an order requiring the receiver or receiver-manager, or a person by or on behalf of whom he is appointed,
 - (i) to make good any default in connection with the receiver's or receiver-manager's custody or management of the property or business of the company,
 - (ii) to relieve any such person from any default on such terms as the court thinks fit, and
 - (iii) to confirm any act of the receiver or receiver-manager; and
- (f) an order giving directions on any matter relating to the duties of the receiver or receiver-manager.

ities of
eivers, etc.

296. A receiver or receiver-manager of a company shall

- (a) immediately give notice of his appointment to the Registrar, and of his discharge;
- (b) take into his custody and control the property of the company in accordance with the court order or instrument under which he is appointed;
- (c) open and maintain a bank account in his name as receiver or receiver-manager of the company for the moneys of the company coming under his control;

- (d) keep detailed accounts of all transactions carried out by him as receiver or receiver-manager;
- (e) keep accounts of his administration, which shall be available during usual business hours for inspection by the directors of the company.
- (f) prepare financial statements of his administration at such intervals and in such form as are prescribed;
- (g) upon completion of his duties, render a final account of his administration, in the form adopted for interim accounts under paragraph (f); and
- (h) file with the Registrar a copy of any financial statement mentioned in paragraph (f) and any final account mentioned in paragraph (g) within 15 days of the preparation of the financial statement or rendering of the final account, as the circumstances require.

297.—(1) A receiver of assets of a company appointed under subsection (3) of section 287 or under the powers contained in any instrument

Liability of receivers, etc.

- (a) is personally liable on any contract entered into by him in the performance of his functions, except to the extent that the contract otherwise provides, and
- (b) is entitled in respect of that liability to an indemnity out of the assets of which he was appointed to be receiver,

but nothing in this subsection limits any right to an indemnity that he would have, apart from this subsection, or limits his liability on contracts entered into without authority, or confers any right to indemnity in respect of that liability.

(2) When the purported appointment of a receiver out of court is invalid because the charge under which the appointment purported to be made is invalid, or because, in the circumstances of the case, the power of appointment under the charge was not exercisable or not wholly exercisable, the court may, on application being made to it,

- (a) wholly or to such extent as it thinks fit, exempt the receiver from personal liability in respect of anything done or omitted to be done by him that, if the appointment had been valid, would have been properly done or omitted to be done; and
- (b) order that the person by whom the purported appointment was made, be personally liable to the extent to which that relief has been granted.

(3) Subsection (1) applies to a receiver appointed before or after the commencement date, but does not apply to contracts entered into before that date.

notice of
receivership.

298. Where a receiver or a receiver-manager of any assets of a company has been appointed for the benefit of debenture holders, every invoice, order of goods or business letter issued by or on behalf of the company or the receiver, being a document on or in which the name of the company appears, shall contain a notice that a receiver or a receiver-manager has been appointed.

299. (1) Where a receiver is appointed on behalf of the holders of any debentures of a company that are secured by a floating charge or where possession is taken, by or on behalf of any debenture holders of a company, of any property of the company that is subject to a floating charge, then, if the company is not at the time in the course of being wound up, the debts that in every winding up are under Part IV and the regulations relating to preferential payments to be paid in order of priority to all other debts shall be paid in order of priority forthwith out of any assets coming into the hands of the receiver or person taking possession of that property, as the circumstances require, in priority to any claim for principal or interest in respect of the debentures of the company secured by the floating charge.

Floating charges
priorities.

(2) Any period of time mentioned in the provisions referred to in subsection (1) is to be reckoned, as the circumstances require, from the date of the appointment of the receiver in respect of the debenture holders secured by the floating charge or from the date possession is taken of any property that is subject to the floating charge.

(3) Payments made pursuant to this section may be recouped as far as can be out of the assets of the company that are available for the payment of general creditors.

300.—(1) Where a receiver of the whole, or substantially the whole, of the assets of a company, in this section and section 301 referred to as the "receiver", is appointed under subsection (3) of section 287, or under the powers contained in any trust deed, for the benefit of the holders of any debentures of the company secured by a general floating charge, then, subject to this section and section 301

Statement of
affairs.

(a) the receiver shall forthwith send notice to the company of his appointment;

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- (b) within 14 days after receipt of the notice by the company, or such longer period as may be allowed by the receiver, there shall be made out by the company and submitted to the receiver a statement in accordance with section 301 as to the affairs of the company;
- (c) the receiver shall, within two months after receipt of the statement, send
- (i) to the Registrar, and, if the receiver was appointed by the court, to the court, a copy of the statement and of any comments he sees fit to make thereon, and, in the case of the Registrar, also a summary of the statement and of his comments, if any, thereon;
 - (ii) to the company, a copy of those comments, or, if the receiver does not see fit to make any comments, a notice to that effect;
 - (iii) to the trustee of the trust deed, a copy of the statement and those comments, if any, and
 - (iv) to the holders of all debentures belonging to the same class as the debentures in respect of which he was appointed, a copy of that summary.

(2) The receiver shall,

- (a) within two months or such longer period as the court may allow, after the expiration of the period of 12

months from the date of his appointment, and after every subsequent period of 12 months, and

- (b) within 2 months or such longer period as the court may allow after he ceases to act as receiver of the assets of the company,

send to the Registrar, to the trustee of the trust deed, and to the holders of all debentures belonging to the same class as the debentures in respect of which the receiver was appointed, an abstract in a form approved by the Registrar.

(3) The abstract shall show

- (a) the receiver's receipts and payments during the period of 12 months, or, if the receiver ceases so to act, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing to act, and
- (b) the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.

(4) Subsection (1) does not apply in relation to the appointment of a receiver to act with an existing receiver, or in place of a receiver who dies or ceases to act, except that, where that subsection applies to a receiver who dies or ceases to act before the subsection has been fully complied with, the references in paragraphs (b) and (c) of that subsection to the receiver include, subject to sub-

section (5), references to his successor and to any continuing receiver.

(5) If the company is being wound up, this section and section 301 apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(6) Nothing in subsection (2) affects the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times that, he is required to do so apart from that subsection.

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301.—(1) The statement as to the affairs of a company required by section 300 to be submitted to the receiver or his successor shall show, as at the date of the receiver's appointment,

- (a) the particulars of the company's assets, debts and liabilities,
- (b) the names, addresses and occupations of the company's creditors,
- (c) the security interests held by the company's creditors respectively,
- (d) the dates when the security interests were respectively created, and
- (e) such further or other information as is prescribed.

(2) The statement of affairs of the company shall be submitted by, and be verified by, the signed declaration of at least one person who is, at the date of the receiver's appointment, a director, and by the secretary of the company at that date, or by such of the persons, hereafter

in this subsection mentioned, as the receiver or his successor, subject to the direction of the Registrar, may require to submit and verify the statement, namely: persons who

- (a) are or have been officers of the company;
- (b) have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;
- (c) are in the employment of the company, or have been in the employment of the company within that year, and, in the opinion of the receiver, are capable of giving the information required; or
- (d) are, or have been within that year officers of, or in the employment of, an affiliated company.

(3) Any person making or verifying the statement of affairs of a company, or any part of it, shall be allowed and paid by the receiver or his successor out of the receiver's receipts, such costs and expenses incurred in and about the making or verifying of the statement as the receiver or his successor considers reasonable, subject to an appeal to the court.

Division D: Prospectuses

302. In this Division,

Definitions.

- (a) "issue" includes circulate or distribute;

- (b) "notice" includes circular or advertisement;
- (c) "prospectus" includes, in relation to any company, any notice, prospectus, or other document that
 - (i) invites applications from the public, or invites offers from the public, to subscribe for or purchase, or
 - (ii) offers to the public for subscription or purchase, directly or through other persons,

any shares or debentures of the company or any units of any such shares or debentures of the company.

Application
Division.

303. This Division applies whether any shares or debentures of a company are offered to the public on, or with reference to, the promotion of a company, or at any time after the company has come into existence.

Prohibition
public issue.

304. (1) Subject to subsection (2), no person shall issue any form of application for shares or debentures unless

- (a) a prospectus, as required by this Division, has been registered with the Registrar, and
- (b) a copy of the prospectus is issued with the form of application or the form specifies a place in Grenada where a copy of the prospectus can be obtained.

(2) Subsection (1) does not apply if the form of application referred to is issued in connection with shares or debentures that are not offered to the public or intended for the public.

305. The following requirements apply to a prospectus: Contents of prospectus.

- (a) the prospectus shall be dated; and that date, unless there is proof to the contrary, is to be taken as the date of issue of the prospectus;
- (b) one copy of the prospectus shall be lodged with the Registrar, and the prospectus shall set out that a copy of the prospectus has been so lodged, and immediately state thereafter that the Registrar takes no responsibility as to the validity or veracity of its contents;
- (c) the prospectus shall contain a statement that no shares and debentures, or either, are to be allotted on the basis of the prospectus later than three months after the date of issue of the prospectus;
- (d) the prospectus shall, if it contains any statement by an expert made or contained in what purports to be a copy of or extract from a report, memorandum or valuation, of an expert, state the date on which the statement, report, memorandum or valuation was made, and whether or not it was prepared by the expert for incorporation in the prospectus;
- (e) the prospectus shall disclose any commission payable by virtue of section 50; and
- (f) the prospectus shall contain such other matters as are prescribed.

professional
times.

306. A prospectus shall not contain the name of any person as a trustee for holders of debentures or as an auditor, a banker, an attorney-at-law, or a stockbroker of the company or proposed company, or for or in relation to the issue or proposed issue of shares or debentures, unless that person has consented in writing, before the issue of the prospectus, to act in that capacity in relation to the prospectus and a copy of the consent, verified as prescribed in subsection (2) of section 506, has been lodged with the Registrar.

no waivers.

307. A condition is void that

- (a) purports to require or bind an applicant for shares or debentures of a company to waive compliance with any requirement of this Division; or
- (b) purports to affect the applicant with notice of any contract, document or matter not specifically referred to in the prospectus.

written notice
required.

308.—(1) Subject to this section, no person

- (a) shall issue any notice that offers, for subscription or purchase, shares or debentures of a company, or invites subscription for, or purchase of, any such shares or debentures;
- (b) shall issue any notice that calls attention to
 - (i) an offer, or intended offer, for subscription or purchase, of shares or debentures of a company;
 - (ii) an invitation, or intended invitation, to subscribe for, or purchase, any such shares or debentures; or

(iii) a prospectus.

(2) This section does not apply to

(a) a notice that relates to an offer or invitation not made or issued to the public, directly or indirectly;

(b) a registered prospectus within the meaning of this Division;

(c) a notice

(i) that calls attention to a registered prospectus,

(ii) that states that allotments of, or contracts with respect to, the shares or debentures will be made only on the basis of one of the forms of applications referred to in, and attached to, a copy of the prospectus; and

(iii) that contains no other information except that permitted pursuant to subsection (3); or

(d) a notice

(i) that accompanies a notice referred to in paragraph (c) or would, but for the inclusion therein of a statement referred to in subparagraph (iii) or (iv) of this paragraph, be a notice so referred to,

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- (ii) that is issued by a person whose ordinary business is or includes advising clients in connection with their investments and is issued only to clients so advised in the course of that business,
 - (iii) that contains a statement that the investment to which it or the accompanying document relates is recommended by that person, and
 - (iv) that, if the person is an underwriter or sub-underwriter of an issue of shares or debentures to which the notice or accompanying document relates, contains a statement that the person making the recommendation is interested in the success of the issue as an underwriter or sub-underwriter, as the case may be.

(3) All or any of the following information is permitted for the purposes of subparagraph (iii) of paragraph (c) of subsection (2):

- (a) the number and description of the shares or debentures of the company to which the prospectus relates;
- (b) the name of the company, the date of its incorporation and the number of the company's issued shares and the amount paid on its issued shares;

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- (c) the general nature of the company's main business, or its proposed main business;
 - (d) the names, addresses and occupations of the directors of the company;
 - (e) the names and addresses of the brokers or underwriters, if any, to the issue of shares or debentures, or both, and, if the prospectus relates to debentures, the name and address of the trustee for the debenture holders;
 - (f) the name of any stock or securities exchange of which the brokers or underwriters to the issue are members;
 - (g) the particulars of the period during which the offer is effective;
 - (h) the particulars of the time and place at which copies of the registered prospectus and form of application for the shares or debentures to which it relates can be obtained.

(4) This section applies to any notice issued in Grenada by newspaper, or by radio or television broadcasting, or by cinematograph or any other means.

309.—(1) Where a person issues a notice in contravention of section 308 and before doing so obtains a certificate that

Responsibility
re certificate.

- (a) is signed by two directors of the company or two directors of the proposed company to

which, or to the shares or debentures of which, the notice relates,

- (b) specifies the names of those directors and of that company or of those proposed directors of that proposed company, and
- (c) is to the effect that, by the operation of subsection (2) of section 308, this section does not apply to the notice,

each person who signed the certificate is deemed to have issued the notice, and the person who obtained the certificate is deemed not to have done so.

(2) A person who has obtained a certificate referred to in subsection (1) shall deliver the certificate to the Registrar on being required to do so by the Registrar.

vidence.

310. In proceedings for a contravention of section 308 or 309 a certificate that purports to be a certificate under section 309 is prima facie proof

- (a) that, at the time the certificate was given, the persons named as such in the certificate were directors of the company so named, or proposed directors of the proposed company so named, as the case may be;
- (b) that the signatures in the certificate purporting to be the signatures of those persons are their signatures; and
- (c) that publication of the notice to which the certificate relates was authorised by those persons.

311. (1) No person shall issue a prospectus unless a copy thereof has first been registered by the Registrar and the prospectus states on its face the fact of the registration and the date on which it was effected.

Registration of
prospectus.

(2) The Registrar may not register a copy of a prospectus unless

- (a) a copy of the prospectus is lodged with the Registrar on or before the date of its issue, and it is signed by every director and by every person who is named in the prospectus as a proposed director of the company, or by his agent authorised in writing;
- (b) the prospectus appears to comply with the requirements of this Act;
- (c) there are also lodged with the Registrar copies of any consents required by section 313 to the issue of the prospectus and of all material contracts referred to in the prospectus, or, in the case of any such contract that is not reduced to writing, a memorandum giving full particulars of the contract; and
- (d) the Registrar is of the opinion that the prospectus does not contain any statement or matter that is misleading in the form or context in which it is included.

(3) If the Registrar refuses to register a prospectus, he shall give notice of that fact to the person who lodged the prospectus, and give in the notice the reason for his refusal; and if the Registrar registers a prospectus he shall

give notice of that fact to the person who lodged the prospectus, and give in the notice the date on which the registration was effected.

(4) A person who lodged a prospectus with the Registrar may, within 30 days after he is notified of a refusal to register pursuant to subsection (3), require in writing that the Registrar refer the matter to the court; and the Registrar shall then refer the matter to the court for its determination.

(5) Where a refusal to register is referred to the court under subsection (4), the court, after hearing the person who lodged the prospectus, and, if the court so wishes, the Registrar, may order the Registrar to register the prospectus, or it may uphold his decision to refuse registration.

(6) On the hearing under subsection (5), a party may be heard in person or by an attorney-at-law.

prospectus
issued.

312.—(1) When a company allots or agrees to allot to any person shares or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, the document by which the offer of sale to the public is made is for all purposes deemed to be a prospectus issued by the company; and all enactments and rules of law as to the contents of prospectuses or otherwise relating to prospectuses, apply and have effect accordingly as if the shares or debentures had been offered to the public, and as if the persons accepting the offer in respect of the shares or debentures were subscribers for them, but without affecting the liability, if any, of the person by whom the offer is made, in respect of statements or non-disclosures in the document or otherwise.

(2) For the purposes of this Act, and unless the contrary is shown, it is proof that an allotment of, or an agreement to allot, shares or debentures of a company was made with a view to the shares or debentures being offered for sale to the public, if

- (a) the offer for sale of the shares or debentures, or of any of them, to the public was made within 6 months after the allotment or agreement to allot; or
- (b) at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) The requirements of this Division as to the prospectuses are to have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of a company.

(4) In addition to complying with the other requirements of this Division, the document making the offer shall set out

- (a) the net amount of the consideration received, or to be received, by the company in respect of the shares or debentures to which the offer relates; and
- (b) the place and time at which the contract under which the shares or debentures have been or are to be allotted can be inspected.

(5) Where an offer to which this section relates is made by a company or firm, it is sufficient if the document making the offer is signed on behalf of the company or firm by two directors of the company, or not less than half the members of the firm, as the case may be; and a director or member may sign by his agent authorised in writing to do so.

expert's
consent.

313.—(1) A prospectus that invites subscription for, or the purchase of shares or debentures of a company, and that includes a statement purporting to be made by an expert shall not be issued unless

- (a) that expert has given, and has not before delivery of a copy of the prospectus for registration withdrawn, his written consent to the inclusion of the statement in the form and context in which it is included in the prospectus; and
- (b) there appears in the prospectus a statement that the expert has given and has not withdrawn his consent.

(2) A person is not to be deemed to have authorised or caused the issue of a prospectus by reason only of his having given the consent required by this Division to the inclusion in the prospectus of a statement purporting to be made by him as an expert.

liability on
prospectus.

314.—(1) Subject to this section, each of the following designated persons is, for any loss or damage sustained by other persons who, on the faith of a prospectus, subscribe for, or purchase any shares or debentures, liable for any loss or damage sustained by those other persons by reason of any untrue statement in the prospectus, or by reason of

the wilful non-disclosure in the prospectus of any matter of which the designated person had knowledge and that he knew to be material, namely:

- (a) a person who is a director of the company at the time of the issue of the prospectus;
- (b) a person who authorised or caused himself to be named, and is named, in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;
- (c) an incorporator of the company; or
- (d) a person who authorised or caused the issue of the prospectus.

(2) Notwithstanding subsection (1), where the consent of an expert is required to the issue of a prospectus and he has given that consent, he is not, by reason only of the consent, liable as a person who has authorised or caused the issue of the prospectus, except in respect of an untrue statement purporting to be made by him as an expert; and the inclusion in the prospectus of a name of a person as a trustee for debenture holders, auditor, banker, attorney-at-law, transfer agent or stockbroker may not, for that reason alone, be taken as an authorisation by him of the issue of the prospectus.

(3) No person is liable under subsection (1)

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

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- (b) who, when the prospectus was issued without his knowledge or consent, gave reasonable public notice of that fact forthwith after he became aware of its issue;
 - (c) who, after the issue of the prospectus and before allotment or sale under it, became aware of an untrue statement in it and withdrew his consent, and gave reasonable public notice of the withdrawal of his consent and the reasons for it; or
 - (d) who, as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, had reasonable ground to believe and did, up to the time of the allotment or sale of the shares or debentures, believe that the statement was true.

(4) No person is liable under subsection (1),

- (a) if, as regards every untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert, it fairly represented the statement, or was a correct and fair copy of, or extract from, the report or valuation and that person had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the expert making the statement was competent to make it, and had given his consent as required under

section 313 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration, nor had the expert, to that person's knowledge, withdrawn that consent before allotment or sale under the prospectus; or

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

(5) Subsections (3) and (4) do not apply in the case of a person liable, by reason of his having given a consent required of him by section 313, as a person who has authorised or caused the issue of the prospectus in respect of an untrue statement purporting to have been made by him as an expert.

(6) A person who, apart from this subsection, would be liable under subsection (1), by reason of his having given a consent required of him by section 313 as a person who has authorised or caused the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert, is not liable,

- (a) if, having given his consent under that section to the issue of the prospectus, he withdrew his consent in writing before a copy of the prospectus was lodged with the Registrar;

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- (b) if, after a copy of the prospectus was lodged with the Registrar and before allotment or sale under the prospectus, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reasons for the withdrawal; or
 - (c) if he was competent to make the statement and had reasonable ground to believe, and did, up to the time of the allotment or sale of the shares or debentures, believe that the statement was true.

(7) When

- (a) a prospectus contains the name of a person as a director of the company, or as having agreed to become a director, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus and has not authorised or consented to its issue, or
- (b) the consent of a person is required under section 313 to the issue of a prospectus and he either has not given the consent or has withdrawn it before the issue of the prospectus,

any person who authorised or caused the issue of the prospectus and the directors of the company, other than those directors without whose knowledge or consent the prospectus was issued, are liable to indemnify the person so named, or whose consent was so required, against all

damages, costs and expenses to which he might be liable by reason of his name having been inserted in the prospectus, or of the inclusion of a statement purporting to be made by him as an expert, or in defending himself against any action or legal proceedings brought against him in respect thereof.

315.—(1) No allotment shall be made of any shares or debentures of a company in pursuance of a prospectus, and no proceedings shall be taken on applications made in pursuance of a prospectus, until the beginning of the fifth day after that on which the prospectus is first issued, or any such later time as is specified in the prospectus; and the beginning of that fifth day or specified later time is referred to in this section as the "time of the opening of the subscription lists".

Subscription
lists.

(2) An application for shares or debentures of a company made in pursuance of a prospectus is not revocable until after the expiration of the fifth day from the time of the opening of the subscription lists, or the giving before the expiration of that fifth day, by some person responsible under this Act for the prospectus, of a public notice having the effect of excluding or limiting the responsibility of the person giving it.

(3) Although an allotment made in contravention of this section is void, it does not affect any allotment of the same shares or debentures later made to the same applicant.

(4) In reckoning for the purposes of this section the fifth day from another day, any intervening day that is a public holiday shall be disregarded; and if the fifth day as so reckoned falls on a Saturday, Sunday, or public holiday, the first day thereafter that is not a Saturday, Sunday or public holiday is deemed to be the fifth day for those purposes.

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tion.

316.—(1) Unless all the shares or debentures offered for subscription by a prospectus issued to the public are underwritten, the prospectus shall state the minimum amount of money required to be raised by the company by issuing the shares or debentures, in this Division, referred to as the "minimum subscription".

(2) No allotment shall be made of any shares or debentures of a company that are offered to the public unless

- (a) the minimum subscription has been subscribed, and
- (b) the sum payable on application for the shares or debentures has been received by the company;

and, if a cheque for the sum payable has been received by the company, the sum is deemed not to have been received by the company until the cheque is paid by the bank on which it is drawn.

(3) If the conditions referred to in subsection (2) have not been complied with on the expiration of 40 days after the first issue of the prospectus, all moneys received from the applicants for any shares or debentures shall be forthwith repaid to them within 48 days after the issue of the prospectus, the directors of the company are, subject to subsection (4), jointly and severally liable to repay that money with interest at the rate of 6 percent per annum from the expiration of the forty-eighth day.

(4) A director is not liable to repay moneys under subsection (3) if the default in any repayment of moneys was not due to any default or negligence on his part.

(5) A condition is void that purports to require or bind any applicant for shares or debentures to waive compliance with a requirement of this section.

(6) This section does not apply to an allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

317. All application money and other moneys paid prior to an allotment by an applicant on account of shares or debentures offered to the public shall, until the allotment of the shares or debentures, be held by the company, or, in the case of an intended company, by the persons named in the prospectus as proposed directors and by the incorporators, upon trust for the applicant; but there is no obligation or duty on any bank or third person with whom any such moneys have been deposited to inquire into, or see to the proper application of those moneys so long as the bank or person acts in good faith.

Escrow of sub-
scription
money.

318.—(1) A shareholder or a debenture holder may bring, against a company that has allotted shares or debentures under a prospectus, an action for the rescission of all allotments and the repayment to the shareholders or debenture holders of the whole or part of the issue price that has been paid in respect of the shares or debentures, if

Rescission of
contract.

- (a) the prospectus contained a material statement, promise or forecast that was false, deceptive or misleading; or
- (b) the prospectus did not contain a statement, report or account required under this Act to be contained in it.

(2) In this section,

- (a) “debenture holder” means a holder of any of the debentures allotted under

the prospectus, whether the original allottee or a person deriving title under him;

- (b) "shareholder" means a holder of any of the shares allotted under the prospectus, whether the original allottee or a person deriving title under him.

(3) For the purposes of this section, a prospectus contains a material statement, promise or forecast if the statement, promise or forecast was made in such a manner or context, or in such circumstances, as to be likely to influence a reasonable man in deciding whether to invest in the shares or debentures offered for subscription; and a statement, report or account is omitted from a prospectus if it is omitted entirely, or if it does not contain all the information required by this Act to be given in the statement, report or account.

(4) In an action brought under this section, the plaintiff need not prove that he, or the person to whom the shares or debentures he holds were allotted, was in fact influenced by the statement, promise or forecast that he alleges to be false, deceptive or misleading, or by the omission of any report, statement, or account required to be contained in the prospectus.

(5) No action may be brought under this section more than 2 years after the first issue of the prospectus under which shares or debentures were allotted to the plaintiff or the person under whom the plaintiff derives title.

(6) If judgment is given in favour of a plaintiff under this section, the allotment of all shares or debentures under the same prospectus, whether allotted to the plaintiff,

or the person under whom he derives title, or to other persons, is void; and judgment shall be entered in favour of all such persons for the payment by the company to them severally of the amount paid in respect of the shares or debentures that they respectively hold; but if any shareholder or debenture holder at the date judgment is so entered signifies to the company in writing, whether before or after the entry of judgment, that he waives his right to rescind the allotment of shares or debentures that he holds, he is deemed not to be included among the persons in whose favour judgment is entered.

(7) The operation of this section is not affected by the company's being wound up or ceasing to pay its debts as they fall due; and in the winding up of the company a repayment due under subsection (6) shall be treated as a debt of the company payable immediately before the repayment of the shares or debentures of the class in question, that is to say:

- (a) in the case of a repayment in respect of shares, before repayment of the capital paid up on shares of the same class, and before any accumulated or unpaid dividends, or any premiums in respect of those shares, but after the payment of all debts of the company and the satisfaction of all claims in respect of prior ranking classes of shares; and
- (b) in the case of a repayment in respect of debentures, before the repayment of the principal of the debentures of the same class, and before any unpaid interest or any premiums in respect of those debentures, but after the payment of all debts or liabilities of

the company that this Act requires to be paid before those debentures, and after the satisfaction of all rights in respect of prior ranking classes of debentures.

(8) Subject to subsection (9), it is a defence to an action under this section for the company to prove that

- (a) the plaintiff was the allottee of the shares or debentures in right of which the action was brought and that at the time they were allotted to him he knew that the statement, promise or forecast of which he complains was false, deceptive or misleading, or that he knew of the omission from the prospectus of the matter of which he complains; or
- (b) the plaintiff has received a dividend or payment of interest, or has voted at a meeting of shareholders or debenture holders since he discovered that the statement, promise or forecast of which he complains was false, deceptive or misleading, or since he discovered the omission from the prospectus of the matter of which he complains.

(9) An action may not be dismissed if there are several plaintiffs, when the company proves that it has a defence under subsection (8) against each of them; and in any case in which the company proves that it has a defence against the plaintiff or all the plaintiffs, the court may, instead of dismissing the action, substitute some other shareholder or debenture holder of the same class as plaintiff.

(10) If a company would have a defence under subsection (8) but for the fact that the allottee of the shares or debentures in right of which the action is brought has transferred or renounced them, the company may bring an action against the allottee for an indemnity against any sum that the court orders it to pay to the plaintiff in the action.

(11) Subsections (8) and (10) apply also in the case of shares and debentures of the same class as those in right of which a plaintiff obtains and enters judgment against the company under subsection (6),

- (a) with the substitution in subsection (8) of references to the shareholder or debenture holder for references to the plaintiff, and
- (b) with the substitution in subsections (8) and (10) of references to a right for the company to have the judgment set aside in respect of the shares or debentures for references to a defence to the action.

(12) This section applies to shares and debentures allotted pursuant to an underwriting contract as if they had been allotted under the prospectus.

(13) This section applies to shares or debentures issued under a prospectus that offers them for subscription in consideration of the transfer or surrender of other shares or debentures, whether with or without the payment of cash by or to the company, as though the issue price of the shares or debentures offered for subscription were the fair value, as ascertained by the court, of the shares or debentures to be transferred or surrendered, plus the amount of cash, if any, to be paid by the company.

(14) The rights conferred on shareholders and debenture holders by this section are in substitution for all rights to rescission and restitution in equity and all rights to sue the company at common law for deceit or for false statements made negligently; and those common law and equitable rights are hereby abolished in connection with prospectuses, but without prejudice to claims for damages or compensation against persons other than the company.

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ment.

319.—(1) No allotment shall be made, on the basis of a prospectus, of any shares or debentures of a company that are offered to the public later than three months after the issue of the prospectus.

(2) Any allotment made in contravention of subsection (1) is void.

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320. A public company that does not issue a prospectus on, or with reference to, its formation may not allot any of its shares or debentures unless at least 3 days before the first allotment of either shares or debentures there has been lodged with the Registrar for registration a statement in lieu of prospectus that complies with the requirements of this Division.

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321.—(1) To comply with the requirements of this Division, a statement in lieu of prospectus lodged by or on behalf of a company

- (a) shall be signed by every person who is named therein as a director or a proposed director of the company, or by his agent authorised in writing,
- (b) shall disclose any commission payable by virtue of section 50, and
- (c) shall contain such matters as are prescribed.

(2) The Registrar may not accept for registration any statement in lieu of prospectus unless it appears to the Registrar to comply with the requirements of this Act.

(3) Subsections (3) to (6) of section 311 apply in relation to the registration of, or refusal to register, a statement in lieu of prospectus as they apply in relation to the registration of or refusal to register a prospectus.

Division E: Insider Trading

322. In this Division, "insider" means, in respect of a company,

"Insider" defined.

- (a) a director or officer of the company;
- (b) a company that purchases or otherwise acquires shares issued by it or any of its affiliates,
- (c) a person who beneficially owns more than 10 per cent of the shares of the company, or who exercises control or direction over more than 10 percent of the votes attached to shares of the company;
- (d) an associate or affiliate of a person mentioned in paragraphs (a) to (c); and
- (e) a person, whether or not he is employed by the company, who
 - (i) receives specific confidential information from a person described in this section, including a person described in this paragraph, and

- (ii) has knowledge that the person giving the information is a person described in this section, including a person described in this paragraph.

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ler.

323.—(1) For the purposes of this Division,

- (a) a director or officer of a body corporate that is an insider of a company is an insider of the company;
- (b) a director or officer of a body corporate that is a subsidiary is an insider of its holding company.

(2) For the purposes of this Division,

- (a) if a body corporate becomes an insider of a company, or enters into a business combination with a company, a director or officer of the body corporate is presumed to have been an insider of the company for the previous 12 months or for such shorter period as he was a director or an officer of the body corporate; and
- (b) if a company becomes an insider of a body corporate, or enters into a business combination with a body corporate, a director or officer of the body corporate is presumed to have been an insider of the company for the previous 12 months, or for such shorter period as he was a director or officer of the body corporate.

(3) In subsection (2), "business combination" means an acquisition of all or substantially all the property of one body corporate by another, or an amalgamation of 2 or more bodies corporate.

324. An insider who, in connection with a transaction in a share or debenture of the company or any of its affiliates, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially its value is guilty of an offence and

Liability of insider.

(a) is liable to compensate any person for any direct loss incurred by that person as a result of the transaction, unless the information was known or in the exercise of reasonable diligence should have been known, to that person at the time of the transaction, and

(b) is accountable to the company for any direct benefit or advantage received or receivable by the insider as a result of the transaction.

325. An action to enforce a right created by section 324 (a) or (b) may not be commenced except within 2 years after the discovery of the facts that gave rise to the cause of action.

Time limit on action.

PART III

OTHER REGISTERED COMPANIES

Division A: Companies Without Share Capital

326.—(1) This Division applies to every company without share capital, in this Act called a "non-profit company".

Application of Act.

(2) When a provision of this Division is inconsistent with, or repugnant to, any other provision of this Act, the provision of this Division in so far as it affects a non-profit company to which this Division applies, supersedes and prevails over the other provisions of this Act.

(3) For the avoidance of uncertainty, but subject to subsection (2), the following provisions of this Act apply, with such modifications as the circumstances of a non-profit company require, to such a company, namely:

- (a) the provisions of Divisions A, B, D, E, F, G, H, I, K, and L of Part 1, and sections 31, 44, 45, 46 and 56 in that Part;
- (b) the provisions of Divisions A, B and C of Part 11;
- (c) the provisions of Divisions B and C of this Part; and
- (d) the provisions of Part IV and V.

Member"
defined.

327. When used in relation to a non-profit company, "member" refers to a member of the non-profit company in accordance with the provisions of this Act and the articles and by-laws of the company.

corporation.

328.—(1) Without the prior approval of the Attorney General, no articles shall be accepted for filing in respect of any non-profit company.

(2) In order to qualify for approval, a non-profit company shall restrict its business to one that is of a patriotic, religious, philanthropic, charitable, educational,

scientific, literary, historical, artistic, social, professional, fraternal, sporting or athletic nature, or the like, or to the promotion of some other useful object.

(3) Notwithstanding subsection (1), the approval of the Attorney-General is not required for the continuation under this Act of a former — Act company that was registered by licence issued pursuant to the former Act.

329. The articles of a non-profit company shall be in the prescribed form, and, in addition, shall state

Form of articles.

- (a) the restrictions on the business that the company is to carry on;
- (b) that the company has no authorised share capital and is to be carried on without pecuniary gain to its members, and that any profits or other accretions to the company are to be used in furthering its business;
- (c) if the business of the company is of a social nature, the address in full of the clubhouse or similar building that the company is maintaining; and
- (d) that each first director becomes a member of the company upon its incorporation.

330.—(1) A non-profit company shall have no fewer than three directors.

Directors
ex officio.

(2) The articles or by-laws of a non-profit company may provide for individuals becoming directors by virtue of holding some office outside the company

incorporated
etc.

331.—(1) Notwithstanding section 10, the word “incorporated” or “corporation” or the abbreviation “inc” or “corp” shall be the last word of the name of each non-profit company; but a non-profit company may use and be legally designated by either the full or the abbreviated form.

(2) This section does not apply to a former-Act company without share capital that is continued under this Act; but this section applies to any such company that changes its name by amended articles.

is
ed.

332.—(1) Unless the articles or by-laws of a non-profit company otherwise provide, there is no limit on the number of members of the company.

(2) The articles or by-laws of a non-profit company may provide for more than one class of membership; but, if they do so, they shall set forth the designation of, and the terms and conditions attached to, each class of members.

sion to
membership.

333. Subject to the articles or by-laws of a non-profit company, persons may be admitted to membership in the company by resolution of the directors; but the articles or by-laws may provide

- (a) that the resolution is not effective until confirmed by the members in a general meeting; and
- (b) that members can be admitted by virtue of holding some office outside the company.

by
ers.

334.—(1) Subject to subsection (2), each member of each class of members of a non-profit company has one vote.

(2) The articles of a non-profit company may provide that each member of a specified class has more than one vote, or has no vote.

335.—(1) Unless the articles of the company otherwise provide, the interest of a member in a non-profit company is not transferable, and lapses and ceases to exist upon his death or when he ceases to be a member by resignation, or otherwise in accordance with the by-laws of the company. Transfer of members.

(2) Where the articles of a non-profit company provide that the interest of a member in the company is transferable, the by-law may not restrict the transfer of that interest.

336.—(1) The directors of a non-profit company may make by-laws, not being contrary to this Act or to the articles of the company, respecting By-laws.

- (a) the admission of persons and unincorporated associations as members and as *ex officio* members, and the qualifications of, and the conditions of membership;
- (b) the fees and dues of members;
- (c) the issue of membership cards and certificates;
- (d) the suspension and termination of membership by the company and by a member;
- (e) where the articles provide that the interest of a member is transferable, the method of transferring membership;

- (f) the qualifications of, and the remuneration of, the directors and the *ex officio* directors, if any;
- (g) the time for, and manner of, election of directors;
- (h) the appointment, remuneration, functions, duties and removal of agents, officers and employees of the company, and the security, if any, to be given by them to the company;
- (i) the time and place, and the notice to be given, for the holding of meetings of the members and of the board of directors, the quorum at meetings of members, the requirements as to proxies, and the procedure in all things at meetings of the members and at meetings of the board of directors; and
- (j) the conduct in all other particulars of the affairs of the company.

(2) The directors of a non-profit company may make by-laws respecting

- (a) the division of its members into groups, either territorially or on the basis of common interest;
- (b) the election of some or all of the directors
 - (i) by the groups on the basis of the number of members in each group,

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- (ii) for the groups in a defined geographical area, by the delegates of the groups meeting together, or
 - (iii) by the groups on the basis of common interest;
 - (c) the election of delegates and alternate delegates to represent each group on the basis of the number of members in each group;
 - (d) the number and qualifications of delegates and the method of their election;
 - (e) the holding of meetings of members or delegates;
 - (f) the powers and authority of delegates at meetings; and
 - (g) the holding of meetings of members or delegates territorially or on the basis of common interest.

(3) A by-law passed under paragraph (f) of subsection (2) may provide that a meeting of delegates for all purposes is a meeting of the members with all the powers of such a meeting.

(4) A by-law under subsection (2) is not effective until it is confirmed by at least two-thirds of the votes cast at a general meeting of the members duly called for that purpose.

(5) A delegate has only one vote and may not vote by proxy.

(6) A by-law passed under subsection (2) may not prohibit members from attending meetings of delegates and participating in the discussions at the meetings.

(7) No by-law made by a non-profit company may contradict the articles of that company.

dissolution and
distribution.

337.—(1) The articles of incorporation of a non-profit company may provide that, upon dissolution, the remaining property of the company is to be distributed among the members, or among the members of a class or classes of members, or to one designated organisation or more, or to any combination thereof.

(2) Where the articles of incorporation of a non-profit company do not provide for a distribution of its remaining property in accordance with subsection (1), the company shall by special resolution, after payment of all debts and liabilities distribute or dispose of the remaining property to any organisation in Grenada the business of which is charitable or beneficial to the community.

(3) Where the articles of incorporation do not contain a provision for the distribution of remaining property to the members, the articles may not be amended so to provide.

Division B: External Companies

external
companies
carrying on
business.

338. An external company carries on business within Grenada.

(a) if business of the company is regularly transacted from an office in Grenada established or used for the purpose;

- (b) if the company establishes or uses a share transfer or share registration office in Grenada.
- (c) if the company owns, possesses or uses assets situated in Grenada for the purpose of carrying on or pursuing its business, if it obtains or seeks to obtain from those assets, directly or indirectly, profit or gain whether realised in Grenada or not.

339. This Division does not apply to an external company that is exempted from this Division by an Order made by the Minister and published in the Gazette.

Exceptions.

340.—(1) No external company shall begin or carry on business in Grenada until it is registered under this Act.

Prohibition.

(2) Every external company that was carrying on business in Grenada immediately before the commencement date shall, within 12 months after that date apply to the Registrar for registration under this Act.

(3) An external company whose name appears on the register maintained by the Registrar pursuant to section 494 is presumed to be registered under this Act; and an external company whose name does not appear on that register is presumed not to be registered under this Act.

(4) Until the expiration of 12 months from the commencement date, subsection (1) does not apply to an external company that was carrying on business in Grenada on that date.

341.—(1) Subject to subsection (2) and to sections 515 and 516 an external company, upon payment of the

Registration required.

prescribed fee, is entitled to be registered under this Act for any lawful business.

(2) An application for registration under this Act by an external company may be referred by the Registrar to the Minister, who may order the Registrar to refuse registration.

ctions
ivities.

342.—(1) In the prescribed circumstances, the Registrar may restrict the powers or activities that an external company can exercise or carry on in Grenada.

(2) When any powers or activities of an external company are restricted under subsection (1), the company shall not exercise those powers or carry on those activities in Grenada.

(3) Where any powers or activities of an external company are to be restricted pursuant to subsection (1),

(a) the Registrar shall notify the company of what he intends to do;

(b) the company may appeal to the Minister within 30 days from the date on which the notification from the Registrar was received by the company; and

(c) the Minister may confirm, vary or overrule the decision of the Registrar.

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gamated
any.

343. An external company that has been continued from the amalgamation of two or more external companies shall comply with section 346 as though it were a new registration of an external company, irrespective of the fact that one or more of the external companies that were continued by the amalgamated company had been registered

under this Act at the date of the amalgamation or thereafter.

344.—(1) In order to register under this Act, an external company shall file with the Registrar a statement in the prescribed form setting out:

Registering
external
companies.

- (a) the name of the company;
- (b) the jurisdiction within which the company was incorporated;
- (c) the date of its incorporation;
- (d) the manner in which it was incorporated;
- (e) the particulars of its corporate instruments;
- (f) the period, if any, fixed by its corporate instruments for the duration of the company;
- (g) the extent, if any, to which the liability of the shareholders or members of the company is limited;
- (h) the business that the company will carry on in Grenada;
- (i) the date on which the company intends to commence any of its business in Grenada;
- (j) the authorised, subscribed and paid-up or stated capital of the company, and the shares that the company is authorised to issue and their nominal or par value, if any;
- (k) the full address of the registered or head office of the company outside Grenada;

- (l) the full address of the principal office of the company in Grenada; and
- (m) the full names, addresses and occupations of the directors of the company.

(2) The statement under subsection (1) shall be accompanied by

- (a) a statutory declaration by a director of the company that verifies on behalf of the company the particulars set out in the statement;
- (b) a copy of the corporate instruments of the company;
- (c) a statutory declaration by an attorney-at-law that this section has been complied with;
- (d) the prescribed fees; and
- (e) a power of attorney in accordance with section 346.

(3) The Registrar may accept the declaration referred to in paragraph (c) of subsection (2) as sufficient evidence of compliance with the requirements of this section.

345. When a document that is required to be filed under section 344 is not in the English language, a notarily certified translation of that document shall be provided unless the Registrar otherwise directs.

346.—(1) An external company shall file with the Registrar a fully executed power of attorney in the prescribed form that will empower some person named in the power and resident in Grenada to act as the attorney of the company for the purpose of receiving service of process in all suits and proceedings by or against the company in Grenada and of receiving all lawful notices.

Attorney of company.

(2) A power of attorney under subsection (1) shall declare that service of process in respect of suits and proceedings by or against the company and of lawful notices on the attorney will be binding on the company for all purposes.

(3) An external company may, by another power of attorney executed and deposited in accordance with this section,

- (a) appoint another attorney in Grenada for the purposes set forth in the power, and
- (b) replace the attorney previously appointed pursuant to this section.

347. If an attorney named in a power of attorney executed by an external company under section 346 ceases to reside in Grenada or if the power of attorney becomes invalid or ineffectual for any other reason, the company shall file another power of attorney pursuant to section 346.

Failure of power.

348.—(1) Service of process and notices on an attorney for an external company appointed under a power of attorney registered under section 346 is legal and binding service on the company.

Capacity of attorney.

(2) When an attorney for an external company appointed under a power registered under section 346 signs

a deed on behalf of the company, the deed is binding on the company in Grenada if the company has empowered the attorney to execute deeds and he executes it with the attorney's own seal.

(3) A deed that is binding under subsection (2) on an external company has the same effect as if it were under the seal of the external company.

ificate of
stration.

349.—(1) When the Registrar has, in respect of an external company, received the statements and other documents required under this Act together with the prescribed fees, the Registrar shall issue a certificate showing that the company has been registered as an external company under this Act but subject to his discretionary powers under this Division.

(2) A certificate of registration issued under this section to an external company is conclusive proof of the registration of the company on the date shown in the certificate and of any other facts that the certificate purports to certify.

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ration.

350. Subject to this Division and any other laws of Grenada an external company that is registered under this Act may carry on its business in Grenada in accordance with its certificate of registration and may exercise its corporate powers within Grenada.

nsion of
ration.

351.—(1) Subject to such regulations as the Minister may make in that behalf, the Minister may suspend or revoke the registration of any external company for failing to comply with any requirements of this Division, or for any other prescribed cause; and the Minister may, subject to those regulations, remove a suspension or cancel a revocation.

(2) The rights of the creditors of an external company are not affected by the suspension or revocation of its registration under this Act.

352.—(1) When an external company ceases to carry on its business in Grenada, the company shall file a notice to that effect with the Registrar, who shall thereupon cancel the registration of the company under this Act.

Cancelling
registration.

(2) If an external company ceases to exist and the Registrar is made aware of that circumstance by evidence satisfactory to him, the Registrar may cancel the registration of the company under this Act.

353.—(1) Where the registration of an external company has been cancelled under section 352, the Registrar may revive the registration of the external company under this Act if the company files with him such documents as he may require and pays the prescribed fee.

Revival of
Registration

(2) A registration of an external company is revived when the Registrar issues a new certificate of registration to the company.

354. Registration or revival of registration under this Act of an external company retroactively authorises all previous acts of the company as though the company had been registered at the time of those acts, except for the purposes of a prosecution for any offence under this Division.

Previous
activities.

355.—(1) Where, in the case of an external company registered under this Act,

Fundamental
changes.

- (a) the name of the company has been changed;
- (b) the corporate instruments of the company have been altered to reflect a fundamental

change within the meaning of Division K of Part 1;

- (c) the objects of the company have been altered or its business has been restricted; or
- (d) any change is made among its directors, the company shall, within 30 days after the change has been made, file with the Registrar duly certified copies of the instruments by which the change has been made or ordered to be made.

(2) Upon receipt of the duly certified copies referred to in subsection (1) and the prescribed fee, the Registrar shall enter the change of name in the register, and, with the approval of the Minister, enter a record of such other changes in the register as he considers to be in the public interest.

(3) The registration of an external company under this Act ceases to be valid 60 days after a change described in subsection (1) is made or ordered unless within that period the change is filed with the Registrar pursuant to subsection (1).

(4) Upon the registration under this section of a change in respect of an external company, the Registrar shall issue to the company a certificate of the change under his hand in a form adapted to the circumstances.

(5) A certificate issued under subsection (4) is admissible in evidence as conclusive proof of the change therein set out.

irms.

356.—(1) An external company shall, not later than the first day of April in each year after the date of its registration, send to the Registrar an annual return in the

prescribed form containing the prescribed information made up to the preceding thirty-first day of December and accompanied with such documents as may be prescribed and the prescribed fees.

(2) A director or officer of the external company shall certify the contents of any return made under this section.

(3) The Registrar may strike off the register an external company that neglects or refuses to file a return required under this section.

357.—(1) An external company that is not registered under this Act may not maintain any action, suit or other proceeding in any court in Grenada in respect of any contract made in whole or in part within Grenada in the course of, or in connection with, the carrying on of any business by the company in Grenada.

Incapacity of company.

(2) Notwithstanding subsection (1), when an external company described in that subsection becomes registered under this Act or had its registration restored, as the case may be, the company may then maintain an action, suit or other proceeding in respect of the contract described in subsection (1) as though the company had never been disabled under that subsection, whether or not the contract was made or proceeding instituted by the company before the date the company was registered or had its registration restored.

(3) In the case of an external company whose registration has been restored, subsection (2) is subject to the terms of any conditions imposed upon the company, or to the terms of any order of the court in respect of the restoration of the company's registration.

(4) Where an assignment of a debt or any chose in action is made by an external company described in subsection (1) to an individual or to a body corporate having the capacity to maintain any action, suit or other proceeding in a court in Grenada.

(a) that individual or body corporate, or

(b) any person claiming under the individual or body corporate,

may not maintain, in any court in Grenada any action, suit or other proceeding that is based on the subject of the assignment unless the external company is registered under this Act during the time the action, suit or other proceeding is being proceeded with.

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(5) Subsection (4) does not apply in respect of an external company that is a judgment creditor applying to have a judgment registered in the Supreme Court under the Foreign Judgments (Reciprocal Enforcement) Act.

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358. Where an action, suit or proceeding has been dismissed or otherwise decided against an external company on the ground that an act or transaction of the company was invalid or prohibited by reason of the company's not being registered under this Act, the company may, when it becomes registered under this Act, and upon such terms as to costs as the court may order, maintain a new action, suit or other proceeding as if no judgment had been given or entered therein.

sions.

359. The provisions of sections 18 to 23, 515 and 516 and the provisions of Divisions B to E of Part II and Division B of Part V apply *mutatis mutandis* to external companies.

Division C: Former-Act Companies

360.—(1) Upon the commencement date,

Former-Act
company.

- (a) all corporate instruments of a former-Act company, and
- (b) all cancellations, suspensions, proceedings, acts, registrations and things,

lawfully done under any provision of the former Act are presumed to have been lawfully done under this Act, and continue in effect under this Act as though they had been lawfully done under this Act.

(2) For the purposes of this section, "lawfully done" means to have been lawfully granted, issued, imposed, taken, done, commenced, filed, or passed, as the circumstances require.

361.—(1) Notwithstanding any other provision of this Act, but subject to subsection (3), if any provision of a corporate instrument of a former-Act company lawfully in force immediately before the commencement date is inconsistent with, repugnant to, or not in compliance with; this Act, that provision is not illegal or invalid only by reason of that inconsistency, repugnancy or non-compliance.

Effect of
corporate
instrument.

(2) Any act, matter or proceeding or thing done or taken by the former-Act company or any director, shareholder, member or officer of the company under a provision mentioned in subsection (1) is not illegal or invalid by reason only of the inconsistency, repugnancy or non-compliance mentioned in that subsection, or by reason of being prohibited or not authorised by the law as it is after the commencement date.

(3) Section 97 applies to a former-Act company immediately upon the commencement date.

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pany.

362.—(1) Every former-Act company shall, within 2 years after the commencement date, apply to the Registrar for a certificate of continuance under this Act.

(2) No fee in excess of \$50 to defray administration costs may be prescribed in respect of an application and certificate of continuance under this Division.

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nent.

363. Within the period referred to in section 362, any amendments to, or replacement of, the corporate instruments of a former-Act company shall be made as nearly as possible in accordance with this Act.

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uance.

364.—(1) Articles of continuance may, without so stating in the articles, effect any amendment to the corporate instruments of a former-Act company if the amendment is an amendment that a company incorporated under this Act can make in its articles.

(2) Articles of continuance in the prescribed form shall be sent to the Registrar together with the documents required by sections 69 and 176.

(3) A shareholder or member may not dissent

under section 226 in respect of an amendment made under subsection (1).

icate of
uance.

365.—(1) Upon receipt of an application under this Part, the Registrar may, and, if the applicant complies with all reasonable requirements of the Registrar to have the continued company accord with the requirements of this Act, the Registrar shall issue a certificate of continuance to the former-Act company, in accordance with section 503.

(2) On the date shown in the certificate of continuance

- (a) the former-Act company becomes a company to which this Act applies as if it had been incorporated under this Act;
- (b) the articles of continuance are the articles of incorporation of the continued company; and
- (c) except for the purposes of subsection (1) of section 65, the certificate of continuance is the certificate of incorporation of the continued company.

366.—(1) When a former-Act company is continued as a company under this Act

Preservation of company.

- (a) the property of the former-Act company continues to be the property of the company;
- (b) the company continues to be liable for the obligations of the former-Act company;
- (c) an existing cause of action, claim or liability to prosecute is unaffected;
- (d) a civil, criminal or administrative action or proceeding pending by or against the former-Act company may be continued by or against the company; and
- (e) a conviction against, or ruling, order or judgment in favour of or against, the

former-Act company may be enforced by or against the company.

(2) When the Registrar determines, on the application of a former-Act company, that it is not practicable to change a reference to the nominal or par value of shares of a class or series that the former-Act company was authorised to issue before it was continued as a company under this Act, the Registrar may, notwithstanding section 26, permit the company to continue to refer in its articles to those shares, whether issued or non-issued as shares having a nominal or par value.

(3) A company shall set out in its articles the maximum number of shares of a class or series referred to in subsection (2); and it may not amend its articles to increase that maximum number of shares or to change the nominal or par value of the shares.

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es.

367.—(1) A share of a former-Act company issued before the company was continued under this Act is presumed to have been issued in compliance with this Act and with the provisions of the articles of continuance, irrespective of whether the share is fully paid, and irrespective of any designation, rights, privileges, restrictions or conditions attached to the share, or set out on, or referred to in, the certificate representing the share; and continuance under this Act does not deprive a shareholder of any right or privilege that he claims under an issued share of the company, nor does it relieve him of any liability in respect of an issued share of the company.

(2) For the purposes of this section, "share" includes an instrument issued pursuant to subsection (1) of section 35.

368.—(1) Subject to this section, a former Act company that does not apply to the Registrar for a certificate of continuance within the time limited therefor by section 362 shall, on the expiration of the time so limited, be deemed to be continued under this Act and the model by-law set out in the Regulations shall apply.

Continuance not applied for within prescribed time.

(2) The court may, on the application of a company deemed to be continued pursuant to subsection (1) or of the Registrar, make such order as it thinks fit for the purpose of securing the company's full compliance with this Act or otherwise in respect of its continuance under this Act.

(3) Where a company makes an application under this section it shall give the Registrar notice thereof, and where the Registrar is the applicant under this section he shall give the company notice thereof and on any application the company and the Registrar are entitled to appear and be heard in person or by an attorney-at-law.

(4) The cost of an application under this section shall, unless the court otherwise orders, be paid by the company.

369.—(1) A reference in any corporate instrument of any body corporate to the former Act or any procedure under the former Act is, in relation to any former-Act company continued under this Act, to be construed as a reference to the provisions of this Act or procedure thereunder that is the equivalent provision or procedure under this Act.

Effect of earlier references.

(2) Without affecting the operation of the Interpretation and General Provisions Act 1989, when there is no equivalent provision in this Act to the provision or procedure in or under the former Act referred to in the corporate instrument of a body corporate, the provision or proceeding of the former Act is to be applied, and stands

30/1989 as amended.

unrepealed to the extent necessary to give effect to that reference in the corporate instrument.

PART IV

WINDING UP

Division A: Preliminary

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ing up.

370.—(1) The winding up of a company may be either

- (a) by the court; or
- (b) voluntary.

(2) The provisions of this Act with respect to winding up apply, unless the contrary intention appears, to the winding up of a company in either of those modes.

ility of
bers.

371.—(1) Subject to this section, in the event of a company being wound up every present or past member is liable to contribute to the assets of the company to an amount sufficient for payment of its debts and expenses of the winding up, and the adjustment of the rights of the members and past members among themselves.

(2) Subsection (1) is subject to the following limitations, namely—

- (a) a past member is not liable to contribute if he has ceased to be a member for a period of one year or upwards before the commencement of the winding up;
- (b) a past member is not liable to contribute unless it appears to the court that the existing members are

unable to satisfy the contributions required to be made by them in pursuance of this section;

- (c) no contribution is required from any member or past member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member, or, as the case may be, the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
- (d) any sum due from the company to a member or past member, in his character of member, by way of dividend or otherwise, shall not be set-off against the amounts for which he is liable to contribute in accordance with this section, but any such sum shall be taken into account for the purposes of final adjustment of the rights of the members and past members amongst themselves.

(3) "Member" in relation to a company means an incorporator of the company and any other person who agrees to become a member of the company and whose name is entered in the company's register of members; and for the purposes of subsections (1) and (2) "past member" includes the estate of a deceased member and, where any person dies after becoming liable as a member or past member, the liability is enforceable against his estate.

(4) Except as provided in subsections (1) to (3), a member or past member of a company is not liable as such for any of the debts or liabilities of the company.

(5) In the event of a company being wound up any part of the issue price of a share remaining to be paid shall, with effect from the commencement of the winding up, be treated as an amount unpaid on the share whether or not the due date for the payment has occurred.

g. 372. Nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract.

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ibutory. 373. The term "contributory" means every person liable to contribute to the assets of a company in the event of it being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

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ibutory. 374. The liability of a contributory creates a debt in the nature of a specialty accruing due from the contributory at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

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ver. 375.—(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives are liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment thereof of the money due.

376. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories-

Contributories
in case of
bankruptcy of
members.

- (a) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and
- (b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

Division B: Winding Up by the Court

377. A company may be wound up by the Court if-

Circumstances
in which
company may
be wound
up by court.

- (a) the company has by special resolution resolved that the company be wound up by the Court;
- (b) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- (c) the company is unable to pay its debts;
- (d) an inspector appointed under Division B of Part V has reported that he is of the opinion-
 - (i) that the company cannot pay its debts and should be wound up; or

(ii) that it is in the interests of the public or of the shareholders or of the creditors that the company should be wound up; or

(e) the Court is of the opinion that it is just and equitable that the company should be wound up.

Definition of
liability
to pay debts.

378.—(1) A company is deemed to be unable to pay its debts if—

- (a) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five thousand dollars then due, has served on the company, by leaving it at the registered office of the company, a demand under his hand or under the hand of his agent lawfully authorised requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;
- (b) execution or other process issued on a judgment decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) it is proved to the satisfaction of the court that the company is unable to pay its debts as they become due.

(2) A company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

(3) The money sum for the time being specified in subsection (1) (a) is subject to increase or reduction by regulation under section 527.

379.—(1) An application to the court for the winding up of a company shall be by petition presented, subject to the provisions of the section, either by

Petition for winding up.

- (a) the company;
- (b) a creditor, including a contingent or prospective creditor, of the company;
- (c) a contributory; or
- (d) the trustee in bankruptcy to, or personal representative of, a creditor or contributory;

or any two or more of those parties.

(2) Notwithstanding anything in subsection (1) -

- (a) a contributory is not entitled to present a winding-up petition unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and
- (b) the court shall not hear a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court

thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the court.

(3) Where a company is being wound up voluntarily, a winding-up petition may be presented by the Official Receiver as well as by any other person authorised in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

(4) A contributory is entitled to present a winding-up petition notwithstanding that there may not be assets available on the winding up for distribution to contributories.

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380.—(1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it is of the opinion—

- (a) that the petitioners are entitled to relief either by winding up the company or by some other means; and

- (b) that in the absence of any other remedy it would be just and equitable that the company should be wound up,

shall make a winding-up order, unless it is also of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

381. At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may, where any action or proceeding is pending against the company, apply to the court to stay or restrain further proceedings, and the court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

Power to stay or restrain proceedings against company.

382. In a winding up by the court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding-up, is, unless the court otherwise orders, void.

Avoidance of dispositions of property, etc. after commencement of winding up.

383. Where any company is being wound up by the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up is void.

Avoidance of attachments, etc.

384.—(1) Where before the presentation of a petition for the winding up of a company by the court a resolution has been passed by the company for voluntary winding up, the winding up of the company is deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up are deemed to have been validly taken.

Commencement of winding up by the court.

(2) In any other case, the winding up of a company by the court is deemed to commence at the time of the presentation of the petition for winding up.

Copy of order
to be forwarded
to Registrar.

385.—(1) On the making of a winding up order, a copy of the order shall forthwith be lodged by the company, or otherwise as may be prescribed, with the Registrar, who shall make an entry thereof in his records relating to the company.

(2) If default is made in lodging a copy of a winding-up order with the Registrar as required by subsection (1), every officer of the company or other person who knowingly authorises or permits the default is guilty of an offence.

Actions stayed
in winding-up
order.

386. When a winding-up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

Effect of
winding up
order.

387. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company, as if made on the joint petition of a creditor and of a contributory.

Meaning of
Official
Receiver.

388. For the purpose of this Act, "Official Receiver" means the Official Receiver attached to the court for bankruptcy purposes, and includes any Assistant Official Receiver.

Statement of
company's
affairs.

389.—(1) Where the court has made a winding-up order or appointed a provisional liquidator, there shall, unless the court otherwise orders, be made out and submitted to the Official Receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities,

the names, residences, and occupation of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the Official Receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary of the company, or by such of the persons hereinafter in this subsection mentioned as the Official Receiver, subject to the direction of the court, may require to submit and verify the statement, that is to say, persons—

- (a) who are or have been officers, other than employees, of the company;
- (b) who have taken part in the formation of the company at any time within one year before the relevant date;
- (c) who are in the employment of the company, or have been in the employment of the company within that year, and are in the opinion of the Official Receiver capable of giving the information required; and
- (d) who are or have been within that year officers of or in the employment of a company, which is, or within that year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the relevant date, or within such extended time as the Official Receiver or the court may for special reasons allow.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the Official Receiver or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Official Receiver considers reasonable, subject to an appeal to the court.

(5) Any person who, without reasonable excuse, makes default in complying with the requirements of this section is guilty of an offence.

(6) Any person stating himself in writing to be a creditor or contributory of the company is entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory is guilty of a contempt of court and shall, on the application of the liquidator or of the Official Receiver, be punishable accordingly.

(8) In this section, "the relevant date" means in a case where a provisional liquidator is appointed, the date of his appointment and, in a case where no such appointment is made, the date of the winding-up order.

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390.—(1) In a case where a winding-up order is made the Official Receiver shall, as soon as practicable after receipt of the statement to be submitted under section 389, or, in a case where the court orders that no statement shall

be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court-

- (a) as to the amount of capital issued, and subscribed, and the estimated amount of assets and liabilities;
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company, or the conduct of the business thereof.

(2) The Official Receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

391. For the purposes of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

Power of Court to appoint liquidators.

392.—(1) Subject to the provisions of this section, the court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition, and either the Official Receiver or any other fit person may be appointed.

Appointment and powers of provisional liquidator.

(2) Where a liquidator is previously appointed by the court, the court may limit and restrict his powers by the order appointing him.

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393. Subject to subsection (2) of section 392 the following provisions with respect to liquidators have effect on a winding-up order being made, namely-

- (a) the Official Receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;
- (b) the Official Receiver shall summon separate meetings of the creditors and contributories of the company for the purposes of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the Official Receiver;
- (c) the court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any such matter, the court shall decide the difference and make such order thereon as the court may think fit;
- (d) in a case where a liquidator is not appointed by the court, the Official Receiver shall be the liquidator of the company;
- (e) the Official Receiver shall by virtue of his office be the liquidator during any vacancy; and
- (f) a liquidator shall be described, where a person other than the Official Receiver is liquidator, by the style of "the liquidator"

and, where the Official Receiver is liquidator, by the style of "the Official Receiver and liquidator", of the particular company in respect of which he is appointed, and not by his individual name.

394.—(1) Where in the winding-up of a company by the court a person other than the Official Receiver is appointed liquidator, that person-

Provisions where person other than Official Receiver is appointed liquidator.

- (a) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in such manner as the court may direct; and
- (b) shall give the Official Receiver such information and such access to and facilities for inspecting the books and documents of the company and generally such aid as may be requisite for enabling the Official Receiver to perform his duties under this Act.

(2) If a liquidator contravenes paragraph (b) of subsection (1) he is guilty of an offence.

395.—(1) A liquidator appointed by the court may resign or, on cause shown be removed by the court.

General provisions as to liquidators.

(2) Where a person other than the Official Receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct and, if more persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) Subject to this Act, the acts of a liquidator are valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Custody of
company's
property.

396. Where a winding-up order has been made or a provisional liquidator has been appointed, the liquidator, or the provisional liquidator, as the case may be, shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.

Vesting of
property of
company in
liquidator.

397. Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its assets.

Powers of
liquidator.

398.—(1) The liquidator in a winding up by the court may with the sanction either of the court or of the committee of inspection—

- (a) bring or defend any action or other legal proceeding in the name and on behalf of the company;

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- (b) carry on the business of the company, so far as may be necessary, for the beneficial winding up thereof;
 - (c) appoint an attorney-at-law or other agent to assist him in the performance of his duties;
 - (d) pay any classes of creditors in full if the assets of the company remaining in his hands will suffice to pay in full the debts and liabilities of the company which rank for payment before, or equally with, the debts or claims of the first mentioned creditors;
 - (e) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
 - (f) compromise any calls and liabilities to calls, debts and liabilities capable or resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as are agreed, and take any security

for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) The liquidator in a winding up by the court may

- (a) sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or to sell the same in parcels;
- (b) do all acts and execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;
- (c) prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his estate, and receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;
- (d) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on

behalf of the company in the course of its business;

- (e) raise on the security of the assets of the company any money requisite;
- (f) take out in his official name letters of administration to any deceased contributory, and do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due is, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, deemed to be due to the liquidator himself.
- (g) appoint an agent to do any business which the liquidator is unable to do himself; and
- (h) do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

399.—(1) Subject to this Part, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any

Exercise and control of liquidator's powers.

directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions so given by the creditors or contributories shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and he shall summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, direct, or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories.

(3) The liquidator may apply to the court in the prescribed manner for directions in relation to any particular matter arising under the winding up.

(4) Subject to this Part, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order as it thinks fit.

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400.—(1) Every liquidator of a company which is being wound up by the court shall keep, in the prescribed manner, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books and make copies thereof or extracts therefrom.

(2) If a liquidator fails to keep proper books as required by subsection (1) or refuses to allow any inspection permitted thereby, he is guilty of an offence.

401.—(1) Every liquidator of a company which is being wound up by the court shall pay the money received by him into such bank as the court may direct.

Payments of liquidator into bank.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding two hundred dollars, or such other amount as the court in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the court, he shall pay interest on the amount so retained in excess at the rate of twenty per centum per annum and shall be liable to disallowance of all or such part of his remuneration as the court may think just, and to be removed from his office by the court, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the court shall not pay any sums received by him as liquidator into his private banking account.

(4) A liquidator who contravenes the provisions of subsection (3) is guilty of an offence.

402.—(1) Every liquidator of a company which is being wound up by the court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Registrar an account of his receipts and payments as liquidator.

Audit of liquidator's accounts.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by an affidavit or a statutory declaration in the prescribed form.

(3) The Registrar shall cause the account to be audited by an auditor eligible for appointment as auditor of a company under section 158 and for the purpose of the audit the liquidator shall furnish the auditor with such vouchers and information as the auditor may require, and the auditor may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Registrar and the other copy shall be delivered to the court for filing, and each copy shall be open to the inspection of any creditor or any person interested.

(5) If a liquidator fails to comply with any of the duties imposed on him by this section he is guilty of an offence.

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liquidators.

403.—(1) The Registrar shall take cognizance of the conduct of liquidators of companies which are being wound up by the court, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Registrar by any creditor or contributory in regard thereto, the Registrar shall inquire into the matter, and take such action thereon as he may think expedient.

(2) The Registrar may at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding up in which he is engaged and may, if the Registrar thinks fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The Registrar may also direct an investigation to be made of the books and vouchers of the liquidator.

404.—(1) When the liquidator of a company which is being wound up by the court has realised all the assets of the company, or so much thereof as can, in his opinion be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Registrar shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Registrar, shall take into consideration the report, and any objection which may be urged by any creditor or contributory or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the court.

Release of liquidator.

(2) Where the release of a liquidator is withheld, the court may, on application of any creditor or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Registrar releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

405.—(1) When a winding-up order has been made by the court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator other than the Official Receiver, to determine further whether or not an

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

application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2) The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determination of the meetings of the creditors and contributories the court shall decide the difference and make such order as the court thinks fit.

406.—(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as is agreed on by the meetings of the creditors and contributories, or as, in the case of a difference, may be determined by the court.

(2) The committee shall meet at such time as they from time to time appoint, and, failing such appointment, at least once a month and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee is present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with

himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy; but if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled he may apply to the court and the court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

407. Where in the case of a winding up there is no committee of inspection, the court may on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

Powers of court where no committee of inspection.

408.—(1) The court may at any time after an order for winding up, on the application either of the liquidator, or the Official Receiver, or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an

Power to stay winding-up, etc.

order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) The court may, at any time after an order for winding up, on the application either of the liquidator or a creditor, and after having regard to the wishes of the creditors and contributories, make an order directing that the winding up, ordered by the court, shall be conducted as a creditors' voluntary winding up; and, if the court does so the winding up shall be so conducted.

(3) On any application under subsection (1) the court may, before making an order, require the Official Receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

(4) A copy of every order made under this section shall forthwith be lodged by the company, or otherwise as may be prescribed, with the Registrar, who shall make an entry of the order in his records relating to the company.

(5) If default is made in lodging a copy of an order made under this section with the Registrar as required by subsection (4), every officer of the company or other person who knowingly authorises or permits the default is guilty of an offence.

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409.—(1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, and may rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

(2) Notwithstanding subsection (1), where it appears to the court that it will not be necessary to make

calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(3) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

(4) The list of contributories when settled shall be *prima facie* evidence of the liabilities of the persons named therein as contributories.

410. The court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any assets or books and papers in his hands to which the company is *prima facie* entitled.

Delivery of property to liquidator.

411.—(1) The court may, at any time after making a winding-up order, make an order directing any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

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

(2) In the case of any company, when all the creditors are paid in full, any money due on account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

412.—(1) The court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time

Power of court to make calls.

being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories, among themselves, and make an order for payment of any calls so made.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

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413.—(1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into a bank to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into such bank in the event of a winding up by the court shall be subject in all respects to the orders of the court.

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414. An order made by the court on a contributory is, subject to any right of appeal, conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due, and all other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

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415.—(1) Where in any proceedings the Official Receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court, and the court may on the application appoint a

special manager of the estate or business to act during such time as the court directs, with such powers, including any of the powers of a receiver or manager, as are entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the court directs.

(3) The special manager shall receive such remuneration as may be fixed by the court.

416. The court may fix a time or times within which creditors are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before those debts are proved.

Power to exclude creditors not proving in time.

417. The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

Adjustment of rights of contributories.

418.—(1) The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors and contributories accordingly, but not further or otherwise.

Inspection of books by creditors or contributories.

(2) Nothing in this section shall be taken as excluding or restricting any statutory rights of a Government Department or a person under the authority of a Government Department or the Minister.

419. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding up in such order of priority as the court thinks fit.

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

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420.—(1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company, or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs, or property of the company.

(2) The court may examine him on oath concerning the matters mentioned in subsection (1), either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them, and any writing so signed may be used in evidence in any legal proceedings against him.

(3) The court may require him to produce any books and papers in his custody or power relating to the company, but where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

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421. (1) Where an order has been made for winding up a company by the court, and the Official Receiver has made a further report under this Act stating that in his opinion a fraud or improper conduct has been committed, or engaged in, by any person in the promotion or formation of the company, or by any officer of the company in

relation to the company since its formation, the court may, after consideration of the report, direct that the person or officer or any other person who was previously an officer of the company, including any banker, attorney-at-law or auditor, or who is known or suspected to have in his possession any property of the company or is supposed to be indebted to the company or any person who the court deems capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company, shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or in the case of an officer or former officer as to his conduct and dealings as officer thereof.

(2) The Official Receiver shall take part in the examination, and for that purpose may, if specially authorised by the court in that behalf, employ an attorney-at-law.

(3) The liquidator, where the Official Receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by attorney-at-law.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath and is not excused from answering any questions put to him on the ground that the answer might tend to incriminate him but, where he claims before answering the question, that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings under subsection (10) or in relation to a charge of perjury in respect of the answer.

(6) A person ordered to be examined shall at his own cost, before his examination, be furnished with a copy of the Official Receiver's report, and may at his own cost employ an attorney-at-law who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him.

(7) When a person directed to attend before the court under subsection (1) applies to the court to be exculpated from any charges made or suggested against him, the Official Receiver shall appear on the hearing of the application and call the attention of the court to any matters which appear to the Official Receiver to be relevant, and if the court, after hearing any evidence given or witnesses called by the Official Receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.

(8) Notes of the examination shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(9) The court may, if it thinks fit, adjourn the examination from time to time.

(10) Any person being examined under this section who makes a statement that is false or misleading in a material particular is guilty of an offence.

(11) For the purposes of this section, conduct is improper if it is of such a nature as to render a person unfit to be concerned in the management of a company.

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422. The court, at any time either before or after making a winding-up order, on proof of probable cause for

believing that a contributory is about to quit Grenada or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and movable personal property to be seized, and him and them to be safely kept until such time as the court may order.

423. Any powers by this Act conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Powers of court cumulative.

424. Provision may be made by rules made under section 486 for enabling or requiring all or any of the powers and duties conferred and imposed on the court by this Act in respect of the following matters-

Delegation to liquidator of certain powers of court.

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;
- (c) the paying, delivering, conveyance, surrender or transfer of any money, property, books or papers to the liquidator,
- (d) the making of calls and the adjusting of the rights of contributories; and
- (e) the fixing of the time within which debts and claims shall be proved,

to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court but the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

dissolution of
company.

425.—(1) When the affairs of a company have been completely wound up, the court, if the liquidator makes an application in that behalf, shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) A copy of the order shall within fourteen days from the date thereof be lodged by the liquidator with the Registrar who shall enter in his records a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section, he is guilty of an offence.

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426.—(1) Orders made by the court under this Act may be enforced in the same manner as orders made in any action pending therein.

(2) Subject to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court.

Division C: Voluntary Winding Up

winding-up
provisions.

427. (1) A company shall be wound up voluntarily if—

(a) a general meeting so resolves by special resolution; or

- (b) a general meeting so resolves by an ordinary resolution which states that the company is unable to pay its debts.

(2) In this Act, "a resolution for voluntary winding up" means a resolution passed under subsection (1).

428.—(1) When a company has passed a resolution for voluntary winding up, it shall, within fourteen days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette and in writing to the Registrar.

Notice of resolution to wind up voluntarily.

(2) If default is made in complying with this section, the company and every officer of the company in default is guilty of an offence.

429. A voluntary winding up is deemed to commence at the time of passing of the resolution for voluntary winding up.

Commencement of voluntary winding up.

430. In case of a voluntary winding up, the company shall, from the commencement of the winding up cease to carry on its business except so far as is in the opinion of the liquidator required for the beneficial winding up thereof but the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles of incorporation, continue until it is dissolved.

Effect of voluntary winding up on business and status of company.

431. Any transfer of shares not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, is void.

Avoidance of transfers, etc. after commencement of voluntary winding up.

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432.—(1) Where it is proposed to wind up a company voluntarily, a director or, in the case of a company having more than two directors, the majority of the directors, may, at a meeting of the directors make a statutory declaration to the effect that they have made a full enquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding twelve months from the commencement of the winding up as may be specified in the declaration.

(2) A declaration made under subsection (1) shall have no effect for the purposes of this Act unless—

- (a) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and is lodged with the Registrar for registration before that date; and
- (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) Any director of a company who makes a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration is guilty of an offence.

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(4) If the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the

declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

(5) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as "a member's voluntary winding up", and a winding up in the case of which a declaration has not been so made and delivered is in this Act referred to as "a creditors' voluntary winding up".

433.—(1) The company in general meeting shall appoint one, or more than one, liquidator for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

Power of company to appoint and fix remuneration of liquidators.

(2) Subject to subsections (3) and (4), the company may by special resolution remove a liquidator and appoint another liquidator, but the removal or appointment does not have effect—

- (a) until after the expiration of the period of fourteen days after the date on which the resolution is passed; or
- (b) if, within that period an application is made to the court under subsection (4), unless the Court dismisses the application or the application is withdrawn.

(3) In addition to the other requirements of this Act with respect to the giving of notice of meetings, the company shall give to all creditors and contributories of the company notice of any meeting at which a resolution under

subsection (2) will be proposed, giving in the notice particulars of the proposals.

(4) A creditor or contributory of the company may, within the period of fourteen days after the date on which a resolution under subsection (2) is passed, apply to the Court for an order cancelling the resolution and the Court may, if it is satisfied that it is fair and reasonable to do so, allow the application, but if not so satisfied shall dismiss the application.

(5) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting or the liquidator, sanctions the continuance thereof.

434.—(1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in the manner provided by this Act or by the by-laws or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

435.—(1) Where a company is proposed to be, or is in the course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to a corporation, (in this section called "the transferee company") the liquidator of the first-mentioned company (in this section called "the transferor company") may, with the sanction of a special resolution of that company, conferring either a general

authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company, and where the whole or part of the compensation or benefit accruing to the members of the transferor company in respect of any such sale or arrangement consists of fully paid shares in the transferee company each such member is deemed to have agreed with the transferee company for the acceptance of the fully paid shares to which he is entitled under the distribution referred to in subsection (1).

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by the Arbitration Act.

(4) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but, if an order is made within a year for winding up the company by the Court, the special resolution is not valid unless sanctioned by the Court.

Duty of liquidator to call creditors' meeting in case of insolvency.

436.—(1) If, in the case of a winding up commenced after the commencement of this Act, the liquidator is at any time of the opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 432, he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company.

(2) Unless the meeting of creditors resolve that the winding up shall continue as a members' voluntary winding up, the winding up shall as from the date when the liquidator calls the meeting of creditors become a creditors' voluntary winding up, and the meeting of creditors shall have the same powers as a meeting of creditors held under section 442.

(3) If the liquidator fails to comply with subsection (1) he is guilty of an offence.

Duty of liquidator to call general meeting at end of each year.

437.—(1) Subject to section 439, in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up and of each succeeding year, or at the first convenient date within three months (or such longer period as the court may allow) from the end of the year, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with subsection (1) he is guilty of an offence

438.—(1) Subject to section 439, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and shall cause the account to be audited and when that has been done shall call a general meeting of the company for the purpose of laying before it the audited account and giving any necessary explanation thereof.

Final meeting and dissolution after a members' voluntary winding up.

(2) The meeting shall be called by advertisement in the Gazette and in one daily newspaper printed and circulating in Grenada, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the liquidator shall lodge with the Registrar a copy of the audited account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator is guilty of an offence.

(4) Notwithstanding anything in subsection (3), if a quorum is not present at the meeting, the liquidator shall, in lieu of the return referred to in subsection (3), make a return that the meeting was duly summoned and that no quorum was present at the meeting, and upon such a return being made the provisions of this subsection as to the making of the return are deemed to have been complied with.

(5) The Registrar on receiving the account and either of the returns mentioned in subsection (3) or (4) shall

forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved but the Court may, on application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(6) The person on whose application an order of the Court under this section is made shall, within seven days after the making of the order, lodge with the Registrar a copy of the order for registration, and if that person fails to do so he is guilty of an offence.

(7) If the liquidator fails to call a general meeting of the company as required by this section, he is guilty of an offence.

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439. Where section 436 has effect, sections 446 and 447 shall apply to the winding up to the exclusion of sections 437 and 438 as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up, but the liquidator shall not be required to summon a meeting of creditors under section 446 at the end of the first year from the commencement of the winding up, unless the meeting held under section 436 is held more than three months before the end of that year.

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440.—(1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the Gazette and once at least in one daily newspaper printed and circulating in Grenada.

(3) The directors of the company shall -

- (a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors; and
- (b) appoint one of their number to preside at the meeting.

(4) The director appointed to preside at the meeting of creditors shall attend and preside at the meeting.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) has effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made—

- (a) by the company in complying with subsection (1) or (2);
- (b) by the directors of the company in complying with subsection (3); or
- (c) by any director of the company in complying with subsection (4).

the company or, as the case may be, each of the directors is guilty of an offence, and, in the case of default by the company, every officer of the company who is in default is guilty of an offence.

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441.—(1) The creditors and the company at their respective meetings mentioned in section 440 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator.

(2) Notwithstanding the provisions of subsection (1), when different persons are nominated any director, member, or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

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442.—(1) The creditors at the meeting to be held in pursuance of section 440 or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number.

(2) Notwithstanding the provisions of subsection (1), the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company

ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(3) Subject to the provisions of this section and to rules made under section 486, the provisions of section 406 (except subsection (1)) apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the Court.

443.—(1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

Fixing of liquidators' remuneration and ceasing of directors' powers.

(2) On the appointment of a liquidator, all the powers of the directors shall cease except so far as the committee of inspection, or there is no such committee, the creditors, sanction the continuance thereof.

444. If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the Court, the creditors may fill the vacancy.

Power to fill vacancy in office of liquidator.

445. The provisions of section 435 apply in the case of a creditors' voluntary winding up as in the case of the members' voluntary winding up, with the modification that the powers of the liquidator under that section shall not be exercised except with the sanction either of the Court or of the committee of inspection.

Application of section 435 to a creditors' winding up.

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446. (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year or at the first convenient date within three months (or such longer period as the court may allow) from the end of the year, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with subsection (1) he is guilty of an offence.

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447.—(1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors, for the purpose of laying the account before the meetings, and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement in the Gazette and in one daily newspaper printed and circulating in Grenada specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator is guilty of an offence.

(4) Notwithstanding anything in subsection (3), if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return referred to in subsection (3), make a return that the meeting was duly summoned and that no quorum was present at the meeting, and upon such a return being made the provisions of this subsection as to the making of the return are, in respect of that meeting, deemed to have been complied with.

(5) The Registrar on receiving the account and in respect of each such meeting either of the returns mentioned in subsection (3) or (4) shall forthwith register them, and on the expiration of three months from the registration thereof the company is deemed to be dissolved, but the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(6) The person on whose application an order of the Court under this section is made, shall, within seven days after the making of the order, lodge with the Registrar a copy of the order for registration, and if that person fails to do so he is guilty of an offence.

(7) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he is guilty of an offence.

448. Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities equally, and subject to that application, shall, unless the articles of the company otherwise provide, be distributed among the members according to their rights and interests in the company.

Distribu-
tion of
property of
company.

Powers and
duties of
liquidator in
voluntary
winding up.

449. (1) The liquidator may—

- (a) in the case of a members' voluntary winding up, with the sanction of a special resolution of the company and, in the case of a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection, exercise any of the powers given by paragraphs (d), (e) and (f) of section 398 (1) to a liquidator in a winding up by the Court;
- (b) exercise any of the other powers by this Act given to the liquidator in a winding up by the Court;
- (c) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories;
- (d) exercise the power of the Court of making calls; and
- (e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their

appointment, or, in default of such determination, by any number not less than two.

(4) Unless the committee of inspection determines, or, as the case may be, the members otherwise determine, section 402 applies in the case of a liquidator in a voluntary winding up as it applies in the case of a liquidator of a company being wound up by the Court.

450.—(1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.

Power of court to appoint and remove liquidator in voluntary winding up.

(2) The court may, on cause shown, remove a liquidator and appoint another liquidator.

451.—(1) The liquidator shall, within twenty-one days after his appointment, publish in the Gazette and in one daily newspaper printed and circulating in Grenada, and deliver to the Registrar for registration a notice of his appointment in the prescribed form.

Notice by liquidator of his appointment.

(2) If the liquidator fails to comply with the requirements of subsection (1) he is guilty of an offence.

452.—(1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

Arrangement when binding on creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement appeal to the court against it and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

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453. The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of the power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks fit.

(3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be lodged by the company, or otherwise as may be prescribed, with the Registrar, who shall enter a minute of the order in his records relating to the company.

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454. All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

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455. The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but in the case of an application by a contributory the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

Division D: Provisions Applicable to Every Mode of Winding Up

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456.—(1) In every winding up, subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy, all

debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as are subject to any contingency or sound only in damages or for some other reason do not bear a certain value.

(2) Subject to section 457, in the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

457.—(1) In a winding up of a company there shall be paid in priority to all other debts—

Preferential
payments.

- (a) all rates, charges, taxes, assessments, impositions or contributions, whether imposed or made by the Government or by any public authority under the provisions of any Act, and having become due and payable within twelve months next before the relevant date;
- (b) all wages or salary (whether or not earned wholly or in part by way of commission or for time or piece work) of any employee, not being a director, in respect of services

rendered to the company during four months next before the relevant date; or

- (c) all severance benefits, not exceeding the equivalent of forty five days basic wages or salary, due or accruing to an employee, not being a director, whether retrenched by an employer, a receiver, a liquidator or some other person.

(2) Where any payment on account of wages, salary or severance benefits has been made to any employee of a company out of money advanced by some person for that purpose, that person shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that employee would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(3) The debts and claims to which priority is given by subsection (1) shall-

- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions, and

- (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and paid accordingly out of any property comprised in or subject to that charge.

(4) Subject to the retention of such sums as are necessary for the costs and expenses of the winding up, the debts and claims to which priority is given by subsection (1) shall be discharged forthwith so far as the assets are sufficient to meet them.

(5) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by subsection (1) shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof, but in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(6) In this section, "the relevant date" means-

- (a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order; and
- (b) in any other case, the date of the commencement of the winding up.

458.—(1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, or a fraudulent conveyance, assignment, transfer, sale or disposition, shall, if made or done by or against a company, be deemed in the event of its being wound up, a fraudulent preference of its creditors, or a fraudulent conveyance, assignment, transfer, sale or disposition, as the case may be, and be invalid accordingly.

Fraudulent preference.

(2) For the purposes of this section, the commencement of the winding up is deemed to correspond with the presentation of the bankruptcy petition in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors is void.

liabilities and
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debts.

459.—(1) Where, in the case of a company wound up in Grenada, anything made or done after the commencement of this Act is void under section 458 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred is subject to the same liabilities, and has the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.

(2) The value of the interest of a person referred to in subsection (1) shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all incumbrances other than those to which the charge for the company's debt was then subject.

(3) On any application made to the court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the court shall have jurisdiction to determine any questions with respect to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

(4) Subsection (3) applies, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.

460. Where a company is being wound up, a floating charge on the undertaking or property of the company created within twelve months of the commencement of the winding up is, unless it is proved that the company immediately after the creation of the charge was solvent, invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of six per centum per annum or such other rate as may for the time being be prescribed by regulation under section 527.

Effect of
floating charge.

461.—(1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in corporations, or unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the property; but where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

Disclaimer of
onerous
property.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The court, may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with a company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such person as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability, or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose.

(7) Notwithstanding anything in subsection (6), where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee by demise, except upon terms of making that person-

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or
- (b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event, if the case so requires, as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court may

vest the estate and interest of the company in the property in any person liable personally or in a representative character, and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(8) Any person injured by the operation of a disclaimer under this section is deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

Interpretation.

462. In sections 463 and 464

“bailiff” includes any officer charged with the execution of a writ or other process;

“goods” includes all chattels personal.

Restriction of
rights of
creditor
to execu-
tion or
attachment.

463.—(1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up but—

- (a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purposes of the foregoing provision be substituted for the date of the commencement of the winding up;

- (b) a person who purchases in good faith under a sale by a bailiff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator; and
- (c) the rights conferred by this subsection on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.

(2) For the purposes of this section-

- (a) an execution against goods shall be taken to be completed by seizure and sale;
- (b) an attachment of a debt is deemed to be completed by receipt of the debt; and
- (c) an execution against land is deemed to be completed from the date of the order for sale or by seizure as the case may be, and, in the case of an equitable interest, by the appointment of a receiver.

464.—(1) Subject to subsection (3), where any goods of a company are taken in execution and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding-up has been passed, the bailiff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the

Duties of bailiff
as to goods
taken in
execution.

execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Subject to subsection (3), where under an execution in respect of a judgment for a sum exceeding one hundred dollars the goods of a company are sold or money is paid in order to avoid sale, the bailiff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the bailiff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

Offences by
Officers of
Companies
Liquidation.

465.—(1) Any person who, being a past or present officer of a company which at the time of the commission of the alleged offence is being wound up, whether by the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up—

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when

the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;

- (b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up;
- (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;
- (d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of five hundred dollars or upwards, or conceals any debt due to or from the company;
- (e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of five hundred dollars or upwards;
- (f) makes any material omission in any statement relating to the affairs of the company;
- (g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of one month to inform the liquidator thereof;

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- (h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company;
 - (i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of, any book or paper affecting or relating to the property or affairs of the company;
 - (j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;
 - (k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;
 - (l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses;

(m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for;

(n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for;

(o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of the business of the company; or

(p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

is guilty of an offence.

(2) It is a sufficient defence in proceedings for an offence under paragraph (a), (b), (c), (d), (f), (n), or (o) of subsection (1) if the accused proves that he had no intent to defraud; and in proceedings for an offence under paragraph (h), (i) or (j) of subsection (1) if he proves that he had no

intent to conceal the state of affairs of the company or to defeat the law.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (o) of subsection (1), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances is guilty of an offence.

(4) For the purposes of this section, "officer" includes any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

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ooks.

466. Any officer or contributory of a company being wound up who destroys, mutilates, alters or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, is guilty of an offence.

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467. Any person who, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up-

- (a) has by false pretenses or by means of any other fraud induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has

caused or connived at the levying of any execution against, the property of the company; or

- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company,

is guilty of an offence.

468.—(1) If where a company is wound up it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is the shorter, every officer of the company who was knowingly a party to the default of the company, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the fault was excusable, is guilty of an offence.

Liability where proper accounts not kept.

(2) For the purposes of this section, proper books of account are deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealing in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

fraudulent
intent.

469.—(1) If in the course of the winding up of a company it appears that any business of the company has been carried on—

- (a) with intent to defraud creditors of the company or the creditors of any other person or for any fraudulent purpose;
- (b) with reckless disregard of the company's obligation to pay its debts and liabilities; or
- (c) with reckless disregard of the insufficiency of the company's assets to satisfy its debts and liabilities;

the court, on the application of the Official Receiver or the liquidator or any creditor or contributory of the company may, if it thinks proper to do so, declare that any of the officers whether past or present, of the company or any other persons who were knowingly parties to the carrying on of the business in that manner are personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company, as far as the court may direct.

(2) Where the court makes any declaration referred to in subsection (1) it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make any provision for making the liability of a person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge, on any assets of the company held by or vested in him, or any company or persons on his behalf or any person claiming as assignee from or through the person liable to any person acting on his behalf, and may

from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

(3) For the purposes of subsection (2), "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business in that manner is guilty of an offence.

(5) The provisions of this section have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration under subsection (1) is made in the case of a winding up, the declaration is deemed to be a final judgment within the meaning of paragraph (g) of subsection (1) of section 3 of the Bankruptcy Ordinance.

470.—(1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present officer or liquidator of the company, has misapplied or retained or become liable or accountable for any money or property of the company or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the Official Receiver or of the liquidator, or of any creditor or contributory, examine into the conduct

Power of court
to assess
damages
against delin-
quent direc-
tors, etc.

of the promoter, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust at the court thinks just.

(2) The provisions of this section have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) Where in the case of a winding up an order for payment of money is made under this section, the order is deemed to be a final judgment within the meaning of paragraph (g) of subsection (1) of section 3 of the Bankruptcy Ordinance.

Execution of
liquidator
directors and
members of a
company.

471.—(1) If it appears to the court in the course of a winding up by the court, that any past or present officer, or any member, of the company has been guilty of an offence in relation to the company for which he is criminally liable the court may, either on the application of any person interested in the winding up or on its own motion, direct the liquidator to refer the matter to the Director of Public Prosecutions.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of a company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Director of Public Prosecutions and shall furnish to the Director such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as the Director may require.

(3) If it appears to the court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, and that no report with respect to the matter has been made by the liquidator to the Director of Public Prosecutions under subsection (2), the court may, on the application of any person interested in the winding up or of its own motion direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section have effect as though the report had been made in pursuance of subsection (2).

(4) If, where any matter is reported or referred to the Director of Public Prosecutions under this section, he considers that the case is one in which a prosecution ought to be instituted, the liquidator and every officer and agent of the company past and present (other than the defendant in the proceedings) shall give him all assistance in connection with the prosecution which he is reasonably able to give.

(5) For the purpose of subsection (4), "agent", in relation to a company, is deemed to include any banker or attorney-at-law of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(6) If any person fails or neglects to give assistance in manner required by subsection (4), the court may, on the application of the Director of Public Prosecutions, direct that person to comply with the requirements of that subsection, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that

the costs of the application shall be borne by the liquidator personally.

qualification
appointment
liquidator.

472. A corporation or an undischarged bankrupt is not qualified for appointment as liquidator of a company, whether in a winding up by the court or in a voluntary winding up, and

- (a) any appointment made in contravention of this provision is void; and
- (b) any corporation which or an undischarged bankrupt who, acts as liquidator of a company is guilty of an offence.

liquidation
company
liquidation.

473. Where a company is being wound up, whether by the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

reference to
section 473.

474. If default is made in complying with section 473, the company and every officer of the company and every liquidator of the company and every receiver or manager, who knowingly authorises or permits the default, is guilty of an offence.

breach of
duties from
duty on
winding up of
companies.

475.—(1) In the case of a winding up by the court, or of a creditors' voluntary winding up, of a company-

- (a) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other incumbrance on, or any estate, right or interest in, any real or personal property, which forms part of the assets of the company and which, after the

execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and

- (b) every power of attorney, proxy, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up or to any proceeding under any such winding up,

is exempt from duties chargeable under the enactment relating to stamp duties.

(2) In subsection (1), "assurance" includes deed, conveyance, assignment, transfer and surrender.

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

Books of company to be evidence.

477.—(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, namely-

Disposal of books and papers of companies.

- (a) in the case of a winding up by the court in such manner as the court directs;
- (b) in the case of a members' voluntary winding up, in such way as a general meeting of the company by ordinary resolution directs, and in the case of a creditors' voluntary winding up, in such manner as the committee of

inspection or, if there is no such committee, as a meeting of the creditors of the company, by resolution directs.

(2) After five years from the dissolution of the company no responsibility rests on the company, the liquidators or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) Provision may be made by rules made under section 486 for enabling the court to prevent, for such period (not exceeding five years from the dissolution of the company) as the court thinks proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to make representations to the court.

(4) If any person acts in contravention of any rules made under section 486 for the purposes of this section or of any direction of the court thereunder, he is guilty of an offence.

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ations.

478.—(1) If where a company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in the winding up and the position of the liquidator.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom.

(3) If a liquidator fails to comply with this section, he is guilty of an offence and any person untruthfully stating himself as provided in subsection (2) to be a creditor or contributory is guilty of a contempt of court, and is, on the application of the liquidator or of the Official Receiver, punishable accordingly.

479.—(1) If it appears either from any statement sent to the Registrar under section 478 or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt or any money held by the company in trust in respect of dividends or other sums due to any person as a member of the company, the liquidator shall forthwith pay that money into court, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

Unclaimed
assets.

(2) Any person claiming to be entitled to any money paid into court in pursuance of this section may apply to the court for payment thereof, and the court may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

480. The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

Meetings to
ascertain wishes
of creditors
or contributo-
ries.

Affidavits, etc.

481.—(1) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in Grenada or elsewhere before any court, judge, magistrate, or person lawfully authorised to take and receive affidavits.

(2) All courts, judges, magistrates, justices, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge, magistrate or person attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

Power of court
to declare
dissolution of
company void.

482.—(1) Where a company has been dissolved (otherwise than pursuant to section 483) the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) The person on whose application the order was made shall, within seven days after the making of the order, or such further time as the court allows, lodge with the Registrar a copy of the order, and if that person fails so to do he is guilty of an offence.

Registrar may
like defunct
company off
register.

483.—(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall

within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Gazette and send to the company or the liquidator, if any, a like notice as is provided in subsection (3).

(5) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved, but-

- (a) the liability, if any, of every director, managing officer, and member of the company continues and may be

enforced as if the company had not been dissolved; and

- (b) nothing in this subsection affects the power of the court to wind up a company the name of which has been struck off the register.

(6) If the company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on an application made by the company or member or creditor before the expiration of twenty years from the publication in the Gazette of the notice may, if satisfied that the company was at the time of the striking off carrying on business or in operation or otherwise that it is just that the company should be restored to the register, order the name of the company to be restored to the register, and upon a copy of the order being delivered to the Registrar for registration the company is deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or other officer of the company or if there is no director or other officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the articles of incorporation, addressed to him at the address mentioned in the articles of incorporation.

484.—(1) Where, after a company has been dissolved, there remains any outstanding property, real or personal, including things in action and whether within or outside Grenada which was vested in the company or to which it was entitled, or over which it had a disposing power at the time it was dissolved, but which has not been realised or otherwise disposed of or dealt with by the company or its liquidator, such property shall, for the purposes of this section and section 485 and notwithstanding any enactment or rule of law to the contrary, by the operation of this section be and become vested in the Official Receiver for all the estate and interest therein legal or equitable of the company or its liquidator at the date the company was dissolved, together with all claims, rights and remedies which the company or its liquidator then had in respect thereof.

Outstanding
assets
of defunct
company to
vest in
Official
Receiver.

(2) Where any claim, right or remedy of the liquidator may under this Act be made, exercised or availed of only with the approval or concurrence of the court or some other person, the Official Receiver may for the purposes of this section make, exercise or avail itself of that claim, right or remedy without such approval or concurrence.

(3) Property vested in the Official Receiver by operation of this section is liable and subject to all charges, claims and liabilities imposed thereon or affecting such property by reason of any statutory provision as to rates, taxes, charges or any other matter or thing to which such property would have been liable or subject had such property continued in the possession, ownership or occupation of the company; but there shall not be imposed on the Official Receiver or the State any duty, obligation or liability whatsoever to do or suffer any act or thing required by any such statutory provision to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims, or

liabilities out of the assets of the company so far as they are in the opinion of the Official Receiver properly available for and applicable to such payment.

disposal of
moneys.

485.—(1) Upon proof to the satisfaction of the Official Receiver that there is vested in the Official Receiver by operation of section 484 or of an enactment of a proclaimed state containing provisions similar to the provisions of section 491, any estate or interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the Official Receiver may get in, sell or otherwise dispose of or deal with the estate or interest or any part thereof as he sees fit.

(2) The Official Receiver may sell or otherwise dispose of or deal with any such property either solely or in concurrence with any other person in such manner for such consideration, by public auction, public tender or private contract upon such terms and conditions as the Official Receiver thinks fit, with power to rescind any contract and resell or otherwise dispose of or deal with any such property as he thinks expedient, and may make, execute and give such contracts, instruments and documents as he thinks necessary.

(3) The Official Receiver shall be remunerated by such commission, whether by way of percentage or otherwise as is prescribed in respect of the exercise of powers conferred by subsection (1).

(4) The moneys received by the Official Receiver in the exercise of any of the powers conferred on him by this section shall be applied in defraying all costs, expenses, commission and fees incidental thereto and thereafter to any payment authorised by section 484 or this section and the surplus, if any, shall be paid into such account as is prescribed, and the same shall, subject to the

rules made under section 486, be dealt with according to orders of the court.

(5) Any claim, suit, or action for or in respect of any moneys paid into the prescribed account shall be presented, made, or instituted within twenty years next after the dissolution of the company, after the expiration of which period of time all moneys then or at any time thereafter standing to the credit of the prescribed account shall, if there be no such claim, suit, or action pending, or any order of the court to the contrary, be paid into the Consolidated Fund.

486. Rules for carrying this Part into effect as far as relates to procedure upon winding up, and fees and costs in connection therewith, may be made in like manner as rules may be made under and for the purposes of the West Indies Associated States Supreme Court (Grenada) Act 1971, as re-enacted by the West Indies Associated States Supreme Court (Grenada) Act (Re-Enactment) Act 1991.

Rules.

17/1971
as amended.
20/1991.

Division E: Winding Up of Unregistered Companies

487.—(1) For the purposes of this Division, "unregistered company" includes—

"registered
company."

- (a) an external company;
- (b) any partnership, whether limited or not, or association consisting of more than seven members; or
- (c) any body corporate not incorporated or continued under this Act, and any unincorporated body;

but does not include—

- (d) a company incorporated or continued under this Act; or
- (e) any society or association established under any enactment designated by the Attorney General by order published in the Gazette.

(2) The provisions of this Division are in addition to and not in restriction of any provisions contained in this Act with respect to the winding up of companies by the court and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in the winding up of companies.

(3) The Attorney General may, from time to time, make an order for the purposes of paragraph (e) of subsection (1).

winding up of
registered
companies.

488.—(1) Subject to this Division, any unregistered company may be wound up under this Part, which Part shall apply to an unregistered company with the following adaptations—

- (a) the principal place of business of the company in Grenada is for all the purposes of the winding up the registered office of the company;
- (b) no such company shall be wound up voluntarily;
- (c) the circumstances in which the company may be wound up are—
 - (i) if the company is dissolved or has ceased to have a place of business in

Grenada or has a place of business only for the purpose of winding up its affairs or has ceased to carry on business;

- (ii) if the company is unable to pay its debts;
- (iii) if the court is of the opinion that it is just and equitable that the company should be wound up; or
- (iv) in the case of an external company, in such a case as is referred to in paragraph (d) of section 377.

(2) An unregistered company is deemed to be unable to pay its debts if—

- (a) a creditor to whom the company is indebted in a sum exceeding five thousand dollars then due has served on the company, by leaving at its principal place of business or by delivering to the secretary or some director, manager or principal officer of the company, or on a person authorised by an external company to accept service of process, or by otherwise serving in such manner as the court approves or directs, a written demand requiring the company to pay the sum so due and the company has for three weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

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- (b) any action or other proceeding has been instituted against any member for debt or demand due or claimed to be due from the company or from him in his character of member, and, notice in writing of the institution of the action or proceeding having been served on the company by leaving it at its principal place of business or by delivering it to the secretary or some director, manager or principal officer of the company, or on a person authorised by an external company to accept service of process, or by otherwise serving it in such manner as the court approves or directs, the company has not within three weeks after service of the notice paid, secured or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by him by reason thereof;
- (c) execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against a company or any member thereof as such or any person authorised to be sued as nominal defendant on behalf of the company is returned unsatisfied;
- (d) it is otherwise proved to the satisfaction of the court that the

company is unable to pay its debts as they fall due.

(3) An unregistered company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

(4) A company incorporated outside Grenada may be wound up as an unregistered company under this Division notwithstanding that it is being wound up or has been dissolved or had otherwise ceased to exist as a company under or by virtue of the laws of the place under which it was incorporated.

(5) The money sum for the time being specified in subsection (2) is subject to increase or reduction by regulation under section 527; but no increase in the sum so specified affects any case in which the winding up petition was presented before the coming into force of the increase.

489.—(1) On an unregistered company being wound up every person is a contributory—

Contributories
in winding up
of unregistered
company.

- (a) who is liable to pay or contribute to the payment of-
- (i) any debt or liability of the company;
 - (ii) any sum for the adjustment of the rights of the members among themselves; or
 - (iii) the costs and expenses of winding up; or

(b) where the company has been dissolved in the place in which it is formed or incorporated, who immediately before the dissolution was so liable, and every contributory is liable to contribute to the assets of the company all sums due from him in respect of any such liability.

(2) On the death or bankruptcy of any contributory the provisions of this Act with respect to the personal representatives of deceased contributories and the trustees of bankrupt contributories respectively apply.

Power of court to stay or restrain proceedings.

490.—(1) The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

(2) Where an order has been made for winding up an unregistered company no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company except by leave of the court and subject to such terms as the court imposes.

(3) The cost of an application under this section shall, unless the Court otherwise orders, be paid by the company.

Outstanding assets of defunct unregistered company.

491.—(1) Where an unregistered company, the place of incorporation or origin of which is in a proclaimed State, has been dissolved and there remains in Grenada any outstanding property which was vested in the company or to which it was entitled or over which it had a disposing

power at the time it was dissolved, but which was not got in, realised, or otherwise disposed of or dealt with, by the company or its liquidator before the dissolution, the property shall, by the operation of this section be and become vested for all the estate and interest therein legal or equitable of the company or its liquidator at the date the company was dissolved, in such person as is entitled thereto according to the law of the place of incorporation or origin of the company.

(2) Where the place of origin of an unregistered company is Grenada, the provisions of sections 484 and 485 apply with such adaptations as may be necessary in respect of that company.

(3) Where it appears to the Minister that an enactment in force in any Member State of the Caribbean Community contains provisions similar to the provisions of this section, he may, by order published in the Gazette, declare that State to be a proclaimed State for the purposes of this section.

PART V

ADMINISTRATION AND GENERAL

Division A: Functions of the Registrar

492.—(1) The Registrar of Companies is, under the general supervision of the Minister, responsible for the administration of this Act. Responsibility.

(2) A seal may be prescribed by the Minister for use by the Registrar in the performance of his duties.

493. A document may be served upon the Registrar by leaving it at the office of the Registrar or by sending it by telex, or telefax or by prepaid post or cable addressed to the Registrar at his office. Service upon the Registrar.

Register of
Companies.

494. The Registrar shall maintain a Register of Companies in which to keep the name of every body corporate

- (a) that is
 - (i) incorporated under this Act;
 - (ii) continued as a company under this Act;
 - (iii) registered under this Act; or
 - (iv) restored to the register pursuant to this Act,and
- (b) that has not been subsequently struck off that register.

Inspection of
register.

495.—(1) A person who has paid the prescribed fee is entitled, during normal business hours, to examine, and to make copies of or extracts from, a document required by this Act or the regulations, to be sent to the Registrar, except a report sent to him under subsection (2) of section 519.

(2) The Registrar shall upon request and payment of the prescribed fee, furnish any person with a copy or certified copy of any document received by the Registrar under this Act, except a report received by him pursuant to subsection (2) of section 519.

(3) If the records maintained by the Registrar are prepared and maintained in other than a written form,

- (a) the Registrar shall furnish any copy required to be furnished under this Act in an intelligible written form; and

- (b) a report reproduced from those records, if it is certified by the Registrar, is admissible in evidence to the same extent as the original written records would be.

496.—(1) A notice or document required by this Act, the regulations, articles or the by-laws to be sent to a shareholder or director of a company may be sent by telex or telefax or by prepaid post or cable, addressed to, or may be delivered personally to,

Notice to directors etc.

- (a) the shareholder at his latest address as shown in the records of the company or its transfer agent; and
- (b) the director at his latest address as shown in the records of the company or in the latest notice filed under section 69 or 77.

(2) A director named in a notice sent by a company to the Registrar under section 69 or 77 and filed by the Registrar is, for the purposes of this Act, a director of the company referred to in the notice.

497. A notice or document sent in accordance with section 496 to a shareholder or director of a company is, for the purpose of this Act, presumed to be received by him at the time it would be delivered in the ordinary course of mail.

Presumption of receipt.

498. If a company sends a notice or document to a shareholder in accordance with section 496 and the notice or document is returned on 3 consecutive occasions because the shareholder cannot be found, the company need not send any further notices or documents to the shareholder until he informs the company in writing of his new address.

Undelivered documents.

Notice waiver. 499. Where a notice or document is required to be sent pursuant to this Act, the sending of the notice or document may be waived, or the time for the notice or document may be waived or abridged at any time with the consent in writing of the person entitled to the notice or document.

Certificate by company. 500. A certificate issued on behalf of a company stating any fact that is set out in the articles, the by-laws, any unanimous shareholder agreement, the minutes of the meetings of the directors, a committee of directors or the shareholders, or in a trust deed or other contract to which the company is a party, may be signed by a director, an officer or a transfer agent of the company.

Evidentiary value. 501. When introduced as evidence in any civil, criminal or administrative action or proceeding,

- (a) a fact stated in a certificate referred to in section 500;
- (b) a certified extract from a register of members or debenture holders of a company; or
- (c) a certified copy of minutes or extracts from minutes of a meeting of shareholders, directors or a committee of directors of a company,

is, in the absence of evidence to the contrary, proof of the fact so certified without proof of the signature or official character of the person appearing to have signed the certificate.

Copies. 502. Where a notice or document is required by this Act to be sent to the Registrar, he may accept a photostatic or photographic copy of the notice or document or a copy by telefax or other device.

503.—(1) Where this Act requires that articles relating to a company be sent to the Registrar, unless otherwise specifically provided, Filed articles.

- (a) two copies, in this section called "duplicate originals", of the articles shall be signed by a director or an officer of the company, or, in the case of articles of incorporation, by the incorporator; and
- (b) upon receiving duplicate originals of any articles that conform to law, and any other required documents and the prescribed fees, the Registrar shall
 - (i) endorse on each of the duplicate originals the word "registered" and the date of the registration;
 - (ii) issue in duplicate the appropriate certificate and attach to each certificate one of the duplicate originals of the articles;
 - (iii) file a copy of the certificate and attached articles; and
 - (iv) send to the company or its representative the original certificate and attached articles.

(2) A certificate referred to in subsection (1) and issued by the Registrar may be dated as of the day he receives the articles, or court order pursuant to which the certificate is issued, or as of any later day specified by the court or person who signed the articles.

(3) A signature required on a certificate referred to in subsection (1) may be printed or otherwise mechanically reproduced on the certificate.

Alteration of documents.

504. The Registrar may alter a notice or document, other than an affidavit or statutory declaration, if so authorised by the person who sent him the notice or document, or by the representative of that person.

Correction of documents.

505.—(1) If a certificate that contains an error is issued to a company by the Registrar, the directors or shareholders of the company shall, upon the request of the Registrar, pass the resolutions and send to the Registrar the documents required to comply with this Act, and take such other steps as the Registrar may reasonably require; and the Registrar may demand the surrender of the certificate and issue a corrected certificate.

(2) A certificate corrected under subsection (1) shall bear the date of the certificate it replaces.

Proof of documents.

506.—(1) The Registrar may require that a document or a fact stated in a document required or sent to him pursuant to this Act be verified in accordance with subsection (2).

(2) A document or fact required by this Act or by the Registrar to be verified may be verified by affidavit or affirmation.

(3) The Registrar may require of a body corporate the authentication of a document, and the authentication may be signed by the secretary, or any director or authorised person or by the attorney-at-law for the body corporate.

Retention of documents.

507. The Registrar need not produce any document of a prescribed class after six years from the date he received it.

508.—(1) The Registrar may furnish any person with a certificate stating Registrar's
certificate.

- (a) that a body corporate has or has not sent to the Registrar a document required to be sent to him pursuant to this Act;
- (b) that a name, whether that of a company or not, is or is not on the register; or
- (c) that a name, whether that of a company or not, was or was not on the register on a stated date.

(2) Where this Act requires or authorises the Registrar to issue a certificate or to certify any fact, the certificate or the certification shall be signed by the Registrar or by his deputy.

(3) A certificate or certification mentioned in subsection (2) that is introduced as evidence in any civil, criminal or administrative action or proceeding, is sufficient proof of the facts so certified, without proof of the signature or official character of the person appearing to have signed it.

509.—(1) The Registrar may refuse to receive, file or register a document submitted to him, if he is of the opinion that the document Refusal pow

- (a) contains matter contrary to the law;
- (b) by reason of any omission or error in description, has not been duly completed;
- (c) does not comply with the requirements of this Act;

- (d) contains an error, alteration or erasure;
- (e) is not sufficiently legible; or
- (f) is not sufficiently permanent for his records.

(2) The Registrar may request that a document refused under subsection (1) be amended or completed and re-submitted, or that a new document be submitted in its place.

(3) If a document that is submitted to the Registrar is accompanied with a statutory declaration by an attorney-at-law that the document contains no matter contrary to law and has been duly completed in accordance with the requirements of this Act, the Registrar may accept the declaration as sufficient proof of the facts therein declared.

Filing form.

510. Every document sent to the Registrar shall be in typed or printed form.

Striking off register.

511.—(1) The Registrar may strike off the Register a company or other body corporate, if

- (a) the company or other body corporate fails to send any return, notice, document or prescribed fee to the Registrar as required pursuant to this Act;
- (b) the company is dissolved;
- (c) the company or other body corporate is amalgamated with one or more other companies or bodies corporate;
- (d) the company does not carry out an undertaking given under subparagraph (i) of paragraph (a) of section 515; or

(e) the registration of the body corporate is revoked pursuant to this Act.

(2) Where the Registrar is of the opinion that a company or other body corporate is in default under paragraph (a) of subsection (1), he shall send it a notice advising it of the default and stating that, unless the default is remedied within 30 days after the date of the notice, the company or other body corporate will be struck off the register.

(3) Section 513 applies *mutatis mutandis* to the notice mentioned in subsection (2).

(4) After the expiration of the time mentioned in the notice, the Registrar may strike the company or other body corporate off the register and publish a notice thereof in the Gazette.

(5) Where a company or other body corporate is struck off the register, the Registrar may, upon receipt of an application in the prescribed form and upon payment of the prescribed fee, restore it to the register and issue a certificate in a form adapted to the circumstances.

512. Where a body corporate is struck off the register, the liability of the body corporate and of every director, officer or shareholder of the body corporate continues and may be enforced as if it had not been struck off the register.

Liability
continues.

513. A notice or document may be served on a company

Service on
company.

(a) by leaving it at, or sending it by telex or telefax or by prepaid post or cable addressed to, the registered office of the company; or

- (b) by personally serving any director, officer, receiver, receiver-manager or liquidator of the company.

Reservation
of name.

514. The Registrar may, upon request and upon payment of the prescribed fee, reserve for 90 days a name for an intended company or for a company about to change its name.

Prohibited
name.

515.—(1) The name of a company

- (a) shall not be the same as or similar to the name or business name of any other person or of any association, partnership or firm, if the use of that name would be likely to confuse or mislead, unless the person, association, partnership or firm consents in writing to the use of that name in whole or in part, and
- (i) if required by the Registrar in the case of any person, undertakes to dissolve or change his or its name to a dissimilar name within 6 months after the filing of the articles by which the name is acquired, or
- (ii) if required by the Registrar in the case of an association, partnership or firm, undertakes to cease to carry on its business or activities, or undertakes to change its name to a dissimilar name, within 6 months after the filing of the articles by which the name is acquired;
- (b) shall not be identical to the name of a body corporate incorporated under the laws of Grenada before the commencement date;

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- (c) shall not suggest or imply a connection with the Crown or the Government or of any Ministry, department, branch, bureau, service, agency or activity of the Government, unless consent in writing to the proposed name is duly obtained from the appropriate Minister;
 - (d) shall not suggest or imply a connection with a political party or a leader of a political party;
 - (e) shall not suggest or imply a connection with a university or a professional association recognised by the laws of Grenada unless the university or professional association concerned consents in writing to the use of the proposed name; and
 - (f) shall not be a name that is prohibited by the regulations.

(2) The name of a company shall not contain the words "Bank", or "Banker", or "Banking", or "Trust" or any other word which in the opinion of the Registrar suggests, or is calculated to suggest, connection with the business of Banking when that company in the opinion of the Registrar is not genuinely engaged in the business of Banking. When a company in the opinion of the Registrar is not genuinely engaged in the business of Banking, the Registrar shall not register that Company if its name contains the word "Bank", "Banker", "Banking", or "Trust" without first consulting the Minister of Finance.

- (i) No Company shall continue to be registered under a name which contains the word "Bank", or "Banker", or "Banking", or "Trust" as would be likely in the opinion of

the Registrar to mislead the public, and the Registrar shall strike such Company off the Register of Companies, notwithstanding the date on which such Company was registered.

- (ii) A company which fails to comply with any requirement of this subsection, and every director, manager, secretary, or other officer of the company who knowingly authorises or permits the default, commits an offence and is liable upon summary conviction to a fine not exceeding five thousand dollars, and in the case of a continuing offence to a further penalty of fifty dollars for each day on which the offence is continued after conviction thereof.

Refusal of
articles.

516.—(1) The Registrar may refuse to accept articles of incorporation or continuation for a company or to register articles amending the name of a company if

- (a) the name is not distinctive because
 - (i) it is too general;
 - (ii) it is descriptive only of the quality, function or other characteristic of the goods or services in which the company deals or intends to deal; or
 - (iii) primarily it is only a geographic name used alone unless the applicant establishes that the name has through use acquired and continues to have a secondary meaning;

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- (b) the name is defectively inaccurate in describing
- (i) the business, goods or services in association with which it is proposed to be used;
 - (ii) the conditions under which the goods or services will be produced or supplied;
 - (iii) the persons to be employed in the production or supply of those goods or services; or
 - (iv) the place of origin of those goods and services;
- (c) it is likely to be confusing with that of a company that was dissolved;
- (d) it contains the word or words "credit union", "co-operative", or "co-op" when it improperly connotes a co-operative venture; or
- (e) it is, in the opinion of the Registrar, on any reasonable ground, objectionable.

(2) The Registrar shall refuse to accept articles of incorporation or continuation for a company or to register articles amending the name of a company if the name of that company violates the provisions of section 515 generally and subsection (2) thereof particularly.

516A.—(1) A company not carrying on or following business, trade or profession in Grenada, usually called an offshore company, shall not be registered if its articles

Offshore
company.

empowers it to carry on or follow banking business or trust business unless

- (i) the company produces to the Registrar a licence under this section, which licence may hereby be granted by the Minister of Finance, or under any other legislation enacted in Grenada, enabling that Company to engage in Banking business or trust business:

Provided that the Registrar may for a period not exceeding one month reserve for the use of that company the name applied for by that company;

- (ii) the company produces to the Registrar a receipt from the Treasury showing that it has paid a fee, charged hereby and called an offshore banking operation fee, of such sum as may from time to time be prescribed in Regulations made by the Minister of Finance and published in the *Gazette*, unless exempted therefrom in writing by the Minister of Finance; and
- (iii) the company produces to the Registrar a list stating the names, addresses and occupations of all its shareholders or stockholders.

(2) The list of shareholders or stockholders of a company referred to in subsection (1) shall be updated by the company in an updated list delivered to the Registrar within fourteen days of any change of any of its shareholders or stockholders, failing which the Registrar shall strike the company off the Register of Companies.

(3) If a company which is already registered would, had it not yet been registered before the commencement of this section, have been required to

comply with the requirements stipulated in this section, it shall comply with the said requirements within one month of the commencement of this section, and if it does not so comply, the Registrar shall strike that company off the Register of Companies.

(4) A Company which defaults in complying or fails to comply with any requirement of this section, and every director, manager, secretary, or other officer of the company who knowingly authorises or permits the default or failure, or any other person who knowingly assists such company in committing such default or failure, commits an offence and shall be liable upon conviction on indictment to a fine of not less than fifty thousand dollars and not exceeding one hundred thousand dollars or to imprisonment for not less than two years or to both such fine and imprisonment, and in the case of a continuing offence to a further penalty of one hundred dollars for each day on which the offence is continued after conviction thereof.

516B. In sections 515 and 516A, the term "banking business" and cognate expressions means

"Banking Business" defined.

(a) the business of receiving funds through

- (i) the acceptance of monetary deposits which are repayable on demand or after notice or any similar operation;
- (ii) the sale or placement of bonds, certificates, notes or other securities;

and the use of such either in whole or in part for loans or investment for the risk of the customer; and

(b) any other activity recognised by the Eastern Caribbean Central Bank as customary

banking practice and which a financial institution may additionally be authorised to do.

Amalgamated
company.

517. If two or more companies amalgamate, the amalgamated company may have

- (a) the name of one of the amalgamating companies;
- (b) a distinctive combination that is not confusing of the amalgamating companies; or
- (c) a distinctive new name that is not confusing.

Division B: Investigation of Companies

Investigation
order.

518.—(1) A shareholder or debenture holder of a company, or the Registrar, may apply, *ex parte* or upon such notice as the court may require, to the court for an order directing that an investigation be made of the company and any of its affiliated companies.

(2) If, upon an application under subsection (1) in respect of a company, it appears to the court that

- (a) the business of the company or any of its affiliates is or has been carried on with intent to defraud any person;
- (b) the business or affairs of the company or any of its affiliates are or have been carried on in a manner, or the powers of the directors are or have been exercised in a manner, that is oppressive or unfairly prejudicial to,

or that unfairly disregards, the interest of a shareholder or debenture holder;

(c) the company or any of its affiliates was formed for a fraudulent or unlawful purpose, or is to be dissolved for a fraudulent or unlawful purpose;

(d) persons concerned with the formation, business or affairs of the company or any of its affiliates have in connection therewith acted fraudulently or dishonestly, or

(e) in any case it is in the public interest that an investigation of the company be made,

the court may order that an investigation be made of the company and any of its affiliated companies.

(3) If a shareholder or debenture holder makes an application under subsection (1) he shall give the Registrar reasonable notice thereof; and the Registrar is entitled to appear and be heard in person or by an attorney-at-law.

(4) An *ex parte* application under this section shall be heard in camera.

(5) No person shall publish anything relating to an *ex parte* proceeding except with the authorisation of the court or the written consent of the company that is being, or to be, investigated.

519.—(1) In connection with an investigation under this Division in respect of a company, the court may make any order it thinks fit, including

Court powers.

(a) an order to investigate;

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- (b) an order appointing an inspector, who may be the Registrar, and fixing the remuneration of the inspector and replacing the inspector.
 - (c) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
 - (d) an order authorising an inspector to enter any premises in which the court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;
 - (e) an order requiring any person to produce documents or records to the inspector;
 - (f) an order authorising an inspector to conduct a hearing, administer oaths and examine any person upon oath, and prescribing rules for the conduct of the hearing;
 - (g) an order requiring any person to attend a hearing conducted by an inspector and to give evidence upon oath;
 - (h) an order giving directions to an inspector or any interested person on any matter arising in the investigation;
 - (i) an order requiring an inspector to make an interim or final report to the court;
 - (j) an order determining whether a report of an inspector should be published, and, if so, ordering the Registrar to publish the report

in whole or in part, or to send copies to any person the court designates;

- (k) an order requiring an inspector to discontinue an investigation; or
- (l) an order requiring the company to pay the costs of the investigation.

(2) An inspector shall send to the Registrar a copy of every report made by the inspector under this Division.

520.—(1) An inspector under this Division has the powers set out in the order appointing him.

Inspector's powers.

(2) An inspector shall upon request produce to an interested person a copy of any order made under subsection (1) of section 519.

521.—(1) An interested person may apply to the court for an order that a hearing conducted by an inspector under this Division be heard in camera and for directions on any matter arising in the investigation.

In camera hearing.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Division may appear and be heard in person or by an attorney-at-law.

522. No person is excused from attending and giving evidence and producing documents and records to an inspector under this Division by reason only that the evidence tends to incriminate that person or subject him to any proceeding or penalty; but the evidence may not be used or received against him in any proceeding thereafter instituted against him, other than a prosecution for perjury or for fabrication of in giving the evidence.

Incriminating evidence.

privilege
absolute.

523. An oral or written statement or report made by an inspector or any other person in an investigation under this Division has absolute privilege.

ownership
interest.

524.—(1) If the Registrar is satisfied that, for the purposes of Division F of Part I or Division E of Part II, there is reason to enquire into the ownership or control of a share or debenture of a company or any of its affiliates, the Registrar may require any person that he reasonably believes has or has had interest in the share or debenture, or acts or has acted on behalf of a person with such an interest, to furnish to the Registrar, or to any person the Registrar appoints,

- (a) information that the person has or can reasonably be expected to obtain as to present and past interests in the share or debenture; and
- (b) the names and addresses of the persons so interested and of any person who acts or has acted in relation to the share or debenture on behalf of the persons so interested.

(2) For the purposes of subsection (1), a person has an interest in a share or debenture, if

- (a) he has a right to vote or to acquire or dispose of the share or debenture or any interest therein;
- (b) his consent is necessary for the exercise of the rights or privileges of any other person interested in the share or debenture; or
- (c) any other person interested in the share or debenture can be required, or

is accustomed, to exercise rights or privileges attached to the share or debenture in accordance with his instructions.

525. Nothing in this Division affects the privileges that exist in respect of an attorney-at-law and his client.

Client
privileges.

526. The Registrar may make of any person any inquiries that relate to compliance with this Act by any persons.

Inquiries.

Division C: Regulations

527.—(1) The Minister may make such regulations as are required for the better administration of this Act, and, in particular, the Minister may make regulations

Regulations.

- (a) prescribing any matter required or authorised by this Act to be prescribed;
- (b) requiring the payment of a fee in respect of the filing, examination or copying of any documents or in respect of any action that the Registrar is required or authorised to take under this Act, and prescribing the amount thereof;
- (c) prescribing the format and contents of returns, notices or other documents required to be sent to the Registrar or to be issued by him;
- (d) prescribing the rules with respect to exemptions permitted by this Act;
- (e) respecting the names of companies or classes thereof;

- (f) respecting the authorised capital of companies;
- (g) respecting the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to shares or classes or series of shares of companies;
- (h) respecting the designation of classes of shares; and
- (i) respecting any other matter required for the efficient administration of this Act.

(2) Regulations made under this section are subject to negative resolution.

Division D: Offences and Penalties

Name offence. 528. Subject to subsection (2) of section 10, a company that contravenes section 10 is guilty of an offence and liable on summary conviction to a fine of five thousand dollars.

Abuse of corporate status. 529. Each of the individuals who carries on business under a name part of which is "limited", "incorporated" or "corporation" or the abbreviations "ltd", "inc" or "corp" when such individual knows or ought to know that the business is not permitted by this Act to use such word or abbreviation in its name is guilty of an offence and liable on summary conviction to a fine of three thousand dollars.

Reports. 530.—(1) A person who makes or assists in making a report, return, notice or other document

- (a) that is required by this Act or the regulations to be sent to the Registrar or to any other person, and

(b) that

- (i) contains an untrue statement of a material fact, or
- (ii) omits to state a material fact required in the report, return, notice or other document, or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made,

is guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of eighteen months, or to both.

(2) A person is not guilty of an offence under subsection (1) if the making of the untrue statement or the omission of the material fact was unknown to him and with the exercise of reasonable diligence could not have been known to him.

(3) When an offence under subsection (1) is committed by a body corporate and a director or officer of that body corporate knowingly authorised, permitted or acquiesced in the commission of the offence, the director or officer is also guilty of the offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of eighteen months, or to both.

531.—(1) A person is guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of eighteen months, or to both

Specific offences.

- (a) who without reasonable cause contravenes section 189;
- (b) who without reasonable cause contravenes section 193;

-
- (c) who wilfully contravenes section 304, 311, or 313.
 - (d) who without reasonable cause contravenes subsection (5) of section 269;
 - (e) who wilfully contravenes section 142 or 143;
 - (f) who without reasonable cause fails to comply with a requirement of the Registrar under section 524 to report to the Registrar any information or any names or addresses of persons sought by the Registrar under that section;
 - (g) who, being a proxy holder or alternate proxy holder, fails without reasonable cause to comply with the directions of a shareholder under subsection (1) of section 145;
 - (h) who, being a registrant within the meaning of this Act, knowingly contravenes section 146;
 - (i) who, being an auditor or former auditor of a company, contravenes subsection (1) of section 169 without reasonable cause; or
 - (j) who, being a director or officer of a company knowingly contravenes section 173.

(2) Where the person who is guilty of an offence under subsection (1) is a body corporate, then, whether the body corporate has been prosecuted or convicted, any director or officer of the body corporate who knowingly

authorised, permitted or acquiesced in the act or omission that constituted the offence is also guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of eighteen months, or to both.

532. A company is guilty of an offence and liable on summary conviction to a fine of five thousand dollars, if

Company offences.

- (a) the company contravenes section 18(1), 315, 316, 317 or 319;
- (b) the management of the company without reasonable cause fails to comply with subsection (1) of section 141; or
- (c) the company without reasonable cause contravenes section 153 or 155;

(2) When a company is guilty of an offence under this section, any director or officer of the company who knowingly authorised, acquiesced in or permitted the contravention is also guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of eighteen months, or to both.

533. Every person who is guilty of an offence under this Act or the regulations is if no punishment is elsewhere in this Act provided for that offence, liable on summary conviction to a fine of three thousand dollars or to imprisonment for a term of twelve months or to both.

General offence.

534. In a prosecution for an offence under this Act arising out of an untrue statement or wilful non-disclosure in a prospectus, it is a defence for the person charged to prove that the statement or non-disclosure was immaterial, or that he had reasonable grounds to believe, and did, up

Defence re prospectuses.

to the time of the issue of the prospectus, believe that the statement was true or non-disclosure was immaterial.

order to
comply.

535. When a person is convicted of an offence under this Act or the regulations, the court, or a court of summary jurisdiction in which proceedings in respect of the offence are taken, may, in addition to any punishment it may impose, order that person to comply with the provision of this Act or the regulations for the contravention of which he has been convicted.

imitation.

536. A prosecution for an offence under this Act or the regulations may be instituted at any time within 2 years from the time when the subject-matter of the prosecution arose.

civil
remedies
affected.

537. No civil remedy for any act or omission is affected by reason that the act or omission is an offence under this Act.

Division E: Construction and Interpretation of Act

affiliated
corporations.

538. For the purposes of this Act,

- (a) one body corporate is affiliated with another corporate if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person; and
- (b) if two bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other.

'Control'.

539. For the purposes of this Act, a body corporate is controlled by a person if any shares of the body corporate carrying voting rights sufficient to elect a majority of the directors of the body corporate are, except by way of

security only, held, directly or indirectly, by or on behalf of that person.

540. For the purposes of this Act,

“Holding” and
“subsidiary”.

- (a) a body corporate is the holding body corporate of another if that other body corporate is its subsidiary; and
- (b) a body corporate is a subsidiary of another body corporate if it is controlled by that other body corporate.

541.—(1) For the purposes of this Act,

“Distribution”
to public.

- (a) a share or debenture of a body corporate is part of a distribution to the public, when, in respect of the share or debenture,
 - (i) there has been, under the laws of Grenada or any other jurisdiction, a filing of a prospectus, statement in lieu of prospectus, registration statement, stock exchange take-over bid circular or similar instrument; or
 - (ii) the share or debenture is listed for trading on any stock exchange wherever situated; and
- (b) a share or debenture of a body corporate is deemed to be part of a distribution to the public where the share or debenture has been issued and a filing referred to in subparagraph (i) of paragraph (a) would be required if the share or debenture were being issued currently.

(2) For the purposes of this Act, the shares or debentures of a company that are issued upon a conversion of other shares or debentures of a company, or in exchange for other shares or debentures, are part of a distribution to the public if any of those others were part of a distribution to the public.

(3) For the purposes of this Act,

- (a) a statement is included in a prospectus or in a statement in lieu of a prospectus if it is included in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith;
- (b) a statement included in a prospectus or statement in lieu of prospectus is deemed to be untrue if it is misleading in the form and context in which it is included; and
- (c) a reference to an offer or offering of shares or debentures for subscription or purchase is deemed to include an offer of shares or debentures by way of barter or otherwise.

Offer¹¹ to
the public.

542.—(1) Any reference in this Act to offering shares or debentures to the public includes, unless the contrary intention appears, a reference to offering them to any section of the public, whether selected as clients of the person issuing the prospectus or in any other manner; and references in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, unless the contrary intention appears, be similarly construed.

(2) Subsection (1) does not require that any offer or invitation be treated as being made to the public if the offer or invitation can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or other-wise as being a domestic concern of the persons making and receiving the offer or invitation.

(3) A provision in the articles or by-laws of a company that prohibits invitations to the public to subscribe for shares or debentures does not prohibit the making of an invitation to the shareholders, debenture holders or employees of the company.

543.—(1) In this Act, unless the context otherwise requires

Definition of technical words.

“affairs” means, in relation to any company or other body corporate, the relationship among the company or body corporate, its affiliates and the shareholders, directors and officers thereof, but does not include any businesses carried on by the companies or other bodies corporate;

“affiliate” means an affiliated company or affiliated body corporate within the meaning of section 538;

“articles” means, unless qualified,

- (a) the original or restated articles of incorporation, articles of amendment, articles of amalgamation, articles of continuation, articles of re-organisation, articles of dissolution, and articles of revival, and

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

“associate” when used to indicate a relationship with any person means

- (a) a company or body corporate of which that person beneficially owns or controls, directly or indirectly, shares or debentures convertible into shares, that carry more than 20 percent of the voting rights
- (i) under all circumstances,
 - (ii) by reason of the occurrence of an event that has occurred and is continuing, or
 - (iii) by reason of a currently exercisable option or right to purchase those shares or those convertible debentures;
- (b) a partner of that person acting on behalf of the partnership of which they are partners;
- (c) a trust or estate in which that person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity;

- (d) a spouse of that person within the meaning of subsections (2) and (3);
- (e) a child whether born in or out of wedlock, a step-child or an adopted child of that person; and
- (f) a relative of that person or of his spouse if that relative has the same residence as that person;

“auditor” includes a partnership of auditors;

“beneficial interest” or “beneficial ownership” includes ownership through a trustee, legal representative, agent or other intermediary;

“body corporate” includes a company within the meaning of this section or other body corporate wherever or however incorporated, other than a corporation sole;

“by-laws” means by-laws made by a company or having effect under sections 64 or 336;

“commencement date” means the date on which this Act comes into operation;

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

“court” means the High Court;

“corporate instruments” includes any statute, letters patent, memorandum of association, articles of association, certificate of incorporation, certificate of continuance, by-laws, regulations or other instrument by which a body corporate

is incorporated or continued or that governs or regulates the affairs of a body corporate;

“debenture” includes debenture stock and any bond or other instrument evidencing an obligation or guarantee, whether secured or not;

“director” in relation to a body corporate, means a person occupying therein the position of a director by whatever title he is called.

“external company” means any firm or other body of persons, whether incorporated or unincorporated, that is formed under the laws of a country other than Grenada;

Cap. 47 of the
1934 Revision.

“former Act” means the **Companies Act, Cap. 47** of the 1934 Revision, in force immediately before the commencement of this Act;

“former-Act company” means a company incorporated or registered under the former Act or any Act replaced by that Act;

“incorporator” means, in relation to a company, a person who signs the articles of incorporation of the company;

“legal representative” in relation to a company, shareholder, debenture holder or other person, means a person who stands in place of and represents the company, shareholder, debenture holder or person, and without limiting the generality of the foregoing, includes, as the circumstances require, a trustee, executor, administrator, assignee, or receiver of the company, shareholder, debenture holder or person;

“liability” includes, in relation to a company, any debt of the company that arises under

- (a) section 49,
- (b) subsection (2) of section 234, or
- (c) paragraph (f) or (g) of subsection (3) of section 241;

“Minister” means the Minister responsible for Trade.

“officer” in relation to a body corporate means

- (a) the chairman, deputy chairman, president or vice-president of the board of directors;
- (b) the managing director, general manager, comptroller, secretary or treasurer; or
- (c) any other person who performs for the body corporate functions similar to those normally performed by the holder of any office specified in paragraph (a) or (b) and who is appointed by the board of directors to perform such functions;

“ordinary resolution” means a resolution passed by a majority of the votes cast by the shareholders who voted in respect of that resolution;

“public authority” means a public body;

“public company” means a company any of whose issued shares or debentures are or were part of a distribution to the public within the meaning of section 541;

Cap. 25 as amended.

“public holiday” means a bank holiday as stipulated by the Bank Holidays Act;

“record” includes any register, book or other record that is required to be kept by a company or other body corporate;

“redeemable share” means a share issued by a company

(a) that the company can purchase or redeem upon demand of the company, or

(b) that the company is required by its articles to purchase or redeem at a specified time or upon the demand of a shareholder;

“Registrar” refers to the Registrar of Companies under this Act;

“Regulations” means regulations made by the Minister under section 527;

“security interest” means any interest in or charge upon any property of a company, by way of mortgage, bond, lien, pledge or other means, that is created or taken to secure the payment of an obligation of the company;

“send” includes deliver;

“series” in relation to shares, means a division of a class of shares;

“share” includes stock;

“shareholder” in relation to a company, includes

- (a) a member of a company described in Division A of Part III, except where inconsistent with a provision of that Division;
- (b) the personal representative of a deceased shareholder;
- (c) the trustee in bankruptcy of a bankrupt shareholder; and
- (d) a person in whose favour a transfer of shares has been executed but whose name has not been entered in the register of members, or, if two or more transfers of those shares have been executed, the person in whose favour the most recent transfer has been made;

“special resolution” means a resolution of which at least 21 days’ notice is given which is

- (a) passed by a majority of not less than 75 per cent of the votes cast by the shareholders who voted in respect of the resolution; or
- (b) signed by all the shareholders entitled to vote on the resolution.

“stated capital account” is an account maintained by a company for a class or series of shares issued by that company pursuant to section 31;

“stock exchange” means any market where shares or bonds are traded;

“unanimous shareholder agreement” means an agreement described in section 135.

(2) For the purposes of this Act reference to a spouse includes a single woman who was living together with a single man as his wife for a period of not less than 5 years and a single man who was living together with a single woman as her husband for a like period.

(3) For the purposes of subsection (2) a reference to a single woman or a single man includes a reference to a widow or widower or to a woman or man who is divorced.

Division F: Incidental and Consequential Matters

Repeal.

544.—(1) Subject to subsection (3), the former Act is repealed.

(2) Notwithstanding subsection (1) the provisions of the former Act continue to apply so far as is necessary to enable a former-Act company lawfully to function until it is continued under this Act or wound up.

(3) Notwithstanding subsection (1) subsidiary legislation regarding any particular matter made under the former Act and in force at the commencement of this Act shall continue to apply until and unless subsidiary legislation needed to be prescribed under this Act regarding such particular matter is prescribed, but such existing subsidiary legislation shall be read with such adaptations,

modifications, qualifications and exceptions as may be necessary to bring it into conformity with this Act.

545.—(1) In this section and section 546

References to
Companies Act.

- (a) “enactment” means an Act or regulation or any provision of an Act or regulation: and
- (b) “regulation” includes an order, regulation, order in council, order prescribing regulations, rule, rule of court, form, tariff of costs or fees, letters patent, commission, warrant, and any instrument issued, made or established
 - (i) in the execution of a power conferred by or under an Act other than the former Act, or
 - (ii) by or under the authority of the Attorney General.

(2) A reference in an unrepealed enactment to the former Act is, as regards a transaction, matter or things subsequent to the commencement date to be construed and applied, unless the context otherwise requires, as a reference to the provisions of this Act that relate to the same subject-matter as the provisions of the former Act; but if there are no provisions in this Act that relate to the same subject-matter, the former Act is to be construed and applied as unrepealed so far as is necessary to do so to maintain or give effect to the unrepealed provision.

546.—(1) Where in any enactment the expression “registered under the Companies Act” occurs, the expression, unless the context otherwise requires, refers to

incorporation, continuation or registration under this Act in respect of all transactions, matters or things subsequent to the commencement date.

(2) Where in any enactment the expression "memorandum of association" or "articles of association" occur, those expressions, unless the context otherwise requires, refer respectively to articles of incorporation and by-laws within the meaning of this Act.

(3) Where in any enactment a reference is made to winding-up under, or to the winding-up provisions of, the former Act, then, unless the context otherwise requires, it refers, in respect of all transactions, matters or things subsequent to the commencement date, to winding up or dissolution under this Act.

Repeal
effect.

547.—(1) Notwithstanding subsection (1) of section 544, if on the commencement date any proceedings under the former Act are pending in respect of the winding-up of any body under that Act, those proceedings may be continued under that Act as if this Act had not been enacted.

(2) When, on the commencement date an amalgamation agreement entered under the former Act and approved by the court under that Act is in the course of being filed with the Registrar General or is in his hands, the amalgamation may be continued and effected under that Act as if this Act had not been enacted, unless the parties to the amalgamation withdraw the amalgamation agreement by notice in writing.

Security for
costs.

548. Where a company is plaintiff in any action or other legal proceeding any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs

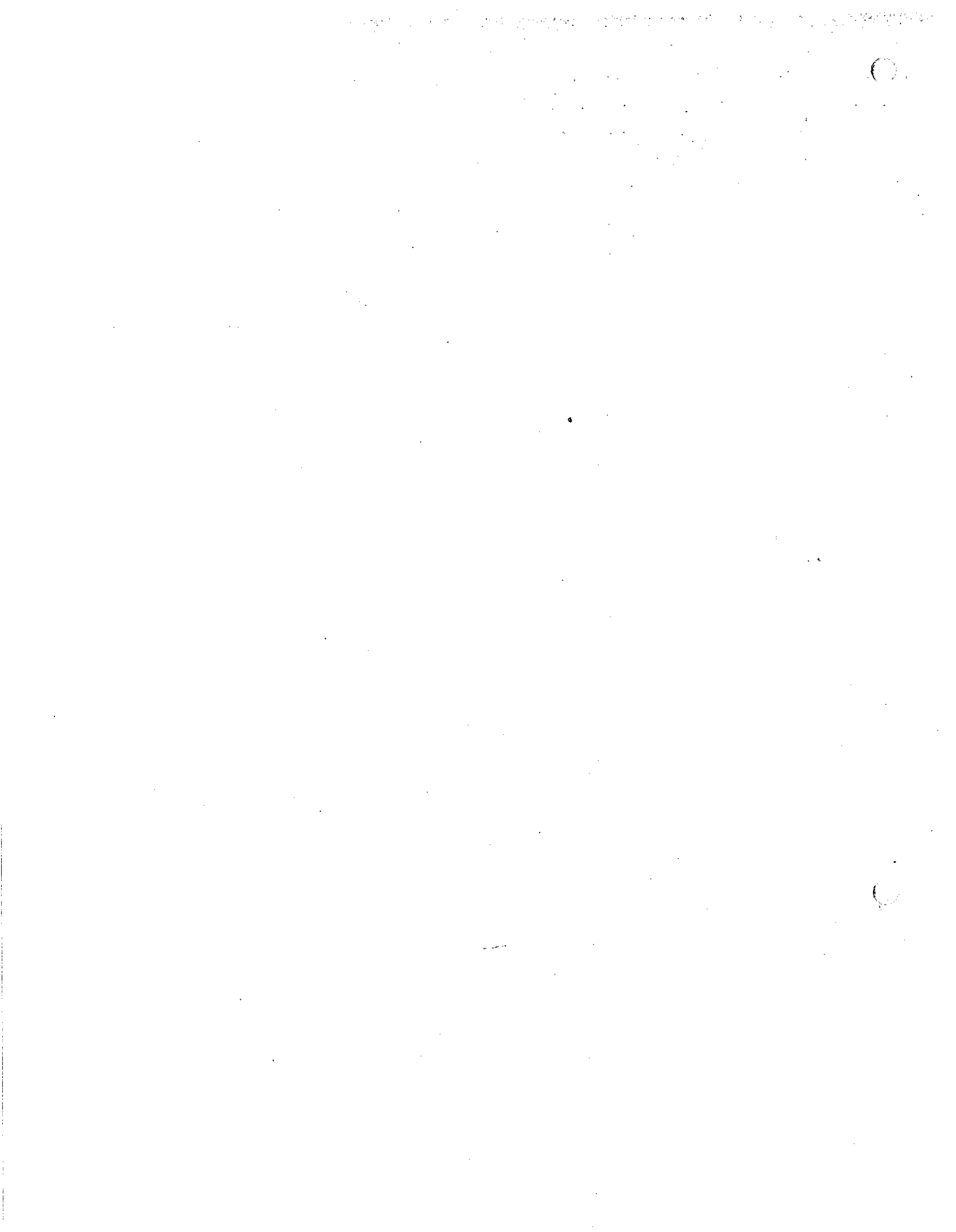
of the defendant if successful in his defence, require sufficient security to be given for those costs and may stay all proceedings until the security is given.

549.—(1) If in any proceeding for negligence, default, breach of duty or breach of trust against person to whom this section applies it appears to the court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think fit.

Power of
court to grant
relief in
certain cases.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where any case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.



(4) The persons to whom this section applies are the following—

- (a) directors, managers or officers of a company;
- (b) persons employed by a company as auditors.

Saving for privileged communications.

550. Where proceedings are instituted under this Act against any person, nothing in this Act shall be taken to require any person who has acted as attorney-at-law for the defendant to disclose any privileged communication made to him in that capacity.

Passed by the House of Representatives this 7th day of June, 1994.

BASIL A. HARFORD
Clerk to the House of Representatives.

Passed by the Senate this 30th day of August, 1994.

BASIL A. HARFORD
Clerk to the Senate.

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10

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