

## PART XII

### APPLICATION OF ORDINANCE TO COMPANIES FORMED AND REGISTERED UNDER PREVIOUS COMPANIES ACTS

440. *Application of Ordinance to companies formed and registered under previous Companies Acts.* This Ordinance shall apply to existing companies as follows:-

- (a) in the case of a limited company other than a company limited by guarantee, this Ordinance shall apply in the same manner as if the company had been formed and registered under this Ordinance as a company limited by shares;
- (b) in the case of a company limited by guarantee, this Ordinance shall apply in the same manner as if the company had been formed and registered under this Ordinance as a company limited by guarantee; and
- (c) in the case of a company other than a limited company, this Ordinance shall apply in the same manner as if the company had been formed and registered under this Ordinance as an unlimited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the previous Companies Act concerned.

441. *Application of Ordinance to companies registered but not formed under previous Companies Acts.* This Ordinance shall apply to every company registered but not formed under any previous Companies Act in the same manner as it applies to existing companies under this Ordinance:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the previous Companies Act concerned.

442. *Application of Ordinance to unlimited companies registered under previous Companies Acts.* This Ordinance shall apply to every unlimited company registered as a limited company in pursuance of any previous Companies Act, in the same manner as it applies to

an unlimited company registered in pursuance of this Ordinance as a limited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as limited company under the previous Companies Act concerned.

## PART XIII

### WINDING UP OF UNREGISTERED COMPANIES

443. *Meaning of "unregistered company".* For the purposes of this Part, the expression "unregistered company" shall not include a railway company incorporated by Act of Parliament of the United Kingdom or by a Pakistan law, nor a company registered under any previous Companies Act or under this Ordinance, but save as aforesaid, shall include any partnership, association or company consisting of more than seven members.

#### Synopsis

1. Scope.

2. Foreign company.

1. **Scope.** Section 443 defines the term "Unregistered company". The second part of this section does not specify what bodies will come within the term "unregistered Co". It is clear that the section is not exhaustive. It cannot be said that the words "shall include" occurring in this section will be interpreted as "shall mean and include". The word "include" in the interpretation clauses is intended to be enumerative and not exhaustive. This part of the section speaks of a partnership, association or Company consisting of more than seven members being an unregistered partnership, association or company. It is, therefore, clear that other partnerships, associations or companies may be included within the meaning of "unregistered Co". From the scheme of the Ordinance it appears that the first part of this section speaks of what is not included within the term "unregistered Co." and speaking generally it brings within the exception bodies incorporated under the specific Acts that is, those bodies which have a corporate existence. It follows, therefore, that bodies which are not incorporated under the specified Acts must be included within the expression "unregistered Co." Therefore, "company" in this section can only mean and must mean a body which has no corporate existence not being registered under this Act.<sup>1</sup>

A company formed in contravention of the provisions of section 14(2) of the Ordinance is not included within the definition of 'unregistered company' in section 443.<sup>2</sup> Sections 443 and 444 relate to a company which has a place of business and they cannot refer to a club.<sup>3</sup>

*Association.* Provision of section 443 of the Ordinance, is concerned with an "association" simpliciter without any reference to its object.<sup>4</sup>

2. **Foreign company.** A foreign company falls within the expression unregistered company, whatever may be the number of its members.<sup>5</sup>

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1. 1973 Dhaka L R 270.

2. AIR 1954 All 555.

3. AIR 1948 All 146 = ILR 1947 All 758 (SB).

4. PLD 1992 Kar 230 = NLR 1992 U.C 518.

5. AIR 1957 Bom 15.

*Company incorporated in India at time of partition.* The Companies Ordinance would exclude from the definition of "company" or existing company any company which, though registered under Companies Act of 1913 or the earlier Acts, had immediately before the establishment of the dominions, its registered office at any place outside Pakistan. A Company could not, if its registered office was outside Pakistan, be called a "company" or an "existing company" in Pakistan and it would make no sense, that while it would not fall under the definition of "company" or existing company under section 2 of the Ordinance it should still be considered a company recognised by Pakistan as a validly registered company for the purposes of section 443 of the Companies Ordinance. The setting up of a registered office, by a company in India before 15th of August, 1947, would in relation to Pakistan, make it a foreign company. Therefore Pakistan Courts have the power to wind up such a company.<sup>6</sup>

Where a company incorporated under the Ordinance had its registered Office in the North-Western Frontier Province and a branch office in India and after the partition of India it was registered as a foreign company in India; it was held that after the partition the Company could not be considered as a company registered in India and that its position after its registration was that of an unregistered company as defined in section 443.<sup>7</sup>

*Foreign company with Central office in Pakistan.* A bank although it is a foreign company would be an unregistered company within the meaning of section 443 and 444 if its central office is situated in Pakistan.<sup>8</sup>

444. *Winding up of unregistered companies.* (1) Subject to the provisions of this Part, any unregistered company may be wound up under this Ordinance, and all the provisions of this Ordinance with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:--

- (i) an unregistered company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding up, be deemed to be registered in the Province where its principal place of business is situated or, if it has a principal place of business situate in more than one Province then in each Province where it has a principal place of business; and the principal place of business situate in the Province in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company;

6. PLD 1951 Lah 288 = PLR 1951 Lah 740 (DB).

7. AIR 1949 All 778 = ILR 1950 All 590 (DB).

8. AIR 1939 Mad 318 (Hence the court in India has jurisdiction to entertain an application under section 153) + 54 Cal W N (2 DR) 201 (Hence it was held that the Dacca High Court had jurisdiction to entertain an application under section 153 in regard to that company).

- (ii) no unregistered company shall be wound up under this Ordinance voluntarily or subject to supervision of the Court;
- (iii) the circumstances in which an unregistered company may be wound up are as follows (that is to say):--
  - (a) if the company is dissolved, or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs;
  - (b) if the company is unable to pay its debts;
  - (c) if the Court is of opinion that it is just and equitable that the company should be wound up;
  - (iv) an unregistered company shall, for the purposes of this Ordinance, be deemed to be unable to pay its debts--
    - (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding twenty-five thousand rupees 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 by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for thirty days after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;
    - (b) if any suit or other legal proceeding has been instituted against any member for any 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 suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, manager or principal officer of the company or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within fifteen days after service of the notice paid, secured or compounded for the debt or demand, or procured the suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the suit or other legal proceeding, and against all

costs, damages and expenses to be incurred by him by reason of the same;

- (c) if execution or other process issued on a decree or order obtained in any Court or other competent authority in favour of the creditor against the company, or any member thereof as such, or any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied in whole or in part;
- (d) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts; and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company and its solvency.

(2) Noting in this Part shall affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company, under any previous Companies Act:

Provided that references in any such enactment to any provision contained in any previous Companies Act shall be read as references to the corresponding provision (if any) of this Ordinance.

(3) Where a company incorporated outside Pakistan which has been carrying on business in Pakistan ceases to carry on business in Pakistan, it may be wound up as an unregistered company under this Part, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.]

#### Synopsis

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|---------------------------|--------------------------------|
| 1. Scope.                 | 3. Foreign company.            |
| 2. Winding up of company. | 4. Application for winding up. |

1. **Scope.** Part XIII of the Ordinance is intended to cover the cases of those companies which can legitimately remain unregistered. It does not contemplate that an illegal company (*i.e.* one formed in contravention of the provisions of section 14(2) can also be wound up through Court).<sup>9</sup> However, a company which was legal in its inception but was subsequently made illegal by law is to be treated differently. Thus where a company has ceased to exist by an act of the country by whose acts and under whose law it was made a juristic entity, it must be treated as

<sup>9</sup> AIR 1954 All 555.

non-existent by all Courts administering English law. Hence all those Courts have jurisdiction to wind up the company within their own territories.<sup>10</sup>

**2. Winding up of company.** The Court has jurisdiction in a proper case to order the winding up of a partnership association or company under section 444 if and only if at the time when the petition for the winding up is presented it consists of more than seven members.<sup>11</sup> But the fact that an order for winding up has been made by the Court of principal domicile of a company does not mean that similar order should be passed automatically by all other Courts of ancillary jurisdiction before which similar proceedings for winding up are pending. Those Courts may on practical considerations find it just and equitable to pass an order for winding up but they are not obliged to do so.<sup>12</sup>

*Unregistered company.* In case of an unregistered company, winding up order can be made only (1) when company is dissolved or is about to be dissolved, (2) when it is unable to pay its debts and (3) when the Court thinks that the company should be wound up.<sup>13</sup> If unregistered company ceases to take new business, it does not mean that it is about to be wound up, and an order for winding it up is not justified.<sup>14</sup> An unregistered company carrying on business 'as a sealed series' does not incur the winding up order if the company is solvent.<sup>15</sup>

*Grounds for winding up.* Where a company which was unregistered admittedly was not in a position to pay dues to its creditors and partners of said unregistered Company had also absconded. The Court allowed petition for winding up of Company and appointed official Assignee as Official Liquidator of the Company.<sup>16</sup>

**3. Foreign company.** A foreign company doing business in Pakistan can be wound up as an unregistered company.<sup>17</sup> A Court has jurisdiction to wind up as an unregistered company, a foreign company whatever the number of its members, if it has an office and assets within its jurisdiction, and the mere fact that the order for winding up the company has been made by a competent Court of the place of the company's incorporation cannot make any difference to the jurisdiction of the Court.<sup>18</sup> It would be sufficient to show that company proceeded against had some assets within the jurisdiction of Court and that there were one or more persons concerned in proper distribution of assets over whom jurisdiction was exercisable.<sup>19</sup>

10. AIR 1941 PC 88 (Company incorporated under laws of Republic of China having head office in Chinese Province and branch at Hong Kong—Company dissolved by decree of Chinese Court—Petition for winding up in Supreme Court of Hong Kong—Held Supreme Court had power to wind up company).

11. AIR 1933 Rang 77=8 Rang 658 (DB) (AIR 1930 Rang 337 Reversed).

12. AIR 1939 Mad 318.

13. 2 Ind Cas 164 (Mad) (Where the company is solvent court will not order its winding up even if it is the minority of the members that oppose it).

14. 2 Ind Cas 164 (Mad).

15. 2 Ind Cas 164 (Mad).

16. 1991 CLC 1148.

17. AIR 1956 Mad 131 + AIR 1962 SC 500.

18. 1986 CLC 2933 + AIR 1937 Bom 15.

19. 1986 CLC 2933 = NLR 1987 CLJ 393.

Section 284, which is a general law as to winding up, applies to the winding up of foreign companies also because under section 444 they are liable to be wound up as unregistered companies.<sup>20</sup>

*Who may apply for winding up of Company.* For moving an application under this section it is necessary that petitioner seeking winding up is a creditor of the company.<sup>1</sup>

**4. Application for winding up.** A foreign creditor can apply under section 444 for the liquidation of a foreign company which carries on business in Pakistan.<sup>2</sup>

An unregistered company itself is competent to apply for its winding up. The right to apply is not confined to the creditors and contributories alone.<sup>3</sup>

**445. Contributories in winding up of unregistered companies.** (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the cost and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

(2) In the event of any contributory dying or being adjudged insolvent, the provisions of this Ordinance with respect to the legal representatives and heirs of deceased contributories, and to the assignees of insolvent contributories, shall apply.

**446. Power to stay or restrain proceedings.** The provisions of this Ordinance with respect to staying and restraining suits and legal 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 suits and legal proceedings against any contributory of the company.

**447. Suits stayed on winding up order.** Where an order has been made for winding up an unregistered company, no suit or other legal proceedings shall be proceeded with or commenced against any contributory of the company in respect of any debt of the

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20. AIR 1939 Mad 318 + AIR 1951 Punj (Simla) 145 = ILR 1950 Punj 395 (FB) (Harnam Singh, J. dissenting).

1. 1986 CLC 2933 = NLR 1987 CLJ 393.

2. AIR 1952 Mad 136 (DB).

3. AIR 1956 Mad 131 = ILR 1956 Mad 440 (DB).



company, except by leave of the Court and subject to such terms as the Court may impose.

448. *Directions as to property in certain cases.* If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the winding up order, or by any subsequent order, direct that all or any part of the property, movable or immovable including all interests and rights in, to and out of property, movable and immovable and including obligations and actionable claims as may belong to the company or to trustees on its behalf, is to vest in the official liquidator by his official name, and thereupon the property or any part thereof specified in the order shall vest accordingly; and the official liquidator may, after giving such indemnity (if any) as the Court may direct, bring or defend in his official name any suit or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

449. *Provisions of this part cumulative.* The provisions of this Part with respect to unregistered companies shall be in addition to and not in derogation of, any provisions hereinbefore, in this Ordinance contained with respect to winding up of companies by the Court and the Court or official liquidator may exercise any powers or do any act in the cases of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Ordinance; but an unregistered company shall not except in the event of its being wound up, be deemed to be a company under this Ordinance, and then only to the extent provided by this Part.

1. **Scope.** Section 499 has adopted practically verbatim the provisions of section 204 of the English Act as it stood in 1881. Therefore the decisions of the English Courts in relation to the terms of section 204 are of binding effect for the interpretation of section 449.<sup>4</sup>

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4. AIR 1949 Lah 48 = Pak L R 1948 Lah 209.

## PART XIV

### COMPANIES ESTABLISHED OUTSIDE PAKISTAN PROVISIONS AS TO ESTABLISHMENT OF PLACES OF BUSINESS IN PAKISTAN

450. *Application of this Part to foreign companies.* This Part shall apply to all foreign companies, that is to say, companies incorporated or formed outside Pakistan which, after the commencement of this Ordinance, establish a place of business within Pakistan or which have, before the commencement of this Ordinance, established a place of business in Pakistan and continue to have an established place of business within Pakistan at the commencement of the Ordinance.

451. *Document to be delivered to registrar by foreign companies.*  
(1) Every foreign company which, after the commencement of this Ordinance, establishes a place of business in Pakistan shall, within thirty days of the establishment of the place of business, deliver to the registrar--

- (a) a certified copy of the charter, statute or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and if the instrument is not written in the English or Urdu language, a certified translation thereof in the English or Urdu language;
- (b) the full address of the registered or principal office of the company;
- (c) a list of the directors, chief executive and secretaries (if any) of the company;
- (d) a return showing the full present and former names and surnames, father's name or, in the case of a married woman or widow, the name of her husband or deceased husband, present and former nationality, designation and full address in Pakistan of the principal officer of the company in Pakistan by whatever name called;
- (e) the full present and former names and surnames, father's name, or, in case of a married woman or widow, the name of her husband or deceased husband, present and former

nationality, occupation and full addresses of some one or more persons resident in Pakistan authorised to accept on behalf of the company service of process and any notice or other document required to be served on the company together with his consent to do so; and

(f) the full address of that office of the company in Pakistan is to be deemed its principal place of business in Pakistan of the company.

(2) The list referred to in clause, (c) of sub-section (1) shall contain the following particulars, that is to say,--

(a) with respect to each director,--

(i) in the case of an individual, his present and former name and surname in full, his usual residential address, his nationality, and if that nationality is not the nationality of origin, his nationality of origin, and his business occupation, if any, and any other directorship which he holds;

(ii) in the case of a body corporate, its corporate name and registered or principal office; and the full name, address, nationality and nationality of origin, if different from that nationality, of each of its directors;

(b) with respect to the secretary, or where there are joint secretaries, with respect to each of them--

(i) in the case of an individual, his present and former name and surname, and his usual residential address;

(ii) in the case of a body corporate, its corporate name and registered or principal office:

Provided that, where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars mentioned in clause (b).

(3) Every foreign company, other than a company mentioned in sub-section (1) shall, if it has not delivered to the registrar before the commencement of this Ordinance the documents and particulars specified in section 227 of the Companies Act, 1913 (VII of 1913), shall continue to be subject to the obligation to deliver those documents and particulars and be liable to penalties in accordance with the provisions of that Act.

## Synopsis

1. Scope.
2. Company resident in more than one country.

1. **Scope.** A foreign company which has complied with the requirements of section 451 has to be treated as an unregistered company for the purposes of Part XIII of the Ordinance.<sup>1</sup>

The fact that the majority of share-holders of a foreign company have migrated to Pakistan does not and cannot change its nationality and domicile.<sup>2</sup>

2. **Company resident in more than one country.** A finding that a company is a resident of more than one country ought not to be made unless the control of the general affair of the company is not centered in one country but is divided or distributed among two or more countries. The matter must always be one of degree and residence may be constituted by a combination of various factors, but one factor to be looked for is the existence in the place claimed as a residence of some part of the superior or the directing authority by means of which the affairs of the company are controlled.<sup>3</sup> Where an insurance company incorporated outside Pakistan carries on business in Pakistan through an agent pays the rent for the office and licence-tax to the corporation, keeps a sign board and maintains a separate account of its business in Pakistan; it carries on business in Pakistan.<sup>4</sup>

452. *Return to be delivered to registrar by foreign companies whose documents, etc. altered.* If any alteration is made or occurs in--

- (a) the charter, statute or memorandum and articles of a foreign company or any such instrument as is referred to in section 451;
- (b) the address of the registered or principal office of the company;
- (c) the directors, chief executive or secretaries or in the particulars contained in the list referred to in section 451;
- (d) the principal officer referred to in section 451;
- (e) the name or addresses or other particulars of the persons authorised to accept service of process, notices and other documents on behalf of the company as referred to in the preceding section 451, or
- (f) the principal place of business of the company in Pakistan;

1. AIR 1951 Punj (Simla) 145 (FB) + AIR 1949 All 778 (DB).

2. AIR 1959 Punj 199 = ILR 1959 Punj 101.

3. 38 I T R 49 (Hence where under the constitution of the subsidiaries their boards are not bound to accept and act on the instructions of the parent company, the subsidiaries registered in and are residents of another country cannot be treated as residents of the country of which the parent company is resident).

4. AIR 1937 All 208 = ILR 1937 All 234 (DB).

the company shall, within thirty days of the alteration, deliver to the registrar for registration a return containing the prescribed particulars of the alteration and in the case of change in persons authorised to accept service of process, notices and other documents on behalf of the company, also his consent to do so.

453. *Accounts of foreign companies.* (1) Every foreign company shall in every year make out and file with the registrar, together with a list of Pakistani members and debenture-holders and of the places of business of the company in Pakistan,—

- (i) such number of copies of a balance sheet and profit and loss account, not being less than three, as may be prescribed, in such form, audited by such person, containing such particulars and including or having annexed or attached thereto such documents (including, in particular documents relating to every subsidiary of the company) as nearly as may be as under the provisions of this Ordinance it would, if it were a company formed and registered under this Ordinance, be required to file in accordance with the provisions of this Ordinance in respect of the company's operations in Pakistan as if such operations had been conducted by a separate public company formed and registered in Pakistan under this Ordinance; and
- (ii) in a case where, by the law for the time being in force of the country in which the company is incorporated, such company is required to file with the public authority an annual balance-sheet and profit and loss account, also such number of copies of that balance sheet and profit and loss account together with any documents annexed thereto, not being less than three, as may be prescribed, and if the same is not in the English language a certified translation thereof in the English language; or
- (iii) in a case where a company is not required to file with the public authority of the country in which the company is incorporated an annual balance sheet and profit and loss account as referred to in clause (ii), the prescribed number of copies, not being less than three, of the balance sheet and profit and loss account and the report of auditors and other documents annexed thereto, in such form and manner as under the provisions of this Ordinance it would, if it had been a public company within the meaning of this

Ordinance, be required to make out any lay before the company in general meeting.

(2) The period within which the documents, returns or reports referred to in sub-section (1) are to be filed with the registrar shall be a period of forty-five days from the date of submission of such documents or returns to the public authority of the country of incorporation or within six months of the date up to which the relevant accounts are made up, whichever is earlier.

454. *Certain obligations of foreign companies.* Every foreign company shall--

- (a) maintain at its principal place of business in Pakistan, or, if it has only one place of business in Pakistan, in that place of business, a register of Pakistani members and debenture-holders, directors and officers, which shall be open to inspection and copies thereof supplied as in the case of similar registers maintained by a company under this Ordinance;
- (b) in every prospectus inviting subscriptions for its shares or debentures in Pakistan, state the country in which the company is incorporated;
- (c) conspicuously exhibit on the outside of every place where it carries on business in Pakistan the name of the company and the country in which the company is incorporated in letters easily legible in English and Urdu characters and also, if any place where it carries on business is beyond the local limits of the ordinary original civil jurisdiction of a High Court, in the characters of one of the vernacular language used in that place;
- (d) cause the name of the company and of the country in which the company is incorporated mentioned in legible English or Urdu characters in all bill-heads and letter papers, and in all notices, advertisements, documents and other official publications of the company; and
- (e) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible English or Urdu characters in every prospectus inviting subscriptions for its shares, and in all bill-heads and letter papers, notices, advertisements and other official publications of the company in Pakistan, and to be exhibited on the

outside of every place where it carries on business in Pakistan.

455. *Service on foreign company.* Any process, notice or other document required to be served on such company as is referred to in this Part shall be deemed to be sufficiently served if addressed to any person whose name has been so filed with the registrar as aforesaid and left at or sent by post to the address which has been so filed:

Provided that--

- (a) where any such company makes default in delivering to the registrar the name and address of a person resident in Pakistan who is authorised to accept on behalf of the company service of process, notices or other documents; or
- (b) if at any time all the persons whose names and addresses have been so filed are dead or have ceased to so reside, or refuse to accept service on behalf of the company or for any reason cannot be served;

a document may be served on the company by leaving it at, or sending it by post to, any place of business established by the company in Pakistan.

1. *Service on foreign company.* The only mode of service on foreign companies is that prescribed by section 455 and not by C.P. Code.<sup>5</sup>

456. *Company's failure to comply with this part not to affect its liability under contracts, etc.* Any failure by a foreign company to comply with any of the requirements of section 451 or section 452 shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof; but the company shall not be entitled to bring any suit, claim any set-off, make any counterclaim or institute any legal proceeding in respect of any such contract, dealing or transaction, until it has complied with the provisions of section 451 and section 452.

457. *Provisions relating to names, enquiries, etc. to apply to foreign companies.* The provisions of sections 37 to 41 relating to names and changes in the names of companies shall, as far as applicable, also apply to companies to which this Part applies; and

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5. AIR 1928 Sind 111 (DB).

the power of inspection, enquiries and investigation conferred by this Ordinance on the registrar and the Authority in respect of companies shall likewise extend to such companies.

458. *Intimation of ceasing to have place of business to be given.*

(1) Any company to which this Part applies shall at least thirty days before it intends to cease to have any place of business in Pakistan--

- (a) give a notice of such intention to the registrar; and
- (b) publish a notice of such intention at least in two daily newspapers circulating in the Province or Provinces in which such place or places of business are situate.

(2) As from the date of intention to cease to have any place of business in Pakistan stated in the notice referred to in sub-section (1), unless the said date is by a similar notice altered, the obligation of the company to deliver any document to the registrar shall cease, provided it has no other place of business in Pakistan.

459. *Penalties.* If any foreign company fails to comply with any of the provisions of this Part, the company, and every officer or agent of the company who knowingly or wilfully authorises or permits the default, shall be liable to a fine which may extend to five thousand rupees and, in the case of a continuing default, to a further fine which may extend to one hundred rupees for every day after the first during which the default continues.

460. *Interpretation of provisions of this Part.* For the purposes of this Part,--

- (a) the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;
- (b) the expression "director", in relation to a company includes any person in accordance with whose directives or instructions the directors of the company are accustomed to act;
- (c) the expression "place of business" includes a branch, management, share transfer or registration office, factory, mine or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the company or maintains a stock of



merchandise belonging to the company from which he regularly fills orders on its behalf:

Provided that:

- (i) a company shall not be deemed to have an established place of business in Pakistan merely because it carries on business dealings in Pakistan through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such,
- (ii) the fact that a company has a subsidiary which is incorporated, resident, or carrying on business in Pakistan (whether through an established place of business or otherwise) shall not of itself constitute the place of business of that subsidiary an established place of business of the company:
- (d) the expression "registrar" means the registrar in the Province or the Islamabad Capital Territory, as the case may be, in which the principal place of business of the foreign company or, where such foreign company has only one place of business in Pakistan, the only place of business in Pakistan is situate; and
- (e) the expression "secretary" includes any person occupying the position of secretary, by whatever name called.

### PROSPECTUS

461. *Issue of prospectus.* No person shall issue, circulate or distribute in Pakistan any prospectus offering for subscription securities of a foreign company or soliciting deposits of money, whether the company has or has not established, or when formed will or will not establish, a place of business in Pakistan unless authorised to do so by the Federal Government under the Capital Issues (Continuance of Control) Act, 1947 (XXIX of 1947), or as may be prescribed.

462. *Restriction on canvassing for sale of securities.* (1) No person shall go from house to house offering securities of a foreign company for subscription or purchase to the public or any member of the public.

*Explanation.* In this sub-section, "house" shall not include an office used for business purposes.

(2) Any person acting in contravention of sub-section (1) shall be punishable with fine which may extend to one thousand rupees.

#### REGISTRATION OF CHARGES, ETC.

463. *Registration of charges.* (1) The provisions of sections 121 to 136 both inclusive, shall extend to charges on properties in Pakistan which are created, and to charges on property in Pakistan which is acquired, by a foreign company which has an established place of business in Pakistan:

Provided that references in the said sections to the registrar shall be deemed to be references, to the registrar referred to in clause (d) of section 460, and reference to the registered office of the company shall be deemed to be reference to the principal place of business in Pakistan of the company:

Provided further that, where a charge is created outside Pakistan or the completion of the acquisition of property takes place outside Pakistan, clause (i) of the proviso to sub-section (1) of section 121 and the proviso to sub-section (1) of section 122 shall apply as if property wherever situated were situated outside Pakistan.

(2) Where a company to which this section applies creates, or has created at any time before establishing a place of business in Pakistan, a charge on any property otherwise registrable under this Ordinance it shall register the same with the registrar in accordance with the provisions of this Ordinance,--

- (a) within thirty days of the establishment of a place of business in Pakistan; or
- (b) if the charge was created before the commencement of this Ordinance and subsisted immediately before such commencement, within three months thereof.

464. *Notice of appointment of receiver.* The provisions of sections 137 and 138 shall *mutatis mutandis* apply to the case of all foreign companies having an established place of business in Pakistan and the provisions of section 230 shall apply to such companies to the extent of requiring them to keep at their principal place of business in Pakistan the books of account required by that section with respect to money received and expended, sales and purchases made, and assets and liabilities in relation to its business in Pakistan:

Provided that references in the said section to the registrar shall be deemed to be references to the registrar referred to in clause (d) of section 460 and references to the registered office of the company shall be deemed to be reference to the principal place of business in Pakistan of the company.

### NOTICE OF LIQUIDATION

465. *Notice of liquidation, etc.* If a foreign company having an established place of business in Pakistan goes into liquidation in the country of its incorporation, it shall--

(a) within thirty days give notice thereof to the registrar, and simultaneously publish a notice at least in two daily newspapers circulating in the Province or Provinces or the part of Pakistan not forming part of a Province, as the case may be, in which its place or places of business are situated and furnish to the registrar within thirty days of the conclusion of the liquidation proceedings all returns relating to the liquidation and the liquidation account in respect of such portion of the company's affairs as relates to its business in Pakistan; and

(b) cause, in legible letters, a statement to appear, on every invoice, order, bill-head, letter paper, notice of other publication in Pakistan, to the effect that the company is being wound up in the country of its incorporation.

(2) Where a company to which this section applies has been dissolved, or has otherwise ceased to exist, no person shall, after the date of such dissolution or cessation, carry on, or purport to carry on, any business in Pakistan in the name or on behalf of such company.

(3) Nothing in this section shall be construed as preventing a company to which this section applies from being wound up in Pakistan in accordance with the provisions of this Ordinance, notwithstanding that it has neither been dissolved nor otherwise ceased to exist in the country of its incorporation.

**PART XV**  
**REGISTRATION OFFICES AND FEES**

466. *Registration offices.* (1) For the purposes of the registration of companies and other work under this Ordinance, there shall be offices at such places as the Federal Government thinks fit, and no company shall be registered except at an office within the Province or Territory in which, by the memorandum, the registered office of the company is declared to be established.

(2) The Federal Government may appoint registrars, additional registrars, joint registrars, deputy registrars, and assistant registrars as it thinks necessary for the registration of companies and performing other duties under this Ordinance, and may make regulations with respect to their duties.

(3) All assistant registrars, deputy registrars, joint registrars and additional registers shall observe and follow the order and instructions of the registrar who is head of the organization for the registration of companies in Pakistan.

(4) The salaries and other terms and conditions of service of the person appointed under this section shall be fixed by the Federal Government.

(5) The Federal Government may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(6) Any person may inspect the documents kept by the registrar and any person may require a certificate of incorporation or a certificate of commencement of business of any company, or a copy or extract of any other document or register or any part of any other document on register to be certified by the registrar on payment of the fees specified in the Sixth Schedule.

(7) Wherever any act is by this Ordinance directed to be done to or by the registrar it shall, until the Federal Government otherwise directs, be done to or by the existing registrar of joint stock companies or in his absence to or by such person as the Federal Government may for the time being authorise; but, in the event of the Federal Government altering the constitution of the existing registration offices or any of them, any such act shall be done to or by such officer and at such place with reference to the

local situation of the registered offices of the companies to be registered as the Federal Government may appoint.

467. *Production of documents kept by registrar, etc.* (1) No process for compelling the production of any document or register kept by the registrar shall issue from any Court except with the special leave of that Court for reasons to be recorded; and any such process, if issued, shall bear thereon a statement that it is issued with the special leave of the Court so granted and state the reasons for grant of such leave.

(2) A copy of, or extract from, any document or register kept and registered at any of the offices for the registration of companies under this Ordinance, certified to be a true copy under the hand of the registrar (whose official position it shall not be necessary to prove) shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document.

(3) Notwithstanding anything contained in any other law, no one shall, without the permission of the Authority in writing, take over or remove any original document or register from the custody of the registrar.

468. *Registrar not to accept defective document.* (1) Where, in the opinion of the registrar, any document required or authorized by or under this Ordinance to be filed or registered with the registrar--

- (a) contains any matter contrary to law, or does not otherwise comply with the requirements of law;
- (b) is not complete owing to any defect, error or omission;
- (c) is insufficiently legible or is written upon paper which is not durable; or
- (d) is not properly authenticated;

the registrar may either require the company to file a revised document in the form and within the period to be specified by him or refuse to accept or register the same.

(2) Subject to the provisions of sub-section (3) and (4) if the registrar refuses to accept any document for any of the reasons aforesaid, the same shall not be deemed to have been delivered to him in accordance with the provisions of this Ordinance unless a revised document in the form acceptable to the registrar is duly

delivered within such time, or such extended time, as the registrar may specify in this behalf.

(3) The registrar shall, if he refuses to accept any document as aforesaid, communicate his decision in writing to the company.

(4) If registration of any document is refused, the company may either supply the deficiency and remove the defect pointed out or, within thirty days of the order of refusal, prefer an appeal--

(a) where the order of refusal has been passed by an additional registrar, a joint registrar, a deputy registrar or an assistant registrar, to the registrar; and

(b) where the order of refusal has been passed, or upheld in appeal, by the registrar, to the Authority.

(5) An order of the Authority under sub-section (4) shall be final and shall not be called in question before any Court or other authority.

469. *Acceptance of documents presented after prescribed time.*

(1) Where any document required or authorised by or under this Ordinance to be filed or registered with registrar within a specified period is presented after the expiry of such period, the registrar may, on payment by the company or other person concerned of such additional fee as may be prescribed by the Authority, not exceeding three times the amount of the specified fee payable in respect thereof, accept the same.

(2) No such document as aforesaid shall be deemed to have been filed with the registrar until the specified or prescribed fee, as the case may be, has been paid in full.

(3) The acceptance of the document by the registrar under sub-section (1) shall not absolve the defaulting company or other person concerned of any liability arising from the default, delay in filing or other failure to comply with the requirements of this Ordinance.

470. *Fees.* (1) There shall be paid in respect of the several matters mentioned in the Sixth Schedule the several fees therein, for the time being, specified or such smaller fees as the Federal Government may direct:

Provided that, in the case of resolutions to which section 172 applies, not more than one fee shall be required for the filing of

more resolutions than one passed in the same meeting if such resolutions are filed with the registrar at the same time.

(2) All fees paid in pursuance of this Ordinance shall be accounted for to the Federal Government.

(3) Any document required or authorised by this Ordinance to be filed by a company with the registrar shall not be deemed to have been so filed until the fee payable in respect thereof has been duly paid and either the original receipt or other proof acceptable to the registrar has been furnished to him.

471. *Power of the Federal Government to prescribe fees chargeable by companies.* The maximum limits of fees to be paid to or charged by companies and liquidators from members, creditors or other persons for supply of copies of documents, inspection of records and other services as are required to be provided under this Ordinance shall be such as may be prescribed.

472. *Enforcing compliance with provisions of Ordinance.* (1) If a company, having made default in complying with any provision of this Ordinance or committed any other irregularity fails to make good the default or undo the irregularity, as the case may be, within thirty days after the service of a notice on the company requiring it to do so, the Authority may, of its own motion or on an application made to it by any member or creditor of the company or a reference by the registrar and, in the case of a listed company, besides other persons as aforesaid, on a reference by the stock exchange, make an order directing the company and any officer thereof, as the case may be, to make good the default or undo the irregularity or otherwise make amends, as the circumstances may require, within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application or reference shall be borne by the company or by any officer of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

1. *Extention of time.* Under the section the Court has power to extend the time prescribed for the doing of the things mentioned therein. Where Annual General Meeting of a Company was not held in compliance with the law. Time of two months was granted to the Company to hold the meeting.<sup>1</sup>

473. *Power of Court, etc., trying offences under Ordinance to direct compliance with the provisions.* The Court, the Authority, the registrar or other officer trying an offence for a default in compliance with any provisions or requirements of this Ordinance may, at any time during the pendency of the trial or at the time of passing final order, direct without prejudice to any liability, any officer, auditor or employee of the company in respect of which the default has been committed to comply with the said provisions or requirements within such time as may be specified in the order.



**PART XVI**  
**GENERAL**

**LEGAL PROCEEDINGS, OFFENCES, ETC.**

474. *Cognizance of offences, etc.* (1) Save as provided in section 476, no Court or authority or officer shall take cognizance of any offence against this Ordinance (other than an offence with respect to which proceedings are instituted under section 418) which is alleged to have been committed by any company or any officer or auditor thereof, except on the complaint in writing of--

- (a) the registrar; or
- (b) in the case of a company having a share capital, by a member or members holding not less than five per cent of the issued share capital of the company or a creditor or creditors of the company having interest equivalent in amount to not less than five per cent of the issued share capital of the company; or
- (c) in the case of a company not having a share capital, by any member or creditor entitled to present a petition for winding up of the company:

Provided that nothing in this sub-section shall apply to a prosecution by a company of any of its officers or employees:

Provided further that, where the registrar is himself empowered to impose a penalty he may take cognizance of the offence and start proceedings on the basis of a memorandum of allegations placed on record by him or an officer subordinate to him.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898) where the complainant under sub-section (1) is registrar or the Authority or a person authorized by the Federal Government, the personal attendance of the complainant before the Court or authority trying the offence shall not be necessary unless the Court, the Authority, the registrar or other officer, as the case may be, for reasons to be recorded, requires his personal attendance at the trial.

(3) Sub-section (1) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have

been committed in respect of any of the matters including in Part XI, or in any other provision of this Ordinance relating to the winding up of companies.

(4) A liquidator of a company shall not be deemed to be an officer of the company within the meaning of sub-section (1).

#### Synopsis

#### 1. Scope.

#### 2. Territorial jurisdiction.

#### 3. Investigation, irregularity in.

**1. Scope.** A first class Magistrate is not a Court having jurisdiction under the Act so as to fall within the term "the Courts" as defined by section 2(11) and further explained and elaborated by section 7 of the Ordinance. The penal sections of the Ordinance only create offences but do not create or confer jurisdiction in or upon any Court. They leave it to the Criminal P.C., to determine which Court has to try those offences.<sup>1</sup>

*Company, prosecution of.* Company despite being a person within the meaning of section 11, P.P.C. is not chargeable for offences which can be committed by human beings only or offences which must be punished with imprisonment.<sup>2</sup>

*Direction to prevent default.* Where a penal section under the Ordinance creates an offence and also authorises the Court to prevent a contemplated non-compliance with its provisions, the High Court or the notified District Court has jurisdiction to issue directions for compliance with its provisions. There is no warrant for holding that since the offence can be punished by the first class magistrate, he alone is competent to prevent a default which will result in a further offence.<sup>3</sup>

**2. Territorial jurisdiction.** The Court within whose jurisdiction is the office of the Registrar with whom the balance sheet is to be filed, has the jurisdiction to try an offence under the section even when the company is situated outside the jurisdiction of the Court.<sup>4</sup> Where the registered office of a company and its factory were situated within the jurisdiction of Court *N* and the complainant who was resident within the same jurisdiction received a copy of the balance sheet, which was alleged to contain false statement, at his residence, the mere fact that the directors had signed the balance sheet at a place outside the jurisdiction of that Court cannot deprive that Court of the jurisdiction to take cognizance of the complaint and deal with it.<sup>5</sup>

**3. Investigation, irregularity in.** Though offences under the Ordinance, are non-cognizable and cannot be investigated under Chap. XIV, Criminal P.C., the

1. I.L.R. (1949) 1 Cal 24.

2. N.I.R. 1986 Cr 520 (DB).

3. I.L.R. (1949) 1 Cal. 24.

4. AIR 1917 Cal 1 = 18 Cr 1J 787 (DB).

5. 52 Cal W N 889.

mere fact that the offences were wrongly investigated and sent up by the police is no obstacle to their being tried by the Magistrate.<sup>6</sup>

475. *Offences to be non-cognizable.* Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), every offence against this Ordinance shall, for the purposes of the said Code, be deemed to be non-cognizable.

476. *Punishment and adjudication of fine or penalty.* (1) Where a fine (other than fine in addition to, or in lieu of, imprisonment) is provided for any offence, contravention of, or default in complying with, any provisions of this Ordinance or a directive of the Authority or the registrar or other authority empowered to issue a directive under any provision of this Ordinance, it shall be adjudged and imposed--

- (a) where the maximum fine provided is less than five thousand rupees and the daily fine is less than two hundred rupees, by the officer who is in charge of the registration office in which the company is registered;
- (b) where the maximum fine provided is five thousand rupees or more but less than one hundred thousand rupees and the daily fine is two hundred rupees or more but less than five hundred rupees, by the registrar who is head of the organisation of the registration of companies in Pakistan;
- (c) where the maximum fine provided is one hundred thousand rupees or more and the daily fine or penalty is five hundred rupees or more, by the Authority or the officer to whom the Authority has delegated its powers and functions in this behalf.

(2) Notwithstanding anything contained in sub-section (1), the Authority may, by an order in writing, empower any officer to exercise the powers conferred by the said sub-section in respect of any case or class of cases, either to the exclusion of, or concurrently with, any other officer.

(3) The fine as aforesaid shall be imposed after giving the person concerned an opportunity to show cause why he should not be punished for the alleged offence, contravention, default or non-compliance and, if he so requests, after giving him an opportunity of being heard personally or through such person as may be prescribed in this behalf.

<sup>6</sup> AIR 1939 Rang. 273=40 Cri. L. Jour 799.

(4) Where imprisonment or imprisonment in addition to fine is provided for any contravention of, or default in complying with, any provisions of this Ordinance, it shall be adjudged by a Court not inferior to that of a Court of Session.

1. *Scope.* Offences under section 476 have been divided into two kinds, firstly, the offences triable by the Authority, Registrar or the Officer who is in charge of the registration office, in terms of section 476(1) & (2), thereof and secondly such offences where imprisonment or imprisonment in addition to fine is provided, triable by a Court not inferior to that of a Court of Session in terms of section 476(4).<sup>7</sup> Proceedings relating to trial of offences under the Ordinance are not the proceedings under the Ordinance, but are proceedings under the Criminal Procedure Code, 1898 triable by a Court of Session having territorial jurisdiction and a notification by Federal Government in terms of section 7 of the Ordinance is not necessary.<sup>8</sup>

477. *Appeal and revision.* (1) Any person aggrieved by any order or sentence passed under sub-section (1) of section 476 may, within sixty days of such order or sentence, prefer a revision application as hereinafter provided:--

- (a) where the order, judgment or sentence has been passed by an additional registrar, a joint registrar, a deputy registrar or an assistant registrar, to the registrar;
- (b) where the order, judgment or sentence has been passed or upheld on revision application by the registrar (not being an additional registrar, a joint registrar, a deputy registrar or an assistant registrar) or by an authority or officer authorised by the Authority in this behalf, to the Authority; and
- (c) in any other case, to the Federal Government;

and the registrar, the Authority, the authority or officer authorised as aforesaid or the Federal Government, as the case may be, may pass such order in relation to the application as he or it thinks fit:

Provided that no order enhancing the fine shall be passed unless the applicant has been given an opportunity of showing cause against it and, if he so requests, of being heard personally or through such person as may be prescribed in this behalf.

(2) An order of the Federal Government under section (1) shall be final and shall not be called in question before any Court or other authority.

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7. 1991 MLD 2448.

8. 1991 MLD 2448.

478. *Powers of the Federal Government, etc., in relation to enquiries and proceedings.* (1) The Federal Government, the Authority, the officer or registrar, as the case may be, shall, for the purposes of a proceeding or enquiry in exercise of its or his powers and discharge of functions, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (Act V of 1908), while trying a suit, in respect of the following matters, namely:--

- (a) summoning and enforcing the attendance of any witness and examining him on oath or affirmation;
- (b) compelling the discovery or production of any document or other material object;
- (c) receiving evidence on affidavit; and
- (d) issuing commissions for the examination of witnesses and documents.

(2) Any proceeding before the Federal Government, the Authority, the officer or registrar, as the case may be shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860), and such Government, the Authority, the officer or registrar shall be deemed to be a civil Court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (Act V of 1898).

479. *Procedure for the trial of a corporate body.* (1) In any proceedings against a body corporate for an offence against any provisions of this Ordinance a notice to show cause or appear may be sent to or served on the body corporate by registered post or in any other manner laid down for the service of summons issued by a Court under the Code of Civil Procedure, 1908 (Act V of 1908), at its registered office, or if there is no registered office at its principal place of business in Pakistan and where no such office is known to exist or is not functioning, at the address of the chief executive or any director or officer of the body corporate.

(2) On service of the notice referred to in sub-section (1) it shall be the duty of the chief executive and other officers of the company to show cause or appear before the Court, Authority, registrar, other officer or authority himself or by a counsel or by an officer or other authorised representative of the body corporate who may be in a position to answer the charge as may be specified in the notice.

(3) Where a body corporate does not appear in the manner aforesaid, the Court, Authority, registrar or officer trying the offence, as the case may be, may either issue a directive to the chief executive or other officer of the body corporate as is referred to in sub-section (2) to appear personally and answer the charge, or, at its or his direction, proceed to hear and decide the case in the absence of the body corporate.

(4) Any sum adjudged, fine imposed or directed to be paid under section 476 shall, unless paid on demand, be recoverable as an arrear of land revenue.

480. *Power of Federal Government to appoint company prosecutors.* Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Federal Government may appoint generally, or in any case, or for any specified class of cases in any local area, one or more persons as company prosecutors, on such terms and conditions as it may deem fit, for the conduct of prosecutions arising out of this Ordinance; and the persons so appointed as company prosecutors shall have all the powers and privileges conferred by that Code on public prosecutors appointed by a Provincial Government under section 494 of that Code.

481. *Appeal against acquittal.* Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Authority may, in any case arising out of this Ordinance, direct any company prosecutor appointed under section 480 or authorise any other person, either by name or by virtue of his office, to present an appeal from an order of acquittal passed by the officer, authority or registrar or any Court other than a High Court and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate Court.

482. *Payment of compensation in cases of frivolous or vexatious prosecution.* (1) In respect of any case instituted upon the complaint of a member or creditor against the company or any officer thereof under section 474, the following provisions shall apply instead of the provisions of section 250 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(2) If the Court, officer, Authority or registrar by whom any such case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them

was false and either frivolous or vexatious, the Court, officer, Authority or registrar, as the case may be, may by its or his order of discharge or acquittal, if the member or creditor upon whose complaint the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused, or to each or any of such accused when there is more than one, or if such member or creditor is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(3) The Court officer, Authority or registrar, as the case may be shall record and consider any cause which such member or creditor may show; and if it or he is satisfied that the accusation was false and either frivolous or vexatious, it or he may for reasons to be recorded direct that compensation to such amount as it may determine be paid by such member or creditor, as the case may be, to the accused or to each or any of them not exceeding ten thousand rupees in all.

(4) In default of payment of the compensation ordered under sub-section (3), the member or creditor ordered to pay such compensation shall suffer simple imprisonment for a term not exceeding two months, and shall also be liable to a fine not exceeding two thousand rupees.

(5) When any person is imprisoned under sub-section (4), the provisions of sections 68 and 69 of the Pakistan Penal Code, 1860 (Act XLV of 1860) shall, so far as may be, apply.

(6) No person who has been directed to pay compensation under this section shall, by reason of such order be exempted from any civil or criminal liability in respect of the complaint made by him:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(7) A complainant who has been ordered to pay compensation under sub-section (3) may appeal from the order, in so far as it relates to the payment of compensation, as if such complainant had been convicted on a trial.

(8) Where an order for payment of compensation to an accused person is made, the amount of compensation recovered shall not be paid to him before the period allowed for the

presentation of the appeal under sub-section (7) has elapsed; or, if an appeal is presented, before the appeal has been decided.

483. *Application of fines.* (1) The Court, officer, Authority or registrar imposing any fine under this Ordinance may direct that the whole or any part thereof shall be applied in or towards--

- (i) payment of costs of the proceedings;
- (ii) rewarding the person on whose information the fine is recovered; and
- (iii) payment to an aggrieved party of compensation for any loss caused by the offence.

(2) Any amount recovered as fine which is not applied as aforesaid shall be accounted for to the Federal Government.

484. *Revision and review.* (1) Any order, other than an order under section 476, passed or made under this Ordinance by the registrar or officer or by an officer subordinate to the Authority or exercising powers of the Authority, not being an order of the Court, shall be subject to revision by the Authority upon application being made by any aggrieved person or the registrar within sixty days from the date of such order; and the Authority's order in revision shall be final.

(2) The Authority may, upon an application being made to it within sixty days from the date of any order passed by it otherwise than in revision under sub-section (1), or of its own motion, review such order; and the Authority's order in review shall be final.

(3) Any order passed or made by the Federal Government under this Ordinance shall be subject to review by the Federal Government of its own motion or on an application made to it within sixty days from the date of the order.

485. *Appeals against orders, etc.* (1) Any person aggrieved by an original order, directive or judgment of the Authority or the Federal Government, other than an order, directive or judgment passed on a revision or review application may, within thirty days thereof, as an alternative to making an application for revision or review to the Authority or the Federal Government, as the case may be, prefer an appeal to the High Court within whose jurisdiction the order, directive or judgment is passed:



Provided that no appeal under sub-section (1) shall lie from an order which does not dispose of the entire case before the Authority or the Federal Government, as the case may be.

(2) An appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court and shall lie on any one of the following grounds, namely:--

- (a) the decision being contrary to law or to some usage having the force of law; or
- (b) the decision having failed to determine a material issue of law or usage having the force of law; or
- (c) a substantial error apparent in the procedure provided by or under this Ordinance which may possibly have led to an error in the decision.

486. *Production and inspection of books where offence suspected.*

(1) Without prejudice to the power otherwise exercisable by any officer or registrar or person under this Ordinance, the Court in Chambers may, on an application made by a public prosecutor or the Attorney-General for Pakistan or the Advocate-General of the Province or an officer authorised by the Authority in this behalf or by a company prosecutor appointed under section 480 or by the registrar, if it is shown that there is reasonable cause to believe that any person has, while he was an officer of a company, committed an offence in connection with the management of the company's affairs, and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company or any officer or agent of the company, make an order--

- (i) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating, and obtaining evidence of the commission of, the offence; or
- (ii) requiring the chief executive of the company or such other officer thereof or person as may be named in the order, to produce the said books or papers or any of them to a person, and at a place and time, named in the order.

(2) Sub-section (1) shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applied to any books or papers of or under the control of the company, except that no such

order as is referred to in clause (ii) thereof shall be made by virtue of this sub-section.

(3) No appeal shall lie from decision under this section.

487. *Power to require limited company to give security for costs.* Where a limited company is plaintiff or petitioner in any suit or other legal proceeding, the Court having jurisdiction in the matter may, if it appears 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.

#### Synopsis

1. *Forma pauperis* suit.
2. Misfeasance proceedings.
3. Appeal.

1. '**Forma pauperis**' suit. The provisions of section 487, do not either expressly or by implication take away the right conferred by Order 33, Rule 1, Civil Procedure Code.<sup>9</sup> It may be that a party may not be able to obtain security for costs under section 487 from a company which has been permitted to sue as a pauper but those provisions merely confer a power upon a Court to require security to be given in appropriate cases and do not make it obligatory upon it to order security to be given in every case.<sup>10</sup>

2. **Misfeasance proceedings.** Misfeasance proceedings under section 412 are not "suit or other legal proceedings" within section 487 and so the Court cannot require security for costs from the liquidator.<sup>11</sup>

3. **Appeal.** An order dismissing the petition under section 487 for taking security is not appealable.<sup>12</sup>

488. *Power of Court, etc. to grant relief in certain cases.* (1) If in any criminal proceeding for negligence default, breach of duty or breach of trust against a person to whom this section applies, it appears to the Court, officer, Authority or registrar 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 executed for the negligence, default, breach of duty or breach of trust, the Court, officer, Authority or registrar, as the case may be, may relieve him, either

9. AIR 1939 Rang 273 = 40 Cr LJ 799.

10. AIR 1961 Bom 1.

11. AIR 1933 All 205 = 55 All 250.

12. AIR 1942 Mad 405 (DB).

wholly or partly, from his liability on such terms as the Court, officer, Authority or registrar, as the case may be, may think fit.

(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 if proceedings against that person for negligence, default, breach of duty or breach of trust had been brought before the Court.

(3) The persons to whom this section applies are the following, namely:--

- (a) director of a company;
- (b) chief executive of a company;
- (c) officers of a company;
- (d) persons employed by a company as auditors, whether they are or are not officers of the company.
- (e) liquidator of a company.

(4) The Court, officer, Authority or registrar shall not grant any relief to any person under sub-section (1) or sub-section (2) unless it or he, by notice served in the manner specified by it or him, as the case may be, requires the registrar and such other person, if any, as it or he thinks necessary, to show cause why such relief should not be granted.

#### Synopsis

1. Scope.
2. Honest and bona fide acts.
3. Default by liquidator.
4. Jurisdiction.
5. Relief.

1. **Scope.** Condonation of default under section 488 is different from the withdrawal of misfeasance proceedings in pursuance of a compromise between the parties because it is the Court which has to decide whether it should condone or not and the parties have nothing to do with the matter. Section 488 has nothing to do with a compromise entered into by the parties.<sup>13</sup>

13. AIR 1954 Bom 121 (DB) (Hence no reliance can be placed for concluding that because the default can be condoned only by the Judge before whom the misfeasance proceedings are pending, a sanction under section 234 for the compromise can also be validly given only by the Judge hearing the misfeasance proceedings).

*Penal proceedings.* The word 'claim' occurring in sub-section (2) would also include penal proceedings and hence the High Court has jurisdiction under that sub-section to grant relief against an apprehended criminal prosecution.<sup>14</sup>

*Application for condonation.* Since a company acts through its agent, therefore, when an application is filed on behalf of the company by its Director it will be competent.<sup>15</sup>

2. **Honest and bona fide acts.** Section 488, can be in favour of an applicant only when he shows that he had acted reasonably and honestly.<sup>16</sup> The provisions of this section have been interpreted to relieve companies of their negligence, carelessness or lack of caution provided the same were not committed with any improper motive or fraudulent intention but were due to honest misapprehensions of fact or ignorance of the law or of the correct state of affairs. But in each case the party seeking to be so relieved must make the fullest and most candid disclosure before the Court and in such an application a mere statement that the omission was accidental or inadvertent; without giving with sufficient particularity the reasons for the breach of the statutory duty imposed by the Ordinance will not be sufficient.<sup>17</sup> Where the reason advanced for non-compliance with the statutory provision and non-filing of the requisite documents is that the Secretary of the company was ignorant of the provisions of law which required submission of those returns and documents. It was held that besides the Secretary, other officers of the company should also have had an idea all through the years that they were required to file returns and documents with the requisite authorities. None of them it seems cared a bit about their responsibility. The default is clear. Since no dishonesty for non-compliance is attributed to the persons concerned and in view of the loss of the territory over which the company operated, the default will be excused on the condition that the company paid a sum of Rs. 1,000 for each year of default.<sup>18</sup>

Punishment has not been prescribed by the law out of vindictiveness but with the intention that the law should be observed. It is, therefore, proper in relation to those defaults in which knowledge, wilfulness, honesty and reasonableness are relevant considerations that those who are entrusted with the duty of enforcing the law should give an opportunity to the defaulters to explain and rectify their mistakes after giving them an opportunity to watch whether they react honestly

14. AIR 1959 Bom 245 (Petitioners can be granted relief under sub-section (2) against an apprehended penal proceeding under section 162 read with section 220 of the Companies Act) + AIR 1960 Ker 15.

15. 1983 CLC 129.

16. PLD 1959 Kar 48 + AIR 1944 Mad 536 (DB) (Directors who permit the managing director to gamble in differences with the assets of the company are guilty of a grave breach of duty. Their action cannot be said to be reasonable) + AIR 1938 Mad 124 (DB) (Insolvency of a person does not necessarily mean that he is dishonest) + AIR 1930 Bom 572 (DB) (Directors guilty of gross negligence of ordinary duties over a long series of years cannot be said to have acted "reasonably" nor ought they "fairly to be excused") + AIR 1925 All 519 (DB) (Directors made responsible by the articles for the management of the company blindly trusting dishonest manager and keeping themselves in ignorance of the affairs of the company--They cannot be held to have acted reasonably).

17. PLD 1958 Dacca 378 = 10 DLR 179.

18. 1985 CLC 129.

and reasonably or not.<sup>19</sup> But where directors must be assumed to have acted with the knowledge that what they are doing is likely to be void they are guilty of breach of trust and no relief can be granted to them under section 488 even though there was no dishonesty on their part.<sup>20</sup>

**3. Default by liquidator.** The facts that there was no dishonesty or improper motive on the part of the liquidator and that he committed a default under section 432 through inadvertence and ignorance of his statutory duties are no grounds for excusing him absolutely from the liability he had incurred under section 432 because his action cannot be said to be reasonable in those circumstances. But they would justify the Court relieving him partially of the full rigour of the penalty incurred by him under that section by his default.<sup>1</sup> Where the trial of the offences defined and punished by the Companies Ordinance is not assigned to any special Courts created by the Companies Ordinance but to the ordinary criminal Courts exercising jurisdiction under the Code of Criminal Procedure subject to the provision contained in section 474 of the Ordinance under which the power or jurisdiction to take cognizance of offences is defined and punished by the Companies Ordinance can be exercised only by person or authority specified in the section. A section defining the limits of the jurisdiction of a criminal Court or specifying the conditions for taking cognizance of an offence created by a special statute, cannot be read as a section creating a special Court or designating a particular person to discharge a judicial function.<sup>2</sup>

**4. Jurisdiction.** The Court or Authority which can grant relief under sub-section (1) against the subject-matter of a pending prosecution is the Court before which the prosecution is pending and not the High Court.<sup>3</sup> It is only under sub-section (2) that the High Court possesses jurisdiction to grant relief.<sup>4</sup> But sub-section (2) of section 488 is attracted only upto the stage where no proceeding has yet been commenced and the person who has committed the default or is liable for the negligence may come up to the High Court for relief for such liability in anticipation thereof but once the proceeding has been commenced, then according to the provision of sub-section (1) of section 488, the only Court that has the power to relieve the defaulter from liability is the Court hearing the case.<sup>5</sup>

**5. Relief.** The words "any claim will or might be made" indicate that there should be an apprehension which has already commenced.<sup>6</sup> The Court under sub-section (2) will not grant relief in the absence of any apprehension of prosecution and such an apprehension can arise only where the registrar has decided to prosecute the applicant. It is the duty of the registrar to decide whether he will prosecute or not and he cannot transfer this function to the Court by asking the applicant to obtain relief under this sub-section. Nor would the Court act on such an application and grant relief. Even where the registrar has decided to prosecute

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19. PLD 1959 Kar 48.

20. AIR 1937 Pat 293 (Directors entering into contracts and making payments under them during the course of winding up).

1. ILR (1955) 2 Cal 439.

2. AIR 1965 Mys 274.

3. AIR 1956 Orissa 205 (DB).

4. AIR 1959 Bom 245 + AIR 1960 All 160.

5. PLD 1958 Dacca 378 = 10 D.L.R. 179.

6. PLD 1959 Kar 32.

and has intimated his intention, the Court would interfere under this sub-section only upon strong grounds and for special reasons, properly proved.<sup>7</sup>

The relief granted by the Court under sub-section (2) on an application filed during the pendency of a prosecution can save the applicant only against future liabilities for the default and not from pending prosecution.<sup>8</sup>

*Inordinate delay in commencing proceedings.* It is proper that the inaction of the registrar should be taken into consideration by the Court while acting under the section.<sup>9</sup> It is a factor which can be helpful to the applicants for obtaining relief.<sup>10</sup>

*No relief can be granted to company.* Relief can be granted to the persons named in sub-section (3) of section 488 and there is no mention in the provision of a company itself asking for relief under it.<sup>11</sup>

489. *Enforcement of orders of Court.* Any order made by the Court under this Ordinance may be enforced in the same manner as a decree made by a Court in a suit.

#### Synopsis

- |   |                |
|---|----------------|
| 1. Scope.                                   | 3. Court-fee.  |
| 2. Execution outside jurisdiction of Court. | 4. Limitation. |

1. **Scope.** A payment order though not a decree is to be executed in the same manner in which a decree can be executed.<sup>12</sup>

2. **Execution outside jurisdiction of Court.** Where applications are made to the High Court for directing the District Courts concerned to enforce payment orders made by another High Court in the matter of winding up of the Company, the proper procedure as indicated by the conjoint effect of sections 355, 356 and 489 is that the order that is filed should be treated in the same manner as a decree passed by the High Court in which it is filed and transferred for execution to the respective District Courts concerned and it is not competent for the High Court to authorise the official liquidator to apply to the District Courts concerned for enforcing the order under section 307.<sup>13</sup>

3. **Court-fee.** There is a distinction, both real and practical, and not merely artificial, between an order that has, by statute, the force of a decree and an order that may, by statute, be enforced in the same manner as a decree. An order that is given by statute the force of a decree is an order that *proprio vigore* stands as a decree whatever the consequences, whereas an order that may, by statute, be enforced as a decree is an order that may be of little or no effect, *proprio vigore*,

7. P.L.D. 1959 Kar 48 + 1941 All LW 1076.

8. AIR 1956 Orissa 205 (DB).

9. P.L.D. 1959 Kar 48.

10. P.L.D. 1959 Kar 32.

11. P.L.D. 1959 Kar 32 + AIR 1960 Kar 15.

12. AIR 1921 Lah 78 = 3 ILJ 382 = 67 Ind Cas 443 (DB).

13. AIR 1927 Mad 271 (54 Ind Cas 364, *Disc from*) + AIR 1927 Pat 182 (DB).

and only becomes effective, when executed by the method by which a decree may be executed. In other words, it is mere shadow unless and until life is infused into it by an application for execution. It is a well-recognised rule of interpretation of statutes that there is a presumption that the Legislature means different things by different phraseology; and when it describes an order as having the force of a decree, it must mean something different from the description of an order which may be in the same manner as a decree. Hence an executable order of the liquidation Judge made under Companies Ordinance which, under section 489, can be enforced in the same manner as a decree is not equivalent to an order having the force of a decree under Sch. II, Art. 11, Court Fees Act.<sup>14</sup>

4. **Limitation.** The application for execution of an order made under section 342 read with section 489 by the High Court is governed by Art. 183 and not by Art. 182 of the Limitation Act.<sup>15</sup>

490. *Enforcement of orders of Court by other Courts.* (1) Where any order made by the Court is required to be enforced by another Court, a certified copy of the order shall be produced to the proper officer of the Court required to enforce the order.

(2) The production of such certified copy shall be sufficient evidence of the order.

(3) Upon the production of such certified copy, the Court shall take the requisite steps for enforcing the order, in the same manner as if it had been made by itself.

491. *Protection of acts done in good faith.* No suit, prosecution or other legal proceeding shall lie against the Government or the Authority or any officer of Government or the Authority or the registrar or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rules or orders made thereunder or in respect of the publication by or under the authority of the Government, Authority or such officer of any report, paper or proceedings.

492. *Penalty for false statement.* Whoever in any return, report, certificate, balance sheet, profit and loss account, income and expenditure account, prospectus, books of account, statement, book or paper, register, other document, application, information or explanation required by or for the purposes of any of the provisions of this Ordinance or pursuant to an order or direction given under this Ordinance makes a statement false or incorrect in any material particular, knowing it to be false or incorrect or omits any material fact knowing it to be material, shall be punishable

14. AIR 1955 Lah 146 = 221 Ind Cas 114 (FB).

15. AIR 1962 SC 403 + AIR 1954 All 362.

with imprisonment for a term which may extend to three years, and shall also be liable to a fine not exceeding twenty thousand rupees.

### Synopsis

1. False statement.
2. Directors and officials, false statement by.
3. Prosecution.

1. **False statement.** In considering whether the statement in a balance sheet is a false statement with regard to a material particular within the ambit of section 492 it is the effect upon the ordinary investor reading that statement in an ordinary careful manner in which an investor would do which has to be considered. Where the statement is such that he would, on a reading of it, believe in the existence of a state of affairs which is different from the true position, then it amounts to a false statement which is in breach of section 492.<sup>16</sup> Showing false profit by adding irrecoverable amounts in a balance sheet is making a materially false statement.<sup>17</sup> But the failure to include in the balance sheet accrued interest on book debts does not amount to the wilful concealment of a material fact where on the face of the balance-sheet itself there is a note informing the share-holders of the non-inclusion of that item in the balance-sheet.<sup>18</sup> It is to be noted that the proper ascertainment of profits in the case of a company is of great importance only in order to avoid the possibility of payment of dividend wholly or partially out of capital which is strictly forbidden. Where that is guarded against and there is no idea of declaring a dividend, showing of profit on paper may not be so vitally misstating the position of the bank.<sup>19</sup>

*'Mens rea' necessary.* 'Mens rea' is the gist of the offence under section 492 and that can be established only when mala fides or want of good faith on the part of the directors is shown. Where all that can be shown against them is that they depended on the permanent officials and the managing director for the working of the company, their prosecution cannot stand.<sup>20</sup> What the law makes punishable is a false statement, that is an untrue or incorrect statement, known to the framers of the balance-sheet to be false. If there is a reasonable likelihood of an honest difference of opinion, based on notions of right and wrong, correct and incorrect, *mens rea* cannot be attributed by the holder of one view to the holder of the opposite view. Any *ex post facto* consideration of the view held by the directors with regard to the balance-sheet should not be the determining factor in a case under section 492.<sup>1</sup>

16. AIR 1936 Cal 680 (DB) (Consolidating the loans and deposits and presenting them in the balance sheet as one item to the readers is a non-disclosure which amounts to the suppression of truth).

17. 1932 Sind 4 (Inclusion of bad debts in profits).

18. AIR 1949 Mad 657=50 Cr LJ 917.

19. AIR 1933 Sind 12=26 Sind LR 211=33 Cr LJ 891.

20. AIR 1949 Mad 657+AIR 1948 Cal 190+AIR 1929 Bom 443 (DB).

1. AIR 1933 Sind 12+AIR 1929 Bom 443 (DB) (Directors making statement after taking counsel's advice on a technical matter--No dishonesty or motive for dishonesty shown--Statement cannot be brought under section 282).



2. **Directors and officials, false statement by.** Directors are trustees of public money; so if they publish false balance sheets to conceal their misconduct they are guilty under section 492.<sup>2</sup> The Directors signing false balance-sheets are liable to prosecution under the section. The fact that they did not attend the meeting or had no knowledge of banking or accounts is immaterial.<sup>3</sup>

*Auditor.* Auditors signing the report in a false balance sheet to the effect that it is correct make a false statement wilfully and are liable to prosecution under section 492.<sup>4</sup>

*Officers.* The manager of a company commits an offence under section 492 if he signs a balance-sheet which contains false statements. The facts that his signature on the balance sheet is not necessary and that he signed it because the directors wished him to do so cannot save him from punishment.<sup>5</sup>

*Liquidator.* The fact that the appointment of a person as a liquidator is irregular and therefore he is no better than *de facto* liquidator does not save him from his liability under section 492 for his wrongful acts.<sup>6</sup>

3. **Prosecution.** The Registrar of Joint Stock Companies is competent to prefer a complaint against the directors of a company for an offence punishable under section 492. There is nothing in section 270 which excludes persons other than those mentioned in the section from preferring complaints in respect of offences relating to the company.<sup>7</sup> The prosecution upon a private complaint for an offence under section 492 is not barred.<sup>8</sup> However in Punjab a private complaint of an offence under section 492 does not lie.<sup>9</sup>

*Jurisdiction.* Although the directors have authenticated a balance sheet which contains false statements at a place other than where the registered office of the company is situated the Court having jurisdiction over the place in which the registered office is situate and the complainant is also resident is competent to try the offence under section 492.<sup>10</sup>

493. *Penalty for wrongful withholding of property.* (1) Any director, chief executive or other officer or employee or agent of a company who wrongfully obtains possession of any property of the

2. AIR 1936 Cal 680=ILR (1937) 1 Cal 328 (DB).

3. AIR 1932 Sind 4=25 Sind L R 297.

4. AIR 1932 Sind 4=25 Sind L R 297.

5. AIR 1932 Sind 4=25 Sind L R 297.

6. AIR 1942 Mad 702=44 Cr LJ 503.

7. AIR 1960 Ker 155=1960 Cr LJ 597.

8. AIR 1942 Sind 9=43 Cr LJ 304 (DB).

9. AIR 1948 Lah 30 (That is so because the Regulations of 1910 framed by the Punjab Government under section 220 of the Act of 1882 limited the right of preferring complaints under the Act to the Registrar and that Regulation continues to be in force because it has not been subsequently revoked either by the Federal or the Provincial Government).

10. 52 Cal W N 889 (DB) (No doubt the offence under the section is completed by the authentication and no publication is necessary but at the same time it must be remembered that under section 233 the copy of the balance-sheet with the statement of accounts and auditor's report has to be kept at the registered office for inspection and sent to each member to his registered address.

company, or having any such property in his possession wrongfully withholds it or wilfully applies it to purposes other than those expressed or directed in the articles and authorised by this Ordinance shall, on the complaint of the company or any creditor or contributory thereof or a memorandum placed on record by the registrar or an officer subordinate to him, be punishable with fine not exceeding ten thousand rupees and may be ordered by the Court, or officer, Authority or registrar or the Federal Government trying the offence, to deliver up or refund within a time to be fixed by the said Court, officer, Authority or registrar or the Federal Government any such property improperly obtained or wrongfully withheld or wilfully misapplied and any gain or benefit derived therefrom.

(2) Whoever fails to comply with an order under sub-section (1), shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to a fine.

#### Synopsis

- |              |                         |
|--------------|-------------------------|
| 1. Scope.    | 3. Complaint.           |
| 2. Intention | 4. Procedure for trial. |

1. *Scope.* Section 493 of the Companies Ordinance cannot be construed as providing for double punishment. It is only an alternative punishment arising when default is committed. Section 493 does not offend against Article 13 of the Constitution, 1973.<sup>11</sup>

The section provides for a summary procedure and authorises only an officer or an employee of the company to apply under it. The benefit conferred by the section does not extend to persons other than those specified by the section.<sup>12</sup> It does not bar the investigation by the police into acts done in relation to a company with a view to prosecute the offenders in a criminal Court where those acts amount to offences under sections 406, 409 and 477-A of the Penal Code.<sup>13</sup> As this section relates to an offence much less serious than an offence under sections 406, 409 and 477-A, Penal Code. Therefore there can be no bar to the investigation by the Police in respect of alleged offences punishable under those sections.<sup>14</sup>

*Pending proceedings filed under Companies Act, 1913—competency of.* Proceedings contemplated under section 493, Companies Ordinance, 1984 being akin to criminal proceedings and only such proceedings could be saved and tried under that section which were pending under the old Act on date of enforcement of new Ordinance. Petition filed under section 235 to 237 of Companies Act, 1913

11. AIR 1953 Mad 595 = 1953 Cr LJ 1142.

12. AIR 1957 Mad 65 = 1957 Cr LJ 205.

13. AIR 1957 Mad 432 (DB).

14. AIR 1957 Mad 432 (DB) (AIR 1957 Mad 65, *Affirmed*).

being quite different could not be treated as pending complaint under S. 493 of Companies Ordinance of 1984.<sup>15</sup>

2. **Intention.** To render the accused liable to the penalties imposed by section 493 there should be proof of fraudulent intention.<sup>16</sup> Where a managing agent having possession of the articles of the company fails to hand them over to the liquidator, he wrongfully withholds them and is therefore guilty of an offence punishable under the section.<sup>17</sup> But where a director obtains a decree for arrears of pay against the company, taking the same as a first charge on certain movables in his possession belonging to the company, his action in retaining with himself these movables for non-payment of his dues is not wrongful.<sup>18</sup>

3. **Complaint.** The section provides for a summary procedure and authorises only specified persons to apply under it. The benefit conferred by the section does not extend to other than those specified by the section.<sup>19</sup> But the fact that the liquidator applying under section 493 has described himself and not the company as the applicant does not vitiate the proceedings where the application is substantially in the name and on behalf of the company.<sup>20</sup> Where a complaint under this section had been taken cognizance of by the Court it cannot be quashed at the instance of one of the accused on the ground that the complainant is not competent to file the complaint, even before the service of summons on all the other accused and their submission to the jurisdiction of the Court.<sup>1</sup>

4. **Procedure for trial.** Section 493 is only a declaratory section specifying the ingredients constituting an offence under the Companies Ordinance. The proceedings relating to trial of such offences are not proceedings under the Ordinance but are proceedings under the Criminal P.C.<sup>2</sup>

494. *Liability of directors for allotment of shares for inadequate consideration.* (1) Any director, creditor or member of a company may apply to the Court for a declaration that any shares of the company specified in the application have been allotted for inadequate consideration.

(2) Every director of the company who is a party to making the allotment of such shares shall be liable, jointly and severally with his co-directors, to make good to the company the amount by which the consideration actually received by the company for the shares is found by the Court, after full inquiry into the circumstances of the transaction, to be less than the consideration

15. 1987 C.L.C. 577 = N.L.R. 1987 Civ 177.

16. AIR 1953 Mad 595 = 1953 Cr L.J. 1142 (DB).

17. AIR 1944 Mad 424 = 46 Cr L.J. 347.

18. AIR 1950 Mad 657.

19. AIR 1957 Mad 65 = 1957 Cr L.J. 205.

20. AIR 1953 Mad 595 (The misdescription amounts only to a form aldefect).

1. AIR 1958 Cal 128 + 1958 Cr L.J. 368.

2. AIR 1955 All 715 = 1953 Cr L.J. 1635.

that the company ought to have received for such shares, if it is proved, as to any such first mentioned director, that such director:--

- (a) had knowledge that the consideration so received by the company was inadequate, or
- (b) failed to take reasonable steps to ascertain whether such consideration so received by the company was in fact adequate.

495. *Punishment for non-compliance of directive of Court, etc.*

(1) Where any directive is given or order is issued by the Court, the officer, the Authority, the registrar or the Federal Government under any provision of this Ordinance, non-compliance thereof within the period specified in such direction or order shall render every officer of the company or other person responsible for non-compliance thereof punishable, in addition to any other liability, with fine not exceeding five thousand rupees and, in the case of a continuing non-compliance, to a further fine not exceeding one hundred rupees for every day after the first during which such non-compliance continues.

(2) If non-compliance or failure continues after conviction under sub-section (1), the officer or other person who is a party to such non-compliance or failure shall be liable to punishment with imprisonment which may extend to six months and fine not exceeding two thousand rupees for every day after the first during which such non-compliance continues, and shall further cease to hold office in the company and be disqualified from holding any office in any company for a period of five years.

496. *Penalty for carrying on ultra vires business.* If any business or part of business carried on or any transaction made, by a company is *ultra vires* of the company, every person who acted as a director or officer of the company and is responsible for carrying on such business shall be liable to a fine not exceeding five thousand rupees and shall also be personally liable for the liabilities and obligations arising out of such business or transaction.

497. *Penalty for improper use of word "Limited".* If any person or persons, trade or carry on business under, or otherwise use or display, any name or title of which the word "Limited" or the words "(Private) Limited" or "(Guarantee) Limited" or any contraction or limitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited

liability or as a private limited company or with the liability of members limited by guarantee, as the case may be, be liable to a fine exceeding five thousand rupees and, in the case of a continuing offence, to a further fine not exceeding one hundred rupees for every day after the first for which that name or title has been used.

1. **Irregularity in investigation.** It is no doubt true that the offences under sections 14(5) and 497 being non-cognizable offences cannot be sent to the police for investigation under Ch. 14 of the Criminal P.C. But where the case was investigated by the police under that chapter but wrongly upon a private complaint and sent up for trial. The Magistrate was not barred from trying the case.<sup>3</sup>

498. *Penalty where no specific penalty is provided elsewhere in the Ordinance.* If a company or any other person contravenes or fails to comply with any provision of this Ordinance or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter had been accorded, given or granted, for which no punishment is provided elsewhere in this Ordinance, the company and every officer of the company who is in default or such other person shall be punishable with a fine which may extend to one thousand rupees, and, where the contravention is a continuing one, with a further fine which may extend to fifty rupees for every day after the first during which the contravention continues.

#### POWER TO ACCORD APPROVAL, ETC. SUBJECT TO CONDITIONS

499. *Power to accord approval subject to conditions.* (1) Where the Authority or registrar is required or authorised by any provision of this Ordinance--

- (a) to accord approval, sanction, consent, confirmation or recognition to or in relation to any matter;
- (b) to give any direction in relation to any matter; or
- (c) to grant any exemption in relation to any matter,

then, in the absence of anything to the contrary contained in such or any other provision of this Ordinance, the Authority or registrar may accord, give or grant such approval, sanction consent, confirmation, recognition, direction or exemption subject to such condition, limitations or restrictions as the Authority or registrar

3. AIR 1939 Rang 270=40 Cr LJ 799.

may think fit to impose and may, in the case of contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.

(2) Save as otherwise expressly provided in this Ordinance, every application which may be or is required to be made to the Authority or registrar under any provision of this Ordinance--

- (a) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by the Authority or registrar, or in relation to, any matter; or
- (b) in respect of any direction or exemption to be given or granted by the Authority or registrar to or in relation to any other matter; or
- (c) in respect of any other matter,

shall be accompanied by fee specified in the Sixth Schedule.

#### ANNUAL REPORT ON ADMINISTRATION OF THE ORDINANCE

500. *Annual report by Authority.* The Authority shall prepare and furnish to the Federal Government as soon as possible after the end of each financial year an annual report on the working and administration of this Ordinance and related matters.

#### DELEGATION OF POWERS

501. *Delegation of powers.* (1) The Federal Government may, by notification in the Official Gazette, direct that all or any of its powers and functions under this Ordinance may, subject to such limitations, restrictions or conditions, if any, as it may from time to time impose, be exercised or performed by the Authority or an officer specified for the purpose.

(2) The Authority may, by notification in the Official Gazette, direct that any of its powers and functions under this Ordinance may, subject to such limitations, restrictions or conditions, if any, as it may from time to time impose, be exercised or performed by the registrar or any other officer of the Authority specified for the purpose.

## ADVISORY COMMITTEE

502. *Advisory Committee.* The Federal Government may, for the purpose of obtaining advice and assistance in carrying out the purposes of this Ordinance, constitute an Advisory Committee consisting of such persons as it may think fit.

APPLICATION OF ORDINANCE TO COMPANIES  
GOVERNED BY SPECIAL ENACTMENTS

503. *Application of Ordinance to companies governed by special enactments.* (1) The provisions of this Ordinance shall apply--

- (a) to insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 (IV of 1938),
- (b) to banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Companies Ordinance, 1962 (LVII of 1962);
- (c) to *modaraba* companies and *modarabas*, except in so far as the said provisions are inconsistent with the provisions of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980);
- (d) to any other company governed by a special enactment for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special enactments.

(2) The provisions of sections 156, 158, 230 to 247, 254 to 274, 277 and 278 shall *mutatis mutandis* apply to listed companies or corporations established by any special enactment for the time being in force whose securities are listed and in the said sections the expression "company" shall include a listed company so established:

Provided that the Authority may, by notification in the Official Gazette, direct that the provisions of any of the aforesaid section specified in the notification shall, subject to such conditions, if any, as may be so specified not apply to any listed company or securities so specified.

1. **Insurance company.** A company registered under the Companies Ordinance, 1984 is subject to all the provisions of Companies Ordinance, 1984 and

if it carries on life insurance business it is in addition subject to the further provisions contained in the Insurance Act of 1938.<sup>4</sup>

504. *Forms.* The forms in the schedules or forms as near thereto as circumstances admit and such other forms as may be prescribed shall be used in all matters to which those forms refer.

505. *Power to the Federal Government to alter schedules.* (1) The Federal Government may by notification in the Official Gazette, alter or add to any of the tables, regulations, requirements, forms and other provisions contained in any of the schedules, and such alterations or additions shall have effect as if enacted in this Ordinance and shall come into force on the date of the notification, unless the notification otherwise directs.

#### Synopsis sections 504 & 505

##### 1. Scope.

1. **Scope.** The power of the Federal Government to alter does not empower it to introduce altogether new forms or to amend the substantive provisions of the Ordinance itself.

##### 2. Publication of amended form.

2. **Publication of amended form.** Where a form in Schedule V of the Ordinance is amended by the Federal Government the publication of a notification merely stating that the Form shall be amended in the manner specified therein is substantial compliance with section 505. The notification need to give the altered Form.<sup>5</sup>

506. *Power of the Federal Government to make rules.* (1) In addition to the powers conferred by any other section, the Federal Government may, by notification in the Official Gazette, make rules--

(a) for all or any of the matters which by this Ordinance are to be, or may be, prescribed by the Federal Government; <sup>7</sup>[\* \*]

<sup>8</sup>[(aa) for establishment and regulatig the activities of any company or class of companies; and]

(b) generally to carry out the purposes of this Ordinance:

Provided that, before making any such rule, the draft thereof shall be published by the Federal Government in the Official Gazette for eliciting public opinion thereon within a period of not less than fourteen days from the date of publication.

(2) Any rule made under sub-section (1) may provide that a contravention thereof shall be punishable with a fine which may extend to two thousand rupees and, where the contravention is a

4. AIR 1934 Cal. 63=35 Cr. L.J. 492.

5. AIR 1944 Bom. 107=ILR 1944 Bom. 302=45 Cr LJ 612 (FB).

6. AIR 1944 Bom. 107=ILR 1944 Bom. 302 (FB) (Beaumont. C.J. *contra*).

7. Word "and", omitted by Act. 1 of 1995, S. 10(6).

8. New Clause (aa) inserted by Act. 1 of 1995, S. 10(6)



continuing one, with a further fine which may extend to one hundred rupees for every day after the first during which such contravention continues.

507. *Power of the Federal Government to permit use of Urdu words or abbreviations.* The Federal Government may, by notification in the Official Gazette, permit use of an Urdu equivalent of any English word or term required to be used pursuant to or for the purposes of this Ordinance or any abbreviation of any such word or term instead of such word or term.

1. *Abbreviation of certain terms.* The corporate law Authority has permitted the use of the following abbreviations and Urdu equivalents in the names of companies, instead of English words and expressions shown against each, pursuant to or for the purpose of the provisions of this Ordinance except in the name clause contained in the memorandum of association and the name appearing in the certificate of incorporation of the companies.

#### I. ABBREVIATIONS

English words/Expressions	Abbreviation
Private	Pvt.
Limited	Ltd.
Company	Co.
Company Limited	Co., Ltd.

#### II. URDU EQUIVALENTS

English words/Expressions	Urdu Equivalent
Company	شرکت
Company Limited	شرکت محدود
Limited	محدود

#### REPEAL, SAVINGS, ETC.

508. *Repeal of laws and savings.* (1) The laws mentioned in the Seventh Schedule shall stand repealed to the extent specified in the fourth column thereof from the date of coming into force of this Ordinance:

<sup>7</sup> Federal Notification No. S.R.O. 282(1)/86, dated 30.3.1986.

Provided that--

- (i) the repeal shall not affect the incorporation of any company registered under any law hereby repealed;
- (ii) any document referring to any former law relating to companies shall be construed as referring to the corresponding provision of this Ordinance;
- (iii) all funds, and accounts constituted or maintained under this Ordinance shall be deemed to be in continuation of the corresponding funds and accounts constituted or maintained under the former laws relating to companies;
- (iv) where any offence has been committed under any former law relating to companies, proceedings may be taken under this Ordinance in respect of such offence after the commencement of this Ordinance, in the same manner as if the offence had been committed under the corresponding provision of this Ordinance.

(2) The mention of particular matters in this section or in any other section of this Ordinance shall not prejudice the general application of section 6 of the General Clauses Act, 1897 (X of 1897), with regard to the effect of repeals.

1. **Scope.** Repeal of Companies Act, 1913 would not prejudice general application of section 6 of General Clauses Act, 1897 with regard to effect of repeals specified in 7th Schedule of Ordinance, XLVII of 1984. A winding up petition would not abate on repeal of Companies Act, 1913. No inconsistency relating to winding up of unregistered company is present in section 271 of Companies Act, 1913 and in section 444 of Companies Ordinance, 1984. A petition filed under repealed Act could be deemed to have been filed under provisions of Companies Ordinance, 1984.<sup>8</sup>

*Different higher punishment provided under this Ordinance than that under repealed Act.* Default or offence committed under Companies Act (1913) repealed by Companies Ordinance (1984) cannot be visited with punishment prescribed by section 233 as this punishment is different and higher than that provided by the repealed Companies Act. Complaint against Company and its Directors filed under section 233 with allegation that they had failed to file annual accounts, was struck down in writ jurisdiction as being violative of Art. 12 of the Constitution.<sup>9</sup>

509. *Amendment of Ordinance, XVII of 1969.* As from the date of commencement of this Ordinance, sections 9, 21 and 28 of the Securities and Exchange Ordinance, 1969 (XVII of 1969), shall

8. 1986 C.L.C 2933 = NLR 1987 CLJ 393.

9. NLR 1989 Cr. 715 = 1989 C.L.C 2103 (DB).

have effect subject to the amendments specified in the Eighth Schedule.

510. *Savings.* Save as otherwise specifically provided, nothing in this Ordinance, or any repeal effected thereby, shall affect or be deemed to affect anything done, action taken, investigation or proceedings commenced, order, rule, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceedings taken or instrument executed or issued, under or in pursuance of any law repealed or amended by this Ordinance and any such thing, action, investigation, proceedings, order, rule, regulation, appointment, conveyance, mortgage, deed, document, agreement, fee, resolution, direction, proceedings or instrument shall, if in force at the commencement of this Ordinance and not inconsistent with any of the provisions of this Ordinance, continue to be in force, and have effect as if it were respectively done, taken, commenced, made, directed, passed, given, executed or issued under this Ordinance or the law as amended by this Ordinance.

511. *Former registration offices, registers and registrars continued.*

(1) The offices existing at the commencement of this Ordinance for registration of companies shall be continued as if they had been established under this Ordinance.

(2) Any person appointed to any office under or by virtue of any previous Companies Act shall be deemed to have been appointed to that office under or by virtue of this Ordinance.

(3) Any books of accounts, book or paper, register or document kept under the provisions of any previous law relating to companies shall be deemed part of the books of account, book or paper, register or document to be kept under this Ordinance.

512. *Construction of references to extraordinary resolution in articles, etc.* Any reference to an extraordinary resolution in the articles of a company, or in any resolution passed in general meeting by the company, or in another instrument, or in any law in force immediately before the commencement of this Ordinance, shall, on and from such commencement, be construed as a reference to a special resolution.

513. *Transitional provisions.* Within one year from the commencement of this Ordinance, all companies shall alter their memorandum and articles or any existing contract or agreement and shall take such other actions as are necessary to bring the

constitution, working and procedures of the company in conformity with the provisions of this Ordinance:

Provided that, notwithstanding the fact that such actions have not been taken or such changes have not been made, the companies shall comply with the provisions of this Ordinance as if they were registered under this Ordinance.

514. *Removal of difficulties.* If any difficulty arises in giving effect to any provision of this Ordinance, the Federal Government may, by notification in the Official Gazette, make such provisions as may appear to it to be necessary for the purpose of removing the difficulty.

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