PART VIII

MANAGEMENT AND ADMINISTRATION
REGISTERED OFFICE, PUBLICATION OF NAME, ETC.

142. *Registered office of company.* (1) A company shall as from the day on which it begins to carry on business, or as from the twenty-eighth day after the date of its incorporation, whichever is the earlier, have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office and of any change therein shall be given within twenty-eight days after the date of the incorporation of the company or of the change as the case may be, to the registrar who shall record the same.

(3) The inclusion in the annual return or any other document of a company of the statement as to the address of its registered office shall not be taken to meet the requirements of sub-section (2).

(4) If a company, fails to comply with the requirements of sub-section (1) or (2), it shall be liable to a fine which may extend to two hundred rupees for every day during which such non-compliance continues, and officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Synopsis

1. Scope.
2. Change of registered office.
3. Foreign company, notice of change of registered office by.

1. Scope. The section only provides one of several methods whereby a communication or notice may be served on a company. The service in that mode is permissive and not imperative.[1]

2. Change of registered office. No change can be made by a company in the situation of its registered office without sanction of the High Court, which has jurisdiction over the company in terms of section 7. Sub-section (3) of section 142 clearly lays down that the notice of change or situation of the registered office cannot be made by any collateral documents.[2] A change of the registered office is made effective only when the change is notified to the registrar and not by the passing of a mere resolution of the company.[3] It is to be noted that the notification

1. AIR 1941 Rang 339 (SB).
2. PLD 1962 Dacca 176 = 14 DLR 407 = PLR 1962 Dacca 933.
3. AIR 1931 Cal 692 = 51 Cal 716.

of address is not merely a routine matter in which the Registrar, Joint Stock Companies has no discretion of any kind whatsoever. The Registrar is not a mere automation and he has no duty to discharge in relation to these matters. The Ordinance casts a duty upon the Registrar of Joint Stock Companies also to see that the requirements of the Companies Ordinance are duly complied with. There is nothing in the Companies Ordinance which prohibits the Registrar from refusing to file such information. The Registrar in such matters fulfils a *quasi*-judicial function. Only by misconduct or carelessness on the part of the Registrar can a company obtain a wholly illegal certificate.[4]

3. **Foreign company, notice of change of registered office by.** A notice given under the section cannot make a foreign company a Pakistani Company or confer on it the status of a Pakistani Company.[5]

143. *Publication of name by a limited company.* Every limited company--

(*a*) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible and in English or Urdu characters, and also, if the registered office is situate in a place beyond the local limits of the ordinary original civil jurisdiction of a High Court, in the characters of one of the vernacular languages used in that place;

(*b*) shall have its name engraven in legible English or Urdu characters on its seal;

(*c*) shall have its name mentioned in legible English or Urdu characters, in all bill-heads and letter papers and in all documents, notices and other official publications of the company, and in all bills of exchange, *hundis*, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

Synopsis

1. Objects and scope.
2. Name of company, display of.
3. Acceptance of bill without mentioning name of company, effect.

1. Object and scope. The object of the legislature in making a provision with regard to the publication of a company's name is to make the company itself continually to bring to the notice of those who deal or might deal with it, the fact

4. PLD 1968 SC 412 = 20 DLR (SC) 355.
5. AIR 1950 East Punj. 188 (DB).

that it is 'limited' and it has fortified this policy by pecuniary penalties. The section has nothing to do with advertising the whereabouts of a company; or affording facilities to members of the public in finding its place of business.[6]

2. Name of company, display of. The requirements of the Ordinance would be satisfied by a company when it displays a board of necessary conspicuousness and legibility outside the office room inside the building in which there are besides it a number of other offices. It is not the requirement of the law that when an office is situated within a compound, the name of the company should be painted or affixed outside the compound as well as outside the office.[7]

3. Acceptance of bill without mentioning name of company, effect. Where the directors of a company accepted a bill of exchange on behalf of the company without however adding the word "limited" to the name of the company. It was held that they had accepted the bill without putting on it the real name of the company and hence were personally liable under that bill.[8] Similarly where the directors of a company accept a bill of exchange on which the name of the company is written differently from its registered name, they are personally liable on those bills.[9]

144. *Penalties for non-publication of name.* (1) If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Ordinance, it shall be liable to a fine which may extend to two hundred rupees for every day during which its name is not so kept painted or affixed, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(2) If any officer of a limited company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company wherein its name is not so engraven as aforesaid, or issues or authorises the issue of any bill-head, letter paper, document, notice of other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, *hundi*,. promissory note, endorsement, cheque or order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine which may extend to two thousand rupees, and shall further be personally liable to the holder of any such bill of exchange, *hundi,* promissory note, cheque or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

6. AIR 1941 Bom. 97 = ILR 1941 Bom. 186 (DB).
7. AIR 1941 Bom. 97 = ILR 1941 Bom. 186 (DB).
8. (1889) 5 T L R 734 (On appeal from (1889) 58 L J Q B 377) + (1889) 120 E R 595.
9. (1894) 70 L T 376.

1. Scope. The section is a penal provision and has to be strictly construed. The burden of proving the infringement of the law under the section is on the prosecution.[10]

145. *Publication of authorised as well as paid-up capital.* (1) Where any notice, advertisement or other official publication of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication shall also contain a statement in an equally prominent position and in equally conspicuous characters of the amount of the capital which has been subscribed and the amount paid up.

(2) Any company which makes default in complying with the requirements of sub-section (1) and every officer of the company who is knowingly a party to the default shall be liable to a fine which may extend to five thousand rupees.

COMMENCEMENT OF BUSINESS BY A PUBLIC COMPANY

146. *Restriction on commencement of business.* (1) A company shall not commence any business or exercise any borrowing powers unless--

(*a*) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription;

(*b*) every director of the company has paid to the company full amount on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash;

(*c*) no money is or may become liable to be repaid to applicants for any shares or debentures which have been offered for public subscription by reason of any failure to apply for or to obtain permission for the shares or debentures to be dealt in on any stock exchange;

(*d*) there has been filed with the registrar a duly verified declaration by the chief executive or one of the directors and the secretary in the prescribed form that the aforesaid conditions have been complied with and the registrar has issued a certificate referred to in sub-section (2); and

(*e*) in the case of a company which has not issued a prospectus inviting the public to subscribe for its shares, there has

10. AIR 1941 Bom. 97 = ILR 1941 Bom. 186 = 42 Cr LJ 452 (DB).

been filed with the registrar a statement in lieu of prospectus.

(2) The registrar shall, on the filing of a duly verified declaration in accordance with the provisions of sub-section (1) and after making such enquiries as he may deem fit to satisfy himself that all the requirements of this Ordinance have been complied with in respect of the commencement of business and matters precedent and incidental thereto, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled:

Provided that, in the case of a company which has not issued a prospectus inviting the public to subscribe for its shares, the registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(5) If any company commences business or exercises borrowing powers in contravention of this section, every officer and other person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding one thousand rupees for every day during which the contravention continues.

(6) Nothing in this section shall apply to a private company, or to a company limited by guarantee and not having a share capital.

Synopsis

1. Commencement of business.
2. Borrowing before incorporation.
3. Allotment of shares.
4. Issued--meaning of.

1. Commencement of business. Section 146 does say that the company shall not commence its business but says that it shall not commence any business, which means that it cannot enter into any agreement for sale or purchase of any property also.[11] The section applies to all the contracts of a company whether preliminary or final or in the course of carrying on its business. Therefore any

11. AIR 1969 Raj. 49 = ILR (1959) 9 Raj. 1277.

contract entered into by the company before it commences its business shall be provisional only. The word 'provisional' in the section means that the contract has to be read as if it contained a provision that it shall not be binding on the company unless and until the company became entitled to commence business.[12]

Expenses incurred before incorporation. A company is not liable for costs and expenses incurred in respect of its formation and promotion and in the case of a company which never commenced its business also for the expenses such as stamp and registration fees, postal and other charges and publicity and travelling expenses incurred even after incorporation. As the Companies Ordinance prohibits the company from making a binding contract before commencement of business no implication of a promise to pay can or should be made in respect of the costs and expenses incurred for its formation and promotion and therefore such costs and expenses cannot be recovered under section 70, Contract Act.[13]

2. Borrowing before incorporation. Where the managing agents of the company borrow money, which is not within their power, on behalf of the company which could not then commence any business inasmuch as it had not got a certificate to commence the business, the borrowing cannot be said to be a bona fide transaction and even if the money is utilised for the company, the company cannot be saddled with the liabilities therein.[14]

3. Allotment of shares. Payment for shares allotted by set off against a debt due by the company, can be regarded as payment in cash for purpose of section 146 (1)(*a*), only if the debt contracted is a debt of the company. A debt contracted by the promoter, even if it be for and on behalf of the Company before the date on which the company was entitled to commence its business cannot be set off against payment in cash for allotted shares, as such debt is only provisional at the time it was incurred and was not binding on the company. Allotment of shares in accord and satisfaction of such a debt would not be an allotment of shares for payment thereof in cash within the provisions of this section.[15]

4. Issued--meaning of. Word "Issued" should be understood to carry a commercial sense, namely "put into money market".[16]

REGISTER OF MEMBERS AND DEBENTURE-HOLDERS

147. *Register of members and index.* (1) Every company shall keep in one or more books a register of its members and enter therein the following particulars, namely:

(*i*) the name in full, father's name (in the case of a married woman or widow, the name of her husband or deceased husband), nationality, address, and the occupation, if any, of each member, and, in the case of a company having a share capital, statement of the shares held by each

12. AIR 1950 Cal. 491.
13. AIR 1950 Cal. 491.
14. AIR 1940 Oudh 202 = 15 Luck 515 (DB).
15. AIR 1964 Ker. 311.
16. AIR 1957 Trav.-Co. 6 (DB).

member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(*ii*) the date at which each person was entered in the register as a member;

(*iii*) the date at which any person ceased to be a member and the reason for ceasing to be a member.

(2) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within fourteen days after the date at which any alteration is made in the register of members, make the necessary alteration in the index.

(3) The index shall, in respect of each member, contain a sufficient indication to enable the entries relating to that member in the register to be readily found.

(4) If default is made in complying with the requirements of sub-section (1) or unnecessary delay takes place in entering in the register of the members the name and particulars of any person who has become or ceased to be a member of a company, as the case may be, the company shall be liable to a fine not exceeding two hundred rupees for every day during which the default continues; and every officer of the company who knowingly and wilfully authorises or permits the default or causes unnecessary delay in entering in the register the name and particulars of any person who has become or ceased to be a member of a company, as the case may be, shall be liable to the like penalty.

(5) If default is made in complying with the requirements of sub-section (2) or sub-section (3), the company and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to a fine not exceeding two thousand rupees.

Synopsis

1. Entry in register of members.
2. Numbers of share certificates to be stated.
3. Legal representative of share-holder.

1. Entry in register of members. Section 147 imposes an obligation on all companies to maintain a register of members containing the particulars specified in the section.[17] The particulars include the details of the share-holdings of every

17. AIR 1936 Mad. 97 (DB).

member and the date "at which any person ceased to be a member."[18] An entry in the register of members is a condition precedent to membership,[19] and the best proof of a person having ceased to be member is the removal of his name from the register of members.[20]

The register of members of a company is to be the creditor's guarantee showing them whom and to what extent they trust them. As a necessary corollary the register should be properly maintained and the names appearing therein should be of the persons really for the time being liable to the creditors.[1] The company's right to retain the name of a person on its register of share-holders is not in any way affected by its failure to send him dividend warrants.[2]

Consequence of entry. When it is shown that a person's name has been put on something which may be considered as a register of share-holders or members of the company as the holders of certain shares with his own knowledge there is evidence to establish that he had agreed to become a member and as such liable as a contributory in respect of these shares.[3] The appearance of the name of a person on the register of members renders him liable so long as his name is on it, to be included in the list of contributories even if it had been put in the register without sufficient cause or fraudulently.[4]

Allotment sheet, entry in. Allotment sheets giving certain details respecting the allottees and containing a column referring to the register and intended as materials from which the register was to be formed as distinguished from the register cannot be treated as the register itself.[5]

2. Numbers of share certificates to be stated. The resolution allotting shares and the letter of allotment need not mention that particular shares bearing particular numbers are allotted to a person but in order that liability may attach to him as a member the distinctive number of the shares purporting to have been allotted to him should be mentioned in the entry in the register of members.[6]

3. Legal representative of share-holder. There is no provision in the Ordinance showing that it is the duty of the company or of the sole surviving member of the company to bring on the register the legal representatives of the deceased members. Nor can it be said that a legal representative can be compelled to come on register.[7] He can become a member only by complying with the provisions of the Articles of the Company for that purpose.[8]

18. PLD 1979 SC 723 = PLJ 1979 SC 13.
19. AIR 1950 Bom. 149 = ILR 1950 Bom. 192.
20. PLJ 1979 SC 13 = PLD 1979 SC 723.
1. ILR 1954 Pat. 802.
2. 23 Com. Cas. 168 (Mad.).
3. (1887) 36 Ch. D. 702.
4. AIR 1951 Mad. 890 = ILR 1952 Mad. 108 (DB)
5. 1894-2 Ch. 392.
6. AIR 1950 Bom. 149 = ILR 1950 Bom. 192.
7. PLD 1979 SC 723 = PLJ 1979 SC 13 + AIR 1958 Ker. 41.
8. PLJ 1979 SC 13 = PLD 1979 SC 723.

148. *Trusts not to be entered on register.* No notice of any trust, expressed, implied or constructive, shall be entered on the register of members, or be receivable by the registrar.

Synopsis

1. Trustee, position of.
2. Rights of company qua trustee.
3. Company holding in trust shares of its constituents.
4. Official trustee.
5. Receiver

1. Trustee, position of. The section which forbids notice of a trust to be entered on the register implies that there can be a trust of shares.[9] Therefore though a company is not bound to recognise a trust in respect of its shares, it would not prevent the Court from recognising it and considering the rights between the parties.[10] On the transfer of shares, the transferee becomes the sole beneficial owner of those shares sold by the transferor, the legal right to which is vested in him. Thus the relation of trustee and *cestui que trust* is thereby established between them. The transferor holds the shares for the benefit of the transferee to the extent necessary to satisfy the demands of section 94, Trusts Act. But this principle of equity cannot be extended to cases where the transferee has not taken active steps to get his name registered as a member with due diligence and in the meanwhile certain other privileges or opportunities arise for the purchase of new shares in consequence of the ownership of the shares already acquired.[11]

The provision as to non-recognition of a trust does not preclude a *cestui que trust* from requesting the company to pay money due in respect of shares to himself or from suing the company in respect of misappropriation of profits to which the owner of the share would be entitled.[12]

The liability for payment of call money is on the person whose name is on the register of 'share-holders'. If he is only a trustee he may have a right to be indemnified by his *cestui que trust* but that has not the effect of altering his liability to the company as its share-holder.[13] This is so because the *cestui que trust* who gets all the benefits of shares should bear its burden and hence the trustee has a right to be indemnified by him against calls.[14] Thus the registered share-holder may only be a *benamidar* for another but still the company can compel only the *benamidar* to pay the call money and not both him and the real owner of the shares.[15]

2. Rights of company qua trustee. Where under the articles the company has a lien over the shares of its members for any money due from them that lien is not defeated by the fact that the share-holder is only a trustee in respect of those

9. 45 Bom. L. R 46.
10. AIR 1931 Bom. 269 (DB).
11. AIR 1953 SC 385 = 1954 SCR 117.
12. (1866) 14 L T 392.
13. AIR 1957 Pepsu 18.
14. AIR 1953 SC 385 + (1901) 1901 App. Cas. 118.
15. AIR 1943 Cal. 440 (DB).

shares.[16] But the company can claim no lien over the shares where it gives advances or credit to the share-holder with full notice that the share-holder is not a beneficial owner of those shares.[17]

3. **Company holding in trust shares of its constituents.** Where *A* company holds on behalf of its constituents shares of *B* company, the latter company allowing the former to vote on behalf of its constituents does not recognise any trust.[18]

4. **Official trustee.** Reading sections 6 and 14 of the Official Trustees Act together, the Official Trustee is entitled as a 'corporation sole' to be entered as a share-holder in the registers of a company and such an entry does not constitute a notice of trust which is prohibited by section 148.[19] There is absolutely no conflict between section 148 and section 14 of Official Trustees Act at all.[20]

5. **Receiver.** Where the purchasers of certain shares brought a suit against the vendor on his refusal to apply for the new shares issued by the company on behalf of the purchasers and a receiver was appointed in the suit. It was held that the receiver not being a share-holder of the company was not entitled to apply to be registered as the holder of the new shares. He was also not entitled to be registered as a receiver in respect of these new shares to which the defendant was entitled because if the company allowed his registration it would by taking notice of a trust with the receiver as trustee for the defendant who was the share-holder.[1]

149. *Register and index of debenture-holders.* (1) Every company shall keep in one or more books a register of the holders of its debentures and enter therein the following particulars, namely:--

(*a*) the name in full, father's name (in the case of a married woman or widow, the name of her husband or deceased husband), nationality, address, and the occupation, if any, of each debenture-holder;

(*b*) the debentures held by each holder, distinguishing each debenture by its number and the amount paid or agreed to be considered as paid on the debentures held by each holder;

(*c*) the date at which each person was entered in the register as a debenture-holder; and

(*d*) the date at which any person ceased to be a debenture-holder.

16. (1892) 21 Ch. D. 302.
17. 19162 Ch. 293.
18. AIR 1955 Cal. 132 = ILR (1965) 1 Cal. 475.
19. AIR 1959 Ker. 254 (The chairman or the general meeting cannot hold that the official trustee who has been entered on the register is not entitled to vote unless he took steps to get the register rectified under S. 155).
20. AIR 1959 Ker. 254.
1. AIR 1950 Bom. 76 (DB).

(2) Every company having more than fifty debenture-holders shall unless the register of debenture-holders is in such form as to constitute in itself an index, keep in index of the names of the debenture-holders of the company and shall, within fourteen days after the date at which any alteration is made in the register of debenture holders make the necessary alteration in the index.

(3) The index shall, in respect of each debenture-holder, contain a sufficient indication to enable the entries relating to that holder in the register to be readily found.

(4) If default is made in complying with sub-sections (1), (2) or (3), the company and every officer of the company shall be liable to a fine as provided in sub-section (4) or sub-section (5), as the case may be, of section 147.

(5) This section shall not apply with respect to debentures which *ex facie* are payable to the bearer thereof.

150. *Inspection of registers.* (1) The register of members commencing from the date of the registration of the company and the index referred to in section 147, the register of debenture-holders and the index referred to in section 149 and the registers referred to in sub-section (4) of section 156 shall be kept at the registered office of the company and, except when closed under the provisions of this Ordinance, shall, during business hours, subject to such reasonable restrictions, as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection, be open to the inspection of members or debenture-holders *gratis* and to the inspection of any other persons on payment of such amount not exceeding the prescribed amount as the company may fix; and any such member, debenture-holder or other person may make extracts therefrom.

(2) Any member or debenture-holder or other person may require a certified copy of the registers and index thereof mentioned in sub-section (1), or of any part thereof, on payment of such amount not exceeding the prescribed amount as the company may fix, and the company shall cause any copy so required by any person to be sent to that person within a period of ten days, exclusive of non-working days and days on which the transfer books of the company are closed, commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under sub-section (1) is refused, or if any copy required under sub-section (2) is not sent within the

specified period, the company and every officer of the company who is in default shall be liable, in respect of each offence, to a fine not exceeding five hundred rupees and to a further fine not exceeding fifty rupees for every day after the first during which the refusal or default continues; and the registrar may by an order compel an immediate inspection of the register and index or direct that copies required shall be sent to the persons requiring them.

Synopsis

1. Object.
2. Books of company, where to be kept.
3. Inspection of books.
4. Copies of books.

1. Object. The section is intended not only for the protection of the share-holders but also the public.[2]

2. Books of company, where to be kept. The register of share-holders is a book which the law requires to be kept at the office of the company during business hours for inspection and such other purposes. It would be a breach of duty on the part of the directors of the company to allow the removal of the register from the office premises of the company where the law requires it to be kept.[3]

Liquidation proceedings. On a winding up order being made the purposes of a going company as regards the register of share-holders are no doubt at an end, but as similar duties arise in the winding up it becomes necessary that the register should be in the hands of the liquidator.[4] Similarly other books of the company, especially those like the minute book of the directors, share register and other books which relate to the management of the company are not the title deeds of the debenture-holders and therefore in the event of the winding up of the company, the liquidator is entitled to their possession as against the receiver of the debenture-holder who has taken possession of them before the winding up.[5]

3. Inspection of books. A share-holder has an absolute right to inspect the register of members at any time during the business hours of the company unless the general body of the share-holders have placed any restriction on that right by a resolution passed at their meeting that such inspection will not be granted when a meeting of the Board of Directors is in progress. Refusal therefore by a director, in the absence of any such restriction, to permit inspection on the ground that it would be inconvenient in view of the directors' meeting which is taking place render him liable for the penalty imposed by the section.[6]

The right of a stock-holder to inspect the register of stock-holder cannot be limited by any qualification such as that it should be bona fide or reasonable.[7] The

2. 20 All 127 (DB).
3. (1883) 24 Ch. D. 408.
4. (1883) 24 Ch. D. 408.
5. 1892-2 Ch. 442.
6. 20 All 127 (DB).
7. (1888) 37 Ch. D. 669.

member's motive for demanding an inspection of the register of members or for requiring a copy thereof on payment of prescribed fee is no valid ground for refusal to comply with the demand.[8]

A company after accepting the status of person to have inspection and obtain a list of present members cannot raise an issue that as the shares of that person had been forfeited he had no right of inspection without payment of the requisite fee.[9]

Right to inspect and to take copies. The right to inspect the register of members and to take notes of anything found there and the right to obtain copies on payment of prescribed fees are not mutually exclusive rights. The latter is an additional right conferred by law on the share-holder.[10]

Inspection through agent. The right to inspect registers, although it is in terms given by the statute only to the share-holders, can be exercised by him through an agent.[11]

4. Copies of books. The right of a share-holder to obtain a copy of the share-holders' book on paying proper fees is as much incidental to the ownership of the stock as his right to obtain inspection. When that right is refused to him he can enforce the same against the company by an action for injunction restraining it from interfering with the right or by any action under the common law procedure for *mandamus* to compel it to grant the right. In either case the motive of the share-holder in asking for the copy would be an irrelevant consideration.[12] An order made in the ordinary form giving the applicant liberty to inspect the documents in the possession of the liquidator and to take copies at his own expense entitles him to take copies without paying for them.[13]

The Company Judge has jurisdiction to order a company to deliver a copy of the register of members of the company to a share-holder when the company fails to do so when requested by the share-holder.[14]

An order made in the ordinary form giving the applicant liberty to inspect the documents in the possession of the liquidator and to take copies at his own expense entitles him to take copies without paying for them.[15]

151. *Power to close register.* A company may, on giving not less than seven days' previous notice by advertisement in some newspaper having circulation in the Province, or part of Pakistan not forming part of a Province, in which the registered office of the company is situate and, in the case of a listed company, also in a newspaper having circulation in the Province, or other part as

8. 1909-1 Ch. 708 + (1873) 29 L T 922.
9. 1891-1 Ch. 596.
10. 1898-1 Ch. 596.
11. 1901-2 Ch. 59.
12. 1909-1 Ch. 248.
13. 1889 W N 134.
14. AIR 1936 All 568 = 58 All 988.
15. 1889 W N 134.

aforesaid, in which the stock exchange on which the company is listed is situate, close the register of members or debenture-holders, as the case may be, for any time or times not exceeding in the whole forty-five days in a year and not exceeding thirty days at a time.

152. *Power to Court to rectify register.* (1) If–

(*a*) the name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members or register of debenture-holders of a company; or

(*b*) default is made or unnecessary delay takes place in entering on the register of members or register of debenture-holders the fact of the person having become or ceased to be a member or debenture-holder;

the person aggrieved, or any member or debenture-holder of the company, or the company, may apply to the Court for rectification of the register.

(2) The Court may either refuse the application or may order rectification of the register on payment by the company of any damages sustained by any party aggrieved, and may make such order as to costs as it in its discretion thinks fit.

(3) On any application under sub-section (1) the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or debenture-holders or alleged members or debenture-holders, or between members or alleged members, or debenture-holders or alleged debenture-holders, on the one hand and the company on the other hand; and generally may decide any question which it is necessary or expedient to decide for rectification of the register.

(4) An appeal from a decision on an application under sub-section (1), or on an issue raised in any such application and tried separately, shall lie on the grounds mentioned in section 100 of the Code of Civil Procedure, 1908 (Act V of 1908):

(*a*) if the decision is that of a civil Court subordinate to a High Court, to the High Court; and

(*b*) if the decision is that of a Company Bench consisting of a single Judge, to a Bench consisting of two or more Judges of the High Court.

Synopsis

1. Scope.
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1. Scope. Section 152 gives the Judge wide discretion in deciding matters relating to the rectification of a register of members, but that would not mean that each and every controversy between the members of the company can be considered and determined under section 152 of the Ordinance. So, the matters which are very much concerned with regard to rectification of the register, can be decided and determined by the Judge under section 152 and not each and every controversy should come within the ambit of section 152 so as to be determined by a Court.[16] Though power to rectify Register of Members is very wide yet jurisdiction of High Court being summary it was held that it was not to be allowed to be invoked for resolution of disputes of complicated nature necessitating a regular trial. Parties in such situations would be required to have the controversy resolved through a regular suit.[17] The proceedings for rectification of a share register is in the nature of a summary procedure and, therefore, such jurisdiction will be exercised by the Company Judge in a case where facts are simple and undisputed and does not involve decision on intricate and disputed question of title between the parties in which case the parties may be left to settle their dispute in appropriate civil proceedings.[18] Where petition under section 152 stated that the removal of petitioner's name from register of directors was on basis of fake and forged documents of transfer deed and letter of registration, although it was admitted that the signatures appearing on the documents were his but he had in fact signed on blank paper including blank transfer deed as he had implicit faith in the respondent; it was further alleged that the respondent had later on written him a letter assuring petitioner that his name would be shown in the Company's paper and he would be relegated to his original position both in respect of his share and office of Director of Company. Respondent denied having signed or issued any such letter. It was held that questions raised required holding of detailed inquiry into complex questions of law and fact more appropriately to be left to be decided at a regular trial, petition under section 152 was dismissed.[19] Thus the question whether during the hearing of an application, the ostensible owner of a share whose name is borne on the register of members may or may not vote at a general meeting of the company can neither be necessary nor expedient to be decided for the rectification of the register. The sole function of the Court

16. 1971 DLC 711 + PLD 1954 Lah. 745 (DB) + AIR 1964 All. 45.
17. 1987 CLC 2079.
18. 1988 CLC 1541 = PLJ 1988 Kar. 508.
19. PLD 1987 Lah. 569 = PLJ 1987 Lah. 585.

called upon to decide an application of that nature being whether the register should or should not, after inquiry, be rectified, in the manner sought.[20]

The Court cannot under this section compel a person to sell or transfer his shares. Such an order being beyond the scope of section 152 any compromise to that effect could also not be recorded even if the Company Judge had such powers to record a compromise. That order must be set aside.[21]

The Court may generally decide any question necessary or expedient for rectification of the Register of Members. This not only gives ample power to the Court but also makes it obligatory upon it, first, to decide the question of domicile of the company, specially in a case where the question of domicile has been particularly raised in relation to the jurisdiction of the Court in deciding an application under section 152 of the Ordinance.[1]

Person unable to purchase qualifying shares for directorship. A person who has undertaken to purchase qualifying shares for appointment as Director but purchases shares which are not sufficient to qualify him to hold that office, shall cease to be a Director. But he does not become disqualified from being a member and if his name is not entered in the register of members, he may seek rectification of register of members for inclusion of his name in the register.[2]

Dispute between company and third parties. This section does not apply where the dispute is between a company and its members on the one hand and Administrator of Abandoned Properties on the other. The section applies only to cases where the dispute is between the company and any person as to his title to get his name entered in the Register of Members.[3]

Appointment of Receiver. As the power of a company Judge under section 152 is a limited one and that power has been conferred for granting a relief to a shareholder in his individual and personal capacity and not in his collective capacity as representing the company or as a person interested in direct management of the affairs of the company, in exercise of that power the Court has no jurisdiction to take over the administration of the affairs of the company and to entrust it to a Receiver. Provisions of Order 30, Rule 1 (*i*), Civil P.C., cannot therefore be applied to applications made under section 152, Companies Ordinance.[4]

Reinstatement of expelled member. Where a member of a club, which was a limited company, was expelled from its membership and he brought a suit for a declaration that his dismissal was illegal and prayed for reinstatement. It was held that the Court has no jurisdiction to order a company to accept any person as a member who has been expelled by it. Any order to that effect by the Court would,

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20. PLD 1954 Lah. 745 = PLR 1955 Lah. 111 (DB).
21. AIR 1964 All. 45.
PLD 1965 Dacca 176 = 14 DLR 407 = PLR 1962 Dacca 933.
1. NLR 1982 Civ. 422 = 1982 CLC 2198 = PLJ 1983 Kar. 314.
2. NLR 1982 Civ 111 = PLJ 1982 Kar. 235 = 1982 CLC 463.
3. AIR 1946 Lah. 193 (DB).
4.

as a matter of fact, amount to interfering with the internal management of the Company, which is neither desirable nor legal.[5]

Allotment of shares in severalty. Shares in a company held jointly by more than one person could be split up specifically between the individual share-holders either amically between them or at the instance of any share-holder by the company under sections 76 and 78 of the Companies Ordinance or at the instance of any share-holder by the Court under section 152 of the Ordinance. When the parties disagree amongst them to divide their joint shares and when the company fails to effect such division, the only remedy left with the parties is to divide such shares by way of an order of the Court to rectify the share register of the company under section 152.[6]

Permanent injunction, grant of. Proceedings under this section may become unsuitable in any particular case because of its summary nature. But where the facts and circumstances in the case are such that questions involved in the suit for permanent injunction could be more appropriately dealt with under the Act itself and an injunction would throw the business of the company into a standstill and drive the members to seek its winding up to get out of the impasse, the Court should refuse to give a permanent injunction.[7]

Conflict between statute and rules. Rules framed under a statute cannot go beyond and over reach the statute itself. Therefore, section 3 of the rules dealing with transfer of shares is *ultra vires*.[8]

2. Application for rectification. Rectification under section 152 implies the correction of an error or removal of defects or imperfections. It implies prior existence of an error, mistake or defect which after rectification is made right and corrected by the removal of the flaws. The register kept by the company has to be shown to be wrong or defective. When the register is amended by the operation of law and in accordance with the directions of the Court; it cannot be said that it was defective and no question of rectification of the register arises.[9]

Affidavit to accompany application. Application for rectification of alleged wrongly recorded shares should be accompanied by affidavit of the counsel.[10]

Premature application. A mere allegation that the company has refused to register a transfer of shares is not enough, something more has to be established before it could be held that the Company was in default in not making the necessary alterations so as to entitle the share-holder to call for rectification under section 152. The petitioner has to show that there was an omission on the part of the company which would amount to sufficient cause within the meaning of sub-clause (*a*) and would amount to default or unnecessary delay within the meaning of sub-clause (*b*).[11] Therefore an application by transferee for rectification of register when

5. PLD 1953 Pesh. 55.
6. 1981 Dhaka LR 49.
7. AIR 1958 Punj. 190=ILR 1958 Punj. 431 (DB).
8. PLJ 1997 Kar. 456=1997 MLD 2155.
9. AIR 1959 Punj. 232.
10. AIR 1953 SC 98=1953 SCR 351.
11. PLD 1981 Lah. 90=PLJ 1981 Lah. 225 (DB)+AIR 1952 Bom. 17.

there is no refusal in law by the company to recognise the transfer and put him on the register is a premature application.[12] Where rectification of Register of Members was sought on the ground that there was an agreement between parties for transfer of share in favour of the petitioner. Neither such agreement nor minutes of any meeting had been entered into between parties for purchase of shares. Only some unsigned documents were shown. A case for rectification of register under this section was made out.[13]

3. Who may apply. This section is brought into operation as soon as there is a person alleging himself to be aggrieved by an improper entry in or omission from the register and thereupon it is open to the person so aggrieved or to the company or any member of the company to come to Court under the section.[14] Thus any person who claims that this name ought to be on the register has the right to apply to the Court to have his name entered on the register. The question whether the Court should grant him relief on the application or not, is a matter which has nothing to do with the question of the right to apply.[15]

Members of company. Under the section any member of a company has the right to invoke the jurisdiction of the Court irrespective of whether he has pecuniary interest in the matter or not.[16]

Transferee of shares. Where the company, having power under the articles to reject a transfer on the ground that the transferee is not a proper person, refuses to register a transfer without giving reasons, the transferee can come before the Court and claim that his right has been violated by the refusal.[17] Where there is nothing in the articles of the company to show that the prior approval of the directors is necessary but the articles only gave a discretion to them to decline to register a transfer for any reason; it was held that the transferee by himself had the right to apply for rectification without impleading the transferor and that his application could not be thrown out on the ground that it was by a person who had no right to apply.[18] But where agreement to sell shares to petitioners was yet to be completed by making payment of balance price of shares, petitioners could not claim to be the owner of said shares and as such possessed of the rights of members of company, and petitioners could not seek rectification of register of members of Company to get their names entered in it.[19]

Official Trustee. The official trustee is entitled to be entered on the register as a 'corporation sole' by the name of official trustee and hence it is not necessary for him to get the register rectified under section 155 in order to exercise the right of voting. It is for those persons who allege that the official trustee has been entered

12. (1900) 22 All. 410.
13. 1985 CLC 1239.
14. 1917-2 Ch. 100.
15. (1866) 1 Ch App 574+(1869) 7 Eq. 273.
16. 1957-2 Mad L Jour 416+AIR 1963 Pb. 341.
17. 17 Ind Cas. 640 (DB) (Bom).
18. (1900) 22 All. 410.
19. PLD 1987 Lah. 1=PLJ 1986 Lah. 551.

on the register without sufficient cause to apply under section 297 for the rectification of the register.[20]

Transmission of shares. The holder of shares as a result of transfer or transmission of shares can seek his remedy under this section when aggrieved by the refusal of the company to rectify the share Register.[1] Where *B* held some shares in a company, and, on his demise, his widow *N* obtained letter of administration and applied to the company to transfer the shares standing in her husband's name to her name. The company made a default and unnecessarily delayed transferring the shares. It was held that the legal representative of a deceased member is the legal owner of the shares held by the deceased. Where the prospective transferee lodged with the company the original grant of the letters of administration to the estate of the deceased. The company could not reasonably require production of any other evidence in proof of her representative title and in fact did not require any evidence. In these circumstances the prospective transferee fully made out her title to the shares and her right to have her name entered as a member in the register of members.[2]

Company, application by. Even a company has a right under clause (*a*) of sub-section (1) to apply for rectification of register of share-holders regarding the name of any person entered in it fraudulently, or without sufficient cause or omitted, from the register of members, and no default or fraud of the company can or need to proved in such case.[3] Thus the company which finds that it has added the names of certain persons to the register improperly must apply to the Court for rectification of register. It cannot of its own accord remove their names.[4]

Third person, application by. An application by a person not for putting his own name in the register but to put somebody else's name cannot succeed.[5]

Firm, application by. The section refers to the entry of the names of persons in the register of members of a company, and therefore a firm which cannot be considered to be a person is not entitled as the transferee of shares to maintain an application to have its name brought on the register of members.[6]

Removal of name, application for. An applicant who purchases shares conditionally cannot, when those conditions are once fulfilled, maintain an application for the removal of his name on the ground that there was subsequently a breach of those conditions. His remedy, if any, lies in an action for damages.[7]

4. Necessary parties. There is no provision of law which makes it essential that the transferor should be a party to a proceeding in which the transferee requires a company to accept a transfer deed and register the shares in his name.[8] But in the

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20. AIR 1959 Ker. 254.
1. AIR 1964 Cal. 335 (DB).
2. AIR 1965 Cal. 34 (DB).
3. AIR 1957 Mad. 702 = ILR 1957 Mad. 1058.
4. AIR 1946 Mad. 35 = ILR 1945 Mad. 728.
5. AIR 1957 Cal. 476.
6. AIR 1944 Oudh 318.
7. AIR 1936 Lah. 700 = 17 Lah. 793 (DB).
8. AIR 1958 Bom. 247.

exercise of its discretion the Court will not order a Company to register a transfer, where the alleged transferor is not before the Court and there is real doubt as to the validity or bona fides of the transaction.[9] Similarly where in a proceeding the claim is for rectification of the stock register, that is to say, for the substitution of the claimant on the stock register as owner of the stock in the place of some other person, that other person is a necessary party to the proceedings.[10] Where, however, there, is a transfer of shares by a member to a non-member, and a transferee's name is registered in Company's register but is cancelled subsequently without notice to the transferee; and the transferee brings a suit for rectification of the Register. That transferor was not a necessary party.[11]

Third parties. Third parties whose rights will be affected by the order of rectification are necessary parties to the proceedings and the Court cannot order rectification in their absence.[12] Thus a mortgagee of the uncalled share capital is entitled to intervene and oppose the application of a share-holder to have his name removed from the register of the company.[13]

Directors of company. Directors of a company are not necessary or proper parties to an application for rectification of register.[14]

5. Civil suit for rectification. The power of the Court to take action under this section is discretionary.[15] Even though a summary procedure prescribed by the section is available to a person seeking rectification of the register of share-holders his common law right to seek the necessary relief through a regular suit is not thereby taken away.[16] Therefore in a simple case where an immediate rectification is essential, it may be desirable to apply under this section. But if the case is complicated, a civil suit should be brought.[17] High Court in such a case stayed the proceedings of application till parties obtained decision from civil Court on disputed question of fact raised on application proceedings.[18] But in a subsequent case it was held: Where Court directs a party to move the Civil Court, keeping of the proceedings for rectification alive while directing the parties to have recourse to a civil Court to determine the question of title first, may in certain cases produce detrimental result on the working of a company. Therefore Court in such cases may dismiss the petition under section 152 of the Companies Ordinance, 1984 but leave it open to the parties to approach appropriate civil Court for determination of their respective rights in this regard as claimed by them. The dismissal of this petition will be no bar to the filing of another petition under section 152 of the Companies Act after decision of the dispute finally by the Civil Court.[19]

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9. 8 Cal. 317.
10. 163 Ind. Cas. 547 (PC).
11. AIR 1962 Pun 49.
12. AIR 1951 Mad. 572=ILR 1950 Mad. 339 (DB).
13. AIR 1920 Cal. 789=47 Cal. 901 (DB).
14. AIR 1946 Lah. 193.
15. 1980 Law Notes 763 (DB) (Lah)+1976 Dhaka LR 313.
16. 1980 Law Notes 763 (DB)+AIR 1928 Lah. 234+AIR 1953 Trav-Co. 253+AIR 1957 Mad. 702 (DB)+AIR 1952 Cal. 58 (DB)+AIR 1928 Mad. 571 (DB)+AIR 1963 Bom. 40.
17. 1986 CLC 2560+1980 Law Notes 763 (DB).
18. 1986 CLC 2560.
19. 1988 CLC 1541=PLJ 1988 Kar. 508.

The proper relief to be claimed in a suit for rectification by the share-holder whose shares have been forfeited is a declaration that the forfeiture of the share is illegal and inoperative and mandatory injunction directing the company to restore the name of the plaintiff as a share-holder in the company's register.[20]

Complicated question of fact and law involved. Where complicated questions of fact and law are involved, a separate action and not an application for rectification of the register would be the proper remedy.[1] Therefore where there is a dispute between the parties as to the right of the applicant to have his name put on the register and the Court is not satisfied that the applicant has made out his case it might direct the proceedings under the application for rectification of the register to stand over until the question has been tried between the parties in other proceedings whether the case on which the application is founded can or cannot be established.[2] Where there are serious disputes regarding the title to the shares and a suit is pending between the parties in the Civil Court and the issues involved are such that they cannot be decided in a summary way upon an application for rectification, the application must be dismissed leaving the parties to get the questions determined in a civil suit.[3] Where discovery and inspection are necessary and complicated questions such as forgery and fabricated documents arise, the summary procedure of trial by petition under section 297 should not be allowed. In such a case the petitioner should be referred to a regular suit for obtaining the relief of rectification.[4] The Court has got the power to direct the party concerned to a civil court and to file a proper action for the purpose of securing the relief which he seeks in the summary proceeding. This direction is given by the Court in exercise of its discretion because it is the Civil Court which has got the jurisdiction to decide all such matters in the first instance and it is only by way of a summary remedy that a party can proceed by an application or a petition under this section.[5]

Procedure and jurisdiction. A suit for the purpose of rectification is governed by Civil Procedure Code. It may be filed only in a Court having pecuniary and territorial jurisdiction. Where it is filed in the High Court as only that Court has pecuniary jurisdiction to try it, the Court will try it as a Civil Court under C.P.C. and not under the Companies Ordinance.[6]

Limitation. A suit claiming relief of the nature contemplated by the section falls within the residuary Art. 120 and not under Art. 48 or 49 of the Limitation Act.[7]

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20. AIR 1951 Mad. 572=ILR 1950 Mad. 339 (DB).
1. 1991 MLD 203+1988 CLC 1541=PLJ 1988 Kar. 508+AIR 1915 Lah. 100 (DB)+AIR 1953 Hyd. 126 (DB)+AIR 1960 Pb. 388+AIR 1957 Cal. 476+AIR 1963 Bom. 40.
2. (1866) 1 Ch. App. 574.
3. AIR 1955 Pat. 486.
4. AIR 1960 Bom. 136.
5. AIR 1963 Bom. 40.
6. AIR 1963 Bom. 40.
7. AIR 1951 Mad. 572 (DB). (*Affirmed* in AIR 1953 SC 98)+AIR 1953 Trav-Co. 253.

Burden of proof. In a suit brought against a company in respect of non-registration of a transfer on the ground that the refusal was mala fide, the burden is on the plaintiff to prove his allegation.[8]

6. Entry or omission of name without sufficient cause. The jurisdiction of the Court under section 152 in the matter of rectification of register is extensive and general.[9] If a person is a regular member of a company and his name has been left out from the register either by mistake or by negligence, or even fraudulently, then the High Court under section 152 of the Companies Ordinance has got the authority to order its rectification.[10]

Sufficient cause or fraud must be proved. The expression 'sufficient cause' in section 152 implies the presence of legal and adequate reasons. It embraces no more than that which provides a plenitude which when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from a reasonable standard of practical and cautious men.[11] Under sub-section (1) what one has to establish is that there is an omission on the part of the company which in law would amount to sufficient cause within the meaning of sub-clause (*a*) and would amount to default or unnecessary delay within the meaning of sub-clause (*b*). It is not sufficient for a share-holder who sells his shares merely to contend or prove that there was an omission on the part of the purchaser to get his name registered or impute knowledge with regard to the change of ownership of the shares to the chairman of the board of directors or the secretary of the company or merely refer to a letter written by him to the company pointing out that he has sold his shares and that he is no longer a share-holder.[12] A rectification under clause (*a*) or sub-section (1) can be passed even where the fraud is that of a third party or the event of sufficient cause is totally unconnected with the company. A transferor whose name continues to remain on the register of members owing to the fraud of the transferee can obtain relief under the section.[13] In acting under the section the Court is justified in taking into consideration subsequent events which take place after the presentation of the petition for rectification of the share register for the purpose of affording complete relief to the parties.[14]

Name entered without sufficient cause or fraudulently. For the application of this section it is not always necessary that the name of a person should have been fraudulently entered. It would equally be sufficient if it was entered "without sufficient cause".[15] Where there has been no valid allotment of shares to a person whose name is on the register, the Court will order rectification by the removal of his name.[16]

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8. AIR 1935 Mad. 784.
9. AIR 1958 Pun. 190=ILR 1958 Pun. 461 (DB).
10. PLD 1950 Pesh. 55.
11. AIR 1959 Pun. 232 (Removal of names of share-holders on compulsory transfer of their shares in accordance with the provisions of the Act cannot be said to be not for a "sufficient cause").
12. AIR 1950 Bom. 217.
13. 23 Com. Cas. 168 (Mad).
14. AIR 1964 Cal. 335 (DB)+AIR 1915 Cal. 103.
15. ILR 1954 Pat. 602.
16. AIR 1921 Bom 372+(1889) 42 Ch. D. 160+(1874) 18 Eq. 17*n*.

Fraudulent transfer. A forged and fraudulent transfer would not defeat title of true owner. As against real owner, a forged or fraudulent transfer is a nullity and person so deprived of his shares can compel the company if it has removed his name from the register, to reinstate him as the holder of shares.[17] But where the contributory has failed to show that his name was entered in the register fraudulently or without sufficient cause, rectification of share register by deleting a number of shares standing against his name cannot be ordered.[18] Thus a shareholder cannot succeed in getting his name removed from the register on the plea that he had been induced by the misrepresentations of the secretary of the company to apply for the shares where the secretary had no authority, either express or implied, to make representation on behalf of the company.[19]

Transfer not fulfilling legal requirements. A refusal to give effect to a transfer and register the name of the transferee in a case where to do otherwise would amount to a contravention of the statute is not a case of omission to enter the name of a person in the register without sufficient cause.[20] Where the directors of a company literally and bona fide carry out the provisions of Articles of Association and refuse to register a transfer unless the restrictions and conditions prescribed by the articles were fulfilled they cannot be said to be acting 'without sufficient cause'.[1] Thus if a company purchases its own shares no matter where, a member who has sold the shares to the company cannot be removed from the register because the purchase must be deemed to have been not validly made as it is *ultra vires* of the company.[2]

Directors acting unreasonably in refusing to rectify register. The Court can order the company to put on the register of share-holders the name of a transferee where it refused to register the transfer of the shares in his name on grounds which are arbitrary or unreasonable.[3] Where in abuse of the power conferred on them by the articles the directors refuse to put on the register the name of the transferee as the holder of the transferred shares, the Court has power to order the company to register the transferee's name.[4] It follows, that a transferee who applied to the Court for rectification of register must show that the directors in refusing to register his name had acted capriciously and unreasonably.[5] The Court will rectify the register where the reason eventually given for the refusal was not a "legitimate reason" having any bearing on the question of recognition or non-recognition of the transmission, but is based on extraneous considerations, *i.e.* for collateral purpose.[6] Where name of the petitioner was not entered in the Register of Members on the ground that he had not contributed the agreed amount but it was proved by the

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17. 1991 MLD 203.
18. AIR 1936 Bom. 24=60 Bom. 297.
19. (1885) 53 I. T 242.
20. 28 Com. Cas. 29 (Pun.).
1. AIR 1936 Rang. 52.
2. AIR 1943 Mad. 111.
3. (1873) 16 Eq. 559.
4. 16 Bom. 80+AIR 1957 Orissa 203+AIR 1956 Nag. 20=ILR 1955 Nag. 1016 (DB)+61 Low Bur Rul. 152.
5. 26 Mad. 79+AIR 1956 Nag. 20=ILR 1955 Nag. 1016 (DB).
6. AIR 1961 Orissa 188 (DB)

petitioner that the contribution had been paid. The Court ordered that the name of the petitioner be entered in the Register.[7]

Expulsion of member from club. The expulsion of the member of a club by the committee under the powers conferred on it by the articles is not a case of omission which would give authority to a Court to order rectification.[8]

Omission--meaning. There is no definition of "omission" given in the Companies Ordinance, but the use of this word in the section clearly signifies that there should be something left undone fraudulently, by mistake, negligently or otherwise in the register of the members of company, that requires to be rectified by the Court.[9] The expression 'omission' may be inapt to cover cases of refusal to register.[10] But the striking out or expunging a member's name from the register is an 'omission' within the meaning of the section.[11]

Entry--meaning. Where in abuse of the power conferred on them by the articles, the directors refuse to put on the register the name of the transferee as the holder of the transferred shares, the Court has power to order the company to register the transferee's name.[12]

Issue of new shares. Where an application was made for removal of the names of persons to whom new shares were issued by the Directors, and on the date furnished it could not be said definitely that the object of issuing new shares was to benefit certain friends and relations of the majority of the directors at the cost of the company, and it was not substantiated that the Chairman in fact had acquired a definite and permanent majority by issue of new shares but on the contrary it was conceded that after the issue of new shares the majority was on the petitioners' side, and it had not been shown that the directors in issuing new shares had been motivated by any ulterior considerations and no objections had been raised by anybody, including the directors in the minority, to the allotment of new shares. It was held that the Court would not be justified in invoking its powers under section 297 of the Companies Ordinance. The allottees of these shares had contracted in good faith with the company and they were entitled to assume that the acts of directors in making allotment of shares, were within the scope of their powers. Moreover the matter related to internal management and no case had been made out for interference by the Court with the decision of the majority of directors.[13]

Forfeiture of shares. Where the shares of a share-holder are forfeited, naturally his name would be removed from the register, or to use the words of this section, his name would be omitted from the register of the company. If the aggrieved share-holder has got sufficient cause he has got a legal right to approach the Court to rectify the register on the ground that the forfeiture is irregular, illegal and void. What is sufficient cause depends on the circumstances of each case. The

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7. PLD 1982 Lah. 634.
8. AIR 1950 Pesh. 28 (DB).
9. PLD 1950 Pesh. 55.
10. AIR 1928 Mad. 571 (DB).
11. 1991 MLD 203+AIR 1941 Mad. 354.
12. 16 Bom. 80+AIR 1957 Orissa 203+AIR 1956 Nag. 20 (DB)+6 Low Bur Rul 152.
13. AIR 1961 Pun. 432.

defects in the notice to specify the date from which interest was to run and the non-mention of expenses would make it invalid and the share-holders in that case would have sufficient cause to apply to the Court setting aside the forfeiture and for rectification of the register of the company.[14]

Burden of proof. The burden of proof shall ordinarily lie upon the applicant himself to show that the name of a person was entered or was omitted from the register of members without sufficient cause. Where the company is guilty of fraud or the company had acted illegally by disregarding the mandatory provisions of the law. it can be said that the initial burden of proof which lay on the applicant stands discharged on his establishing the fraud or the doing of the illegal act and thereafter the burden shifts to the company to show that the omission of the name and the entry of another name was with sufficient cause. But where the company is not guilty of fraud or non-compliance of the mandatory provisions of the law, a heavy burden lies upon the applicant.[15] Where the document for transfer of shares was presented to the company but the lawyers of the alleged transferors informed the company that they had not transferred the shares and that the petitioner was trying to appropriate those shares. The company thereupon refused to register the shares. The petitioner moved the High Court for rectification of register of share-holders. The Court held that the company had acted rightly in not accepting the documents as genuine without further proof and refused to rectify the register of share-holders.[16]

7. **Delay, default or omission.** The delay, default or omission contemplated by clause (*b*) of sub-section (1) must be delay, default or omission of the company itself.[17] An incorporated company is a creature of statute. Its rights, obligations and duties are defined and controlled by the statute and its Articles. The rights of members of the company and also of persons who claim to have become members are also controlled by the statute. A company can be brought to book, only if it has committed a default or an act of omission in respect of duty imposed upon it by the statute or its Articles. Where therefore, an instrument of transfer is not lodged by a transferee of shares strictly in compliance with section 74, it cannot be said that the company has any obligation to register the transferee, or that by reason of refusal to register, the company has committed a default as contemplated by the Ordinance.[18] Where the applicant had not complied with statutory requirements; there could be no delay on the part of company in disposing of the application of the transferee to put his name on the register.[19]

8. **Discretion of Court.** Sub-section (3) of section 152 of Companies Ordinance, 1984 confers discretion on the Company Court to decide any question relating to the title of any person who is party to the application to have his name entered or omitted from the register whether the question arises between members or debenture-holders or alleged members or debenture-holders or between members

14. AIR 1962 Mad. 276 (DB).
15. AIR 1965 All. 135 (DB).
16. PLD 1964 Kar. 31.
17. 23 Com. Cas. 168 (Mad).
18. AIR 1965 Cal. 436.
19. AIR 1954 Nag. 293=ILR 1953 Nag. 392.

or alleged members or debenture-holders or alleged debenture-holders, on the one hand and the Company on the other hand, and also decide generally any other question which is necessary and expedient for decision of rectification of the register.[20] The provisions of this section are very wide and the Court has amply scope and power to grant relief and save the parties from being harassed and unnecessarily relegated to protracted litigation in a simple case.[1] A petitioner seeking rectification of the register of members is not entitled to an order *ex debito justitiae*. The Court has wide powers in the matter of rectification of registers although the exercise of those powers is circumscribed by the judicial discretion of the Court. It is always open to the Court to allow or reject the petition in the exercise of its discretion guided by equitable principles,[2] depending on facts of each case.[3]

Jurisdiction given to the Court is not limited to cases in which there has been error, mistake or default on the part of the company but is a general one applicable to all cases. The intention of the section is to provide a summary means of dealing with cases which the Court in its discretion should think might be so dealt with. A large and wide discretion ought to be exercised by the Court in determining whether it will exercise the power given to it by the section and it would be too narrow a construction to hold that the section applies only where there is error, mistake or default, on the part of the company.[4] The Court has a discretion and may either refuse an application or may order rectification of the register.[5] The power of rectifying is discretionary in the sense that the Court can exercise it only if it is satisfied with the justice of the case. The exercise of the power should be declined where it would not be fair to do so or to put it more technically where the applicant does not establish any equity to disturb the existing state of things. In considering this the Court must have regard to the lapse of time and to any facts and circumstances indicating acquiescence in the existing state of things by those on whose behalf the application is made to disturb it.[6] It follows that the Court must not put on the share register some person who has not even a prima facie title to the shares in question even though that person is a party to the application.[7]

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20. 1988 CLC 1541 = PLJ 1988 Kar. 508.
1. 1982 Dhaka LR 345.
2. 1982 Dhaka LR 345 + AIR 1960 Pun. 388 + AIR 1959 Pun. 352 + AIR 1950 Pun. 106 + AIR 1959 Pun. 232 (Thus an applicant who had sought remedy under S. 395 and gave it up when he realised that the objections of the opposite party were fatal cannot be granted relief under S. 38 + AIR 1920 Cal. 789.
3. 1991 MLD 203.
4. (1867) 2 Ch. App. 431 (Lord Cairns, L.J., *dissenting*).
5. 1957-2 Mad. L. Jour 416 + AIR 1959 Pun. 352 + AIR 1953 Hyd. 126 (DB) + AIR 1936 Bom. 24 + 33 Bom L R 184 + AIR 1920 Cal. 789 + AIR 1920 Low Bur 50.
6. 1901 2 Ch. 265. (The same considerations would apply whether the official liquidator invokes the power of the Court or it is invoked by a person who seeks to be restored to the privileges of the share-holders) + (1882) 52 L T 501 (Application for removal from register refused on the ground of inordinate delay and in view of the creditors having acquired a paramount right through a winding up order passed in the meanwhile) + (1867) 2 Ch. App. 604. (Share-holders desiring to be relieved of their shares on the ground of fraud must apply to Court with promptitude).
7. AIR 1957 Cal. 476

The wide words of the section leaves it to the discretion of the Court whether in any particular case it would hear the petition or leave the parties to a separate suit in view of the fact that there is a question of title between the parties or that there is any intricate question which should not be taken seisin of under the section.[8] However, the rectification of the register of members of the company can be ordered by the Company Judge. Without his entering into the complicated question of title, if it is found that the company has acted illegally and has intentionally disregarded the mandatory provisions of the law. This is based upon the general rule that no one can be permitted to derive undue advantage of a fraudulent or illegal act of his and, parties must be relegated to the position they occupied before the fraudulent or illegal act was done unless under the law the improper act can be condoned.[9]

Discretion must be exercised judicially. In the exercise of powers under this section, the Court has to act judicially; to adjudicate upon the right exercised by the directors in the light of the powers conferred upon them by the Articles of Association.[10] Therefore the Court will not be justified in refusing relief where the facts made out in the case show that the applicant is entitled to the relief.[11] But where Court would come to the conclusion that purpose of withdrawal of proceedings was only to prevent Court from passing order undoing wrong or injustice done to party or withdrawal would deprive Government or public functionary to receive or recover public dues or withdrawal would defeat ends of justice, prayer for withdrawal of petition would be declined.[12]

Relief where no mistake, error or default. There is jurisdiction in the Court to rectify the register even in the absence of error, or mistake or default, on the part of the company, though the Court will not, usually, exercise its discretion and rectify the register, when there is no mistake, or error, or default, on the part of the company.[13]

Legal formalities not gone through. The Court should not exercise its discretion to order rectification where the only object of the application is to save the expense of taking out letters of administration and of legal transfer of shares to the applicant's name.[14] Similarly the Court cannot order rectification in a case where there is no duly stamped transfer deed in favour of the petitioner, as to do so would be to direct the company to act in contravention of law.[15]

'Ultra vires' agreement. Although it is possible that, if a man agreed to become a share-holder on the terms of an *ultra vires* agreement and afterwards ascertained that fact and repudiated the agreement before he had done anything to acknowledge that he was a share-holder, he might be entitled to get off the register, yet in ordinary cases he would have admitted his position as a share-holder and

8. AIR 1952 Papsu 47 + AIR 1965 All. 135 (DB).
9. AIR 1965 All. 135 (DB).
10. AIR 1961 SC 1669.
11. 1957-2 Mad. L. Jour 416.
12. 1997 CLC 1075.
13. AIR 1957 Mad. 702 = ILR 1957 Mad. 1058 (DB).
14. AIR 1920 Low Bur 50.
15. 28 Com. Cas. 29 (Pun.).

therefore would be liable to pay for his shares in full notwithstanding any *ultra vires* agreement to the contrary.[16]

Limitation on power of Court. Where the name of a person is placed improperly on the list of members, it is there without sufficient cause and the Court can order the removal of that name. Thus where there was a sham and colourable transaction of sale of shares and the company brought on the register the name of the purchaser believing the fraudulent representation of the transferor; it was held that the Court had power to remove the name of the transferee and restore transferor's name to the register.[17]

Date of rectification. When it is right that an order for rectification of the register should be made, whether it be by taking a name off the register or by putting a name on, the Court may make an order not only that right name should be put on or taken off, as the case may be, but that the register shall be treated to have remained with that alteration even retrospectively from the moment it ought to have been, in fact should have been so.[18]

9. Delay in application. No period of limitation is prescribed for initiating proceedings under the section.[19] But an application under the section should be made without delay.[20] However mere delay is not by itself a ground for refusing an order for rectification.[21] The delay even when unexplained, will not constitute sufficient ground for refusing relief where it has not resulted in detriment to the company or its members or creditors.[1]

Repudiation of contract to take shares. If a share-holder is entitled in the circumstances of a case to avoid his contract for shares and he applied to the Court within reasonable time to be relieved of his contract, the Court is bound to grant him relief and take his name off any list of members or contributories.[2] But he disqualified himself to obtain relief from the Court when he lies idle for an inordinately long time and takes no steps in the matters.[3]

10. Costs. The section gives wide discretion to the Court regarding costs.[4]

11. Damages, payment of, by company. In the proceedings under the Ordinance for the rectification of register the company can be directed to pay damages only when its register is ordered to be rectified.[5] It is doubtful whether the Court can pass an order directing the company to pay damages in the proceedings

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16. (1903) 19 T L R 341.
17. (1869) 5 Ch. App. 95 + 1908-1 Ch. 141.
18. 1909-1 Ch. 598 + 57 Cal. W N 102 (Court may fix the date from which rectification shall be effective).
19. AIR 1951 Mad. 572 = ILR 1950 Mad. 339 (DB).
20. AIR 1956 Pepsu 98.
21. AIR 1939 Pat. 603.
1. AIR 1956 Pepsu 98.
2. (1867) 2 Ch App. 604.
3. AIR 1936 Lah. 700 = 17 Lah. 793 (DB) + AIR 1915 Lah. 100.
4. AIR 1939 Pat. 603.
5. AIR 1951 Mad. 572 = ILR 1950 Mad. 339 (DB).

for rectification where for some reason it holds that no order for rectification could be passed.[6]

12. Winding up proceedings, rectification after. A petition for rectification will lie normally after the filing of the winding up petition but before the winding up order is passed and the Court has an undoubted jurisdiction to entertain the petition. The question whether the petition for rectification filed after an application for winding up should be allowed or not rests entirely in the discretion of the Court.[7]

It is not correct to say that the Court possesses only a power of rectification in the settlement of list of contributories.[8]

Application after winding up order. The proceedings for rectification of register of share-holder is a proceeding against the company and therefore can be taken only by leave of Court where a winding up order has already been passed.[9] Where pending the application of the transferor to the company for the registering of the transfer the company went into liquidation; it was held that the transferor in order to get the transferee substituted as a contributory, by an application under the section, must prove lack of sufficient cause for unnecessary delay on the part of the company in disposing of his application to register the transfer.[10] Where a transfer of shares remained unregistered until winding up due to the default of the company itself, the Court will refuse to rectify the register on the application of the official liquidator who represents only the company which had been in default.[11]

Where a company accepting the surrender of shares by a member excused him of all liabilities and removed his name from the register of share-holders; it was held that it was *ultra vires* of the powers of the company to do so and therefore that person was entitled to have his name restored to the register. In such a case it would have been just and equitable to restore his name if the liquidator had applied for it and hence there ought to be no difficulty in restoring his name merely because he himself applies for the relief.[12]

13. Nature of inquiry. Where petitioner adduces prima facie, satisfactory evidence in his favour, rectification of register of company may be ordered as per prayer of petitioner.[13] But it may be noted that the object of enacting section 152 was to provide a summary remedy in non-controversial matters or in matters where a quick decision was necessary to obviate an irreparable injury to a party. This provision was not intended for settling controversies under several heads necessitating a regular investigation. In a case of that type the petitioner should be directed to proceed by a regular suit.[14]

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6. 1893 1 Ch. 618.
7. AIR 1957 Mad. 702 = II R 1957 Mad. 1058 (DB).
8. 1909-1 Ch. 598 + 1891-2 WB 463.
9. 1891-2 W B 463.
10. AIR 1915 Bom. 1 = 40 Bom. 134 (DB).
11. (1867) 3 Ch. App. 119.
12. 1902-2 Ch. 14.
13. PLD 1992 Kar. 210 = NLR 1992 UC 579 = 1992 CLC 2273.
14. 1991 MLD 203 + 1991 CLC Note 110, p. 89 + AIR 1959 Pun. 352.

It is misreading of the words "without sufficient cause" to suppose that they confer upon the Court jurisdiction to make roving enquiry as to whether what has happened is desirable or even unreasonable where the directors had carried out literally and bona fide the provisions of the company's articles of association.[15] But that does not mean that it cannot consider the bona fides of the company even by way of affidavits or by examining parties and adjudicate upon the question in dispute namely whether the forfeiture has been validly made, and whether the removal of the name of the share-holder from the company's register was warranted by circumstances and exigencies of the case.[16] Similarly where the company which has power to reject a transferee on the ground that he is not a proper person refuses to register a transfer without assigning reasons, the Court on the application of the transferee can determine the question whether he is a proper person or not.[17]

Title, question of. An order under the section is not so summary as is contemplated under the English Law. It contemplates decisions of questions relating to title and also provides for an appeal from the decision of such an issue.[18]

Existence of transfer. The official trustee is entitled to be entered on the register as a 'corporation sole' by the name of official trustee and hence it is not necessary for him to get the register rectified under section 152 in order to exercise the right of voting. It is for those persons who allege that the official trustee has been entered on the register without sufficient cause to apply under section 152 for the rectification of the register.[19]

Objection by third party. The question which the Court can decide as being "Necessary or expedient to be decided for rectification of the register" need not necessary be one between members or alleged members or between members on the one hand and the company on the other hand. The discretion conferred by the section is of the widest nature and hence the Court can consider objections raised by the mortgagee of the uncalled share capital to the removal of share-holders although he is not a member of the company.[20]

14. Restoration of name--effect. Where the Court, holding the forfeiture of shares invalid, orders the restoration of the name of the share-holder to the register, the order brings about the continuity of his status as a share-holder even during the period in which the invalid act of the company had disturbed that status. The applicant therefore cannot be regarded as a fresh member from the date on which his name is reintroduced in pursuance of the order.[1]

15. Appeal. The conditions precedent to the existence of a right of appeal under section 147 are that the lower Court should have directed an issue to be tried in which some question of law was raised and that the Court should have come to a decision on such issue.[2] The section does not limit the appeal to the decision on an

15. AIR 1936 Rang. 52.
16. AIR 1952 Pepsu 47.
17. 17 Ind. Cas. 640 (DB).
18. AIR 1957 Orissa 208.
19. AIR 1959 Ker. 254.
20. AIR 1920 Cal. 789=47 Cal. 901 (DB).
1. AIR 1952 Pepsu 92=3 Pepsu L R 12.
2. AIR 1916 Bom. 147=41 Bom. 76 (DB).

issue-where it was tried by someone else to whom it was sent by the Judge and exclude from appeal the decision when the judge himself chooses to decide the issue.[3]

Interference in appeal. In an appeal from an order under the section a finding based on evidence and fairly arrived at would be binding. But if the finding is based on evidence received by placing the onus wrongly then it would be open to consideration in appeal.[4]

Consent order. A party cannot challenge the form of order under the section to which its counsel had consented.[5]

Interlocutory order. A mere direction to produce documents for inspection is no doubt a decision of the Court, but that decision cannot be regarded as a question of law for which the right of appeal is contemplated in section 152 of the Companies Ordinance.[6]

153. *Punishment for fraudulent entries in and omission from register.* Anyone who fraudulently or without sufficient cause enters in, or omits from the register of members or the register of debenture-holders the name or other particulars of any person shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

154. *Notice to registrar of rectification of register.* When it makes an order for rectification of the register of members in respect of company which is required by this Ordinance to file a list of its members with the registrar, the Court shall cause a copy of the order to be forwarded to the company and shall, by its order, direct the company to file notice of the rectification with the registrar within fifteen days from the receipt to the order.

1. **Notice not given when passing order under section 152.** Section 154 only directs an ancillary and consequential order to be passed by the Court while passing the main order under section 152. Where S. 154 is completely overlooked by the Court and the omission is rectified after giving notice to all parties concerned, there is no illegality or error of jurisdiction in the second order. Such accidental slip comes within the scope of section 152 of Civil P.C.[7]

155. *Register to be evidence.* The registers referred to in sections 76, 147, 149 and 156 shall be *prima facie* evidence of any matter

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3. AIR 1923 All. 258=44 All 151 (DB).
4. AIR 1956 Nag. 20=ILR 1955 Nag. 1016 (DB).
5. AIR 1953 SC 98=1953 SCR 351.
6. 1969 DLC 322=21 Dhaka LR 186.
7. AIR 1961 Orissa 188 (DB).

which by this Ordinance is directed or authorised to be inserted therein.

Synopsis

1. Presumption of correctness.
2. Register of members, presumption as to.

1. **Presumption of correctness.** A company after accepting the status of a person to have inspection and obtain a list of present members cannot raise an issue that as the shares of that person had been forfeited he had no right of inspection without payment of the requisite fee.[8]

Register, evidentiary value of. This section has enlarged the scope of section 40 of Companies Act, 1913 and has made all the registers mentioned in it to be prima facie evidence of the matters inserted in them.

2. Register of members, presumption as to. The Register of members is prima facie evidence of any matter by the Companies Ordinance directed or authorised to be inserted therein.[9] It is prima facie evidence of membership.[10] It is necessary not only from the point of view of the law but as a matter of policy to see that it is as conclusive as it can be made consistently with a proper interpretation of the Companies Ordinance.[11] Therefore where the company alleges that a person is not a member it should produce in Court its register of members to substantiate the plea. If it does not, an adverse inference may be drawn against the company.[12] But the register of share-holders in a company is not absolutely conclusive.[13] Other cogent evidence available on record shall be preferred over entries in Form A. Thus admission as to shareholding made in memorandum of understanding would be preferred over entries in Form A.[14]

Where in addition to the presence of a person's name on the register there is proof that he has become entitled to a share by subscribing to the prescribed sum or otherwise; the evidence that he is a share-holder becomes conclusive.[15] A person whose name is on the register of share-holders and who has been treated as a share-holder and acted as such will be estopped from contesting that he is not a member.[16]

Burden of proof. When the name of a person is entered in the register of members, the onus is on him to prove that he is not a member.[17] If the person whose name is on the register of share-holders alleges that he has not become a member on the ground that an allotment notice had not been sent to him; he must

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8. 1898-1 Ch. 596.
9. 1984 Dhaka L R 516.
10. NLR 1995 CLJ 322+PLD 1979 SC 723=PLJ 1979 SC 13+AIR 1926 Lah. 414+AIR 1957 Pun. 261 (DB).
11. AIR 1936 Bom. 24=60 Bom. 297.
12. PLD 1979 SC 723=PLJ 1979 SC 13.
13. NLR 1995 CLJ 322+AIR 1936 Bom. 24=60 Bom. 297.
14. NLR 1995 CLJ 322.
15. AIR 1957 Pun. 261=ILR 1957 Pun. 1505 (DB).
16. AIR 1936 Bom. 24=60 Bom. 297.
17. AIR 1933 Lah. 1016+AIR 1933 Lah. 108.

prove his allegation.[18] The failure of the person, objecting to his being treated as a member, on the ground of no allotment letter having been sent to him, to give evidence in support of his allegation, becomes immaterial where the documents filed by the opposite-party in addition to the register of members go to support this allegation.[19]

Right to vote. The burden of proving that the persons whose names are found on the register of share-holders are not qualified to vote is upon those who object to the voting.[20]

156. *Annual list of members, etc.* (1) Every company having a share capital shall, once in each year, prepare and file with the registrar a return containing the particulars specified in Form A of the Third Schedule as on the date of the annual general meeting or, where no such meeting is held, or, if held is not concluded, on the last day of the calender year.

(2) A company not having a share capital shall in each year prepare and file with the registrar a return containing the particulars specified in Form B of the Third Schedule as on the date of the annual general meeting or, where no such meeting is held or if held is not concluded, on the last day of the calender year.

(3) The return referred to in sub-section (1) or sub-section (2) shall be filed with the registrar:--

(*a*) in the case of a listed company, within forty-five days; and

(*b*) in the case of any other company, within thirty days;

from the date of the annual general meeting held in the year or, when no such meeting is held or if held is not concluded, from the last day of the calender year to which it relates:

Provided that, in the case of a listed company, the registrar may for special reasons extend the period of filing of such return by a period not exceeding fifteen days.

(4) All the particulars required to be submitted under sub-section (1) and sub-section (2) shall have been previously entered in one or more registers kept by the company for the purpose.

(5) If a company makes default in complying with any requirement of this section, the company and every officer of the

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18. AIR 1926 Lah. 414.
19. 9 All. 366.
20. AIR 1936 Cal. 327 = 63 Cal. 703 (DB).

company who knowingly and wilfully authorises or permits the default shall be liable:--

(*a*) in the case of a listed company, to a fine not exceeding ten thousand rupees and to a further fine not exceeding two hundred rupees for every day after the first during which the default continues; and

(*b*) in the case of any other company, to a fine not exceeding two thousand rupees and to a further fine not exceeding fifty rupees for every day after the first during which the default continues.

Synopsis

1. Mandatory provisions.
2. Object.
3. Contents of return.
4. Shares issued for cash.
5. Default in submitting list.
6. Company's liability under the section.
7. Liability of Directors and Officers.
8. *Mens rea* necessary.
9. No general meeting held during the period.
10. Complaint for offence.

1. **Mandatory provisions.** The provisions of the section are mandatory.[21]

2. **Object.** The provisions of the section have been deliberately enacted to protect share-holders and in some cases the general public and they impose a definite duty upon the directors.[22]

3. **Contents of return.** The return shall give a list of the share-holders on the date of the meeting. It need not give any detail of the change that might have taken place during the year. Thus where the company possesses power under its Articles to cancel a decision of the directors at a general meeting of the share-holders and a decision of the director as to forfeiture of certain shares has been so cancelled, it is not necessary to note in the returns those cases of forfeiture.[1]

Incorrect statements in return. Forwarding to the registrar a list of members and a summary which are not in accordance with facts is not sufficient compliance with the requirement of the Ordinance even though the list and summary on the face of them satisfy the requirements of the Ordinance. But for purely arithmetical mistake in additions in the returns filed, the accused cannot be convicted. Where there is a discrepancy it must be proved to the hilt as in all criminal prosecution that the return is false. Where in a charge under section 156(5) the lower Court found that certain entries did not agree with the figures in papers filed previously and there was no evidence that the previous returns were correct: it was held that the

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21. AIR 1934 Cal. 63=35 Cri. L. Jour 492.
22. AIR 1914 Lah. 125 (DB)+AIR 1948 Cal. 42.
1. AIR 1932 Mad. 497=33 Cri. L. Jour 589.

whole charge failed in the absence of evidence of the correctness of the previous returns.[2]

4. Shares issued for cash. When it is said that shares are issued for cash it does not necessarily mean that actual money has changed hands. An exchange of cheques or an order on a banker to transfer money from the account of the share-holder and in fact anything which would amount in law to sufficient evidence to support a plea of payment would be payment in cash.[3]

5. Default in submitting list. The obligation to forward a summary and list is a continuing obligation and it does not cease when default having been committed the company and its officers have become liable for the penalty. There is a default every day, even after that, during the period in which the return is not sent.[4]

6. Company's liability under the section. A company is always liable where the return is not sent and no question of wilfulness or knowledge can arise in its case.[5] Where all the directors of the company including the Managing Director admit their guilt and are convicted, the Magistrate must convict the company also. The company cannot be let off in such a case.[6]

Burden of proof. The burden of proof that the list of share-holders was forwarded to the registrar in time is on the company.[7]

Appeal. When the conviction is not of the managing director but of a company, the company acting through a properly authorised agent is the proper appellant and not the managing director.[8]

7. Liability of Directors and Officers. The directors of a company, although they are merely figureheads, are liable when the list of members and summary required under section 156 are not submitted.[9] The fact that the managing director and chief secretary have resigned their position before the prosecution for non-compliance with the provisions of this section was started, without resigning thereby their post as director does not free from their liability.[10]

Director convicted under section 158. Where a director is convicted under section 158, his further conviction under section 156 may be dropped.[11]

8. 'Mens rea' necessary. Words 'knowingly' and 'wilfully' in sub-section (5) connote an intentional default.[12] Therefore the liability of the directors under the section depend on their knowingly any wilfully withholding the list,[13] and in order

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2. AIR 1932 Mad. 497=33 Cri. L. Jour 589.
3. 1897 App. Cas. 358+1910 App. Cas. 439+1904-2 Ch. 108+(1892) App. Cas. 125.
4. AIR 1916 Lah. 397=17 Cr. L Jour 242.
5. AIR 1942 Mad. 75=43 Cr. L. Jour 138.
6. AIR 1961 Punj. 77 (DB).
7. AIR 1954 Hyd. 49=1954 Cri. L. Jour 437 (DB).
8. AIR 1934 Cal. 63=35 Cri. L. Jour 492.
9. AIR 1948 Cal. 42=48 Cri. L. Jour 236.
10. AIR 1914 Lah. 125 (DB).
11. AIR 1942 Cal. 225=43 Cri. L. Jour 466.
12. AIR 1929 Lah. 836=10 Lah. 521=31 Cri. L. Jour 341.
13. AIR 1954 Hyd. 49 (DB)+AIR 1942 Mad. 75=43 Cri. L. Jour 138.

to sustain conviction under the section it must have been found as a fact, from the conduct of the accused, that default was knowingly or wilfully authorised or permitted.[14] Where in spite of repeated reminders to the managing directors from the registrar there was non-submission of the list, it must be held that he committed the default knowingly and wilfully.[15] In order that a conviction under this section of an officer may be sustained, the only thing the prosecution has to prove is that the particular officer knowingly and wilfully authorised or permitted the defaults. The offence is complete if the officer knew of the defaults and permitted them; it is not necessary further to prove that he authorised those defaults.[16] If an officer of the company knows of the fact of non-compliance with the requirements of the section and takes no steps to have them complied with, it can be held that he permitted the defaults to continue.[17]

No wilful default. An accused should not be convicted under the section when what is proved against him is a mere inadvertent default.[18] Thus where the default was due to reasons beyond the control of the company and its directors; it would be hard if they are to suffer criminal liability on account of the default. Where by reason of the Books of the Bank being seized by the Police and produced in a Criminal Court the balance-sheet and profit and loss account, etc., were not filed, the company and the directors were not liable.[19]

9. No general meeting held during the period. In the list of members there are a number of most important matters which are entirely independent of the holding of a general meeting and hence the compilation of the list cannot justifiably be postponed on the ground that no general meeting at all had been held especially when it is owing to the default of the company itself, at any rate when the person charged under this section himself is also a party to the default in holding the meeting.[20] Where the Directors of a company were charged with an offence under section 156(5) and section 241 in that they were knowingly and wilfully parties to the failure to file the summary of share capital for a certain year as required by S. 156(1) and to the failure to lay before the company in general meeting the balance-sheet and profit and loss account as required under section 233. No general meeting of the company had been held during the year in question and the Directors had been knowingly parties to the default of the company in that respect. It was held: (*i*) that the fact that no general meeting of the company was held was, in the circumstances, no defence to the charge of not complying with the requirements of section 156. A person charged with an offence could not rely on his own default as an answer to the charge. Nor did the fact that section 156(5) imposed a daily fine during the continuance of the default indicate that the default was not committed till

14. AIR 1942 Cal. 225=43 Cri. L. Jour 466+AIR 1954 Hyd. 49 (DB).
15. AIR 1954 Hyd. 49 (DB)+AIR 1957 Mad. 675=1957 Cri. L. Jour 1279.
16. AIR 1936 Cal. 237=37 Cri. L. Jour 552.
17. AIR 1936 Cal. 237=37 Cri. L. Jour 552.
18. AIR 1929 Lah. 836=10 Lah. 521=31 Cri. L. Jour 341.
19. AIR 1960 Ker. 15=ILR 1959 Ker. 1031.
20. 1911-1 K B 588.

the meeting had been held. The default occurred after the expiry of 21 days from the day when the meeting should have been held within the year.[1]

10. Complaint for offence. There is nothing in the Companies Ordinance to suggest that the complaint of the Registrar, is necessary before prosecution of a company, or of a director, can be entertained.[2] Under the Punjab Government Notification No. 3, dated 23rd February, 1910, Registrar of the Joint Stock Companies can authorise any person to institute complaints for offences.[3]

MEETINGS AND PROCEEDINGS

157. *Statutory meeting of company.* (1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than three months, nor more than six months, from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called "the statutory meeting".

(2) The directors shall, at least twenty-one days before the date on which the meeting is held, forward a report, in this Ordinance referred as "the statutory report", to every member.

(3) The statutory report shall be certified by not less than three directors, one of whom shall be the chief executive of the company, and shall state:--

(*a*) the total number of shares allotted, distinguishing shares allotted otherwise than in cash, and stating the consideration for which they have been allotted;

(*b*) the total amount of cash received by the company in respect of all the shares allotted;

(*c*) an abstract of the receipts of the company and of the payments made thereout up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company showing separately any commission or discount paid or to be paid on the issue or sale of shares or debentures;

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1. AIR 1961 SC 186+(1875) 10 Q B 329+(1875) 45 L J M C 41=(1911) 1 K B 588+AIR 1963 Raj. 133 (DB).
2. AIR 1948 Cal. 42=48 Cri. L. Jour 236.
3. AIR 1916 Lah. 397=17 Cri. L. Jour 242.

(*d*) the name, addresses and occupations of the directors, chief executive, secretary, auditors and legal advisers of the company and the changes, if any, which have occurred since the date of the incorporation;

(*e*) the particulars of any contract the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification;

(*f*) the extend to which underwriting contracts, if any, have been carried out and the extent to which such contracts have not been carried out, together with the reason for their not having been carried out; and

(*g*) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares to any director, chief executive, secretary or officer or to a private company of which he is a director.

(4) The statutory report shall also contain a brief account of the state of the company's affairs since its incorporation and the business plan, including any change or proposed change affecting the interest of shareholders and business prospects of the company.

(5) The statutory report shall, so far as it relates to the shares allotted by the company, the cash received in respect of such shares and to the receipts and payments of the company, be accompanied by a certificate of the auditors of the company as to the correctness of such allotment, receipt of cash, receipts and payments.

(6) The directors shall cause at least five copies of the statutory report, certified as aforesaid, to be delivered to the registrar for registration forthwith after sending the report to the members of the company.

(7) The directors shall cause a list showing the names, occupations, nationality and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting and to remain open and assessible to any member of the company during the continuance of the meeting.

(8) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous

notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(9) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or after the original meeting, may be passed, and an adjourned meeting shall have the same powers as an original meeting.

(10) If a petition is presented to the Court in manner provided by Part XI for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

(11) In the event of any default in complying with the provisions of any of the preceding sub-sections, the company and every officer of the company who knowingly and wilfully authorises or permits such default shall be liable,--

(*a*) if the default relates to a listed company, to a fine not less than ten thousand rupees and not exceeding twenty thousand rupees and in the case of a continuing default to a further fine not exceeding two thousand rupees for every day after the first during which the default continues; and

(*b*) if the default relates to any other company, to a fine not exceeding five thousand rupees and in the case of a continuing default to a further fine not exceeding two hundred rupees for every day after the first during which the default continues.

(12) This section shall not apply to a private company but if any such private company is converted into a company of either of the classes mentioned in sub-section (1), this section shall become applicable thereto and a reference in that sub-section to the date of commencement of business shall be construed as a reference to the date of such conversion.

Synopsis

1. Statutory and ordinary meetings.
2. Offence under the section.

1. Statutory and ordinary meetings. The statutory meeting of a private company should be convened in the manner provided by its articles. If they require

the notice convening the meeting to state that it is a statutory one, the failure to do so would render the meeting one not properly convened.[4]

2. Offence under the section. An offence under the section will also be complete if an officer of the company knowing of the defaults permitted them. It is not necessary that in addition he should have authorised the defaults.[5]

158. *Annual general meeting.* (1) Every company shall hold, in addition to any other meeting, a general meeting, as its annual general meeting, within eighteen months from the date of its incorporation and thereafter once at least in every calender year within a period of six months following the close of its financial year and not more than fifteen months after the holding of its last preceding annual general meeting:

Provided that, in the case of a listed company, the Authority, and, in any other case, the registrar, may for any special reason extend the time within which any annual meeting, not being the first such meeting, shall be held by a period not exceeding ninety days.

(2) An annual general meeting shall, in the case of a listed company, be held in the town in which the registered office of the company is situate:

Provided that the Authority, for any special reason, may, on the application of such company, allow the company to hold a particular meeting at any other place.

(3) The notice of an annual general meeting shall be sent to the shareholder at least twenty-one days before the date fixed for the meeting and, in the case of a listed company, such notice, in addition to its being dispatched in the normal course, shall also be published at least in one issue each of a daily newspaper in English language and a daily newspaper in Urdu language having circulation in the Province in which the stock exchange on which the company is listed is situate.

(4) If default is made in complying with any provision of this section, the company and every officer of the company who is knowingly and wilfully a party to the default shall be liable,--

(*a*) if the default relates to a listed company, to a fine not less than ten thousand rupees and not exceeding twenty thousand rupees and to a further fine not exceeding two thousand

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4. (1912) 1912-1 Ch. 700.
5. AIR 1936 Cal. 237=37 Cri. L. Jour 552.

rupees for every day after the first during which the default continues; and

(*b*) if the default relates to any other company, to a fine not exceeding five thousand rupees and to a further fine not exceeding two hundred rupees for every day after the first during which the default continues.

Synopsis

1. Scope.
2. Adjournment of meeting.
3. Powers of general body of share-holders.
4. Decisions to be taken by majority.
5. Injunction restraining holding of meeting.
6. Default in holding meeting.
7. Conviction under different sections.
8. Forum for trial.
9. Punishment.
10. Meeting on holiday.
11. Apppeal.

1. **Scope.** The provision as to the holding of the general meeting under the section within the time specified is mandatory.[6] The section provides for the holding of a general meeting within 15 months of the preceding General Meeting. Wherever the expression "Annual General Meeting" has been used it does not mean necessarily the meeting held within a period of one calendar year. The expression includes a meeting held within 15 months of the last preceding Annual General Meeting.[7]

Purpose of meeting. The general meeting under the section may be called for other purposes as well and necessary for the consideration of the balance-sheet or the profit and loss account.[8] Therefore the fact that the statement of accounts could not be compiled and got audited within time is no ground for not holding the general meeting within the prescribed time.[9]

Notice for holding meeting. The provisions of section 158(3) are mandatory.[10] Therefore, non-compliance of the same would render meetings conducted on specified dates invalid. Where notice of annual general meeting must be presumed to have been sent a day earlier for publication. Requirements of section 158(3) Companies Ordinance were, thus, partly complied with as far as publication was concerned. But no supporting material was, however, on record to show that individual notices were sent to all directors/shareholders in terms of section 158(3). The holding of the General Meeting was held to be invalid.[11]

Legislature specified the *terminus qua* of notice from date of its sending and not from date of its delivery or receipt. Thus if notice of meeting is factually issued

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6. AIR 1954 Mad. 276 + AIR 1934 Cal. 624 = 61 Cal. 408.
7. NLR 1982 CLJ 327.
8. AIR 1954 Mad. 276.
9. AIR 1934 Cal. 624 = 61 Cal. 408 + (1958) 1958-3 W L R 349.
10. 1987 CLC 726 = NLR 1987 UC 352.
11. 1996 MLD 1943.

or despatched by the management twenty-one days prior to the date of meeting, purpose of law would be fully served.[12]

2. Adjournment of meeting. Where an Annual General Meeting has to be held within a calendar year and such meeting is called in time; but it is adjourned by order of Court, so as to fall in the next calendar year; the adjourned meeting is nothing but a continuation of the previous meeting and, therefore, it cannot be subjected to any objection on that count, and is therefore within time.[13] Where it was contended that as the adjourned meeting was held in the next calendar year it may be treated as a meeting for that year also so as to obviate the necessity of holding a general meeting for that year. It was held that the annual meetings contemplated by the section are distinct and separate meetings. Hence there is no compliance with the section when the annual general meeting of a particular year held at the end of that year is adjourned to a date in the following year and the holding of the meeting on the adjourned date would not amount to having held the annual general meeting for the following year.[14]

There is inherent power in a Company to adjourn its meeting and an adjourned meeting is in continuation of the previous meeting. But this principle will apply on the language of section 158(1) only if the adjourned meeting is completed before the expiry of fifteen months of the date of the preceding meeting. If it is held that the adjourned meeting, though treated as in continuation of the earlier meeting, can be held after the expiry of fifteen months' period, it will defeat the provisions of section 158(1) of the Companies Ordinance. Where the adjourned meeting is not held within fifteen months of the last preceding meeting, the stewards and Chairman cease to hold office and the Chairman cannot even call an annual general meeting.[15]

Notice of adjourned General Meeting. Where notice of adjourned Annual General Meeting was not issued, holding of meeting on specified dates were declared to be invalid and respondents were directed to immediately take steps in accordance with the Companies Ordinance, 1984 and Memorandum of Articles of Association to call for the Annual General Meeting immediately. Official assignee was appointed to conduct the said meeting under his supervision.[16]

Adjournment by Managing Director. Where Annual General Body Meeting was to be held on 1.9.1994; but it was adjourned by M.D. of the Company and the meeting was subsequently held on 31.10.1994. The petitioners, however held a General Meeting on 1.9.1994 and elected tenant directors as per agenda issued earlier. Subsequently a General Body Meeting was held on 30.10.1994 as determined by M.D. This was challenged by the newly elected directors who sought an injunction against holding any General Body Meeting, as one had already been held. It was held that Art. 58 of Memorandum and Articles of Association authorised M.D. or any other director nominated by Provincial Government to suspend any resolution pending reference to Provincial Government. Meeting was

12. 1987 CLC 726=NLR 1987 UC 352.
13. PLD 1969 Lah. 615.
14. AIR 1938 Mad. 640=39 Cri. L. Jour 907.
15. NLR 1982 CLJ 327+PLD 1978 Lah. 1098=PLJ 1978 Lah. 324.
16. 1996 MLD 1943.

adjourned by M.D. while exercising his powers and subsequently petitioners attended meeting on 30.10.1994 of Board of Directors and thereafter they even did not make any objection or protest. Balance of convenience was not in favour of petitioners, moreover they were not likely to suffer any irreparable loss or injury whatsoever on the contrary, respondents were likely to suffer irreparable loss if *ad-interim* order was allowed to continue. The petition was dismissed.[17]

Postponement of meeting. A general meeting properly convened cannot be postponed by the directors where the articles contain provision for the adjournment of the meeting in certain events but not for its postponement.[18]

Extraordinary general meeting. There is sufficient compliance with the requirements of the section where even an extraordinary meeting is held within the specified period from the last general meeting.[19]

Meeting of Directors. Although a decision taken at a meeting of the board of directors could have been validly done only at a general meeting of the share-holders, it could be deemed to be a decision by the general meeting where the directors themselves were the only share-holders of the company. In such a case it must be taken that they who as share-holders could waive notice and other formalities, had done so and met as the general body of share-holders when they took the decision.[20]

One-man company. A meeting requires the presence of at least two persons and therefore a general meeting as contemplated by the section is an impossibility in the case of a one-man company.[21]

3. Powers of general body of share-holders. The general body of share-holders can render valid acts which are *ultra vires* of the powers of the directors by previous authorisation or subsequent ratification.[22] The acts which are *ultra vires* of the directors may be validated by the general body of share-holders by ratification but such ratification, to be effective, must be made by the share-holders with full knowledge of the invalidity of the transaction which they ratify.[23]

Act beyond powers of company. A company cannot confirm or ratify anything which is beyond its powers, express or implied in the memorandum or conferred by statute.[1]

Cancellation of previous decisions. There is no provision in the Ordinance that if the Company in General Meeting has taken one decision at one time, it cannot be altered by a subsequent decision of the Company in the General Meeting. So the subsequent meeting of the Company changing its earlier view that the new shares

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17. PLJ 1997 Kar. 444.
18. (1906) 1906-2 Ch. 193.
19. AIR 1920 All. 357 = 21 Cri. L. Jour 94 + (1873) 8 Ch. App. 548.
20. (1920) 1920-1 Ch. 460.
21. AIR 1958 Ker. 41 = 1958 Cri. L. Jour 177 (DB).
22. (1869) 3 H L 171 + (1877) 2 App. Cas. 366.
23. AIR 1938 P C 284 + AIR 1934 Bom. 243.
1. AIR 1934 Bom. 243.

would be allotted to outsiders cannot be characterised as either illegal or without jurisdiction.[2]

Decision of Directors, cancellation of. The company at its general meeting, in the absence of anything in the articles restricting its power, can cancel a decision of the directors.[3]

Reduction of powers of Directors. The majority of share-holders, unless such power is reserved to the general body of share-holders by means of an agreement at the time of the appointment of the directors, cannot take away by a resolution the powers conferred on the directors by the articles of the company.[4] But the fact that a certain power is vested by the articles in the board of directors would not deprive the company, under all circumstances, even when the board of directors are non-existent or unwilling to act, right to exercise that power at its general meeting.[5]

Bye-laws, general body has power to override. The delegation of powers to the directors to frame bye-laws in relation to the internal management of the affairs of the company does not deprive the general body of the power to sanction a thing in a special case where the bye-laws, as they stand, do not permit that thing being done.[6]

Notice of resolution. A notice of resolution to be passed in the general meeting must be given to the members but in spite of the fact that proper notice of a resolution to be moved at the adjourned general meeting of the company, had not been given; it was held that the resolution which confirmed the order of the Board of Directors dismissing the secretary could not be treated as void inasmuch as the matter to which the resolution pertained was one within the powers of the company.[7]

4. Decisions to be taken by majority. The internal affairs of corporations or companies are managed by a vote of the majority.[8] The acts of a corporation are those of the major part of the corporators; that is to say the major part must be present at a meeting and of that major part there must be a majority in favour of the act or resolution.[9]

Sanction of act by share-holders without formal resolution. Where all the share-holders sanction the doing of an act and there is no question of the act being *ultra vires* of the company, the absence of a formal resolution passed at a general meeting does not render that act one which could be subsequently impeached by the

2. AIR 1963 Orissa 189 (DB).
3. AIR 1932 Mad. 497.
4. 1947 Jaipur L R 219 (DB).
5. (1914) 1914-1 Ch. 895.
6. AIR 1940 Mad. 928.
7. AIR 1926 Mad. 705.
8. AIR 1946 Bom. 516.
9. (1867) 21 QBD 160+(1912) 1912 App. Cas. 546 (Lease by company not *ultra vires*--Majority of share-holders approving the same--Minority bound by majority decision in the absence of fraud)+(1941) 26 E R 531.

company.[10] But assent is insufficient to make valid as against the corporation that which is beyond the powers of the corporation to do.[11]

Majority decisions should be bona fide. Powers conferred on majorities and enabling them to bind minorities must be exercised not only in the manner required by law but also bona fide for the benefit of the company as a whole, and without exceeding the powers conferred,[12] or unfairly or in an oppressive manner.[13]

Share-holders must be heard. The vote of the majority at a general meeting, as it binds both dissentient and absent share-holders must be with the utmost fairness. Not only the matter must be fairly put before the meeting itself but the meeting must be conducted in the fairest possible manner.[14] A share-holder is not entitled to speak as much as he pleases but has a right to be heard in reasonable terms for a reasonable time.[15] The majority cannot tyrannically refuse to hear the voice of the minority totally but should hear their reasonable arguments to the contrary for a reasonable time and after considering these arguments come to a decision one way or the other.[16] A speaker who is shouted down to his seat can be held to have been prevented from speaking if from circumstances it appears that he would have been prevented if he continued. Whether the denial of this right vitiates the resolution itself, depends on the circumstances of each case. If it is practically certain that his speech would not have made any difference in the situation, the resolution will stand.[17]

5. **Injunction restraining holding of meeting.** There must be a very strong case to induce the Court to stop a meeting of share-holders, especially on an interlocutory motion in a suit by a share-holder. Neither the refusal by the company to allow inspection by proxy nor the failure to give information which could easily be had at the meeting itself by putting questions are reasons sufficient to restrain the holding of a general meeting.[18] Where an injunction is granted, failure by company to hold Annual General Meeting as a result of injunctive order by High Court passed in its writ jurisdiction does not attract penalties under section 158, as maxim *actus curiae neminem gravabit* would be attracted to such a case.[19]

6. **Default in holding meeting.** The statute requires the holding of a valid meeting. Therefore it is obvious that when it is found that the meeting which was held was not a valid meeting in the eye of law there would be "default" in holding the meeting.[20] But it must be noted that where there is an allegation that record relating to annual meeting was fabricated and bogus. It cannot appropriately be decided in proceeding under section 158. Petition may be dismissed leaving

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10. (1903) 1903-3 Ch. 254 (Per Romer, J).
11. (1883) 36 Ch. D. 675*n*.
12. (1919) 1919-1 Ch. 290+(1927) 1927 App. Cas. 369.
13. AIR 1946 Bom. 516.
14. (1899) 1899-1 Ch. 861.
15. AIR 1924 Bom. 102=47 Bom. 915.
16. (1898) 1898-2 Ch. 469.
17. AIR 1925 Bom. 49 (DB).
18. AIR 1926 Sind 295+(1919) 36 TLR 35.
19. NLR 1983 CLJ 98.
20. PLD 1968 Dacca 610=19 DLR 280.

petitioner at liberty to seek such other remedy as may be available to him in this regard.[1]

Liability of Company. The liability of the company under section 158(4) becomes established even without showing anything more than that there is a default as contemplated by the section.[2] Therefore although the default in holding a general meeting within the specified time is due to the mistake of the directors, who under competent legal advice believed that there was no default, the company cannot escape liability for the default.[3]

Knowingly and wilfully. To convict the directors and officers of a company under section 158(4) it is not sufficient to show merely that there is a default but there must be some evidence, direct or circumstantial, to sustain the inference that they also contributed to the default with full consciousness of their responsibility in the matter.[4] An ordinary director of a company who was not knowingly and wilfully a party to the default under section 158(4) cannot be convicted.[5] Where the default in holding the annual meeting was not willful inasmuch as it was not held owing to the serious illness and death of a brother of the accused who along with another brother held almost all the shares of the company, the accused cannot be convicted under section 158(4) of the Companies Ordinance.[6]

Meeting held after statutory period. Where a company holds a general meeting after the expiry of the statutory period, for the default penal liability under sub-section (4) of that section will be there and a penal action under sub-section (4) is not in any way dependent on the determination of the question of default by the High Court.[7]

Complaint for default, who may make. The fact that the Regulations made under section 466 assigned the duty of investigating alleged offences under the Ordinance and filing complaints to the Registrar, Joint Registrar or any other officer concerned does not take away the right of any citizen or a member of the company to file a complaint under the Ordinance.[8]

7. Conviction under different sections. Section 158 creates a separate and distinct offence from the one under section 241, hence no question of an accused being tried and punished twice for the same offence will arise where he is convicted and sentenced once under section 241 and again under section 158.[9] But as a rule where there is conviction of a director under section 158, conviction under another section may be dropped.[10]

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1. NLR 1987 UC 364=1987 CLC 2351.
2. 1958 Ker. L T 173.
3. AIR 1938 Mad. 640=39 Cri. L. Jour 907.
4. NLR 1988 TD 11=PLJ 1988 Tr.C. 39+1958 Ker L T 173.
5. 43 Cri. L. Jour 295 (Mad.)+42 Cri. L. Jour 854 (Mad.)+AIR 1938 Mad. 640.
6. AIR 1941 Ajmer 39=52 Cri. L. Jour 237.
7. PLD 1969 Lah. 251=21 DLR (WP) 204+PLD 1977 Lah. 1367 (Liability for prosecution subsists even when meeting called under sub-section (3)).
8. AIR 1953 Mad. 196=1953 Cri. L. Jour 436+AIR 1928 Nag. 186=29 Cri. L. Jour 581.
9. AIR 1953 Mad. 558=1933 Cri. L. Jour 1062.
10. AIR 1942 Cal. 225=43 Cri L.Jour 466.

8. Forum for trial. Where a company had committed default in holding an Annual General Meeting; an application made direct to the High Court under section 158(4) or section 230 of the Companies Ordinance for taking penal action was misconceived. A Magistrate I Class was competent to try the offences by virtue of section 474 of the Companies Ordinance read with section 29 of the Code of Criminal Procedure.[11]

9. Punishment. An offence under section 158 is not merely a technical offence but a real one deserving substantial punishment. The question of adequacy of the sentence to be awarded for an offence under section 158 is left to the discretion of the Court. That discretion has to be exercised judicially. The Court in awarding sentence cannot ignore the maximum limit prescribed by the section and impose only nominal sentence. To do so would result in reducing the prosecution itself into a mockery and defeat the object of the penal provisions.[12] Directions under section 170 by Corporate Law Authority do not save any other action which may be taken under section 158(4) for default in holding or late holding of Annual General Meeting of company. Failure by Chief Executive to apply on behalf of company for extension in time for holding Company's Annual General Meeting, renders Chief Executive liable to penalty. One year's default in holding of Annual General Meeting would be a mitigating circumstance justifying lenient view in matter of punishment. Corporate Law Authority in a case taking this fact in view imposed fine of Rs. 10,000/- on Chief Executive of company for late holding of Annual General Meeting.[13] Where there was default in compliance with section 158(1) and Chief Executive of company was knowingly and wilfully party to default. Minimum fine of rupees ten thousand prescribed by section 158(4)(a) was imposed against Chief Executive for this default with direction that fine would be paid from his personal resources and not from resources of the company.[14]

10. Meeting on holiday. There is no provision in Companies Ordinance or in any other law under which the company is prohibited from holding a meeting on a day which is or is declared to be a public holiday. If there is no such provision in the Articles of the company also, a meeting on a holiday cannot be *ultra vires* or illegal. The date of meeting of share-holders of a company is normally fixed taking into consideration the convenience of the company as well as its share-holders. Sometime holding of a meeting of share-holders on a holiday may be more convenient to the share-holders. Sometime it may be more convenient when it is held on a working day. Therefore, it cannot be said that if a meeting is held on a holiday it must necessarily be mala fide.[15]

11. Appeal. Regard being had to the fact that in exercising a jurisdiction under the Companies Ordinance, the High Court exercises a special statutory jurisdiction, it would follow that, when the statute itself provides a complete code as to what matters are appealable and what are not, then there cannot be any appeal against the requirement of the statute by a necessary and positive implication of its

11. PLD 1969 Lah. 251 = 21 DLR (WP) 204.
12. 1958 Ker L T 173.
13. NLR 1990 TD 362 = PLJ 1990 Tr.C. 109 = 1990 CLC 1640.
14. NLR 1990 TD 358 = PLJ 1990 Tr.C. 105 + NLR 1988 TD 11 = PLJ 1988 Tr.C. 39.
15. PLD 1980 Kar. 401.

provisions. An appeal would be incompetent from a judgment and order passed by a District Judge, either under section 158 or under section 160 or under both. Therefore no inter-Court appeal would be competent where the orders are passed by the High Court.[16]

159. *Calling of extraordinary general meeting.* (1) All general meetings of a company, other than the annual general meeting referred to in section 158 and the statutory meeting mentioned in section 157, shall be called extraordinary general meetings.

(2) The directors may at any time call an extraordinary general meeting of the company to consider any matter which requires the approval of the company in a general meeting and shall, on the requisition of members representing not less than one-tenth of the voting power on the date of deposit of the requisition, forthwith proceed to call an extraordinary general meeting.

(3) The requisition shall state the objects of the meeting, be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(4) If the directors do not proceed within twenty-one days from the date of the requisition being so deposited to cause a meeting to be called, the requisitionists, or a majority of them in value, may themselves call the meeting, but in either case any meeting so called shall be held within three months from the date of the deposit of the requisition.

(5) Any meeting called under sub-section (4) by the requisitions shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by directors.

(6) Any reasonable expense incurred by the requisitionist by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sum due or to become due from the company by way of fees or other remuneration for their services to such of the directors as were in default.

(7) Notice of an extraordinary general meeting shall be sent to the members at least twenty-one days before the date of the meeting, and in the case of a listed company shall also be published in the manner provided for in sub-section (3) of section 158:

16. PLD 1970 Dacca 521 = 19 DLR 735.

Provided that, in the case of an emergency affecting the business of the company, the registrar may, on the application of the directors, authorise such meeting to be held at such shorter notice as he may specify.

(8) Every officer of the company who knowingly or wilfully fails to comply with any of the provisions of this section shall be liable--

(*a*) if the default relates to a listed company, to a fine not less than ten thousand rupees and not exceeding twenty thousand rupees and in the case of a continuing default to a further fine which may extend to two thousand rupees for every day after the first during which the default continues; and

(*b*) if the default relates to any other company, to a fine which may extend to two thousand rupees and in the case of a continuing default to a further fine which may extend to two hundred rupees for every day after the first during which the default continues.

Synopsis

1. Requisition of meeting.
2. Who may call meeting.
3. Notice.
4. Meeting called by members.

1. Requisition of meeting. The requisition must be made by holders of not less than one-tenth of the share capital of the company. In the case of shares held jointly by several members a requisition not signed by all of them is insufficient.[17]

Date of requisition. There is no presumption that a requisition under the section was received by the directors on the date which it bears on it.[18]

2. Who may call meeting. A meeting can be lawfully summoned within twenty-one days of the date on which the requisition was deposited by the directors only acting as a board. The secretary of the company cannot act on his own authority and lawfully summon the meeting.[19]

3. Notice. A notice of the meeting under section 159 need not recite all facts necessary to meet every technical objection which may be raised to its validity.[20] Where the matters mentioned in the requisition are matters which could be validly considered by the general meeting and they have not been expressed vaguely, the directors cannot exclude some of these matters from the notice calling for the meeting. If they do so the share-holders are themselves entitled to issue a notice calling for a meeting for all the purposes mentioned in their requisition.[21]

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17. 1906 W N 164.
18. AIR 1940 Sind 87.
19. 1901-2 Ch. 431.
20. AIR 1940 Sind 87.
21. (1883) 25 Ch D. 320.

4. Meeting called by members. The managing director who prevents the share-holders, who requisitioned the meeting for electing a new managing director, from holding the meeting at the registered office cannot complain that the meeting which was held elsewhere and the resolution passed therein are invalid.[22]

Annual General Meeting, if may be called by members. There is no reason why the requisite number of share-holders would not be entitled under section 159 or section 160 to convene an annual general meeting which is overdue and which the directors have defaulted in convening within the prescribed time. Such a general meeting may not strictly be characterised as the Annual General Meeting but is nevertheless a meeting in which all that can be done in an annual general meeting can be done including the passing of the balance-sheet and appointment of directors.[1]

160. *Provisions as to meetings and votes.* (1) The following provisions shall apply to the general meetings of a company or meetings of a class of members of the company, namely:--

(*a*) notice of the meeting specifying the place and the day and hour of the meeting alongwith a statement of the business to be transacted at the meeting shall be given--

(*i*) to every member of the company;

(*ii*) to any person entitled to a share in consequence of death of a member if the interest of such person is known to the company; and

(*iii*) to the auditor or auditors of the company;

in the manner in which notices are required to be served by section 50, but the accidental omission to give notice to, or the non-receipt of notice by, any member shall not invalidate the proceedings at any meeting;

(*b*) where any special business, that is to say business other than consideration of the accounts, balance-sheets and the reports of the directors and auditors, the declaration of a dividend, the appointment and fixation of remuneration of auditors, and the election or appointment of directors, is to be transacted at a general meeting, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning such business, including, in particular, the nature and extent of the interest, if any, therein of every director, whether directly or indirectly, and where any item

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22. AIR 1951 Mad. 542.
1. AIR 1959 Cal. 715.

of business consists of the according of an approval to any document by the meeting, the time when and the place where the document may be inspected shall be specified in the statement;

(*c*) subject to the provisions of this Ordinance so far as they relate to the election and appointment of directors, the provisions of clause (*b*) shall apply *mutatis mutandis* to meeting where ordinary business, being business other than special business, is to be transacted;

(*d*) all the members may participate in the meeting either personally or through proxy.

(2) The quorum of a general meeting shall be--

(*a*) in the case of a public company, unless the articles provide for a larger number, not less than three members present personally who represent not less than twenty-five per cent of the total voting power, either of their own account or as proxies; and

(*b*) in the case of a private company, unless the articles provide for a larger number, two members present personally who represent not less than twenty-five per cent of the total voting power, either of their own account or as proxies:

Provided that, if within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if called upon the requisition of members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present, being not less than two, shall be a quorum, unless the articles provide otherwise.

(3) The chairman of the board of directors, if any, shall preside as chairman at every general meeting of the company, but if there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, any one of the directors present may be elected to be chairman, and if none of the directors is present or is unwilling to act as chairman the members present shall choose one of their number to be the chairman.

(4) In the case of a company having a share capital, every member shall have votes proportionate to the paid-up value of the shares or other securities carrying voting rights held by him according to the entitlement of the class of such shares or securities, as the case may be:

Provided that, at the time of voting, fractional votes shall not be taken into account.

(5) No member holding shares or other securities carrying voting rights shall be debarred from casting his vote, nor shall anything contained in the articles have the effect of so debarring him.

(6) In the case of a company limited by guarantee and having no share capital, every member thereof shall have one vote.

(7) On a poll, votes may be given either personally or by proxy.

(8) Every officer of the company who knowingly or wilfully fails to comply with any of the provisions of this section shall be liable,--

(*a*) if the default relates to a listed company, to a fine which may extend to twenty thousand rupees and in case of a continuing default to a further fine which may extend to two thousand rupees for every day after the first during which the default continues; and

(*b*) if the default relates to any other company, to a fine not exceeding five thousand rupees and in the case of a continuing default to a further fine which may extend to two hundred rupees for every day after the first during which the default continues.

Synopsis

1. Scope.
2. Notice of meeting.
3. Passing of resolution by circulation.
4. Proxy--vote by.

1. Scope. Section 160 no doubt states that its provisions shall have effect with respect to meetings of Company. No distinction is maintained between a public Company and a private Company under this section.

One-man company. The provisions of this section apply even to a one man company incorporated under the Ordinance.[2]

2. 1981 Dhaka LR (SC) 315.

2. Notice of meeting. Notice of the meeting shall clearly state the object and purpose of the meeting.[3] It is mandatory to annex to the notice of the meeting a statement setting out all material facts concerning the business.[4] But a share-holder actually knowing about business to be transacted at a meeting cannot complain of insufficiency of notice.[5] Absence of any agenda or formal notice of meeting of company cannot completely destroy business transacted therein.[6] However, where there is any secret agreement or any interest of the Directors in the agreement not disclosed in the circular, or in the notice, the Court will view with strictness any omission to refer to it in the notice or in the circular accompanying the notice; and the omission to mention any secret arrangement would constitute a serious defect in the notice. But where no secret agreement is proved or suggested anywhere, there is no indication that there was anything to conceal, the Court will as far as possible take a liberal view of the terms of the notice and will not upset the proceedings taken on a notice for some defect which might have been avoided but which was not avoided on account of some honest mistake. A meeting ought not to be treated very critically in order to see whether we can pick out some defect in it. Notice calling an extraordinary general meeting of the share-holders of a Bank to consider the proposal of amalgamating it with another Bank was held not so defective as to upset proceedings at the meeting though it failed to disclose the difference of opinion that existed among the directors in the matter and the basis of calculation on which the terms of union were settled and although no copy of the agreement between the banks was sent to the share-holders along with the notice.[7]

3. Passing of resolution by circulation. In order to be valid, a resolution passed by circulation should be circulated among all the Directors irrespective of the fact whether they would like to support it or to oppose it. This is necessary for the reason that the business of the company being carried on through the Directors, each Director must have full knowledge of the affairs of the company particularly its financial affairs. A resolution not circulated among all the Directors would, therefore, not be of any consequence although it may have been subscribed to by a majority of the Directors.[8]

4. Proxy--vote by. Right to vote by proxy is the creature of a contract between share-holders and cannot be claimed under the ordinary law. Where the right to vote by proxy is given, all the requisite of the contract as to the exercise of that right must be followed. Where the Articles of Association provided that no person without a particular qualification should be appointed proxy, the qualification should exist at the time of appointment and not merely on the date to which the operation of the instrument is postponed.[9] A person to whom a member gives a proxy is that member's agent for the purpose of voting. The authority of an agent may be revoked expressly or by implication, but unless and until it is so revoked that authority continues. If a man is present and allows another to act for

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3. AIR 1928 PC 180.
4. PLD 1995 Lah. 264.
5. AIR 1928 PC 180.
6. NLR 1988 TD 71.
7. AIR 1925 Bom. 49 (DB).
8. PLD 1977 Lah. 902.
9. (1902) 27 Bom. 113=4 Bom L R 953 (DB).

him, presumably he approves what that other does. Therefore where persons who voted on the proposed amendment but did not vote on the substantive proposition, and whose votes on the substantive proposition were recorded by their proxies in a meeting of the company held for changing its memorandum. It was held, that the votes by proxies were good.[10]

Company having no share capital. Only effect of proviso (*a*) of section 161(1) of the Ordinance is that right to vote by proxy which is conferred on members of companies is not so conferred upon members of a company not having share capital. But even in case of such companies, the right of vote by proxy provided by its Articles of Association for voting by proxy has not in any manner been taken away by proviso (*a*) of section 161(1), Companies Ordinance, 1984. Such right remains unaffected in spite of the proviso.[11]

Form of proxy. The Court had ample power under section 284 to settle a form of proxy. Section 284 is wider in its terms than section 131 of the English Act. Any substantial failure to comply with the Court's direction would invalidate the proxy. But the proxy would not be invalidated where the addition is immaterial or insubstantial.[12]

Second proxy. A proxy later in time would ordinarily cancel proxy signed earlier. But where the second proxy is signed after the time for lodging it has expired; it would not invalidate the first proxy which has been lodged in time. Where *A* signed a proxy in favour of *B*. The time for lodging proxies ended two days before the meeting. The proxy in favour of *B* was lodged in time. *A* then signed a second proxy in favour of *C* and lodged it after the expiry of the time. The second proxy being out of time was rejected without scrutiny. The first proxy was held to have not been revoked.[13]

Undated proxy. An undated proxy is valid.[14]

Unstamped proxy. Those proxies which are unstamped or upon which the stamps have not been cancelled, must be excluded. Any votes recorded on the authority of such proxies cannot be counted.[15]

Debtors, proxies by. Proxies given by persons who are debtors of the company are bad.[16]

Proxy by company in favour of Directors. Proxies given by a company in favour of a director of that company are bad.[17]

161. *Proxies.* (1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint

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10. AIR 1928 Bom. 80.
11. PLD 1992 Kar. 181.
12. AIR 1928 Bom. 80.
13. AIR 1928 Bom. 80=108 Ind. Cas. 465.
14. AIR 1928 Bom. 80=108 Ind. Cas. 465.
15. AIR 1928 Bom. 80=108 Ind. Cas. 465.
16. AIR 1928 Bom. 80=108 Ind. Cas. 465.
17. AIR 1928 Bom. 80=108 Ind Cas. 465.

another person, as his proxy to attend and vote instead of him, and a proxy so appointed shall have such rights as respects speaking and voting at the meeting are available to a member:

Provided that--

(*a*) this sub-section shall not apply in the case of a company not having a share capital;

(*b*) a member shall not be entitled to appoint more than one proxy to attend any one meeting;

(*c*) if any member appoints more than one proxy for any one meeting and more than one instruments of proxy are deposited with the company, all such instruments of proxy shall be rendered invalid; and

(*d*) a proxy must be a member unless the articles of the company permit appointment of a non-member as proxy.

(2) Every notice of a meeting of a company shall prominently set out the member's right to appoint a proxy and the right of such proxy to attend, speak and vote in the place of the member at the meeting and every such notice shall be accompanied by a proxy form.

(3) The instrument appointing a proxy shall--

(*a*) be in writing; and

(*b*) be signed by the appointer or his attorney duly authorised in writing, or if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

(4) An instrument appointing a proxy, if in the form set out in regulation 39 of Table A in the FIRST SCHEDULE shall not be questioned on the ground that it fails to comply with any special requirements specified for such instruments by the articles.

(5) The proxies shall be lodged with the company not later than forty-eight hours before the time of the meeting and any provision to the contrary in the company's articles shall be void.

(6) The members or their proxies shall be entitled to do any or all the following things in a general meeting, namely:--

(*a*) subject to the provisions of section 167, demand a poll on any question; and

(*b*) on a question before the meeting in which poll is demanded, to abstain from voting or not to exercise their full voting rights;

and any provision to the contrary in the company's articles shall be void.

(7) Every member entitled to vote at a meeting of the company shall be entitled to inspect during the business hours of the company all proxies lodged with the company.

(8) The Court may, on a petition by members having not less than ten per cent of the voting power in the company that the proceedings of a general meeting be declared invalid by reason of a material defect or omission in the notice or irregularity in the proceedings of the meeting, which prevented members from using effectively their rights, declare such proceedings or part thereof invalid and direct holding of a fresh general meeting:

Provided that the petition must be made within thirty days of the impugned meeting.

(9) The provisions of the section shall apply *mutatis mutandis* to the meeting of a particular class of members as they apply to a general meeting of all the members.

(10) Failure to issue notice in time or issuing notice with material defect or omission or any other contravention of this section which has the effect of preventing participation or use of full rights by a member or his proxy shall make the company and every officer of the company who knowingly and wilfully is a party to the default or contravention liable to a fine which may extend to five thousand rupees if the default relates to a listed company and to a fine which may extend to two thousand rupees if the default relates to any other company.

Synopsis

1. Proxy, right to vote by.
2. Proxy, nature of.
3. Revocation of proxies.
4. Form of proxies.
5. Delay in execution or deposit of proxy.
6. Stamp duty.
7. Sub-section (8).

1. **Proxy, right to vote by.** A proxy is a creature of law of agency, though with this difference that under the company law such an agent has to be appointed in a manner as provided thereunder. Therefore, so far as voting by proxy is

concerned that can be done on behalf of any person, may it be natural or artificial, so long as that person is in a position to appoint proxy as provided in law.[18]

Company having no share capital. Right of a company not having share capital to provide by its articles of association for voting by proxy has not in any manner been taken away by proviso (a) to section 161. This right remains unaffected.[19]

Deceased share-holder, rights of executor. Where the articles of a company confine the right of voting to persons who are duly registered members of the company and also provide for the registration of the names of the executors, the executor cannot exercise the voting rights of the deceased share-holder. That being so, a proxy given by him is also ineffective.[20]

Exclusion of votes. Where under the articles of a company the votes of share-holders who are indebted to the company are to be excluded, that votes, when recorded by proxy, also must be excluded.[21]

2. **Proxy, nature of.** The Contract Act governs the relationship of the share-holder with the proxy inasmuch as the proxy, on being appointed, becomes the agent of the share-holder by reason of a contract. A proxy cannot act contrary to his instructions in the matter.[1] Proxies must vote according to the desires of the share-holders whose proxies they hold. A company or corporation holding shares in another company on behalf of its different reconstituents votes as the proxy of each one of them in respect of his shares, although on paper the company or the corporation appears as the holder of those shares. In allowing it to vote differently in accordance with the desires of each of the constituents in exercise of the right arising under his shares, no question of the company in which the share are held transgressing the rule which prohibits recognition of trusts can arise.[2]

3. **Revocation of proxies.** Unless the right to revoke proxies is expressly excluded by the articles, a proxy like any other contract of agency is revocable subject to the provisions of the contract. On the principles underlying section 204 of the Contract Act the authority of the proxy can be revoked even after it has been partially exercised, although such revocation will not affect what has been already done by the proxy. Thus the fact that the proxy has exercised the vote at one poll in the meeting does not prevent the revocation of his authority before the second poll, which is a different act in the series of acts done at the same meeting, takes place.[3]

Mode of revocation. The authority of a proxy may be revoked by a member either expressly or by implication. But until so revoked the proxy's authority continues. No implicit revocation of the authority of the proxy can be inferred from the mere presence of the member at the meeting. On the other hand his conduct in

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18. AIR 1959 Pat. 293 (DB).
19. NLR 1996 UC 373.
20. AIR 1928 Bom. 80.
21. AIR 1928 Bom. 80.
1. AIR 1952 Mad. 515=ILR 1952 Mad. 218 (DB).
2. AIR 1955 Cal. 132=ILR (1956) 1 Cal. 475.
3. AIR 1952 Mad. 515=ILR 1952 Mad. 218 (DB).

allowing the proxy to vote raises the presumption that he approves what the proxy does.[4]

The authority of proxy is revoked by implication when the member votes personally. Where the member himself voted on the amendments but abstained from voting on the main proposition. It was held that presumably he did not desire to revoke the authority of the proxy to vote on the main proposition.[5]

Second proxy if revokes first proxy. The execution of a second proxy does not by itself have the effect of revoking the earlier one executed by the member. There must be express or constructive notice to bring about the revocation. The mere sending in of a second proxy by a share-holder to the company cannot amount to a constructive notice of his revocation of an earlier proxy where he gives no indication of the existence of any earlier proxy and his intention to revoke the same. The company has no duty when a proxy is received to scrutinise whether that is an earlier proxy executed by the same share-holder.[6]

Notice of revocation to proxy. Revocation of a proxy is not invalid because notice of such revocation has not been given to the proxy.[7]

4. Form of proxies. Requirement for providing proxy forms, is to facilitate availability of such forms so that same could be conveniently utilized by members without facing difficulty and delay. Section 161(2) has two parts first part being of mandatory nature whereas later part relating to sending of proxy forms alongwith notice is merely directory. Where proxy forms were available with members no prejudice occasioned on account of omission to attach the same with notice, where no evidence was led by petitioners to substantiate allegation regarding refusal of company to entertain proxies.[8]

A proxy executed by a company is not valid when the seal of the company is not affixed to it in the presence of its directors. Although an omission to state the date of the meeting in the proxy may be a serious defect the failure to write the date of its execution is not sufficient to vitiate the proxy.[9] A company sent proxy forms to the share-holders for being filled in and returned. The date of the meeting was by mistake left blank in the proxy. The share-holders executed the proxies without completing the blanks and this omission was rectified by the secretary of the company before lodging them. It was held that proxies which were duly stamped were perfectly valid and that the secretary had the authority to rectify the accidental omission.[10]

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4. AIR 1928 Bom. 80.
5. AIR 1928 Bom. 80.
6. AIR 1928 Bom. 80.
7. AIR 1952 Mad. 515=ILR 1952 Mad. 218 (DB).
8. 1987 CLC 726=NLR 1987 UC 352.
9. AIR 1928 Bom. 80.
10. (1897) 1897-1 Ch. 1.

Where the Court, which has power to do so, has settled the form of the proxy for use at the meeting to be held under section 284, a proxy which in form substantially differs from that approved form is invalid.[11]

5. **Delay in execution or deposit of proxy.** Where an article of association of a company required the instrument of proxy to be deposited in the registered office of the company not less than two clear days before the date of the meeting at which the holder of the proxy proposed to vote; it was held that the meeting meant by the article was the original meeting and therefore a proxy-holder who deposited the instrument of proxy after the original meeting but more than two days before the day fixed for the adjourned meeting would not be entitled to vote. Proxies lodged after the date originally fixed for the meeting cannot be used for voting at the adjourned meeting where the articles require the lodgment of the proxies in advance of the meeting by a certain number of days. In such a case the date of the meeting is the date originally fixed and not the adjourned date.[12]

6. **Stamp duty.** On a proxy which contains specific powers as well as general powers the stamp duty payable is the aggregate of the amounts of the duty payable on each of the separate instruments executed in respect of each power.[13]

Proxies which are unstamped or upon which stamps have not been cancelled and the votes recorded on the authority of such proxies must be excluded.[14] A proxy which is insufficiently stamped is not invalid but only inadmissible. It can be validated by payment of deficit stamp duty and penalty fixed by the collector. Therefore the chairman must not reject the proxy on the ground that it is sufficiently stamped when there is an offer by the share-holder to pay the deficit and any penalty imposed by the collector. In such a case the chairman should refer the case to the collector and postpone the declaration of the result of the poll until the decision of the collector is obtained.[15]

7. **Sub-section (8).** Provisions of sub-section 8 of section 161 appear to have been enacted with a view to make the matters as regards investment by one company in associated company whether by way of purchasing the right shares or otherwise transparent. Apart from the fact that the terms and conditions attached to such an investment are required to be given in the resolution itself from which authority was sought to be derived for making such investment in the associated company, a statement regarding all material facts in relation thereto under section 160(1)(8) was also to be appended with the notice so that all the members of the company may know as to what was the exact scope and nature of the business to be discussed in the meeting so that they could make up their minds considering the importance of the matter from their point of view to attend the meeting and to use their rights effectively. Where in the proposed resolution itself no mention was made as to terms and conditions attached to the purchase of right shares of an associated company of respondent Company and no mention was made as to how the investment by respondent Company by way of purchasing the right shares

11. AIR 1928 Bom. 80.
12. (1917) 1917-2 Ch. 261.
13. AIR 1952 Mad. 515=ILR 1952 Mad. 213 (DB)
14. AIR 1928 Bom. 80.
15. AIR 1952 Mad. 515=ILR 1952 Mad. 218 (DB)

would be beneficial to the company and what would be the mode for raising funds and the duration of such investment, short and long term benefits such as amount of dividends to be earned, so as to apprise the members to take a decision whether to participate in the meeting and to use their rights effectively. In the said statement instead of focusing the attention to highlight the benefit to be derived by the respondent company by such investment, a stress was made merely to highlight the different aspect of the investments made by other investors in the Associated Company and discussing such company. It was held that notice for Extraordinary General Meeting suffered from acute illegality for non-compliance of provisions of section 160(1)(8) and the resolution itself passed, was also violative of section 208 as it failed to indicate the terms and conditions attached to the investment to be made in the Associated Company. It was held that the provisions of law being mandatory, the notice as well as the resolution stood vitiated for non-compliance thereof.[16]

Every error or omission or irregularity is not amenable to jurisdiction of High Court but that is so only when facts and circumstances are such which might continue material defect or omission in notice or irregularity in proceedings of meeting that proceedings could be sought to be declared invalid. There must be something more than mere defect or incidental omission or minor irregularity when High Court might take action under the law.[17]

Parties to proceedings. Where the dispute was only between Directors *inter se*. No relief was sought against Registrar Joint Stock Companies and assertions in petition did not refer to any violation committed by him. Nothing was available to show that without impleading Registrar, effective determination of claim in petition could not be sought. Registrar was held, not necessary party. [18]

Default in power of attorney. Where name of respondent is incorrectly typed in power of attorney. Error being only technical in nature and curable, defective authorisation would not affect maintainability of petition.[19]

162. *Representation of corporations at meetings of companies and of creditors*. (1) A company which is a member of another company may, by resolution of the directors, authorise any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual share-holder of that other company.

(2) A company which is a creditor of another company may authorise any of its officials or any other person to act as its representative at any meeting of the creditors of that other company

16. PLD 1995 Lah. 264.
17. 1987 CLC 726=NLR 1987 UC 352.
18. 1987 CLC 726=NLR 1987 UC 352.
19. 1987 CLC 726=NLR 1987 UC 352.

held in pursuance of this Ordinance or any other meeting to which it is entitled to attend in pursuance of the provisions contained in any debenture or trust deed or any other document and the person so authorised shall be entitled to exercise the same powers as are available to the company which he represents.

Synopsis

1. Scope. 2. Creditor corporation.

3. Valid proxy necessary.

1. **Scope.** Section 162 applies only to a company which is incorporated under this Ordinance. Hence it cannot be invoked by a corporation which is not so incorporated. But as a corporation by its very nature must act through some human agency and therefore an unincorporated company although it is not entitled to act under section 162, has the right to appoint one of its members to represent it at a meeting of a company of which it is a member.[20]

2. **Creditor corporation.** The provision made in section 162 for a corporation to vote in person is confined to its capacity as a member corporation only and is not in relation to its capacity as a creditor corporation. That means, in the case of a proceeding which is controlled exclusively by this ordinance a creditor corporation as contemplated under section 284 of that Ordinance, can vote only by proxy and not in person.[21]

3. **Valid proxy necessary.** Where a director of a company votes at the meeting of another company under a proxy given to him by his company but the proxy being not affixed with the seal of his company is invalid. The vote recorded by him also is invalid. The defect cannot be cured by the company subsequently ratifying what the director did at the meeting.[1]

163. *Representation of Federal Government, etc. at meetings of companies.* (1) The Federal Government, or a Provincial Government, as the case may be, if a member of a company, may appoint such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company.

(2) A person appointed to act as aforesaid shall, for the purpose of this Ordinance, be deemed to be a member of such a company and shall be entitled to exercise the same rights and powers, including the right to appoint proxy, as the Federal Government or the Provincial Government, as the case may be, may exercise as a member of the company.

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20. 55 Cal. W N 237 (DB).
21. AIR 1959 Pat. 293 (DB).
1. AIR 1928 Bom. 80.

164. *Notice of resolution.* (1) With the notice for a meeting, the company shall send to the members copies of draft resolutions, other than routine or procedural resolutions, which are proposed for consideration in the meeting.

(2) The members having not less than ten per cent voting power in the company may give notice of a resolution and such resolution together with the supporting statement, if any, which they proposed to be considered at the meeting, shall be forwarded so as to reach the company--

(*a*) in the case of a meeting requisitioned by the members, together with the requisition for the meeting;

(*b*) in any other case, at least fifteen days before the meeting;

and the company shall forth with circulate such resolution to all the members.

(3) In the event of any default in complying with any of the provisions of this section, the company and every officer of the company who is knowingly or wilfully a party to such default shall be liable to a fine which may extend to five thousand rupees if the default relates to a listed company and to a fine which may extend to two thousand rupees if the default relates to any other company.

Synopsis

1. Notice of meeting.
2. Statutory suspension of right to notice.
3. Preference share-holders.
4. Copy of resolution should accompany notice.

1. Notice of meeting. A share-holder having knowledge about the business to be transacted at a meeting cannot complain of insufficiency of notice.[2] But if the directors issue a circular in which they refer to certain alterations and say only alterations are with regard to clause (*x*) of the articles of association, whereas there are equally important alterations in clause (*y*); it cannot be said that share-holders have sufficient notice of the alterations in clause (*y*).[3]

2. Statutory suspension of right to notice. Where a special resolution was passed at a meeting of which no notice was either sent or attempted to be sent to share-holders whose registered addresses were in enemy or enemy occupied territories; it was held that as the company was prohibited by to have or attempted to have any communication with those share-holders their right to receive

2. AIR 1928 PC 180=55 Ind. App. 274=52 Bom. 571+AIR 1925 Bom. 49 (DB).
3. AIR 1931 Bom. 354 (DB).

notice stood suspended during the period of the war and therefore the validity of the resolution was not open to challenge.[4]

3. Preference share-holders. In the absence of a provision in the articles to the contrary preference share-holders having no right of voting are not entitled to a notice under the section.[5]

4. Copy of resolution should accompany notice. A valid notice was the one which gave verbatim the resolution which was intended to be passed.[6]

165. *Voting to be by show of hands in first instance.* At any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded, be decided on a show of hands.

166. *Chairman's declaration of result of voting by show of hands to be evidence.* At any general meeting, a declaration by the chairman that on a show of hands, a resolution has or has not been carried, or has not been carried either unanimously or by a particular majority, and an entry to the effect in the books containing the minutes of the proceedings of the company, shall, until the contrary is proved, be evidence of the fact, without proof of the number or proportion of the votes cast in favour of or against such resolution.

Synopsis of Sections 165 & 166

1. Right to vote.
2. Vote by proxy.
3. Show of hands, vote by.
4. Decision by Chairman.
5. Amendment of resolution.
6. Objection to votes.
7. Majority for election.

1. Right to vote. The right to vote attached to a share is property.[7] The share-holder who has been prevented by the decision of the majority at a meeting from exercising his vote can file a suit in the Civil Court for a declaration of his right to vote.[8]

2. Vote by proxy. The chairman cannot go behind the articles of association and reject the votes given on a proxy executed in the form prescribed by the articles on the ground that proper stamp duty has not been paid on it.[9] Proxies cannot be used on a show of hands but they can be used on a poll only.[10]

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4. (1943) 1943-2 All E R 88.
5. (1916) 1916-2 Ch. 450.
6. PLJ 1982 Lah. 263=PLD 1982 Lah. 664.
7. AIR 1955 Cal. 132=ILR (1956) 1 Cal. 475.
8. 10 Cal W N 906 (Case under the Act of 1882).
9. AIR 1952 Mad. 515 (DB) (Chairman cannot reject the proxy even if he is of the opinion that the duty of two annas paid by the share-holder under the altered law, on the footing that is only a proxy and not a power of attorney, is wrong).
10. AIR 1955 Cal. 132=ILR (1956) 1 Cal. 475 (*see also* (1897) 1897-1 Ch. 1.

Decision as to vote by proxy. If the Chairman in the exercise of his powers comes to a decision whether the votes given on proxy which are in question shall be disallowed or not on the ground of sufficiency of stamp and if that decision is not vitiated by fraud or misconduct on the part of chairman it is binding on himself or his successor at a later stage of the same meeting.[11]

3. Show of hands, vote by. A show of hands is the constitutional method of declaring the will of the meeting. It stands as the resolution of the meeting unless the declaration of the Chairman that the resolution is thereby carried or lost is subsequently displaced by the result of a poll duly demanded and held.[12] In counting the number of votes given on a show of hands the Chairman must count one vote for each proxy holder and not as many votes as the number of members whose proxies he holds.[13] A declaration of the Chairman in a show of hands that the resolution is carried is conclusive evidence and the minutes of the meeting are not admissible in evidence to show that the declaration of the chairman is unwarranted.[14]

4. Decision by Chairman. The chairman of a company meeting by virtue of his position and the nature of his duties has to decide on the spot all emergent questions that arise at the meetings. Prima facie the authority or his verdict is conclusive and it must be allowed to stand unless the verdict is shown to be opposed to the articles or the statute.[15] The declaration of the chairman that a resolution has been passed cannot be treated as conclusive where it is erroneous in point of law.[16] A declaration as to the result of the vote upon a resolution is a nullity where the chairman put the resolution to vote after improperly ruling out of order an amendment which was germane to the resolution.[17] The burden of showing the verdict to be wrong is on the persons who challenge it and not on those who rely upon it.[18]

On an interlocutory application, made in a suit, challenging a resolution on the ground that the chairman in declaring the result of the poll taken on that resolution had wrongly rejected or accepted votes given by proxy, the Court will not restrain the company from acting on the resolution unless a prima facie case of bad faith is made out against the chairman. On the other hand the Court would allow the decision of the chairman to stand as prima facie final until it is found to be wrong at the trial and decision in the suit.[19]

Point of order. A point of order purporting to object to the competency of the meeting to consider the subject-matter of the resolution can be ruled out by the chairman when it can properly constitute a speech against the resolution itself.[20] A

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11. AIR 1952 Mad. 515=ILR 1952 Mad. 211 (DB).
12. (1937) 1937-2 All E R 422.
13. (1897) 1897-1 Ch 1. (*But see* AIR 1955 Cal 132).
14. AIR 1928 Bom. 38.
15. AIR 1955 Cal. 132=ILR (1956) 1 Cal. 475.
16. AIR 1937 Cal. 645=ILR (1938) 1 Cal. 90 (DB).
17. AIR 1945 Bom. 475+AIR 1925 Bom. 49 (DB)+45 Ch D 330.
18. AIR 1955 Cal. 132=ILR (1956) 1 Cal. 475.
19. AIR 1955 Cal. 132=ILR (1956) 1 Cal. 475.
20. AIR 1925 Bom. 49 (DB).

point of order objecting to the validity of votes tendered for a resolution must be handed to the chairman before he commences to take poll. It must not only indicate the nature of the objection but also particularise the votes objected to. An objection to all the votes, which does not enable the chairman to consider the validity of any particular vote, is too general to be of any use.[1]

5. Amendment of resolution. The chairman can properly rule out an amendment which amounts to a counter-proposal of different nature involving either adjournment of the consideration of the resolution or the rejection of the resolution or when it goes beyond the subject-matter of the resolution.[2] Where the amendment proposing certain persons for office instead of those proposed in original resolution is an integral amendment, the chairman is perfectly entitled, when all of the person proposed excepting one decline, to disallow the amendment and not put it to vote as regards the one who is willing to be elected.[3]

Where a meeting is held under orders of Court the Chairman can reject an amendment which is contrary to the terms of the order under which the meeting is being held.[4]

6. Objection to votes. An objection to votes tendered for a resolution amounts to a sort of invitation on the part of the member objecting to adjourn the proceedings of the meeting to examine the votes over again.[5]

7. Majority for election. By saying that a person in order to be elected should have the support of the majority of shares means the majority of shares of those share-holders who are present in the general meeting convened for the purpose of electing the office-holders.[6]

167. *Demand for poll.* (1) Before or on the declaration of the result of the voting on any resolution on a show of hands, a poll may be ordered to be taken by the chairman of the meeting of his own motion, and shall be ordered to be taken by him on a demand made in that behalf by the persons or person specified below, that is to say,--

(*a*) in the case of a public company, by at least five members having the right to vote on the resolution and present in person or by proxy;

(*b*) in the case of a private company, by one member having the right to vote on the resolution and present in person or by proxy if not more than seven such members are personally present, and by two such members present in person or by

1. AIR 1925 Bom. 49 (DB) (AIR 1924 Bom. 102, *Affirmed*).
2. AIR 1925 Bom. 49 (DB).
3. AIR 1925 Bom. 105 (DB).
4. AIR 1925 Bom. 105 (DB).
5. AIR 1925 Bom. 49 (DB).
6. PLD 1960 Ker. 609 (DB).

proxy if more than seven such members are personally present;

(*c*) by any member or members present in person or by proxy and having not less than one-tenth of the total voting power in respect of the resolution; or

(*d*) by any member or members present in person or by proxy and holding shares in the company conferring a right to vote on the resolution, being shares on which an aggregate sum has been paid up which is not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2) The demand for a poll may be withdrawn at any time by the person or persons who made the demand.

1. **Polls, taking off.** The Chairman who is enjoined by the share-holders to hold a poll has ample powers to carry out their wishes. He does not, when one attempt to hold the poll breaks down, become *functus officio*. The taking of the poll on a date fixed is not by itself a meeting but is merely an enlargement of the meeting at which it was demanded. The original meeting continues notionally until the poll is actually taken although the share-holders are not actually in session and business is not transacted during the interval.[7]

Proxies. Where the articles do not contemplate the use of voting paper, the Chairman has no power to take a poll by means of polling papers signed by the members delivered to the office of the company on or before a fixed day and time.[8]

Closed door meeting. The Chairman is justified in closing the doors when the polls is taken, where it is not an ordinary meeting of the company but one in which special, precautions have to be taken in view of the rivalry between two groups. Even in ordinary meetings it is open to the Chairman, if he thinks it advisable, to close the doors during the taking of a poll.[9]

168. *Time of taking poll.* (1) A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith and a poll demanded on any other question shall be taken at such time, not more than fourteen days from the day on which it is demanded, as the chairman of the meeting may direct.

(2) When a poll is taken, the chairman or his nominee and a representative of the members demanding the poll shall scrutinize the votes given on the poll and the result shall be announced by the chairman.

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7. AIR 1932 Mad. 100 (DB).
8. (1906) 1906-1 Ch 331.
9. AIR 1925 Bom. 105 (DB).

(3) Subject to the provisions of this Ordinance, the chairman shall have power to regulate the manner in which a poll shall be taken.

(4) The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

1. **Poll on adjourned meeting.** When a poll is demanded at general meeting, the original meeting continues until the chairman has carried out the direction given to him by the share-holders to take a poll. It is a notional meeting not dependent for its existence and continuity upon the share-holders being actually in session and business being transacted.[10]

Adjourned meeting, who may vote on. Where an annual general meeting originally convened for a particular date is adjourned from time to time due to the action of one party or the other, the Court would be justified in directing that only such of the share-holders who were on the list of share-holders on the original date of meeting would be entitled to vote at the meeting to be held on the adjourned date.[11]

169. *Resolution passed at adjourned meeting.* Where a resolution is passed at an adjourned meeting of--

(*a*) a company;

(*b*) the holders of any class of shares in a company;

(*c*) the directors of a company; or

(*d*) the creditors of a company;

the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

170. *Power of registrar to call meetings.* (1) If default is made in holding the statutory meeting, annual general meeting or any extraordinary general meeting on the requisition of members in accordance with section 157, section 158 or section 159, as the case may be, the registrar may notwithstanding anything contained in this Ordinance or in the articles of the company, either of his own motion or on the application of any director or member of the company, call, or direct the calling of, the said meeting of the company in such manner as the registrar may think fit, and give such ancillary or consequential directions as the registrar thinks expedient in relation to

10. AIR 1932 Mad. 100 (DB).
11. AIR 1951 Mad. 927 (DB) (Such a direction would not be in contravention of S. 79 (1) (*e*)).

the calling, holding and conducting of the meeting and preparation of any document required with respect to the meeting.

Explanation. The directions that may be given under sub-section (1) may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any such direction shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted, and all expenses incurred in connection thereto shall be paid by the company unless the registrar directs the same to be recovered from any officer of the company which he is hereby authorised to do.

Synopsis

1. Scope.
2. Directions by Registrar.
3. Appointment of Chairman of meeting.

1. Scope. The section provides an alternative remedy to be applied only when the normal machinery of the company management fails. The power of the Registrar under this section is a discretionary one and the Court is not bound to exercise that power in every case. He must use the power with great caution and in such a manner as to avoid becoming itself in effect a share-holder or a director interested in the internecine squabbles of the company. Before granting the remedy provided by the section the Registrar, must find that to leave the parties to follow their own remedies will put the company in jeopardy.[12]

2. Directions by Registrar. Power given to Registrar to give direction to company for holding of delayed annual general meeting is of wide amplitude. It overrides other provisions of the Ordinance and anything contained in Articles of Association of company.[13] The Registrar is given power to modify or supplement the articles of a company or the Ordinance only for the purpose of enabling, it to hold a meeting without contravening the articles of the Ordinance. To exercise that power it must have good reasons and a mere apprehension that the chairman of the Board of Directors who according to articles has to preside at the meeting may not act fairly or impartially is not such a reason on which the Court would intervene and supplant the articles of the company and give directions for the conduct of the meeting under section 170.[14] Therefore direction by Registrar to Company for holding three overdue meetings was unexceptionable and did not derogate from S.252 (1).[15]

Where a meeting was originally fixed for a particular date and the transfer book was closed and the Court while adjourning the meeting on the application of a party to another date directed that only those share-holders who were on the register

12. AIR 1956 Cal. 658.
13. NLR 1990 TD 358=PLJ 1990 Tr.C. 105.
14. AIR 1956 Cal. 658.
15. NLR 1990 TD 358=PLJ 1990 Tr.C.105.

on the date on which the transfer book was closed could vote at the meeting. It was held that there was nothing in that direction to offend the law.[16]

Scope of proceedings before Court in respect of annual general meeting of Company and election of Board of Directors is limited only for ordering of holding of annual general meeting of Company. Dispute arising between parties with regard to title to shares, being a triable issue, could not be resolved in the said proceedings. Court issued order for holding annual general meeting of Company with direction that only such persons would be entitled to vote whose name appeared in the Register maintained by the Company.[17]

Adjournment of meeting. Where delinquent Company was directed by Authority to hold its overdue annual general meetings and to pass its annual accounts within a specified period. It was held that a meeting held under Ss.158 and 159, Companies Ordinance, 1984, under normal course could be adjourned by Members but no meeting called in pursuance of direction given under S.170 Companies Ordinance, 1984 could be adjourned beyond the given time without permission of competent Authority. Directions of Authority having not been followed Company was found to have had violated the same and was liable under S.171, Companies Ordinance. Penalty was imposed for violation of direction of Authority.[18]

3. **Appointment of Chairman of meeting.** The power of the Registrar to call a meeting also implies a power to appoint an independent chairman to preside over that meeting. Such an appointment cannot be condemned as an interference with the internal management of the company.[19] Therefore where a meeting is held under the orders of the Court under the chairmanship of an officer appointed by the Court the results of the voting as reported by the chairman cannot be attacked as freely as otherwise. The adducing of evidence to challenge the result would be subject to the discretion and control of Court as to the kind and amount of evidence that would be allowed for the purpose.[20]

171. *Penalty for default in complying with the directions of the registrar for holding the meeting.* If default is made in complying with any directions of the registrar under section 170, the company and every officer of the company who is in default shall be liable to a fine which may extend to ten thousand rupees and in the case of a continuing default to a further fine which may extend to two hundred rupees for every day after the first during which the default continues.

16. AIR 1951 Mad. 927 (DB).
17. 1987 CLC 1943=NLR 1987 Civ. 639.
18. 1991 CLC 313=PLJ 1990 Tr.C. 180=NLR 1991 TD 1.
19. AIR 1952 Mad. 60 (DB).
20. AIR 1925 Bom. 105 (DB).

1. Scope. Violation by company of direction under section 170 by Corporate Law Authority for holding of overdue meetings of company was visited by lump sum penalty of Rs. 5,000/- made payable by Chief Executive of Company.[1]

172. *Filing of resolution, etc.* (1) A printed or typed copy of every special resolution shall, within fifteen days from the passing thereof, be filed with the registrar duly authenticated by the chief executive or secretary of the company.

(2) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the date of the resolution.

(3) A copy of every special resolution shall be forwarded to any member at his request on payment of such fee not exceeding the prescribed amount as the company may determine.

(4) In the event of any default in complying with the provisions of sub-section (1), the company and every officer who is knowingly and wilfully in default shall be liable to a fine which may extend to one hundred rupees for every day during which the default continues.

(5) In the event of any default in complying with the provisions of sub-section (2) or (3), the company and every officer who is knowingly and wilfully in default shall be liable to a fine which may extend to one thousand rupees for each default.

173. *Minutes of proceedings of general meetings and directors.* (1) Every company shall cause a fair and accurate summary of the minutes of all proceedings of general meetings and meetings of its directors and committee of directors, alongwith the names of those participating in such meetings, to be entered in properly maintained books.

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceeding were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Until the contrary is proved, every general meeting of the company or meeting of directors or committee of directors in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly called and held, and all proceedings had thereat to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid.

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1. NLR 1991 TD 1=PLJ 1990 Tr.C. 180=1991 CLC 313.

(4) The book containing the minutes of proceedings of the general meetings of a company and those of the meetings of the directors and committee of directors shall be kept at the registered office of the company.

(5) In the event of failure to comply with the provisions of sub-section (1) or sub-section (4), the company and every officer of the company who is knowingly in default shall be liable to a fine which may extend to five thousand rupees and to a further fine which may extend to one hundred rupees for every day after the first day during which the failure continues.

(6) The books containing the minutes of proceedings of the general meetings shall be open to inspection by members without charge during business hours, subject to such reasonable restrictions as the company may by its articles or in general meeting impose so that not less than two hours in each day be allowed for inspection.

(7) Any member shall at any time after seven days from the meeting be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a certified copy of the minutes of any general meeting at such charge not exceeding the prescribed amount as may be fixed by the company.

(8) If any inspection required under sub-section (6) is refused, or if any copy required under sub-section (7) is not furnished within the time specified therein, the company and every officer of the company who is knowingly and wilfully in default shall be liable in respect of each offence to a fine which may extend to one thousand rupees and to a further fine which may extend to fifty rupees for every day after the first day during which the default continues, and the registrar may direct immediate inspection or supply of copy, as the case may be.

Synopsis

1. Minute books to be maintained.
2. Minutes, presumption of truth.
3. Default in furnishing copies.

1. Minute book to be maintained. The section directs that a minute book must be kept by every company and minutes of every meeting shall be recorded in it. But where the minute book is in possession of the petitioners and they do not make it available to the respondent to record the minutes of the meeting, then the

respondent may record the minutes on a separate sheet of paper and this would be sufficient compliance with the section in such circumstances.[2]

Minutes not recorded on the date of meeting. It is no doubt true that the directors cannot think without a meeting and that the company is entitled to the benefit of the "combined wisdom of the directors in a meeting unless the articles provide for transacting the business by resolution in writing circulated to the directors without a meeting. But where from the circumstances of the case it is difficult to accept the position that the directors did not consider the propriety of an act done by them and that they were not of one mind in the matter the act cannot be rejected on the technical ground that there is no record of any meeting in the minutes books of the company on the day on which it was done.[3] Where an article of the company provided that no director shall be entitled to vote at the Board meeting in respect of a contract in which he may be interested in his individual capacity unless he disclosed the general nature of his interest. The article also required that the disclosure and the interest should be recorded in the minute. But it did not prescribe a time limit before which the entry was to be made in the minute. It was held that the entry was to be made within a reasonable time otherwise the resolution approving the contract was invalid.[4]

2. Minutes, presumption of truth. The minutes recorded are presumed to be true.[5] They must be taken as prima facie evidence of what happened at the meeting.[6] In other words the entry in the minutes although not conclusive yet throws the burden of proof on the party who alleges the contrary to what is recorded in the entry as having taken place at the meeting,[7] and the onus cannot be lightly discharged.[8] Therefore, a bare allegation about non-compliance with S.178 not supported by any reliable evidence, cannot be accepted in face of minutes duly maintained by company under section 173.[9]

Onus may be discharged by reliable evidence. In spite of the absence of the entry in the minute book regarding the passing of a resolution forfeiting certain shares there is sufficient evidence to presume that such a resolution had been duly passed where there are entries in the register of shares showing those shares as forfeited and transferred to the company.[10]

3. Default in furnishing copies. The section provides that the book containing minutes of proceedings of all meetings of the company shall be kept at the Registered Office of the Company. Under the law it is the Registered Office of a limited company where all documents, books and registers shall be kept. It is therefore obvious that if any copy of a document is required, it will be furnished only from Registered Office. From these provisions it is necessarily implied that

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2. PLD 1960 Lah. 609.
3. ILR 1955 Mad. 528.
4. (1915) 1915 W N 29.
5. 1984 Dhaka LR 316+AIR 1935 Lah. 157 (DB).
6. AIR 1925 Bom. 49 (DB)+AIR 1925 Bom. 105 (DB).
7. 1984 Dhaka LR 316+AIR 1925 Bom. 105 (DB).
8. 1984 Dhaka LR 316+AIR 1935 Lah. 157 (DB).
9. NLR 1992 Civ. 371=1991 MLD 2675.
10. (1867) 2 Ch App. 321.

any person requiring copy of the company's document, must, in the absence of any other official arrangements, submit his application at the Registered Office. Where the application for copies was submitted at a Branch Office of the Company. It was held that when the application for copies were not submitted at the Registered Office, the opposite party was not entitled to get them within the periods as prescribed by this section, and no offence was found to have been committed.[11]

DIRECTORS

174. *Minimum number of directors.* Notwithstanding anything contained in any other law for the time being in force every private company shall have not less than two directors and every public company not less than seven directors appointed and elected in the manner provided in this Ordinance.

Synopsis

1. Directors, position of.
2. Liability of Directors for their acts.
3. Powers of Directors.
4. Misuse of powers by Directors.
5. Duties of Directors.
6. Managing Director.

1. Directors, position of. A director or a managing director is in no way a servant of the company. He is the agent of the company for carrying on its business.[12] He is to be treated as an agent of the company only where he is acting in his capacity as a Director. Therefore the knowledge of a director of a company that certain bills endorsed to the company for value in a certain transaction were only accommodation bills will not affect the company with notice of that fact where that Director had not acted on behalf of that company in that transaction.[13] Where a director purchases property without any mandate from the Company and under circumstances which do not warrant his being treated as a trustee of the property, he cannot be compelled to give the benefit of the purchase to the company. Hence on a re-sale of that property to the company by the director, it cannot retain the sale as well as ask the director to account for the profit which he made by the sale.[14] It follows that a director who wants to set up a case that he had acted in the suit transaction not personally but as the agent of his company must set up the plea specifically in his written statement.[15]

Director, if deemed to be trustee. Directors of public companies are generally speaking better designated as agent of the company through whom the company necessarily acts. But as regards the share-holders they are still always clothed with a fiduciary character with reference to any dealing with the property of the company. Whether or not in a given case a director of a company is to be treated as a trustee

11. 1976 Dhaka LR 46 (DB).
12. AIR 1942 Lah. 47 (AIR 1940 Lah. 243 *Reversed*).
13. (1867) 2 Ch App 617.
14. (1902) 1902 App Cas 83.
15. AIR 1959 All 29.

and if so to what extend is a question of fact.[16] To put it more plainly the directors are the mere trustees or agents of the company--trustees of the company's money and property, agents in the transactions which they enter into on behalf of the company.[17] They are trustees of assets which have come into their hands, or which are under their control.[18] Therefore although directors differ from trustees in some respects yet to the extent of their being entrusted with the moneys of the company they are trustees and they are jointly and severally liable for any breach of trust.[19] Ever since joint stock companies were invented directors have been made liable to make good moneys which they have misapplied upon the same footing as if they were trustees.[20]

The power of the directors to issue shares for raising capital is a fiduciary power which cannot be exercised by them for the purpose of maintaining their own control or for defeating the wishes of the majority.[1]

Director is not trustee of individual share-holders. The directors are not trustees for the individual share-holders and hence are under no obligation, when they purchase shares, to disclose to their vendor share-holders the fact that negotiations for the sale of the undertaking are afoot.[2] But in regard to his qualification shares he cannot deal with them without giving up his directorship.[3]

2. Liability of Directors for their acts. A Director must treat company's work as his own. He is not liable for error of judgment or unavoidable absence or imprudence not amounting to gross negligence. A director (*a*) must act honestly; (*b*) must exercise such degree of skill and diligence as would amount to the reasonable care, which an ordinary man might take on his own behalf; (*c*) he ought to attend meetings when reasonably able to do so, and (*d*) he is in the absence of grounds for suspicion justified in trusting other officials properly empowered to perform duties honestly.[4] In acting in his capacity as a Director a director need not exhibit a greater degree of skill than may reasonably be expected from a person of his knowledge and experience.[5] Therefore a Chairman receiving money on behalf of a Company and expending it on matters connected with the Company cannot be made personally liable for it.[6]

A Director would only be liable for losses incurred by the company where he is shown to have acted negligently or dishonestly. Therefore in a suit by a company against its directors, with respect to decrees allowed to be time-barred by them, it was necessary for the company to show that the failure to do this was due to the

16. AIR 1962 SC 1821+6 Beng L R 278, (*But see* 1983 CLC 162 which does not lay down correct law as it does not follow the Authority on which reliance has been placed and which is quoted *in extenso*).
17. AIR 1962 SC 1821+(1872) 8 Ch A 149.
18. AIR 1962 SC 1821+(1878) 10 Ch D 450.
19. AIR 1937 Pat. 293.
20. (1894) 1894-1 Ch 616+(1888) 39 Ch D 141+(1869) 8 Eq. 381.
1. (1920) 1920-1 Ch 77.
2. (1902) 1902-2 Ch. 421.
3. (1870) 5 Ch App 559.
4. AIR 1926 Oudh 153.
5. (1925) 1925-1 Ch. 407.
6. AIR 1938 Lah. 341 (DB).

negligence of the directors. In a suit against its director, the rate of interest on a loan raised by a director was impugned but no attempt was made on behalf of the company to prove that the money urgently needed, could have been raised at any lower rate. It was held that the rate of interest was proper.[7]

3. **Powers of Directors.** Directors have power to act on behalf of the Company. That would obviously mean the Directors collectively and not that a single Director could bind a company by his act.[8]

Assets of company, disposal of. The assets of a company cannot be disposed of by a resolution of the directors only. They can be disposed of only after the resolution of the share-holders passed at the special meeting called for the purpose of winding up the company and disposing of its assets.[9]

Compromise, power to enter into. The Directors have power to settle by compromise a reasonable dispute raised by a person objecting to the company putting him on the register of share-holders and demanding call money and release him from further liability on certain terms.[10]

Power to make calls. The power which the directors have to decide whether at a particular time a call ought or ought not to be made is a fiduciary power. They must exercise that power with due regard to the interest of the share-holders and of the company and without bias.[11]

Presumption as to proper exercise of powers. Where under the articles the directors might have the authority that they purport to exercise there is a prima facie presumption that they have such authority.[12] Therefore, where directors give a security which according to the articles of the company they might have power to give, the person taking it is entitled to assume that they had the power.[13]

Voting power does not affect powers of Directors. The fact that a person holds practically all the shares in a company and therefore is in a position, by exercising his voting powers to turn out the directors and to enforce his own views as to policy does not in any way diminish the rights or powers of the directors or make the property or assets of the company his as distinct from the corporation.[14]

Limitations on powers. An article of the Company which gives its whole business into the hands of its directors and authorises them to "exercise all such powers as are not by the Ordinance or the articles required to be exercised by the company in general meeting" might imply that the directors are the company for all purpose not expressly excluded by the Ordinance or by the words of the articles. But it would be too strong a thing to construe that article as meaning that besides

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7. AIR 1932 PC 244.
8. 1968 SCMR 804
9. AIR 1938 Rang 447 (DB).
10. (1872) 5 H L 606 (Held that the deed of settlement of the company conferred such power expressly).
11. (1870) 5 Ch App 559
12. PLD 1957 Dacca 233 (DB)+(1876) 1 C P 674 (That presumption is sufficient to support a verdict against the company, in the absence of evidence to rebut it).
13. (1896) 1896 2 Ch 93.
14. (1908) 1908-2 Kar. 89.

exercising all powers of the company, which means the powers of effecting the object as detailed in the memorandum and working those out in detail in daily work, that is to say, performing the executing duties, the directors should be constituted the principal of the company as regards its agent so as to maintain a direct relation between the company and its agent and relieve any one of them of their duties to their principal.[15] The Directors cannot override the mandate given by the share-holders. Where the share-holders authorise at their general meeting the withdrawal of dissenting members to an arrangement provided the expression of their wish is received before a specified date. The directors cannot ignore that condition and enter into an arrangement with a dissenting member who has not expressed his wish to retire before the specified date.[16]

Assets of company, powers relating to. The directors of a company have a general power of dealing with the property of the company, but so far as no express power is given to them, they have only such powers of mortgage and sale as are reasonably incidental to the business they carry on. They must not deal with any property of the company in a way inconsistent with the objects and constitution of the Company.[17] Therefore the assets of a company cannot be disposed of by a resolution of the directors only. They can be disposed of only after the resolution of the share-holders passed at a special meeting called for the purpose of winding up the company and disposing of its assets.[18]

4. Misuse of powers by Directors. Directors, as men who assume complete control of a company's business, must remember that they are not at liberty to sacrifice the interests which they are bound to protect and while ostensibly acting for the company divest in their own favour business which should properly belong to the company they represent. Thus where they, while acting in the conduct of the affairs of the company, deliberately design to exclude and use their influence and position to so exclude the company from the benefit of a contract and enter into it themselves then it belongs in equity to the company and ought to be dealt with as assets of the company.[19] Where the directors of a company misuse their powers as directors to their own advantage their actions as against the company will be of no effect and the Court will not enquire whether the company derived any benefit from the transaction.[20]

A company is not bound by acts of its directors which are *ultra vires* their powers unless such acts have been expressly ratified by the share-holders or unless all, with knowledge or notice, have acquiesced in what had been done.[1]

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15. (1890) 63 L T 238.
16. (1852) 3 H L 263 (But the share-holders would be deemed to have sanctioned the arrangement where with knowledge that the directors had exceeded their authority they allow the thing to remain unimpeached for a long time).
17. (1883) 24 Ch D 408 (Directors cannot create any lien on the register of share-holders and the minute book which could deprive the company of the power of using them for the purposes of the company).
18. AIR 1938 Rang. 447 (DB).
19. (1916) 1916-1 App. Cas. 554.
20. AIR 1937 PC 279.
1. AIR 1930 Bom. 267=54 Bom. 178 (DB).

Directors obtaining benefits for themselves without informing the other share-holders must account for these benefits to the company.[2] Therefore a director who is interested in a property which is being sold to the company is bound to disclose that interest to the other directors of the company who are entering into the contract for purchase. His failure to make that disclosure would entitle the company, upon discovering his interest, to rescind the sale.[3]

5. **Duties of Directors.** A director is not bound to give continuous attention to the affairs of his company. His duties are of an intermittent nature to be performed at periodical meetings of the board and at meetings of any committee of the board upon which he happens to be placed. He is not, however, bound to attend all such meetings, though he might attend whenever, in the circumstances, he is reasonably able to do so. In respect of all duties that, having regard to the exigencies of business, and the articles of association, may properly be left to some other official, a director is, in the absence of grounds for suspicion, justified in trusting that official to perform that duty honestly.[4]

It is the duty of the directors to inform the share-holders of their policy and also the facts relating to that policy. They are also entitled to canvas votes in support of their policy. Any expenses incurred by them in that regard are expenses incurred by them in the interest of the company and are therefore properly payable out of the funds of the company.[5]

Directors not performing duty. If the directors of a company, for personal reasons refuse or are unwilling or unable to do an act for the company or by reason of their own acts disabled themselves from so acting, the company can act through others who have an interest in the affairs of the company.[6]

6. **Managing Director.** A person dealing with a Company is not concerned with its "indoor management" and may assume that all is being done regularly. Thus where the Articles give power to borrow, a lender who realise on his power need not inquire into whether any sanction was given to the Director concerned to do so or not. He may assume that it has and if he is acting bona fide he will, even though sanction has not been obtained, stand in as guarded a position as it had been given.[7] Thus where the Articles of Association provide for delegation of powers by the Directors to the managing director, a person dealing with such managing director may assume that the managing director has the power to do what he purports to do provided that it is within the ordinary duties of the Managing Director.[8]

Rights of, against company. Where due to the winding up the services of the Managing Director stood terminated before the expiry of the period of his contract with the company and the winding up was not brought about by his

2. (1900) 1900-2 Ch 56.
3. (1887) 12 App. Cas. 652.
4. (1925) 1925-1 Ch. 407.
5. (1907) 1907-1 Ch. 5.
6. 52 Cal. W. N. 188 (DB).
7. PLD 1970 Lah. 235.
8. PLD 1970 Lah. 235+AIR 1957 Ker. 97.

mismanagement; it was held that he was entitled to enforce the contract against the liquidator and recover compensation on the ground of premature termination of his service.[9]

175. *Only natural persons to be directors.* Only a natural person shall be a director and no director shall be variable representative of a body corporate.

176. *First directors and their term.* (1) In default of and subject to any provisions in the articles of a company and section 174, the number of directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum, and until so determined all the subscribers of the memorandum who are natural persons shall be deemed to be the directors of the company.

(2) The first directors shall hold office until the election of directors in the first annual general meeting.

Synopsis

1. Subscribers to memorandum, position of.
2. Appointment of Directors.
3. Validity of appointment.
4. Void election.

1. Subscribers to memorandum, position of. The subscribers to the memorandum are not directors but are only persons who are to be deemed as such until the appointment of directors takes place.[10] Where they do not choose to act themselves as directors but simply to nominate others, they are under no obligation to meet for the purpose. What is required of them is, that they shall determine the number of directors and the names of first directors. It is sufficient if all of them in any way show their determination on the subject and that determination ought to be treated as valid.[11]

2. Appointment of Directors. According to the requirements of the statute the directors of a company can only be appointed at a general meeting by the share-holders. A contract entered into by the company with another company under which the latter can appoint a certain specified number of its directors to the board of directors of the former is illegal.[12] The nomination by a third party entitled under a contract with a company to nominate its directors cannot bring about appointment as directors of the persons nominated.[13] Where a share-holder of a private limited company had made an arrangement as to election of Directors and Managing

9. AIR 1957 All. 143 = ILR (1958) 1 All. 407 (DB).
10. (1891) 1891-2 Ch 386.
11. (1890) 44 Ch D 472.
12. (1873) 6 H L 335.
13. (1916) 85 L J Ch 801 (In this case the Court while leaving open the question whether such a contract would be enforced against the company under any circumstances at all held that it would not do so, at any rate, while the contract remained executory).

Directors whereunder the petitioner was to remain Managing Director of the company but subsequently the company was converted into a public limited company. The Articles of Association of the company were altered after the conversion and restriction on the right to transfer shares and prohibition against invitation to the public to subscribe to any shares, were removed. This was done to bring the company in consonance with the definition of public Company contained in section 3 in accordance with the Articles of Association. The Directors were to retire by rotation, though they were eligible for re-election. There was no provision in them for equal representation. By transfer and issue of new shares to the public the respondents made the company broadbased and obtained more capital urgently required for expanding the business of the company. This resulted is disturbing the equilibrium in the shares held by the new groups and finally in the exclusion of the petitioner and his group from the management and control of the affairs of the company. He thereupon challenged his removal from office. The Court refused to enforce prior arrangements because to accept such a contention would be to give the agreement a sanctity which could not fit in with the Articles of Association and the provision of the statute.[14]

Determination of number of elected Directors. Directors of Company would fix number of elected Directors of Company not later than thirty-five days, before commencing of general meeting at which Directors were to be elected; number so fixed should not be changed except with prior approval of a general meeting of the company.[15]

Delegation of power to appoint Directors. A Company can delegate to the Board of Directors its power to appoint directors. But where there is no legally constituted Board of Directors or where the board, if it is there, is unwilling to act in exercise of the power delegated by the company to appoint directors, the company in exercise of its inherent right can itself appoint directors at the general meeting.[16]

Appointment of Director by another Director by will. This section contemplates an appointment by a director of another person as director to take his office, when made vacant by his resignation or death or the expiry of the term of his office. There will be nothing illegal, if the power is exercised in the case of the death of the director, by an appointment made by his will.[17]

Appointment by Government. A Company which is incorporated and is being run according to its Memorandum and Articles, cannot be dictated to by Government in its Policy matters. Notification issued by Secretary Industries of Government appointing and designating himself as Chairman of Board of Directors of Company was quashed by High Court in its writ jurisdiction. All acts and orders based on or in consequence of notification were also rendered nullity in law.[18]

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14. AIR 1963 Orissa 189 (DB).
15. 1991 MLD 2675=PLJ 1991 Kar. 399=NLR 1992 Civ. 371.
16. AIR 1953 Mad. 520=ILR 1953 Mad. 966 (DB).
17. AIR 1961 SC 373.
18. NLR 1996 UC 173.

3. Validity of appointment. Person dealing with the Director or Managing Directors of a Company are not called upon to enquire whether the Directors have been validly appointed or whether there is a specific resolution authorizing them to do a particular act, if it is clear from Articles of Association of the company that they could have been authorized to do the said act.[19]

4. Void election. Where directors are elected at the general meeting but not in conformity with the articles of the association, their election is void and they can remain as directors only until they are validly replaced in accordance with the articles.[20] Where the precondition that members of the company should have paid the dues of the company before voting for election had not been met by members who voted in the election; the election was set aside and fresh election was ordered.[21]

How election may be challenged. A suit challenging the position of a particular Board of Directors and to remove them from the directorate is wrongly constituted. But a suit to declare plaintiff a director and for the protection of his right is competent.[22] In a suit for a declaration and injunction by an excluded director, the Court should grant temporary injunction restraining the defendants from interfering with the rights of the plaintiff.[1]

177. *Retirement of directors.* On the date of the first annual general meeting of a company all directors of the company for the time being who are subject to election shall stand retired from office and thereafter all such directors shall retire on the expiry of the term laid down in section 180:

Provided that the directors so retiring shall continue to perform their functions until their successors are elected:

Provided further that the directors so continuing to perform their functions shall take immediate steps to hold the election of directors and in case of any impediment report the circumstances of the case to the registrar within fifteen days of the expiry of the term laid down in section 180.

1. Scope. Provision of section 177, Companies Ordinance, 1984 provides for retirement of directors who were subject to election and thereafter to follow procedure as laid down under section 180 of the Ordinance. Proviso of section 177, Companies Ordinance directs to take steps immediately to hold election of Directors or if there were any impediments, same should be communicated to Registrar within fifteen days. Where neither such plea was taken nor Registrar was informed by respondents. It was held that where two groups of closely related family members were involved in tussle to get controlling power and oust the other one, it

19. PLD 1957 Dacca 233 (DB).
20. 57 Cal L Jour 143.
21. PLD 1961 Lah. 723=PLR 1962 (2) W P 368 (DB).
22. AIR 1941 Cal. 136=ILR (1940) 1 Cal. 560.
1. AIR 1933 All. 344=55 All. 399 (DB).

was obligatory that all legal requirements were complied with. Provisions of Companies Ordinance, 1984 having not been complied with by respondents, annual general meeting and adjourned general meeting conducted by them for the election of directors without notice served on petitioners were declared to be invalid. Official Assignee was directed to conduct such meeting in accordance with law.[2]

178. ***Procedure for election of directors.*** (1) The directors of a company shall, subject to section 174, fix the number of elected directors of the company not later than thirty-five days before the convening of the general meeting at which directors are to be elected, and the number so fixed shall not be changed except with the prior approval of a general meeting of the company.

(2) The notice of the meeting at which directors are proposed to be elected shall among other matters, expressly state--

(*a*) the number of elected directors fixed under sub-section (1); and

(*b*) the names of the retiring directors.

(3) Any person who seeks to contest an election to the office of director shall, whether he is a retiring director or otherwise, file with the company, not later than fourteen days before the date of the meeting at which elections are to be held, a notice of his intention to offer himself for election as a director:

Provided that any such person may, at any time before the holding of election, withdraw such notice.

(4) All notices received by the company in pursuance of sub-section (3) shall be transmitted to the members not later than seven days before the date of the meeting, in the manner provided for sending of a notice of general meeting, in the normal manner or in the case of a listed company by publication at least in one issue each of a daily newspaper in English language and a daily newspaper in Urdu language having circulation in the Province in which the stock exchange on which its securities are listed is situate.

(5) The directors of a company having a share capital shall, unless the number of persons who offer themselves to be elected is not more than the number of directors fixed under sub-section (1), be elected by the members of the company in general meeting in the following manner, namely:--

2. 1996 MLD 1943.

(*a*) a member shall have such number of votes as is equal to the product of the number of voting shares or securities held by him and the number of directors to be elected;

(*b*) a member may give all his votes to a single candidate or divide them between more than one of the candidates in such manner as he may choose; and

(*c*) the candidate who gets the highest number of votes shall be declared elected as director and then the candidate who gets the next highest number of votes shall be so declared and so on until the total number of directors to be elected has been so elected.

Synopsis

1. Number of Directors. 2. Tenure of Directors.

3. Mode of election.

1. Number of Directors. Directors of a Company have first to fix number of elected Directors of the Company not later than thirty-five days before convening of general meeting at which Directors have to be elected. Once number of Directors has been fixed in accordance with provisions of S.178, Companies Ordinance, same could not be altered except with prior approval of general meeting of the Company. Where two out of four Directors of Company fixed number of Directors as three instead of four, same was in violation of provisions of S.178, Companies Ordinance, 1984, because such decision was rendered in absence of other two Directors and without prior approval of general meeting of the Company.[3]

2. Tenure of Directors. Where the general meeting at which the election of directors should have taken place came to an end before such election could take place; it was held that the directors elected at the previous general meeting could continue in office.[4] But where no meeting was held because of the default of the directors themselves in not calling a meeting; it was held that those directors could not take advantage of their default and continue beyond their term of office.[5]

3. Mode of election. The mode of election of a Director is governed by the Articles of Association. Where an article of a Company provided that if no election takes place at a meeting where such an election was intended, that the meeting shall stand adjourned to the same day the following week and if no election takes place the vacating directors shall be deemed to have been re-elected. By another article the directors had powers to co-opt to fill up vacancies or as additions and persons so co-opted were to hold office till the next general meeting. The directors co-opted six persons and in the following general meeting, these co-opted directors were not elected specifically nor were the vacancies filled up. It was held: that they should be

3. 1991 CLC 589+1991 MLD 2675=NLR 1992 Civ. 371=PLJ 1991 Kar. 399.
4. AIR 1928 Cal. 868 (DB).
5. AIR 1953 Mad. 520 (DB)+AIR 1953 Mad. 467 (DB)+AIR 1960 Bom. 312+1914-1 Ch. 883.

deemed to have been elected according to the terms of the first article.[6] But no such election can be deemed to have taken place where the Articles do not provide for the contingency. Thus where under the articles of a company there were two sets of directors, namely, the share-holders' directors and the policy-holders' directors. At a meeting convened for the election of certain directors to be elected by the share-holders the chairman ordered poll to take place on the certain date. But no poll took place on that day because of the absence of both the chairman and the polling officer. Thereupon the policy holders' directors co-opted certain share-holders as directors. It was held that their action was *ultra vires*.[7]

Succession to deceased Director. Petition for succession to deceased directors of company, would be maintainable only after obtaining succession certificate in respect of share of deceased director. Hearing of petition may be adjourned to enable petitioner to obtain succession certificate.[8]

179. *Circumstances in which election of directors may be declared invalid.* The Court may, on the application of members holding not less than twenty per cent of the voting power in the company, made within thirty days of the date of election, declare election of all directors or any one or more of them invalid if it is satisfied that there has been material irregularity in the holding of the elections and matters incidental or relating thereto.

1. **Void election.** Where directors are elected at the general meeting but not in conformity with the articles of the association, their election is void and they can remain as directors only until they are validly replaced in accordance with the articles.[9] Where the precondition that members of the company should have paid the dues of the company before voting for election had not been met by members who voted in the election; the election was set aside and fresh election was ordered.[10]

Where during winding up of private company, management of the company remains in the hands of its Directors, share-holder of a company having twenty per cent, of share holding could not be permitted to invoke provisions of S.179. Therefor application of a Director under S.314, alonghwith O.XXXIX, Rr.1 & 2, C.P.C. 1908 was misconceived and not maintainable.[11]

How election may be challenged. A suit challenging the position of a particular Board of Directors and to remove them from the directorat is wrongly constituted. But a suit to declare plaintiff a director and for the protection of his right is competent.[12] In a suit for a declaration and injunction by an excluded

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6. AIR 1941 Cal. 136=ILR (1940) 1 Cal. 560.
7. AIR 1932 Mad 100 (DB).
8. NLR.1989 UC 682.
9. 57 Cal L Jour 143.
10. PLD 1961 Lah. 723=PLR 1962 (2) W P 368 (DB).
11. 1991 MLD 2675=PLJ 1991 Kar 399=NLR 1992 Civ. 371.
12. AIR 1941 Cal. 136=ILR (1940) 1 Cal. 560.

director, the Court should grant temporary injunction restraining the defendant from interfering with the rights of the plaintiff.[13]

180. *Term of office of directors.* (1) A director elected under section 178 shall hold office for a period of three years unless he earlier resigns, becomes disqualified from being a director or otherwise ceases to hold office.

(2) Any casual vacancy occurring among the directors may be filled up by the directors and person so appointed shall hold office for the remainder of the term of the director in whose place he is appointed.

181. *Removal of director.* A company may by resolution in general meeting remove a director appointed under section 176 or section 180 or elected in the manner provided for in section 178:

Provided that a resolution for removing a director shall not be deemed to have been passed unless the number of votes in favour of such a resolution is not less than--

(*i*) the minimum number of votes that were cast for the election of a director at the immediately preceding election of directors, if the resolution relates to removal of director elected in the manner provided in sub-section (5) of section 178; or

(*ii*) the total number of votes for the time being computed in the manner laid down in sub-section (5) of section 178 divided by the number of directors for the time being, if the resolution relates to removal of a director appointed under section 176 or section 180.

Synopsis

1. Removal of Director.
2. Managing Director, removal of.

1. Removal of Director. Where the articles expressly require a resolution for the removal of a director from office, the Board of Directors cannot, relying on a rule made by them under powers conferred on them by the articles to the effect that a director who defaulted in repayment of loans would cease to be a director, declare a director to have vacated his office on the ground of such failure.[14] However, the competency of a general meeting summoned by the directors, to pass a special resolution to remove a director is not affected by any irregularity, such as the

13. AIR 1933 All 344=55 All 399 (DB).
14. AIR 1942 Mad. 737=ILR 1943 Mad 291.

insufficiency of notice to the director concerned, in the convening of the board meeting at which the resolution to summon the general meeting was passed.[15]

2. Managing Director, removal of. Though the articles of a company do not provide for the removal of a person from his office of managing director, the directors can revoke the appointment under section 203 of the Contract Act because the relationship between them is that of principal and agent.[16] A managing director removed from his office can in his own name maintain a suit to have a declaration that despite such removal he continued to be in office and that the person elected in his place was not the managing director.[17]

182. *Creditors may nominate directors.* In addition to the directors elected or deemed to have been elected by share-holders, a company may have directors nominated by the company's creditors, or other special interests by virtue of contractual arrangements.

183. *Certain provisions not to apply to directors representing special interests.* Nothing in section 178, section 180 or section 181 shall apply to--

(*a*) directors nominated by the Pakistan Industrial Credit and Investment Corporation Limited or by a corporation or company formed under any law in force and owned or controlled, whether directly or indirectly, by the Federal Government or a Provincial Government on the board of directors of a company in or to which the said Corporation or such corporation or company has made investment or otherwise extended credit facilities;

(*b*) directors nominated by the Federal Government or a Provincial Government on the board of directors of the company; or

(*c*) directors nominated by foreign equity holders on the board of the Pakistan Industrial Credit and Investment Corporation Limited, or of any other company set up under a regional co-operation or other co-operation arrangement approved by the Federal Government:

Provided that, where a director referred to in clause (*a*), (*b*) or (*c*) is nominated, such number of the votes computed in the manner laid down in sub-section (5) of section 178 as is equal to the minimum number of votes which would have been sufficient to elect such director if he had offered himself for election shall stand

15. (1887) 37 Ch D 1.
16. AIR 1939 Bom. 201.
17. AIR 1951 Mad. 542.

excluded from the total number of votes otherwise available at an election of the directors to the authority or person nominating him:

Provided further that a director nominated under this section shall hold office during the pleasure of the corporation, company, Government or authority which nominate him.

184. *Consent to act as director to be filed with registrar.* (1) No person shall be appointed or nominated a director or chief executive of a company or represent as holding such office, nor shall any person describe or name any other person as a director or proposed director or chief executive or proposed chief executive of any company, unless such person or such other person has given his consent in writing to such appointment or nomination and that consent has been filed by the company with registrar before such appointment or nomination or being described or named as a director or proposed director or chief executive or proposed chief executive of the company, as the case may be.

(2) Within seven days of the issue of certificate of incorporation of a company, the subscribers to the memorandum of association shall file with the registrar a list of persons who have consented to act as directors of the company alongwith their consent to do so.

(3) This section shall not apply to a private company, not being a private company which is subsidiary of a public company.

1. **Scope.** The words "persons appointed as Directors" includes persons elected as Directors. Thus section 184 would be applicable to the persons who have been elected as Directors of the Company.[18]

Consent of Directors. Section 184(1) envisages two stages. Firstly, it is imperative for Directors appointed or nominated to file consent to act as directors. Secondly, it is obligatory upon the company that their consent be filed by the Company "with the Registrar before such appointment or nomination or being described or named as a director or proposed director or chief executive or proposed chief executive of the company, as the case may be". Besides the doctrine of indoor management aims at efficatious and smooth running of the affairs of the company by necessary implication it also casts upon those at the helm of administration a duty to call upon the directors appointed, elected or nominated to file their consent in writing in case no such consent is forthcoming. Where directors have not given their consent to their appointment, they cannot be removed without giving them a show cause notice.[19]

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18. 1990 MLD 348.
19. 1990 MLD 348.

185. *Validity of acts of directors.* No act of a director, or of a meeting of directors attended by him, shall be invalid merely on the ground of any defect subsequently discovered in his appointment to such office:

Provided that, as soon as any such defect has come to notice, the director shall not exercise the right of his office till the defect has been rectified.

Synopsis

1. Scope.
2. Defect of appointment, does not invalidate acts done by Director.
3. *De facto* Director.
4. Board of Directors acting with *de facto* Directors on it.
5. Challenge to validity of acts done by *de facto* director.

1. Scope. Where a person continues to act as a director even after his term of office has expired or where he had from the very outset usurped the office without the colour of authority, the section will not apply to his acts.[20]

2. Defect of appointment does not invalidate acts done by Director. Acts done bona fide by a Manager or Director are valid in spite of a defect in his appointment, not only between company and outsiders but also between company and its members.[1] It is the subsequent discovery of defect in the appointment or qualification of a director which section 185 seeks to cure for certain purposes and not the subsequent discovery of complete absence of factual appointment of director.[2] Moreover the defect should be known at the time when the acts were done Where any action of a Director of a company is challenged on account of defect in his appointment, onus would be on the person questioning such action to show further that the Director acted as such in spite of the defect coming to his notice and without rectification of the same.[4]

3. 'De facto' Director A person, who, although he had been appointed irregularly as a director, continues bona fide to act as such, is a *de facto* director.[5] As between the company and third persons having no notice to the contrary, directors *de facto* are directors *de jure*.[6] Therefore a plaint signed on behalf of the company in good faith by a person as a director is valid in view of section 185 even if the person happens to be only a *de facto* director.[7]

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20 (1946) 1946-1 All E R 586+AIR 1959 Cal 715.
1 PLD 1990 Kar. 198=NLR 1992 CLJ 557+1990 MLD 348+PLD 1970 Lah. 235+1911 Pun Re (Civ) No. 46, p. 165 (DB).
2 1910 Punj 655+(1946) 1946-1 All E R 586.
3 AIR 1927 Lah. 797 (DB).
4 PLD 1990 Kar. 198=NLR 1992 CLJ 557.
5 AIR 1931 Rang 139=9 Rang 56 (DB).
6 PLD 1970 Lah. 235+10 Ind Cas 748 (Bom).
7 AIR 1931 Rang 139=9 Rang 56 (DB).

Acts must be bond fide. Acts of directors not *de jure* but *de facto* will be upheld by Courts only if they had been done bona fide in the interest of the company. If the sole motive of the *de facto* directors in selling certain shares which were subject to lien for debts was not to benefit the company but to promote their private interest and deprive the share-holder of his voting power and the purchaser also is not an innocent purchaser, the Court would not uphold that sale.[8] But where the directors bona fide and oblivious to the fact that they had disqualified themselves by no-payment of allotment and call money proceeded to allot shares to applicants and make calls; the allotment as well as the calls made by them were binding and valid.[9]

4. Board of Directors acting with 'de facto' Directors on it. The proceedings of the board of directors are not vitiated by the fact that one of them who had ceased to be a director took part in such proceedings when the fact was unknown to them.[10]

5. Challenge to validity of acts done by 'de facto' director. Merely raising a doubt as to the validity of the appointment of a director is not enough to attract the proviso to section 185.[11] A defendant challenging the competency of a director who signed the plaint should be allowed to cross-examine the director to enable him to expose all facts which would render the provision of section 185 inapplicable to the case.[12] Moreover only a person interested in the matter can challenge validity of acts of a director. When a company is shown to have accepted a certain person for many years as its director and had never on any occasion repudiated any of his acts as such, it is not open to one who has no concern with the company to challenge the appointment of such director or to contest his authority to act on behalf of the company.[13]

186. *Penalties.* Whoever knowingly and wilfully contravenes or fails to comply with any of the provisions of sections 174 to 185 or is a party to the contravention of the said provisions shall be liable to a fine which may extend to ten thousand rupees and may also be debarred by the authority which imposes the fine from becoming or continuing as director of the company for a period not exceeding three years.

1. Scope. Imposition of penalties under sections 186 & 189 and for relief required "Authority" is to be approached and not the High Court.[14]

Failure of Chief Executive of Company to hold election of Directors of Company, would make him liable to penalties provided by sections 186, 492.[15]

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8. AIR 1959 Cal. 715.
9. AIR 1935 Lah. 464+AIR 1950 All. 508 (DB)+AIR 1914 All. 471 (DB).
10. AIR 1956 Pepsu 89.
11. AIR 1960 Punj. 655.
12. AIR 1931 Rang 54 (DB).
13. AIR 1915 Lah 478 (DB).
14. PLD 1987 Lah. 569=PLJ 1987 Lah. 585.
15. NLR 1993 UC 476=1993 CLC 1413.

Removal of Directors for non-filing of consent. The language of section 186 of the Ordinance is unambiguous and empowers the Corporate Law Authority only to impose penalties including debarring the directors from becoming or continuing as director if they have failed to file their consent in writing as envisaged under section 184 of the Ordinance. There is nothing in the Company to expel, disqualify or debar their co-directors in any given situation. The Resolution of the "Board of Directors" whereby the respondent Directors had disqualified the applicant Directors to hold the office of director was held to be *ultra vires* of the Companies Ordinance.[16]

187. *Ineligibility of certain persons to become director.* No person shall be appointed as a director of a company if he--

(*a*) is a minor;

(*b*) is of unsound mind;

(*c*) has applied to be adjudicated as an insolvent and his application is pending;

(*d*) is an undischarged insolvent;

(*e*) has been convicted by a Court of law for an offence involving moral turpitude;

(*f*) has been debarred from holding such office under any provision of this Ordinance;

(*g*) has betrayed lack of fiduciary behaviour and a declaration to this effect has been made by the Court under section 217 at any time during the preceding five years;

(*h*) is not a member:

Provided that clause (*h*) shall not apply in the case of--

(*i*) a person representing the Government or an institution or authority which is a member;

(*ii*) a whole-time director who is an employee of the company;

(*iii*) a chief executive; or

(*iv*) a person representing a creditor.

188. *Vacation of office by the directors.* (1) A director shall *ipso facto* cease to hold office if--

16. 1990 MLD 348.

(*a*) he becomes ineligible to be appointed a director on any one or more of the grounds enumerated in clauses (*a*) to (*h*) of section 187;

(*b*) he absents himself from three consecutive meetings of the directors or from all the meetings of the directors for a continuous period of three months, whichever is the longer, without leave of absence from the directors;

(*c*) he or any firm of which he is a partner or any private company of which he is a director--

(*i*) without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of chief executive or a legal or technical adviser or a banker; or

(*ii*) accepts a loan or guarantee from the company in contravention of section 195.

(1) Nothing contained in sub-section (1) shall be deemed to preclude a company from providing by its articles that the office of director shall be vacated on any grounds additional to those specified in that sub-section.

Synopsis

1. Scope.
2. Provision in Articles of Company.
3. Resignation by Director.

1. Scope. Nothing contained in the Articles of Association of a company can detract from the statutory provisions contained in sub-section (1) which has enumerated the contingencies upon the happening of which a director would vacate his office.[17] On the happening of such contingency the vacation of office is automatic. The board of directors cannot waive the effect of the event which, when it happens, results in the director ceasing to be such.[18]

2. Provision in Articles of Company. Nothing prevents a company from providing for additional grounds upon which also the office of the director would fall vacant. The Company should however in creating such grounds must specify them in the articles in the same manner in which the statutory contingencies have been stated by the section.[19] Where the articles of a company **provided** that a director shall *ipso facto* cease to be such "if he resigns or for any other reason becomes incapable of acting as a director". It was held that the other reasons

17. AIR 1956 Bom 190 (DB).
18. AIR 1956 Pepsu 89.
19. AIR 1956 Bom. 190 (DB).

referred only to such events as incapacity due to long illness, absence, etc. but not to the director's indebetness to the company.[20]

Board of Directors cannot waiver provision in Articles. Where the articles have provided that a director shall vacate his office on the happening of certain events or on the doing of certain acts he automatically vacates his office on the happening of those events or the doing of those acts. The board of directors cannot either waive the event or condone the act which has caused the vacation of office.[1]

3. **Resignation by Director.** The Articles of Association can provide, that a director shall vacate his office on grounds not specified in section 188 of the Companies Ordinance, 1984 and since resignation is a contingency not listed in the section, it can appropriately be made an additional ground in the articles of association leaving of course, full discretion to the framers of the articles of association to provide for the date on which resignation shall be deemed to take effect.[2] When resignation by notice is one of the conditions in Articles of Association in addition to provisions of section 188, if a Director resigns from the directorship the resignation operates from the moment of its communication to the company. Where by the articles a director has power to resign at any time, his resignation takes effect independently of its acceptance by the other directors of the company.[3]

189. *Penalty for unqualified person acting as director, etc.* If a person who is not qualified to be a director or chief executive or who has otherwise vacated the office of director or chief executive describes or represents himself or acts as a director or chief executive, or allows or causes himself to be described as such, he shall be liable in respect of each day during which he so describes or represents or acts, or allows or causes himself to be described, as such, to fine which may extend to two hundred rupees.

190. *Ineligibility of bankrupt to act as director, etc.* (1) If any person being an undischarged insolvent acts as chief executive, director or managing agent of a company, he shall be liable to imprisonment for a term not exceeding two years, or to a fine not exceeding ten thousand rupees, or to both.

(2) In this section the expression "company" includes a company incorporated outside Pakistan which has a place of business in Pakistan.

191. *Restriction on director's remuneration, etc.* (1) The remuneration of a director for performing extra services, including the holding of the office of chairman, shall be determined by the

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20. AIR 1942 Mad 737+ILR 1943 Mad 291.
1. (1904) 1904-1 Ch 276.
2. PLD 1962 Pesh 175 (DB).
3. PLD 1973 SC 160.

directors or the company in general meeting in accordance with the provisions in the company's articles.

(2) The remuneration to be paid to any director for attending the meetings of the directors or a committee of directors shall not exceed the scale approved by the company or the directors, as the case may be, in accordance with the provisions of the articles.

1. Remuneration of Directors. The acceptance of the office of director by a person implies the existence of an agreement between him and the company to the effect that he will serve the company on the terms as to qualification and otherwise and on the part of the company that it will pay him the remuneration and provide him with the benefits to which a director is entitled under the articles.[4] The directors have no right to be paid for their services and cannot pay themselves or each other or make presents to themselves out of the company's assets unless authorised so to do by the instrument which regulates the company or by the shareholders at a properly convened meeting.[5] They cannot get out of the assets of the company travelling expenses incurred by them in attending Board meetings. There must be a resolution of the company or a provision in the articles to authorise the payment.[6]

Retired Director. Where the articles of a company provide that the directors should retire at the general meeting required to be held once in every year the directors vacate their office, even when they hold no such meeting, on the last day on which the meeting could have been held for that year. After that day and until their re-election the directors continuing to act as such can have no claim for any remuneration.[7]

192. *Restriction on assignment of office by directors.* (1) If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director of the company to assign his office as such to another person, any assignment of office made in pursuance of the said provision shall, notwithstanding anything contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company.

(2) Notwithstanding anything contained in sub-section (1) the appointment by a director, with the approval of the directors, of an alternate or substitute director to act for him during his absence from Pakistan of not less than three months, shall not be deemed to be an assignment of office.

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4. 1892-2 Ch 158.
5. 1895-1 Ch 674.
6. 1905-1 KB 687.
7. 1914-1 Ch 883.

(3) The alternate director appointed under sub-section (2) shall *ipso facto* vacate office if and when the director appointing him returns to Pakistan.

Synopsis

1. Applicability. 2. Appointment of Director.

1. Applicability. This section applies to managing directors.[8]

2. Appointment of Director. The word assignment does not mean or include "appointment". It contemplates an appointment by a director of another person as director to take his officer when made vacant by the resignation or death or the expiry of the term of his office. There will be nothing illegal, if the power is exercised in the case of the death of the director, by an appointment made by his will.[9]

193. *Proceedings of directors.* (1) The quorum for a meeting of directors of a listed company shall not be less than one-third of their number or four, whichever is greater.

(2) The directors of a public company shall meet at least twice in a year.

(3) If a meeting of directors is conducted in the absence of a quorum specified in sub-section (1), or a meeting of directors is not held as required by sub-section (2), the chairman of the directors and the directors shall be liable--

(*a*) to a fine not exceeding ten thousand rupees and in the case of a continuing default to a further fine not exceeding one hundred rupees for every day after the first during which the default continues, if the contravention relates to a listed company; or

(*b*) to a fine not exceeding two thousand rupees and in the case of a continuing default to a further fine not exceeding fifty rupees for every day after the first during which the default continues, if the contravention relates to a non-listed company.

194. *Liabilities, etc. of directors and officers.* Save as provided in this section, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, chief executive or officer of the company or any person, whether an officer of the company or not, employed by

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8. AIR 1960 Bom. 167 (DB).
9. AIR 1961 SC 473 (*Reversed* AIR 1960 Bom. 167).

the company as auditor, from, or indemnifying him against, any liability which by virtue of any law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company, shall be void:

Provided that, notwithstanding anything contained in this section a company may, in pursuance of any such provision as aforesaid, indemnify any such director, chief executive, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted, or in connection with any application under section 488 in which relief is granted to him.

1. **Liability of Directors for their acts.** A Director must treat company's work as his own. He is not liable for error of judgment or unavoidable absence or imprudence not amounting to gross negligence. A director (*a*) must act honestly: (*b*) must exercise such degree of skill and diligence as would amount to the reasonable care, which an ordinary man might take on his own behalf; (*c*) he ought to attend meetings when reasonably able to do so, and (*d*) he is in the absence of grounds for suspicion justified in trusting other officials properly empowered to perform duties honestly.[10] In acting in his capacity as a director, a director need not exhibit a greater degree of skill than may reasonably be expected from a person of his knowledge and experience.[11] Therefore a Chairman receiving money on behalf of a company and expending it on matters connected with the company cannot be made personally liable for it.[12]

A Director would only be liable for losses incurred by the company where he is shown to have acted negligently or dishonestly. Therefore in a suit by a company against its directors, with respect to decrees allowed to be time-barred by them, it was necessary for the company to show that the failure to do this was due to the negligence of the director. In a suit against its director, the rate of interest on a loan raised by a director was impugned but no attempt was made on behalf of the company to prove that the money urgently needed, could have been raised at any lower rate. It was held that the rate of interest was proper.[13]

195. *Loans to directors, etc.* (1) Save as otherwise provided in sub-section (2), no company, hereafter in this section referred to as "the lending company", shall, directly or indirectly, make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to, or to any other person by,--

10. AIR 1926 Oudh 153.
11. (1925) 1925-1 Ch 407.
12. AIR 1938 Lah. 341 (DB).
13. AIR 1932 PC 244.

(*a*) any director of the lending company or of a company which is its holding company or any partner or relative of any such director;

(*b*) any firm in which any such director or relative is a partner;

(*c*) any private company of which any such director is a director or member;

(*d*) any body corporate at a general meeting of which not less than twenty-five per cent of the total voting power may be exercised or controlled by any such director or his relative, or by two or more such directors together or by their relatives; or

(*e*) any body corporate, the directors or chief executive whereof are or is accustomed to act in accordance with the directions or instructions of the chief executive, or of any director or directors, of the lending company:

Provided that a company may, with the approval of the Authority, make a loan or give any guarantee or provide any security in connection with a loan made by any other person to a director who is in the whole-time employment of the company for the purpose of acquisition or construction of a dwelling house or land therefor or for defraying the cost of any conveyance for personal use or household effect or for defraying any expense on his medical treatment or the medical treatment of any relative as are ordinarily made or provided by the company to its employees.

Explanation. "Relative" in relation to a director means his spouse and minor children.

(2) Sub-section (1) shall not apply to--

(*a*) any loan made, guarantee given or security provided--

(*i*) by a private company, unless it is a subsidiary of a public company; or

(*ii*) by a banking company;

(*b*) any loan made by a holding company to its subsidiary; or

(*c*) any guarantee given or security provided by a holding company in respect of any loan made to its subsidiary.

(3) Where any loan made, guarantee given or security provided by a lending company and outstanding at the commencement of this

ordinance could not have been made, given or provided, if this section had then been in force, the lending company shall within six months from the commencement of this Ordinance enforce the repayment of the loan made or, as the case may be, of the loan in connection with which the guarantee was given or the security was provided, notwithstanding any agreement to the contrary:

Provided that this sub-section shall not apply where the loan made, guarantee given or security provided to a whole-time director is approved by the Authority as provided in the proviso to sub-section (1).

(4) Every person shall within fourteen days of his appointment as director or chief executive of a company file with the registrar the particulars of any loan, taken, or guarantee or security obtained, prior to his becoming director or chief executive of the lending company which could not have been taken or obtained without the prior approval of the Authority had he at the time of taking the loan or obtaining the guarantee or security been the director or chief executive of the lending company.

(5) Every person who is knowingly a party to any contravention of this section, including in particular any person to whom the loan is made or who has taken the loan in respect of which the guarantee is given or the security is provided, shall be punishable with fine which may extend to five thousand rupees or with simple imprisonment for a term which may extend to six months:

Provided that where any such loan, or any loan in connection with which any such guarantee or security has been given or provided by the lending company, has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section, and where the loan has been repaid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be proportionately reduced.

(6) All persons who are knowingly parties to any contravention of sub-section (1) or (3) shall be liable, jointly and severally, to the lending company for the repayment of the loan or for making good the sum which the lending company may have been called upon to pay by virtue of the guarantee given or the security provided by such company.

(7) Sub-section (1) shall apply to any transaction represented by a book-debt which was from its inception in the nature of a loan or an advance.

(8) No officer of the lending company or of the borrowing body corporate shall be punishable under sub-section (5) or shall incur the liability referred to in sub-section (6) in respect of any loan made, guarantee given or security provided after the commencement of this Ordinance in contravention of clause (*d*) or (*e*) of sub-section (1), unless at the time when the loan was made, the guarantee was given or the security was provided by the lending company, he knew or had express notice that clause was being contravened thereby.

Synopsis

1. Scope. 2. Banking company.

3. Contravention of section.

1. Scope. The purpose of sections 195 and 208 of the Ordinance is to secure the funds of the company and to curb the abuse of powers by the directors who hold interest in more than one company.[14] So far as the provisions of section 195 are concerned there is no distinction between a loan and a deposit. Both in case of a loan and a deposit there is relationship of a debtor and a creditor and the amount is repayable to the creditor.[15]

Director, Karta of joint Hindu family. When an amount is taken by the *karta* of a joint Hindu family concern, it is a loan to him though the members of the family may also be liable to pay it. When the *Karta* of the joint family concern is also a director of the lending company it is a loan to a director and the provisions of this section are attracted.[16]

2. Banking company. The provisions of the Ordinance shall have effect as if for the purpose of clause (*g*) of sub-section (2) of section 195, the words "Banking company" had the same meaning in the Banking Tribunals Ordinance, 1984 (LVIII of 1984).[17]

There is no prohibition against banking company lending money to concerns, of which a director of the bank is also a director. There are certain prohibitions under section 195 but these prohibitions do not apply to banking companies,[18] because loans to directors of a bank are contemplated under the section as part of its business.[19] But where any such loan is given to the bank or to any other person on the guarantee of a Director, the Director is personally liable for the money lent in case of non-payment by the borrower. Where the director of a Bank, in order to

14. PLD 1988 Lah. 1 = PLJ 1988 Lah. 42 = NLR 1988 SD 403.
15. AIR 1963 Raj. 6.
16. AIR 1963 Raj. 6.
17. Federal Notification No. S.R.O. 178 (1)/86, dated 23.2.1986.
18. 52 Cal W N 662.
19. AIR 1942 Mad. 737 = ILR 1943 Mad. 291.

facilitate a firm, of which he is a member, to obtain money, supported the application for loan made by his own *munim*, by making a false statement as to his solvency, and sanctioned the loan. On the *munim* being declared insolvent, it was held that the director himself was liable to the Bank for the money lent as a result of his fraud.[20]

3. Contravention of section. It is the duty of the directors, when it is brought to their notice that a loan has been advanced in contravention of the provisions of section 195, to immediately terminate the transaction irrespective of whether the period for which the loan was given had expired or not. The Registrar of joint stock companies should, when it is brought to his notice that a loan has been given in contravention of the provisions of section 195, take action and at least warn the directors not to repeat such illegalities in future.[1]

196. *Powers of directors.* (1) The business of a company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not by this Ordinance, or by the articles, or by a special resolution, required to be exercised by the company in general meeting.

(2) The directors of a company shall exercise the following powers on behalf of the company, and shall do so by means of a resolution passed at their meeting, namely:--

(*a*) to make calls on share-holders in respect of money unpaid on their shares;

(*b*) to issue shares;

(*c*) to issue debentures or [2][any instrument in the nature of redeemable capital];

(*d*) to borrow moneys otherwise than on debentures;

(*e*) to invest the funds of the company;

(*f*) to make loans;

(*g*) to authorise a director or the firm of which he is a partner or any partner of such firm or a private company of which he is a member or director to enter into any contract with the company for making sale, purchase or supply of goods or rendering services with the company;

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20. AIR 1936 Lah. 268=17 Lah. 262.
1. AIR 1942 Mad. 452=43 Cr.L.J. 770.
2. Subs. by Ord. 57 of 1984, S. 7.

(*h*) to approve annual or half-yearly or other periodical accounts as are required to be circulated to the members;

(*i*) to approve bonus to employees; and

(*j*) to incur capital expenditure exceeding twenty thousand rupees on any single item or dispose of a fixed asset of the value exceeding ten thousand rupees:

Provided that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of moneys on deposit by a banking company with another banking company on such conditions, as the directors may prescribe, shall not be deemed to be a borrowing of moneys or, as the case may be, a making of loans by a banking company within the meaning of this section.

(3) The directors of a public company or of a subsidiary of a public company shall not except with the consent of the general meeting either specifically or by way of an authorisation, do any of the following things, namely:--

(*a*) sell, lease or otherwise dispose of the undertakings or a sizable part thereof, unless the main business of the company comprises of such selling or leasing; and

(*b*) remit, give any relief or give extension of time for the repayment of any debt outstanding against any person specified in sub-section (1) of section 195.

(4) Whosoever contravenes any provision of this section shall be punishable with a fine which may extend to five thousand rupees and shall be individually and severally liable for losses or damages arising out of such action.

Synopsis

1. Acts of Directors, binding effect of.
2. Powers of Directors.
3. Liability of Directors..
4. Director wrongfully excluded from management, suit by.

1. Acts of Directors, binding effect of. A company must act through a human agency and hence the articles of the company can designate any particular natural person or a body of natural persons to be that human agency.[3] As the Board of Directors speak primarily through its resolutions, those resolutions would primarily be referred to and depended upon to ascertain what the decision of the

3. 52 Cal. W N 188 (DB).

Board was.[4] A company is liable for all acts done by its directors even though not authorised by it provided such acts are within the apparent authority of the directors and not *ultra vires* the company.[5] Where there is power in the directors to do a certain thing the Courts have no jurisdiction to review the discretion exercised by the directors in doing that thing.[6] However if the Directors act beyond their powers, the acts are not binding. Where the Board of Directors of a company passed a resolution that a certain percentage of net profits of the company should be paid to the family of the Managing Director every year. It was held that apart from the fact that the term family was too vague to be acted upon, the Board of Directors had no power to pass such a resolution. It was not therefore binding on the official liquidator of the Company.[7]

Directors not regularly appointed. Where appointment of working directors was challenged by petitioners/directors only when they had fallen out with the respondents/directors. No specific resolution was cited to appoint such directors as working directors but they worked as such and received remuneration etc. and the payments so made were reflected in the Annual Accounts passed by the share-holders each year. Petitioners could not produce any evidence to show that such lapse by the Company had caused any prejudice to them or share-holders or to the company. Irregularity, if any stood rectified or condoned with the tacit approval of the petitioners themselves.[8]

Directors acting beyond their powers. Any person dealing with a company is supposed to be acquainted with its articles and memorandum and, therefore, aware of the powers that the directors have. A company cannot be bound by any contract which is entered into by the directors and which is beyond their powers even though it is subsequently ratified.[9] To render valid an act of the directors which is beyond their authority there must be acquiescence of the share-holders. This acquiescence cannot be presumed unless knowledge of the invalidity of the transaction is brought home to every share-holder. There can be no ratification without an intention to ratify, and there can be no intention to ratify an illegal act without knowledge of the illegality.[10] It is further to be noted that a company cannot confirm or ratify anything done by the directors which is beyond its powers, express or implied in memorandum of the statute.[11] But a company acts within its powers in modifying its articles to give power to the board of directors to increase the capital for the purpose of carrying on its trade. The powers to modify the memorandum so as to increase the capital is not one which the company should necessarily exercise in general meeting.[12]

Property wrongly acquired by company. Apart from ratification, a company is answerable for any property which has come into its possession through the

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4. AIR 1957 Cal. 709 (DB).
5. AIR 1932 All. 141=53 All. 1009 (DB).
6. AIR 1957 Cal. 293=ILR (1958) 1 Cal. 89 (DB).
7. AIR 1963 AP 152.
8. PLD 1988 Lah. 1=PLJ 1988 Lah. 42=NLR 1988 SD 403.
9. AIR 1938 Mad. 227.
10. AIR 1938 PC 284+AIR 1957 All. 311 (DB).
11. AIR 1934 Bom. 243.
12. (1910) 1910-2 Ch. 382.

unauthorised acts of the directors.[13] Thus where the directors lend money to the company in excess of the borrowing powers conferred by the articles of association and all those moneys are in fact utilized by the company, the company is liable to pay the amount.[14]

2. Powers of Directors. The Directors have, subject to the memorandum or Articles of Association of a company, to act on behalf of the company. For that purpose the governing director of a company who is authorised by the articles of association to delegate all or any of his powers to the other directors, managers, agents or other persons can validly assign to an assistant accountant who is in the employment of the company the power and duty of acting on behalf of the company in an industrial dispute.[15] Where under the constitution of a company the directors could delegate their power to the managing director and what the managing director does is within the ordinary duties of his office, a person dealing with him can assume, without making any enquiry, that he has the power to do the thing. But this rule cannot apply where the question is not about the scope of the power exercised but it is whether the person exercising that power is the managing director at all.[16]

Directors hold a fiduciary relationship qua the company and are required to exercise power vesting in them for the benefit of the company. But when the need of the company for increase of capital is established, the fact that in promoting the interest of the company, the Directors make use of this need to promote their own interest as well, their action cannot be dubbed as breach of trust.[17]

Banking Company or financial institutions. The provisions of this Ordinance shall have effect as if for the purpose of sub-section (2) of section 196, the directors of a banking company or a financial institution were authorised to entrust by a resolution passed at their meeting, to one or more committees of directors or directors and others, the chief executive, any director, a manager or any other principal officer thereof or, in the case of any zonal regional or branch office of the company, the principal officer of such office, the powers specified in the clause (*d*), (*e*) or (*f*) of the said sub-section to the extent and subject to such conditions, if any, as may be specified by the directors.[18]

Borrowing by Directors. In the absence of any express prohibition in the memorandum or the articles of the company the directors have the power to borrow on behalf of the company subject only to the limitation contained in Regulation 46 of the table of Regulations.[19] Where the articles provide for certain safeguards in regard to the borrowing powers of a company, *viz.* that manager or managing agent can borrow and the directors were to control them; in the absence of an express provision delegating such powers to the directors, the directors cannot exercise those borrowing powers.[20]

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13. AIR 1936 Bom. 62=60 Bom. 326 (DB).
14. AIR 1942 Bom. 231.
15. AIR 1960 Mys. 44.
16. AIR 1957 Ker. 97.
17. PLD 1992 SC 274=PLJ 1992 SC 173=NLR 1992 SCJ 395=1992 Law Notes 773.
18. Federal Notification No S.R.O. 178 (1)/86, dated 23.3.1986.
19. AIR 1957 Mad. 122 (DB).
20. AIR 1957 Cal. 299 (DB).

Investment by Directors. The Directors cannot invest money in contravention of the mandate given to them by the Articles of Association. Thus where articles authorise directors to invest money in the purchase of house property, they are not entitled to invest money in constructing a building.[1] But within the sphere of the mandate, the Directors can exercise their own discretion. Thus where the articles provided that the directors could invest money not immediately required upon such securities and bank deposits as may be from time to time determined. The directors had complete discretion in the matter of approving the kind of security offered.[2]

Legal proceedings. The Directors have power to institute suits on behalf of the company when it becomes necessary in the course of management to recover moneys due to the company.[3] Ordinarily the directors only can sue in the name of the company. But when they are themselves the wrong-doers or when their own personal interests are in conflict and hence they would not or could not sue, the share-holders can take steps to seek redress for the wrong done to the company.[4]

Transfer of shares. Directors can transfer shares belonging to the company where they have been vested by the articles, with the control of the company and its business, inasmuch as transfer of shares is a business of the company.[5]

Managing Director, sale of land by. Managing Director of Company empowered by its Articles of Association to make and sign all contracts, would be competent to enter into and execute agreement of sale of land on behalf of Company.[6]

Fixing number of Directors. Provisions of section 196(2), enumerate powers which could be exercised by Board of Directors of a Company by means of a resolution passed at their meeting. Fixation of number of Directors could not be included as one of such functions to be performed by Board of Directors by means of a resolution at its meeting.[7]

3. Liability of Directors. Directors utilising company's money for their own interests are liable to account for such money to the company.[8] The Chairman of a company, who is also the treasurer and in whom the administration of the company is vested under the articles cannot escape liability by stating that he entrusted the entire management to another and, therefore, he is not responsible for the extensive act of misappropriation committed by the Vice-Chairman.[9]

Indemnity to Directors. Where an article of association comprises the indemnity to directors for anything done by them, except where loss has been incurred as a result of wilful neglect or wilful default on their part. In order to be guilty of wilful negligence, the director must not only be guilty of negligence, but

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1. AIR 1934 Mad. 411 (DB).
2. AIR 1935 Lah. 792 (DB).
3. AIR 1938 Mad. 962=ILR 1939 Mad. 36 (DB).
4. AIR 1950 FC 133=1949 FCR 673.
5. AIR 1957 Cal. 293=ILR (1958) 1 Cal. 89 (DB).
6. NLR 1989 AC 289=PLD 1988 Lah. 717.
7. 1991 CLC 589.
8. AIR 1933 Lah. 705 (DB).
9. 1956 Andh L T 207 (DB).

he must know that he is committing a breach of duty or is recklessly careless in the matter. A director is justified in trusting the integrity, skill and competence of the officials unless he has ground for suspicion.[10]

Dishonesty and fraud by Directors. Where a loan is tainted with dishonesty and directors are responsible for the loan, they are liable for the debt.[11] A suit against a director who fraudulently sanctioned a loan in violation of the rules is one for the breach of fiduciary obligation and not merely for compensation for the loss incurred.[12]

4. Director wrongfully excluded from management, suit by. A suit for injunction restraining the other directors from wrongfully excluding from acting as a director will lie at the instance of the aggrieved director. It is for the Court to decide whether the circumstances warrant such an order.[13] Where the Directors of the company were removed from office illegally and new ones elected in their place. They brought a suit for being reinstated, and for a declaration that the election of other directors was illegal. It was contended that even if they had a good case, the writ sought for should not be issued because by then the period for which they could have remained directors by the rule of rotation had already expired. It was held that in such circumstances that rule of rotation did not apply and reinstated the Directors, who had been wrongfully excluded from the management.[14]

197. *Prohibition regarding making of political contributions.* (1) Notwithstanding anything contained in this Ordinance, a company shall not contribute any amount--

(*a*) to any political party; or

(*b*) for any political purpose to any individual or body.

(2) If a company contravenes the provisions of sub-section (1), then--

(*i*) the company shall be liable to a fine which may extend to ten thousand rupees; and

(*ii*) every director and officer of the company who is knowingly and wilfully in default shall be punishable with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

10. AIR 1938 Mad. 124=ILR 1938 Mad. 292 (DB).
11. AIR 1936 Lah. 271 (DB).
12. AIR 1953 Lah. 705 (DB).
13. AIR 1924 Cal. 982=51 Cal. 916 (DB).
14. PLD 1960 SC 266=PLR 1960 (2) W P 924.

CHIEF EXECUTIVE

198. *Appointment of first chief executive.* (1) Every company, other than a company managed by a managing agent, shall have a chief executive appointed in the manner provided in this section and section 199.

(2) The directors of every company shall as from the date from which it commences business or as from a date not later than the fifteenth day after the date of its incorporation, whichever is earlier, appoint any individual to be the chief executive of the company.

(3) The chief executive appointed as aforesaid shall, unless he earlier resigns or otherwise ceases to hold office, head office up to the first annual general meeting of the company or, if a shorter period is fixed by the directors at the time of his appointment, for such period.

199. *Appointment of subsequent chief executive.* (1) Within fourteen days from the date of election of directors under section 178 or the office of the chief executive falling vacant, as the case may be, the directors of a company shall appoint any person, including an elected director, to be the chief executive, but such appointment shall not be for a period exceeding three years from the date of appointment.

(2) On the expiry of his term of office under section 198 or sub-section (1), a chief executive shall be eligible for re-appointment.

(3) The chief executive retiring under section 198 or this section shall continue to perform his functions until his successor is appointed unless non-appointment of his successor is due to any fault on his part or his office is expressly terminated.

200. *Terms of appointment of chief executive and filling up of casual vacancy.* (1) The terms and conditions of appointment of a chief executive shall be determined by the directors or the company in general meeting in accordance with the provisions in company's articles.

(2) The chief executive shall, if he is not already a director of the company, be deemed to be its director and be entitled to all the rights and privileges, and subject to all the liabilities, of that office.

201. *Restriction on appointment of chief executive.* No person who is ineligible to become a director of a company under section

187 shall be appointed or continue as the chief executive of any company.

202. *Removal of chief executive.* The directors of a company by resolution passed by not less than three-fourths of the total number of directors for the time being, or the company by a special resolution, may remove a chief executive before the expiration of his term of office notwithstanding anything contained in the articles or in any agreement between the company and such chief executive.

203. *Chief executive not to engage in business competing with company's business.* (1) A chief executive of a public company shall not directly or indirectly engage in any business which is of the same nature as and directly competes with the business carried on by the company of which he is the chief executive or by a subsidiary of such company.

Explanation. A business shall be deemed to be carried on indirectly by the chief executive if the same is carried on by his spouse or any of his parents, children, brothers or sisters.

(2) Every person who is appointed as chief executive of a public company shall forthwith on such appointment disclose to the company in writing the nature of such business and his interest therein.

204. *Penalty.* Whoever contravenes or fails to comply with any of the provisions of sections 198 to 203 or is a party to the contravention of the said provisions shall be liable to a fine which may extend to ten thousand rupees and may also be debarred by the authority which imposes the fine from becoming a director or chief executive of a company for a period not exceeding three years.

REGISTER OF DIRECTORS AND OTHER OFFICERS

205. *Register of Directors, officers, etc.* (1) Every company shall keep at its registered office a register of its directors and officers, including the chief executive, managing agent, secretary, chief accountant, auditors and legal adviser, containing with respect to each of them the following particulars, that is to say:--

(*a*) in the case of an individual, his present name in full, any former name, or surname in full, his father's name, in the case of a married woman or a widow, the name of her husband or deceased husband, his usual residential address,

nationality and, if that nationality is not the nationality of origin, his nationality of origin and his business occupation, if any, and if he holds any other directorship or other office the particulars of such directorship or office;

(*b*) in the case of a corporation, its corporate name and registered or principal office, and full name, address and nationality of each of its directors; and

(*c*) in the case of a firm, the full name, address, and nationality of each partner, and the date on which each became a partner.

(2) Every person referred to in sub-section (1) shall, within a period of ten days of his appointment or any change therein, as the case may be, furnish to the company the particulars specified in sub-section (1) and, within the period, respectively mentioned in this section, the company shall file with the registrar a return in duplicate in the prescribed form containing the particulars specified in the said register and notification in the prescribed form of any change among the directors, the chief executive, managing agent, chief accountant, secretary, auditor or legal adviser or in any of the particulars contained in the register.

(3) The period within which the said return is to be filed with the registrar shall be period of fourteen days from the date of incorporation of the company and the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof.

(4) The register to be kept under this section shall during business hours, subject to such reasonable restrictions as the company may by its articles or in general meeting impose so that not less than two hours in each day be allowed for inspection, be open to the inspection of any member of the company without charge and of any other person on payment of the prescribed fee or such lesser sum as the company may specify for each inspection.

(5) If any inspection required under this section is refused or if default is made in complying with sub-section (1) or sub-section (2) or sub-section (3), the company and every officer of the company or other person who is knowingly and wilfully in default shall be liable to a fine which may extend to five hundred rupees and to a further fine which may extend to fifty rupees for every day after the first during which the default continues.

(6) In the case of any such refusal, the registrar on application made by the person to whom inspection has been refused and upon notice to the company, may by order direct an immediate inspection of the register.

Synopsis

1. Scope.
2. Return relating to changes.
3. Default in furnishing returns.
4. Prosecution for default in furnishing return.
5. Directors continuing in office after election of new Directors--remedy.

1. **Scope.** Persons contracting with company are not affected with notice of all that is contained in the register of directors kept as required by section 205. They are not bound to search the register and find out for themselves whether the persons who were being permitted to act as directors for some length of time were really the *de jure* directors of the company.[15]

2. **Return relating to changes.** The section requires a return to be furnished only relating to changes in the Register of Directors, etc. By re-election of the same directors, there is no change in the directorship and it is not necessary to send to the Registrar a notification under section 205(3).[16]

Manager. A person who is not, in charge of the entire business of the company but is entrusted only with the business of a branch is not the manager of the company. But he is an officer of the company. Therefore failure to file with the Registrar a notice regarding a change in the Branch Manager in a company dost not attract, the penal consequences prescribed by the section.[17]

Time for submission of return cannot be extended. The time within which the director has to perform his duty by reporting a change is a statutory time and that cannot be extended by the Registrar.[18]

3. **Default in furnishing returns.** The Ordinance has deliberately made no provision for exercise of jurisdiction by the Court in regard to resignations of directors. Therefore although the Registrar has called upon a director who has resigned from his office to furnish the annual returns on the ground that he had no information from the company under section 205 of his registration, the Court will not entertain the complaint of the director and interfere in the matter. On the other hand it would leave it open to the Registrar to recognise the resignation and to give effect to it in his further dealings with the company.[19]

4. **Prosecution for default in furnishing return.** In a prosecution of the company for its omission to inform the Registrar of a change as required by section 205 it is not necessary to prove that anybody connected with the company had

15. AIR 1926 Bom. 28 (DB)+AIR 1936 Bom. 62=60 Bom 326 (DB).
16. AIR 1956 Ajmer 78=1956 Cr.L.J. 1379.
17. AIR 1918 Lah. 170=19 Cri. L.Jour 215 (DB).
18. 1946 A M L J 35.
19. AIR 1960 Mad. 482.

knowledge of the change.[20] But as the default itself entails penalty under section 205 it is unnecessary to consider whether it is wilful or not.[21]

5. Directors continuing in office after election of new Directors--remedy. The continuance of the directors in office after they had been validly removed by a resolution passed at a meeting requisitioned by the share-holders may amount to a contravention of section 205 but even if it is so that would not give a right to an individual share-holder to apply to the Court for issuing a direction to them to hand over the records, etc. to the persons who had been elected in their place. If anybody could apply in the circumstances it would be the company itself or a share-holder representing all the other share-holders of the company.[22]

BAR ON APPOINTMENT OF MANAGING AGENTS, SOLE PURCHASE AND SALES AGENTS, ETC.

206. *Bar on appointment of managing agents, sole purchase, sales agents, etc.* (1) No company whether incorporated in Pakistan or outside Pakistan shall appoint any managing agent, by whatever name called, that is to say, a person, firm or company entitled to the management of the affairs of a company, by virtue of an agreement or contract with the company:

Provided that this sub-section shall not apply to a company which is managed by a managing agent wholly owned or controlled by the Federal Government or a Provincial Government.

(2) The Federal Government may, by notification in the official Gazette, exempt any of the following classes of agreements or contracts from the operation of sub-section (1), namely:--

(*a*) an agreement or contract with an investment adviser in relation to an investment company registered under the rules made under the Securities and Exchange Ordinance, 1969 (XVII of 1969);

(*b*) an agreement or contract, approved by the Federal Government, with a foreign collaborator in relation to a company which owns an hotel in Pakistan; and

(*c*) an agreement or contract approved by the Federal Government in relation to a company formed for setting up,

20. AIR 1943 Mad. 214=44 Cr.L.J. 380.
21. AIR 1956 Ajmer 78=1956 Cr.L.J. 1379.
22. AIR 1947 Mad. 322=ILR 1947 Mad. 546.

in collaboration with one or more public sector financial institutions, an industrial undertaking which, in the opinion of the said Government, is likely to contribute to the economic development of Pakistan.

(3) No company whether incorporated in Pakistan or outside Pakistan which is carrying on business in Pakistan shall, without the approval of the Authority, appoint any sole purchase, sale or distribution agent:

Provided that this sub-section shall not apply to a sole purchase, sale or distribution agent appointed by a company incorporated, or person ordinarily residing, outside Pakistan unless the major portion of the business of such company or person is conducted in Pakistan.

(4) Whoever contravenes any of the provisions of this section shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one hundred thousand rupees, or with both; and, if the person guilty of the offence is a company or other body corporate, every director, chief executive, or other officer, agent or partner thereof shall, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent its commission, be deemed to be guilty of the offence.

TERMS OF APPOINTMENT OF MANAGING AGENT

207. *Terms and conditions of appointment of managing agent.* (1) Where a managing agent is appointed in pursuance of any exemption available under section 206, such appointment shall be subject to such terms and conditions as the Federal Government may deem fit to impose.

(2) In the event of any contravention of the terms and conditions imposed by the Federal Government under sub-section (1), the company and every officer thereof who is knowingly and wilfully in default shall be liable to a fine which may extend to twenty thousand rupees and such officer shall, in the event of the company incurring a loss on account of such contravention, be jointly and severally liable for the loss.

MISCELLANEOUS PROVISIONS REGARDING INVESTMENTS, CONTRACTS, OFFICERS AND SHAREHOLDINGS, TRADING AND INTERESTS

208. *Investments in associated companies and undertakings.* (1) A company shall not make any investment in any of its associated companies or associated undertakings except under the authority of a [23][special] resolution which shall indicate the nature and amount of investment and terms and conditions attaching thereto [24][:

Provided that--

(*a*) the aggregate investment in associated companies, except a wholly owned subsidiary company, shall not exceed thirty per cent of the paid up capital plus free reserves of the investing company at any point of time;

(*b*) the return on investment in the form of loan shall not be less than the borrowing cost of the investing company;

Provided further that the Federal Government may, in respect of any company having foreign investment, relax the application of clause (a) of the first proviso]

[25][Explanation. The expression "investment" shall include loans, advances, equity, by whatever name called, or any amount which is not in the nature of normal trade credit.]

(2) No change in the nature of an investment or the terms and conditions attaching thereto shall be made except under the authority of a [26][special] resolution.

[1]* * * * * *

(5) If default is made in complying with the requirements of this section, every director of the company who is knowingly and wilfully in default shall be liable to a fine which may extend to one million rupees and, in addition, the directors shall jointly and severally reimburse to the company any loss sustained by the company in

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23. Inserted by Act, 1 of 1995, S. 10 (5)(a)(*i*).
24. Colon subs. for full-stop and proviso added by Act, 1 of 1995, S. 10 (5)(*a*)(*ii*).
25. Explanation subs. by Act, 1 of 1995, S. 10 (5)(*a*)(*iii*).
26. Inserted by Act, 1 of 1995, S. 10 (5) (*b*)
1. Subsections (3) and (4) omitted by Act, 1 of 1995, S. 10 (5)(*c*).

consequence of an investment which was made without complying with the requirements of this section.

(6) This section shall not apply to--

(*a*) a banking company;

(*b*) a financial institution approved by the Federal Government; and

(*c*) a private company which is not a subsidiary of a public company.

Synopsis

1. Investment and loan--distinction.
2. Loan, regularization of.
3. Investment in Associated Companies.

1. **Investment and loan--distinction.** The explanation added to section 208 provides that the term 'Investment" shall include any amount which is not in the nature of normal trade credit. The words "Invest" and "Investment" used in the Ordinance are to be taken in business sense of laying out of money for earning income or profit. The term 'Investment' includes the application of money in the purchase of some property from which the income or profit is expected and property is purchased in order to be held for the sake of income which it will yield. The dictionary meaning of the term 'loan' on the other hand is 'a sum of money lent to another on the understanding that it shall be returned or equivalent given'. The expression 'Investment' is a term of wider connotation than the term 'loan'. The Companies Act, 1913 did not contain a provision similar to the one contained in section 195 of the Companies Ordinance, 1984 and it was for this reason that subsection (3) was added which provides that the loan made, guarantee given or security provided by a lending company and outstanding at the commencement of the Ordinance which could not have been made, given or provided, had these provisions then been in force, the lending company shall within six months from the commencement of the Ordinance enforce the repayment of the loan. etc. Section 208 of the Ordinance at the same time provides that a company shall not make any investment in any of its associate companies or undertakings except under the authority of a resolution indicating the nature, the amount of investment and the terms and conditions attached thereto, passed by majority of not less than 60% of the member. Thus, applying the rule of harmonious construction, it is open for a lending company either to enforce the repayment of the loan under section 195(3) or have the investment made regularized by passing a resolution with the requisite majority, under section 208 of the Ordinance.[2]

2. **Loan, regularization of.** Where a company passed a resolution to which the petitioners were party as the Extraordinary General Meeting was attended by the two petitioners/directors. The petitioners were estopped to challenge the action of

2. PLD 1988 Lah. 1=PLJ 1988 Lah. 42=NLR 1988 SD 403.

advancing the loan as firstly the shareholders including the representatives of the petitioners for years together approved the accounts of the company and secondly the representatives of the petitioners namely the petitioner/directors were party to both the resolutions whereby the loan was resolved to be advanced and then was regularised in the terms of section 208 of the Ordinance.[3]

3. Investment in Association Companies. Section 208 postulates that a company would not make any investment in any of its associated companies or associated undertakings except under the authority of a resolution indicating nature and amount of investment and terms and conditions attached thereto.[4] The company has to act in this behalf on a special resolution to be passed in a general meeting. Therefore, where such complete disclosure as to the above stated facts was not made. It was held that if all material facts had been given in the statement attached to the notice and terms and conditions attached to the investment proposed to be made disclosed in the proposed resolution itself for information of the whole body of shareholders/members, it would have been very material for such members to take a decision to attend the meeting or not due to which it can safely be held that such members due to non-compliance with these mandatory provisions were prevented from using their right effectively in relation to the said business. Therefore the notice of extra-ordinary General Meeting was held to be invalid and it was directed that the company may hold fresh Extraordinary General Meeting for the purpose after making compliance with the provisions of section 160(1)(*b*) and section 208 of the Companies Ordinance.[5] Where transaction in dispute was however, not a fresh investment by plaintiff in the defendant company but transfer of existing investment from plaintiff to defendant shareholders. Such transfer could not be deemed to be fresh investment in the defendant company but rather disinvestment which was outside the scope of section 208(1), Companies Ordinance.[6]

209. *Investments of company to be held in its own name.* (1) Save as otherwise provided in sub-sections (2) to (5) or any other law for the time being in force, and subject to the provisions of sub-sections (6) to (8),--

(*a*) all investments made by a company on its own behalf shall be made and held by it in its own name; and

(*b*) where any such investments are not so held immediately before the commencement of this Ordinance the company shall within a period of one year from such commencement, either cause them to be transferred to its own name, or dispose of them.

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3. PLD 1988 Lah. 1 = PLJ 1988 Lah. 42 = NLR 1988 SD 403.
4. 1993 MLD 42.
5. PLD 1995 Lah. 264.
6. 1993 MLD 42.

(2) Where the company has a right to appoint or get elected any person as a director of any other company and a nominee of the company in the exercise of such right has been so appointed or elected, the shares in such other company of an amount not exceeding the nominal value of the qualification shares which are required to be held by a director thereof, may be registered or held by such company jointly in its own name and in the name of such person or nominee, or in the name of such person or nominee alone.

(3) A holding company may hold any shares in its subsidiary company in the name of its nominee or nominees if and in so far as it is necessary so to do for ensuring that the number of members of the subsidiary company is not reduced below seven in case it is a public company, or below two in case it is a private company.

(4) Sub-section (1) shall not apply to investments made by an investment company, that is to say, a company whose principal business is the purchase and sale of securities.

(5) Nothing in this section shall be deemed to prevent a company--

(*a*) from depositing with a bank, being the banker of the company, any shares or securities for the collection of any dividend or interest payable thereon; or

(*b*) from depositing with or transferring to or holding in the name of a scheduled bank or a financial institution approved by the Authority shares or securities in order to facilitate the transfer thereof:

Provided that, if within a period of six months from the date on which shares or securities are so deposited, transferred or held, no transfer of such shares or securities takes place, the company shall as soon as practicable after the expiry of such period have the shares or securities retransferred to itself from the scheduled bank or, as the case may be, the financial institution, and again hold the shares or securities in its own name; or

(*c*) from depositing with, or transferring to any person any shares or securities, by way of security for the repayment of any loan advanced to the company or the performance of any obligation undertaken by it.

(6) The certificates or the letter of allotment relating to the shares or securities in which investments have been made by a company shall, except in the cases referred to in sub-sections (4) and (5), be in the custody of the company or of such scheduled bank or financial institution as may be approved by the Authority.

(7) Where, in pursuance of sub-section (2), (3), (4) or (5), any shares or securities in which investments have been made by a company are not held by it in its own name, the company shall forthwith enter in a register maintained by it for the purpose at its registered office--

(*a*) the nature, value and such other particulars as may be necessary fully to identify such shares or securities; and

(*b*) the bank or person in whose name or custody such shares or securities are held.

(8) The register kept under sub-section (7) shall be open to the inspection of any member or debenture-holder or creditor of the company without charge, during business hours, subject to such reasonable restrictions as the company may, by its articles or in general meeting, impose so that not less than two hours in each day are allowed for such inspection.

(9) If default is made in complying with any of the requirements of sub-sections (1) to (8), the company, and every officer of the company who is knowingly and wilfully in default, shall be liable to a fine which may extend to five thousand rupees and to a further fine not exceeding two hundred rupees for every day after the first during which the default continues.

(10) Without prejudice to the provisions of sub-section (9), if any inspection required under sub-section (8) is refused, the registrar may on an application direct an immediate inspection of the register.

210. *Form of contract.* (1) Contracts on behalf of a company may be made as follows, that is to say,--

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

(*ii*) any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(2) All contracts made according to sub-section (1) shall be effectual in law and shall bind the company and its successors and all other parties thereto, their heirs, or legal representatives as the case may be.

Synopsis

1. Contract with company, when enforceable.
2. Contract made before incorporation of company.
3. Contract of guarantee.
4. Borrowing powers.
5. Duty of creditors.
6. Presumption as to validity of acts.

1. **Contract with company, when enforceable.** Before a stranger, who enters into an agreement with a Director of a company, can enforce that agreement he has to show; (1) that he acted bona fide, (2) that he knew that the power which the Director purports to have exercised, could be delegated to him, and (3) that such power normally was delegated to the Directors. In the absence of proof of all these facts an agreement entered into between a Director and a stranger would not be binding on the Company unless the Director was empowered by the Articles of Association of the Company to enter into such an agreement.[7] A corporate body cannot be estopped from denying that they have entered into a contract which it was *ultra vires* for them to make. No corporate body can be bound by estoppel to do something beyond its powers.[8]

2. **Contract made before incorporation of company.** A company brought into existence under the Ordinance cannot be bound by a contract made before its incorporation.[9] A company after its incorporation cannot ratify an agreement ostensibly made on its behalf before it was incorporated. A fresh agreement can however, be made, after the company comes into existence, between the former contracting parties and the company upon the same terms as those contained in the earlier agreement. If the terms are not expressly set out in the new agreement but are ascertained by reference in it to the terms contained in the old one, the new agreement will be of full effect upon the terms in the earlier agreement. An agreement, to which the company was not a party, which was entered into on its behalf by the promoters of the company before its incorporation cannot be enforced by the company even if after its incorporation it has adopted and ratified the

7. PLD 1962 Lah. 370=PLR 1963 (1) WP 438 (DB).
8. AIR 1953 Mad. 111.
9. AIR 1934 Bom. 427=59 Bom. 218 (DB).

agreement.[10] Moreover if the directors of a company after incorporation enter into a new agreement embodying the terms of a contract entered into before the incorporation of the company and the company acquiesced in their action; it would be bound, even if the Directors had acted beyond their legal power.[11]

3. Contract of guarantee. A limited company can stand guarantee for the contracts of another limited company when express power is given to it either in so many words or to be inferred from the general language used.[12]

4. Borrowing powers. A provision in the articles of association prohibiting the directors from delegating their power to borrow does not prevent them from empowering one of the directors to execute a mortgage deed in respect of a loan which has already been incurred, and to settle the details of the mortgage transaction.[13]

Where the articles of association contained a clause empowering a managing agent to conduct and manage the business and affairs of the company and to enter into all contracts and do all other things usual and necessary or desirable in such management but there was also another clause which expressly prohibited the directors from delegating their power to borrow; it was held that the two clauses should be read together and the first clause could not be interpreted to give unrestricted power to borrow on behalf of the company and the second clause did not restrict the agent from raising a temporary loan in an emergency, for the management of the company. Even if a managing agent acts *ultra vires* in contracting a loan, the loan becomes binding on the company by the subsequent ratification of it by the directors.[14] Moreover where the money, borrowed by directors or managing agents without the authority to borrow, has been used for the benefit of the company, the liability of the company cannot be repudiated on the ground that the agents had no authority to borrow.[15] But in another case it was held that where all deeds executed on behalf of the Company must, according to its articles be signed by its managing director, working director and its secretary, a mortgage executed by two of them only cannot be enforced against the company in spite of the fact that the loan was used for the purposes of the company.[16]

Money borrowed not spent for the company. Money borrowed by directors in excess of their authority but not spent for the purposes of the company cannot be recovered from it.[17]

Loan cannot be repudiated on technical grounds. A mortgage-deed need not necessarily be under the common seal and hence a mere defect in the manner of affixing the seal will not render the document of loan invalid.[18]

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10. AIR 1946 Cal. 23.
11. AIR 1923 Lah. 100.
12. AIR 1941 Bom. 108=ILR 1941 Bom. 273 (DB).
13. AIR 1932 All. 141=53 All. 1009 (DB).
14. AIR 1932 All. 141=53 All. 1009 (DB).
15. AIR 1936 Bom. 62=60 Bom. 326 (DB)+AIR 1942 Bom. 231.
16. AIR 1934 Mad. 579.
17. AIR 1942 Bom. 231.
18. AIR 1932 All. 141=53 All. 1009 (DB).

Lien. The Chairman of a Corporation as its principal officer has implied authority to execute a declaration creating a lien on the property of the Corporation in respect of a loan sanctioned by the Board of Directors though the articles of association are silent about it.[19]

5. Duty of creditors. Where a company is regulated by a memorandum and articles registered in some public office, persons dealing with the company are bound to read the registered documents and to see that the proposed dealing is not inconsistent therewith. But they are not bound to do more.[20] A lender who is not a member of the company is entitled to assume, in the absence of anything to the contrary in the Ordinance itself or the articles of association of that company that all the acts done by the company or on its behalf are regular and proper.[21] Where the articles of the company empower the managing agents to execute a mortgage with the approval of the directors, the lender is entitled to assume that the managing agents had the authority or approval of the directors for executing the mortgage in his favour. Merely because the seal of the company is attested by the managing agents only, it cannot be said that the lender was not justified in making such assumption.[1] Where the borrowing by a director is within the scope of the authority conferred on him the company is liable to the lender irrespective of the fact that the director had misappropriated the amount to his own use. The lender is under no duty to ascertain the actual application of the money borrowed.[2] Where the Managing Director of a company entered into a contract with a party as the Managing Director of the company duly authorised in this behalf but later on the company contended that it was not bound by the contract because he had not been duly authorised to enter into such dealings. It was held that the petitioners cannot be adversely affected in any manner. The Managing Director described himself as acting personally and as representative duly authorised of all share-holders of the company and therefore the petitioners were not under a duty to enquire into the indoor management of the company. The respondent company are estopped from challenging the agreement in favour of the petitioners on the ground that the Managing Director had no such authority.[3] But where a person acts negligently or his act is not bona fide the company is not bound by the contract entered into with him. Thus where a person knowing at least something about the constitution of a bank and knowing that its managing Director had died, takes a transfer of the bank's property from its accountant who had no power of attorney, within a few days after the death of the managing director, he was not entitled to assume that the transfer was authorised and regular and the transfer could not be enforced by him.[4]

6. Presumption as to validity of acts. Simply because there is a duly incorporated company which is a separate legal entity from any one of its members it does not follow that every transaction alleged to have taken place between it and such members was a valid or a genuine transaction. With the company as with an

19. AIR 1939 Sind 100.
20. AIR 1957 Ker. 97.
21. 39 Cal. 810 (DB)+AIR 1932 All. 141=53 All. 1009 (DB).
1. 39 Cal. 810 (DB).
2. AIR 1944 Mad. 532=ILR 1945 Mad 96 (DB).
3. PLD 1956 Sind 1 (DB).
4. AIR 1942 Oudh 417=18 Luck. 110 (DB).

individual an initial presumption may be made that a duly executed document of transfer is a genuine document but evidence can certainly be given to show that in reality there was only a sham transfer.[5]

211. *Bills of exchange and promissory notes.* A bill of exchange, *hundi* or promissory note shall be deemed to have been made, drawn, accepted or endorsed on behalf of a company if made, drawn, accepted or endorsed in the name of, or by or on behalf or on account of the company by any person acting under its authority, express or implied.

Synopsis

1. Negotiable instrument drawn by company.
2. Liability of company.
3. Personal liability.
4. Transfer of negotiable instrument.

1. Negotiable instrument drawn by company. The section only emphasises the fundamental principle underlying the law of negotiable instruments when it lays down that the instrument on the face of it and according to its tenor must make it clear that it is one made, drawn or endorsed by the company itself.[6] Therefore before a company can be bound by a negotiable instrument one of the essential conditions is that the instrument on its face must show that it has been drawn, made, accepted or endorsed by the company. This may be done either by showing the name of the company itself on the instrument, or by the statement of the person making the instrument that he is doing so on behalf of the company. In other words, unless the plain tenor of the negotiable instrument on its face satisfies the relevant requirement the instrument cannot be validly treated as an instrument drawn by the company. The inevitable consequence of this requirement is that whenever a negotiable instrument is issued without complying with the said requirement it would not bind the company and cannot be enforced against it.[7] A promissory note signed by the secretary of a company bearing rubber stamp of the company, was signed on behalf of this company.[8] The holder of a pronote under an assignment from a company endorsed by its branch manager is entitled to assume that the manager had the authority to assign the pronote in question and he is entitled to the benefit of the presumption that he is a holder in due course under section 118 of the Negotiable Instruments Act.[9]

2. Liability of company. Where a bank bona fide makes payment on certain cheques drawn by persons having authority of the company to draw such cheques, the company cannot repudiate those payments and recover the money paid on the

5. AIR 1927 Bom. 371=51 Bom. 372 (DB).
6. AIR 1956 Bom. 57=ILR 1955 Bom. 1072 (DB).
7. AIR 1961 SC 993.
8. AIR 1923 Bom. 29 (DB).
9. AIR 1959 Mys. 36 (The onus lies on the person sued on the pronote to show that the manager had no authority and hence the assignee was not a holder in due course).

ground that those cheques did not show that they had been drawn by the company or on behalf of it or on its account.[10]

3. **Personal liability.** When a person is not specifically authorized either as a managing agent or otherwise to execute or make a promissory note in his own name so as to bind the company, the company will not be liable.[11] A promissory note which pledges the personal credit of the directors will not bind the company although it has the seal of the company on it.[12] Where a manager of the family which is managing agent of a company executes a promissory note in his own name with the object of lending the money borrowed to the company, the company cannot be held liable to the promisee even if he knew with what object the money was being borrowed. Before the company can be held liable it must be found that the loan was actually a loan to the company. The mere fact that the company benefited by the loan is not by itself sufficient to bind the company.[13]

Bill accepted by unauthorized person. A company will not be held liable on a bill of exchange merely because the person who had accepted it on its behalf is one who might, by a certain delegation of power, have been authorised and have been thus acting under its authority. To bind the company on a bill it must have been accepted by one who is in fact acting under its authority to accept bills.[14]

4. **Transfer of negotiable instrument.** As the transfer of negotiable instruments is an ordinary transaction of a bank, its manager as its agent for performing all ordinary transactions has power to transfer a negotiable instrument.[15]

212. *Execution of deeds.* A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place either in or outside Pakistan; and every deed signed by such attorney, on behalf of the company and under his seal, where sealing is required shall bind the company, and have the same effect as if it were under its common seal.

1. **Scope.** In the absence of anything in the memorandum and articles of association the company has power to appoint agents and through those agents to borrow money and raise capital on company matters. The company as an entity cannot act except through an agent. Where the person deals on behalf of the company with a power of attorney a third party dealing with him is entitled to assume that it has been validly given and bind the company by the transaction entered into by him with the company through that agent.[16]

213. *Power for company to have official seal for use abroad.* (1) A company whose objects require or comprise the transaction of

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10. AIR 1961 SC 993 + AIR 1956 Bom. 57 (DB).
11. AIR 1930 All. 778 = 52 All. 883 (DB).
12. AIR 1927 Cal. 612.
13. AIR 1946 All. 372 = ILR 1946 All. 361 (DB).
14. (1909) 1909-1 KB 106.
15. AIR 1924 Lah. 462 (DB).
16. 1937-1 All ER 231.

business beyond the limits of Pakistan may, if authorised by its articles, have for use in any territory not situate in Pakistan, an official seal which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory where it is to be used.

(2) A company having such an official seal may, by writing under its common seal, authorise any person appointed for the purpose in any territory not situate in Pakistan to affix the same to any deed or other document to which the company is party in that territory.

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

(4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

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

214. *Disclosure of interest by director.* (1) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in any contract or arrangement entered into, or to be entered into by or on behalf of the company shall disclose the nature of his concern or interest at a meeting of the directors:

Provided that a director shall be deemed also to be interested or concerned if any of his relatives, as defined in the Explanation to sub-section (1) of section 195, is so interested or concerned.

(2) The disclosure required to be made by a director under sub-section (1) shall be made,--

(*a*) in the case of a contract or arrangement to be entered into, at the meeting of the directors at which the question of entering into the contract or arrangement is first taken into consideration or, if the director was not, on the date of that meeting, concerned or interested in the contract or

arrangement, at the first meeting of the directors held after he becomes so concerned or interested; and

(*b*) in the case of any other contract or arrangement, at the first meeting the directors held after the director becomes concerned or interested in the contract or arrangement.

(3) For the purposes of sub-sections (1) and (2), a general notice given to the directors to the effect that a director is a director or a member of a specified body corporate or a member of a specified firm and is to be regarded as concerned or interested in any contract or arrangement which may, after the date of the notice, be entered into with that body corporate or firm, shall be deemed to be a sufficient disclosure or concern or interest in relation to any contract or arrangement so made.

(4) Any such general notice shall expire at the end of the financial year in which it is given, but may be renewed for further period of one financial year at a time, by a fresh notice given in the last month of the financial year in which it would otherwise expire.

(5) No such general notice, and no renewal thereof, shall be of effect unless either it is given at meeting of the directors, or the director concerned takes reasonable steps to ensure that it is brought up and read at the first meeting of the directors after it is given.

(6) A director who fails to comply with sub-section (1) or sub-section (2) shall be liable to a fine which may extend to five thousand rupees.

(7) Nothing in this section shall be taken to prejudice the operation of any law restricting a director of a company from having any concern or interest in any contract or arrangement with the company.

Synopsis

1. Director entering into contract with company.
2. Interest of Director--meaning.
3. Disclosure of interest.
4. Plea of disclosure must be taken in plaint.
5. Penalty.

1. **Director entering into contract with company.** A director is in a fiduciary relation to the company and it is a rule of universal application that no one who has such duties to discharge shall be allowed to enter into engagements in which he has or can have a personal interest conflicting or which may conflict with

the interest of those whom he is bound to protect.[17] Therefore directors of a company as a general rule, cannot enter into a contract with the company for personal benefit.[18] There are certain special obligations upon a director who places himself in the position of contracting with his Company. The general principle is that such a contract is not binding on the company, for a director is not entitled to place himself in a position in which his interest is in conflict with his duty. The company, it has been said, has a right to the services of its directors as an entire board. Even if the contract is not avoided, whether because the company elects to affirm it or because circumstances have rendered it incapable of rescission, the director remains accountable to the company for any profit that he may have realised by the deal. Subject to any statutory requirements that cannot be dispensed with, it is open to companies to make such provisions as they please for the purpose of modifying the incidence of this general principle. Where the company had modified the general principles so that a director who had an interest in a transaction was not permitted to vote upon a Board resolution dealing with such a contract or arrangement and he could only retain for himself any profit arising from the transaction if at the meeting which passed the resolution he has disclosed to his colleagues "the nature of his interest". It was held that a director who wishes to keep for himself the benefit arising from some deal with his company has to establish that he has satisfied all necessary conditions. The onus is upon him.[19]

Contracts referred to in section 214 also include contracts not made at a meeting of directors and even petty purchases from another firm in which purchasing director has an interest.[20]

Loan by Director to Company. A company is entitled to borrow money from one of its own directors. But that is subject to the fundamental position that the director, even though disclosing his interest, does not take undue advantage of his position because, fundamentally, the position of a director is very like that of a trustee and so the transaction must be fair and proper.[1]

2. Interest of Director--meaning. The term "interest" in an agreement is elastic and must be interpreted in the context of a case.[2] Thus sub-partnership with the other party to a contract is interest in the contract.[3]

Relationship with other party to contract. The interest of a director in a contract need not necessarily be a pecuniary interest, but even mere relationship as that of husband and wife or father and son, is interest if the circumstances are such that it may reasonably be regarded as affecting the director's mind. Thus where a director of a Company executed a lease on its behalf, and his son had obtained a power of attorney from the lessee and was made a major partner with six annas share in the lease and there was difference between the rate of working charges to be given to the Company as stated in the lease and that on the basis of which the

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17. AIR 1956 Pepsu 89.
18. AIR 1915 Mad. 1179=38 Mad. 991.
19. PLD 1952 PC 79.
20. AIR 1938 Cal. 440=39 Cri. L Jour 687 (DB).
1. AIR 1951 Nag. 255=ILR 1950 Nag. 562 (DB).
2. AIR 1956 Mad. 4=1957 Cri L Jour 69.
3. AIR 1929 Mad. 353 (DB).

lessees were to calculate their profits; it was held that though the director was separate from his son, he must be considered to have pecuniary interest in the lease.[4]

Power to operate Bank Account. Where a Board of three directors managing a company passes a resolution authorizing any two directors named therein to operate the bank account of the company, the resolution is not creation of any personal interest of those two directors but merely delegation of Board's power.[5]

3. **Disclosure of interest.** Section 214 enjoins an obligation on the director who is interested in a contract or arrangement entered into by the company to disclose his interest to other directors and imposes penalties for not disclosing his interest.[6] The object of the section is to compel the directors to disclose their personal interest when there is a possibility of such interest conflicting with their duties to the company as its directors and thus avoid there being such a conflict which would remain unknown.[7] There is no precise formula that will determine the extent of detail that is called for when a director declares his interest or the nature of his interest. Rightly understood, the two things mean the same. The amount of detail required must depend in each case upon the nature of the contract or arrangement proposed and the context in which it arises. It can rarely be enough for a director to say "I must remind you that I am interested" and to leave it at that, unless there is some special provision in a Company's articles that makes such a general warning sufficient. His declaration must make his colleagues "fully informed of the true-state of things". If it is material to their judgment that they should know not merely that he has an interest but what it is and how far it goes, then he must see to it that they are informed.[8]

Disclosure must be made at meeting of Directors. The section provides that disclosure of interest must be made at a meeting of the Directors. A letter written by the director disclosing his interest in the firm where the purchase was made by him and endorsed as noted by the Chairman of the Board, his signature is not disclosure at the director's meeting. The mere endorsement by the Chairman does not prove such a disclosure.[9]

4. **Plea of disclosure must be taken in plaint.** Allegation of non-disclosure of interest in the contract not taken up in the plaint itself cannot be raised subsequently after issues are framed and evidence closed.[10]

5. **Penalty.** The penalty imposed by sub-section (6) is in addition to the common law obligation which is on the offending director to account to the company for the profits gained by him out of the transaction.[11]

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4. AIR 1929 Mad. 353 (DB).
5. AIR 1957 Mad. 4=ILR 1957 Mad. 665=1957 Cri L Jour 69.
6. AIR 1957 Mad. 4=ILR 1957 Mad. 665=1957 Cri L Jour 69.
7. AIR 1957 Mad. 4=ILR 1957 Mad. 665+AIR 1929 Mad. 353 (DB).
8. PLD 1952 PC 97.
9. AIR 1938 Cal. 440=39 Cri L Jour 667 (DB).
10. AIR 1929 Mad. 353 (DB).
11. PLD 1952 PC 79+AIR 1957 Mad. 4=ILR 1957 Mad. 665.

215. *Interest of other officers, etc.* (1) Save as provided in section 214 in respect of directors, no other officer of a company who is in any way, directly or indirectly, concerned or interested in any proposed contract or arrangement with the company shall, unless he discloses the nature and extent of his interest in the transaction and obtains the prior approval of the directors, enter into any such contract or arrangement.

(2) An officer who contravenes sub-section (1) shall be liable to a fine which may extend to five thousand rupees.

216. *Interested director not to participate or vote in proceedings of directors.* (1) No director of a company, shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void.

(2) Sub-section (1) shall not apply to--

(*a*) a private company which is neither a subsidiary nor a holding company of a public company;

(*b*) any contract of indemnity against any loss which the directors, or any one or more of them, may suffer by reason of becoming or being sureties or a surety for the company;

(*c*) any contract or arrangement entered into or to be entered into with a public company, in which the interest of the director aforesaid consists solely in his being a director of such company and the holder of not more than such shares therein as are requisite to qualify him for appointment as a director thereof, he having been nominated as such director by the company referred to in sub-section (1).

(3) Every director who knowingly contravenes any of the provisions of sub-section (1) or sub-section (2) shall be liable to a fine which may extend to five thousand rupees.

Synopsis

1. Contract or arrangement. 2. Interest.

3. Non-compliance with section.

1. **Contract or arrangement.** The contracts or arrangements dealt with by section 216 are the identical contracts or arrangements referred to in section 214 and the object of section 216 is to prevent directors who are interested in those contracts or arrangements from voting upon them.[12] An allotment of shares is a contract and where the allottee is a director he will not be entitled to join in forming a quorum and vote upon the allotment at the directors' meeting.[13]

Arrangement. The "interest in an arrangement" which is referred to in the section is the personal interest of a director which would come into conflict with his duty as such director of the company.[14] The conflicting interest which would bring into operation the provisions of section 216 need not be one which belongs to the director beneficially. It is sufficient for the purposes of the section even if the director is interested in the matter as a trustee.[15] But the word 'arrangement' in section 216 does not cover a general scheme of the type under which at the time when the scheme is approved by the board of directors no rights or liabilities accrue or are incurred by the members of the company, the directors or the company itself. The word 'arrangement' as used in the section is intended to cover such transaction in which a director at once becomes interested, so that he either acquires some rights as a result of it or incurs some liabilities as a result of it.[16]

2. **Interest.** The conflicting interest which would bring into operation the provisions of section 216 need not be one which belongs to the director beneficially. It is sufficient for the purposes of the section even if the director is interested in the matter as a trustee. Where a person is a share-holder or director of a company which is entering into a transaction with another of which also that person is a director, he comes within the rule contained in section 216 and the transaction can be avoided by the latter company if there is non-compliance with the section.[17]

Operation of Bank Account. A resolution of the Board authorising a director to operate the bank accounts of the company on its behalf merely delegates the power of the Board to that director and does not create in the director an interest of the nature contemplated by section 216. Hence the resolution does not become bad by the fact of the particular director also voting on it.[18]

3. **Non-compliance with section.** Though under section 216(1) the presence of a director acting in breach of the provisions of the sub-section is not to be counted for the purpose of forming a quorum at the time of vote at the meeting, the contract entered into in such meeting is not void *ab initio*. The fact that sub-section (3) provides a penalty cannot, by itself, make the contract void. It would be voidable at the instance of the Company and not the Director. Thus a resolution allotting certain shares to the defaulting director passed at such meeting is not void and would be binding on such director. Further the defaulting director being

12. AIR 1957 Mad. 4=ILR 1957 Mad. 665.
13. AIR 1921 Bom. 372.
14. AIR 1957 Mad. 4=ILR 1957 Mad. 665.
15. AIR 1938 PC 159=32 Sind LR 517.
16. AIR 1959 All 276.
17. AIR 1938 PC 159=ILR 1938 Bom. 421=32 Sind L R 517.
18. AIR 1957 Mad. 4=ILR 1957 Mad. 665=1957 Cri. L. Jour 69.

himself a party to the resolution and being primarily responsible for committing the illegality, cannot be allowed to say that the allotment is bad and not effective. Even on general principles the defaulting director cannot be allowed to plead his own default for avoiding the allotment because he subsequently finds it onerous.[19]

Third parties not affected. Persons dealing with a company are fixed with notice only of limitation on powers of directors imposed by the articles and memorandum of the company. Once they have ascertained that there is power they are no further saddled with the obligation to know whether that power had been properly used also. The questions whether a director was personally interested in a contract or whether he was qualified to vote are all of purely internal management and with which a third party need not concern himself.[20] A third party dealing with the company is entitled to assume that the internal management of the company is properly conducted. Therefore a third party cannot be deprived of the benefit of a contract merely because there was non-compliance with section 216. In order to disentitle the third party, it is necessary to show that the party had knowledge of the real state of affairs, namely that the contract was voidable against him, at the time he entered into it.[21]

217. *Declaring a director to be lacking fiduciary behaviour.* The Court may declare a director to be lacking fiduciary behaviour if he contravenes the provisions of section 214 or sub-section (1) of section 215 or section 216:

Provided that before making a declaration the Court shall afford the director concerned an opportunity of showing cause against the proposed action.

1. **Scope.** Declaring a Director to be lacking fiduciary behaviour can only be made if any Director or Directors contravene the provisions of section 214 or section 215(1) or section 216 of the Companies Ordinance, 1984.[22]

218. *Disclosure to members of directors' interest in contract appointing chief executive, managing agent or secretary.* (1) Where a company--

(*a*) appoints, or enters into a contract for the appointment of, a chief executive, managing agent, whole-time director or secretary of the company, in which appointment or contract any director of the company is in any way, whether directly or indirectly, concerned or interested; or

(*b*) varies any such contract already in existence,

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19. AIR 1961 Bom. 252 (DB).
20. AIR 1936 Bom. 62=60 Bom. 326 (DB).
21. AIR 1938 PC 159=32 Sind L R 517.
22. PLD 1995 Lah. 264.

the company shall make out and attach to the report referred to in section 236 an abstract of the terms of the appointment or contract or variation, together with a memorandum clearly specifying the nature of the concern or interest of the director in such appointment or contract or variation.

(2) Where a company appoints or enters into a contract for the appointment of a chief executive of the company, or varies any such contract already in existence, the company shall send an abstract of the terms of the appointment or contract or variation to every member of the company within twenty-one days from the date of the appointment or of entering into the contract or varying of the contract, as the case may be, and if any other director of the company is concerned or interested in the appointment or contract or variation, a memorandum clearly specifying the nature of the concern or interest of such other director in the appointment or contract or variation shall also be sent to every member of the company with the abstract.

(3) Where a director becomes concerned or interested as aforesaid in any such contract as is referred to in sub-section (1) or sub-section (2) after it is made, the abstract and the memorandum, if any, referred to therein shall be sent to every member of the company within twenty-one days from the date on which the director becomes so concerned or interested.

(4) All contracts entered into by a company for the appointment of a managing agent, chief executive or secretary shall be kept at the registered office of the company; and shall be open to the inspection of any member of the company at such office; and extracts may be taken therefrom and certified copies thereof may be required by any such member, to the same extent, in the same manner and on payment of the same fee, as in the case of the register of members of the company; and the provisions of section 150 shall apply accordingly.

(5) The provisions of this section shall apply in relation to any resolution of the directors of a company appointing a managing agent, a secretary or a chief executive or other whole-time director, or varying any previous contract or resolution of the company relating to the appointment of a managing agent, a secretary or a chief executive or other whole-time director, as they apply in relation to any contract for the like purpose.

(6) If default is made in complying with any of the provisions of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine which may extend to five thousand rupees.

219. *Register of contracts, arrangements and appointments in which directors, etc., are interested.* (1) Every company shall keep a register in which shall be entered separately particulars of all contracts, arrangements or appointments to which section 214 or section 215 or section 216 or section 218 applies, including the following particulars to the extent they are applicable in each case, namely:--

(*a*) the date of the contract, arrangement or appointment;

(*b*) the names of the parties thereto;

(*c*) the principal terms and conditions thereof;

(*d*) the date on which it was placed before the directors;

(*e*) the names of the directors voting for and against the contract, arrangement or appointment and the names of those remaining neutral;

(*f*) the name of the director or officer concerned or interested in the contract, arrangement or appointment and the extent or nature of his interest therein.

(2) Particulars of every such contract, arrangement and appointment shall be entered in the relevant register aforesaid--

(*a*) in the case of a contract, arrangement, or appointment requiring the directors' approval, within seven days of the meeting of the directors at which the contract, arrangement or appointment is approved; and

(*b*) in the case of any other contract, arrangement or appointment, within seven days of the receipt at the registered office of the company of the particulars of such other contract, arrangement or appointment or within thirty days of the date of such other contract, arrangement or appointment, whichever is later; and the register shall be placed before the next meeting of the directors and shall then be signed by all the directors present at the meeting.

(3) The register aforesaid shall also specify, in relation to each director of the company, the names of the firms and bodies corporate

of which notice has been given by him under sub-section (3) of section 214.

(4) Nothing in sub-section (1), sub-section (2) or sub-section (3) shall apply--

(*a*) to any contract or arrangement for the sale, purchase or supply of any goods, materials or services, if the value of such goods and materials or the cost of such services does not exceed two thousand rupees in the aggregate in any year; or

(*b*) to any contract or arrangement by a banking company for the collection of bills in the ordinary course of its business.

(5) The register referred to in sub-section (1) shall be kept at the registered office of the company and shall be open to inspection by and extracts may be taken therefrom and certified copies thereof required by any member of the company in the same manner and on payment of the same fee as in the case of register of members kept under section 150.

(6) If default is made in complying with the provisions of this section, the company and every director of the company who is knowingly and wilfully in default shall, in respect of each default, be liable to a fine which may extend to five thousand rupees and to a further fine which may extend to two hundred rupees for every day after the first during which the default continues.

220. *Register of director's shareholdings, etc.* (1) Every listed company shall keep a register showing as respects each director, chief executive, managing agent, chief accountant, secretary or auditor of the company, and every other person holding not less than ten per cent of the beneficial interest in the company, the number, description and amount of any shares in or debentures of, the company or any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, which are held by or in trust for him, or of which he has a right to become holder, whether on payment or not.

(2) Where any shares or debentures have to be recorded in the said register or to be omitted therefrom or any particulars changed in relation to any director or other person as aforesaid by reason of a transaction entered into after the commencement of this Ordinance and while he occupies that position or holds such interest, the register

shall also show the date of, and the price or other consideration for, the transaction:

Provided that, where there is an interval between the agreement for any such transaction and the completion thereof, the date so shown shall be that of the agreement.

(3) The nature and extent of any position or interest or right in or over any shares or debentures recorded in relation to a director or other person in the said register shall, if he so requires, be indicated in the register.

(4) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put upon inquiry as to, the rights of any person in relation to any shares or debentures.

(5) The said register shall, subject to the provisions of this section, be kept at the registered office of the company and shall be open to inspection during business hours as follows, subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that no less than two hours in each day are allowed for inspection,--

(*a*) during the period beginning fourteen days before the date of the annual general meeting of the company and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company; and

(*b*) during that or any other period, it shall be open to the inspection of any person acting on behalf of the Authority.

(6) Without prejudice to the rights conferred by sub-section (5), the Authority and the registrar may at any time require a certified copy of the said register or any part thereof.

(7) The said register shall also be produced at the commencement of the annual general meeting of the company and remain open and accessible during the continuance of the meeting to any person attending the meeting.

(8) If default is made in complying with sub-section (7), the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine which may extend to one thousand rupees, and if default is made in complying with sub-section (1) or sub-section (2), or if any inspection required under this section

is refused or any copy required thereunder is not sent within a reasonable time, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine which may extend to ten thousand rupees.

(9) Without prejudice to the provisions of sub-section (8), the registrar may, in the case of any refusal to allow inspection of register or supply of a copy thereof under sub-section (5) or sub-section (6), direct immediate inspection of such register or supply of a copy thereof.

221. *Duty of directors, etc., to make disclosure of share-holders, etc.* (1) Every director, officer and such other person as is referred to in sub-section (1) of section 220 shall give notice to the company of such matters relating to himself as may be necessary for the purpose of enabling the company to comply with the provisions of section 220.

(2) The notice referred to in sub-section (1) shall be given in writing within fifteen days of each acquisition or change of interest or right, as the case may be, referred to in sub-section (1) of section 220 or date of agreement referred to in sub-section (2) of that section.

(3) Any person who knowingly and wilfully fails to comply with sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.

222. *Submission of statements of beneficial owners of listed securities.* (1) Every director, chief executive, managing agent, chief accountant, secretary or auditor of a listed company who is or has been the beneficial owner of any of its equity securities, and every person who is directly or indirectly the beneficial owner of more than ten per cent of such securities, shall submit to the registrar and the Authority a return in the prescribed form containing the prescribed particulars pertaining to the beneficial ownership of such securities and notify in the prescribed form the particulars of any change in the interest aforesaid.

(2) The period within which the said return is to be submitted to the registrar and the Authority shall be,--

(*a*) where the person occupies the position or office specified in sub-section (1), or is a person whose interest as beneficial owner of securities requiring submission of the return as stated in the said sub-section subsists on the commencement

of this Ordinance, within thirty days from such commencement;

(*b*) in any other case, including a case where the company is listed on the stock exchange after the commencement of this Ordinance or after the person has occupied the position or office specified in sub-section (1) or has acquired interest as beneficial owner of securities as aforesaid, within thirty days of occupying the office in the company or acquisition of interest as beneficial owner requiring submission of the return aforesaid or listing of the company on the stock exchange, as the case may be;

(*c*) where there is any change in the position or interest as aforesaid including a change in the beneficial ownership of any equity security, within fifteen days of such change; or

(*d*) where the Authority by an order so requires, within such period as may be specified in such order.

223. *Prohibition of short selling.* No director, chief executive, managing agent, chief of accountant, secretary or auditor of a listed company, and no person who is directly or indirectly the beneficial owner of not less than ten per cent of the listed equity securities of such company, shall practise directly or indirectly short-selling such securities.

224. *Trading by directors, officers and principal share-holders.* (1) Where any director, chief executive, managing agent, chief accountant, secretary or auditor of a listed company or any person who is directly or indirectly the beneficial owner of more than ten per cent of its listed equity securities makes any gain by the purchase and sale, or the sale and purchase, of any such security within a period of less than six months, such director, chief executive, managing agent, chief accountant, secretary or auditor or person who is beneficial owner shall make a report and tender the amount of such gain to the company and simultaneously send an intimation to this effect to the registrar and the Authority:

Provided that nothing in this sub-section shall apply to a security acquired in good faith in satisfaction of debt previously contracted.

(2) Where a director, chief executive managing agent, chief accountant, secretary, auditor or person who is beneficial owner as aforesaid fails or neglects to tender, or the company fails to recover, any such gain as is mentioned in sub-section (1) within a period of six

months after its accrual, or within sixty days of a demand therefor, whichever is later, such gain shall vest in the Federal Government and unless such gain is deposited in the prescribed account, the registrar or the Authority may direct recovery of the same as an arrear of land revenue.

(3) For the purposes of sections 220 and 224, the term "auditor of the company" shall, where such auditor is a firm, include all partners of such firm.

Explanation. (a) For the purposes of this section and section 222, beneficial ownership of securities of any person shall be deemed to include the securities beneficially owned, held or controlled by him or his spouse or by any of his dependent lineal ascendants or descendants not being himself or herself a person who is required to furnish a return under section 222, and

(*i*) in the case where such person is partner in a firm, shall be deemed to include the securities beneficially held by such firm; and

(*ii*) in the case where such person is a share-holder in a private company, shall be deemed to include the securities beneficially held by such company:

Provided that for the purposes of sub-section (1) the gain which is required to be tendered to the company by such person shall be an amount bearing to the total amount of the gain made, as the case may be, by the firm or private company the same proportion as his relative interest bears to the total interest in such firm or private company.

(*b*) For the purposes of this Explanation, "control", in relation to securities means the power to exercise a controlling influence over the voting power attached thereto.

(4) Whoever knowingly and wilfully contravenes or otherwise fails to comply with any provisions of section 222, section 223 or section 224 shall be liable to a fine which may extend to thirty thousand rupees and in the case of a continuing contravention, non-compliance or default to a further fine which may extend to one thousand rupees for every day after the first during which such contravention, non-compliance or default continues.

225. *Contracts by agents of company in which company is undisclosed principal.* (1) Every officer or other agent of a company,

other than a private company, not being the subsidiary company of a public company, who enters into a contract for or on behalf of the company in which contract the company is an undisclosed principal shall, at the time of entering into the contract, make a memorandum in writing of the terms of contract, and specify therein the person with whom it has been made.

(2) Every such officer or other agent shall forthwith deliver the memorandum aforesaid to the company and send copies to the directors and such memorandum shall be filed in the office of the company and laid before the directors at their next meeting.

(3) If any such officer or other agent makes default in complying with the requirements of this section--

(*a*) the contract shall, at the option of the company be void as against the company; and

(*b*) such officer or other agent shall be liable to a fine not exceeding two thousand rupees.

226. *Securities and deposits, etc.* No company, and no officer or agent of a company, shall receive or utilise any money received as security or deposit, except in accordance with a contract in writing; and all moneys so received shall be kept or deposited by the company or the officer or agent concerned, as the case may be, in a special account with a scheduled bank:

Provided that this section shall not apply where the money received is in the nature of an advance payment for goods to be delivered or sold to an agent, dealer or sub-agent in accordance with a contract in writing.

227. *Employees' provident funds and securities.* (1) All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company within fifteen days from the date of deposit in a special account to be opened by the company for the purpose in a scheduled bank or in the National Savings Schemes, and no portion thereof shall be utilized by the company except for the breach of the contract of service on the part of the employee as provided in the contract and after notice to the employee concerned.

(2) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund, whether by the company or by the

employees, or received or accruing by way of interest, profit or otherwise from the date of contribution, receipt or accrual, as the case may be, shall either--

(*a*) be deposited--

(*i*) in a National Savings Scheme;

(*ii*) in a special account to be opened by the company for the purpose in a scheduled bank; or

(*iii*) where the company itself is a scheduled bank, in a special account to be opened by the company for the purpose either in itself or in any other scheduled bank; or

(*b*) be invested in Government securities [1][; or

(*c*) in bonds, redeemable capital, debt securities or instruments issued by the Pakistan Water and Power Development Authority and in listed securities subject to the conditions as may be prescribed by the Authority.]

(3) Where a trust has been created by a company with respect to any provident fund referred to in sub-section (2), the company shall be bound to collect the contribution of the employees concerned and pay such contributions as well as its won contributions, if any, to the trustees within fifteen days from the date of collection, and thereupon, the obligations laid on the company by that sub-section shall devolve on the trustees and shall be discharged by them instead of the company.

Synopsis

1. Scope.
2. Claims relating to deposit.
3. Duty of bank.
4. Employee--meaning of.

1. Scope. The applicability of section 227 is not limited to moneys or securities deposited by an employee with the company as cash security but extends to every kind of deposit made by him in pursuance of his contract of service. The mere fact that the amount deposited by an employee with the company carried interest at a certain rate would not make it a loan, instead of a security.[2]

2. Claims relating to deposit. A company is in the position of a trustee in respect of the deposits falling within the ambit of section 227 and hence the employees whose deposits they are, have over the assets of the company a preferential claim in respect of their deposits in the event of the liquidation of the

1. "; or" subs. for full-stop and clause (*c*) added by Act 12 of 1994 S. 9 (2).
2. 1957 Cri. L. Jour 126 (Cal) (DB).

company.[3] But where a bank which accepts a deposit with the knowledge that it has been made by the depositor as required by the provisions of sub-section (1) of section 227 goes into liquidation, the depositing company can claim no preferential right to the repayment of the deposit but must prove its claim only as an ordinary creditor.[4] Where, subsequent to the coming into force of section 227, a company renewed a deposit in a bank, which to the knowledge of that Bank represented the provident fund accumulations of that company, and the bank went into liquidation, the company was entitled to preferential payment only as regards that part of the amount which, in accordance with the statutory provisions, it ought to have invested in approved securities but which in breach of trust it had invested otherwise. As regards the balance, the company was entitled to prove its claim only as an ordinary creditor.[5]

3. **Duty of bank.** A bank which accepts a deposit with notice that it is made under section 227 will be presumed also to have notice of the statutory limitations on the power of the depositor to make use of that money and hence is under an obligation not to part with it even on the direction of the depositor for purposes which he knows are inconsistent with the statutory limitations.[6]

4. **Employee--meaning of.** The word "employee" means an employee as such and not an ex-employee or past employee or a person whose contract of service has been put an end to. An ex-employee therefore has no right to demand inspection of securities in which provident funds are invested.[7]

228. *Right to see bank receipts for money or securities.* Any person depositing any money or security or making any contribution under section 227 shall be entitled on request made in this behalf to the company or the person concerned or to the trustees referred to in sub-section (3) of section 227, as the case may be, to see the receipt of the bank or other body for any such money, deposit or security as is referred to in that section.

229. *Penalty for contravention of section 226, 227 or 228.* Whoever contravenes or authorises or permits the contravention of any of the provisions of section 226 or section 227 or section 228 shall be punished with a fine which may extend to five thousand rupees and shall also be liable to pay the loss suffered by the

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3. AIR 1939 Mad. 337 (Deposits do not become the assets of the company and therefore are not divisible amongst its creditors).
4. AIR 1941 Mad. 48=ILR 1941 Mad. 125 (DB).
5. AIR 1939 Mad. W.N. 1069+1939 Mad. W.N. 1068.
6. AIR 1940 Mad. 178 (But the bank itself does not become a trustee. But by parting with the money it becomes liable on the ground of having participated in the breach of trust by the depositor who is a trustee)+AIR 1940 Mad. 184. (Bank which accepts the deposit is not a trustee. Its liability can arise only as a participator in the breach of trust by the depositor employer).
7. AIR 1962 Bom. 130 (DB)

depositor of security or the employee on account of such contravention.

1. **Scope.** In the proceedings under this section, the Court is entitled to draw from the facts proved before it any legitimate inference as to the existence of the requisite knowledge in the accused and act upon it. Its decision will not be vitiated by its omission to question the accused on those facts under section 342, Criminal P.C. because the omission to question him on the facts proved in his presence cannot in any manner prejudice him.[8]

ACCOUNTS

230. *Books of account to be kept by company.* (1) Every company shall keep at its registered officer proper books of account with respect to--

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases of goods by the company;

(c) all assets of the company;

(d) all liabilities of the company; and

(e) in the case of a company engaged in production, processing, manufacturing or mining activities, such particulars relating to utilisation of material or labour or to other inputs or items of cost as may be prescribed, if such class of companies is required by the Authority by a general or special order to include such particulars in the books of accounts:

Provided that all or any of the books of account aforesaid may be kept at such other place in Pakistan as the directors may decide and when the directors so decide, the company shall, within seven days of the decision, file with the registrar a notice in writing giving the full address of the other place.

(2) Where a company has a branch office, whether in or outside Pakistan, the company shall be deemed to have complied with the provisions of sub-section (1) if proper books of account relating to

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8. 1957 Cr. L. Jour. 126 (DB) (Cal.) (Membership of accused in the managing committee of society which as a matter of practice has not been complying with the provisions of section 282-B for a long time is sufficient by itself to support the inference as to his knowledge of the non-compliance).

the transactions effected at the branch office are kept at the branch office and proper summarised returns, made up to date at intervals of not more than three months are sent by the branch office to the company at its registered office or the other place referred to in sub-section (1).

(3) For the purposes of sub-sections (1) and (2), proper books of account shall not be deemed to be kept with respect to the matters specified therein if there are not kept such books, as are necessary to give a true, and fair view of the state of affairs of the company or the branch office, as the case may be and to explain its transactions.

(4) The books of account and other books and papers of every company shall be open to inspection by the directors during business hours.

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

(6) The books of account of every company relating to a period of not less than ten years immediately preceding the current year shall be preserved in good order:

Provided that, in the case of a company incorporated less than ten years before the current year, the books of account for the entire period proceeding the current year shall be so preserved.

(7) If a company fails to comply with any of the requirements of this section, every director, including chief executive and chief accountant, of the company who has knowingly by his act or omission been the cause of such default shall,--

(*a*) in respect of a listed company, be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than ten thousand rupees nor more than twenty thousand rupees, and with a further fine which may extend to two thousand rupees for every day after the first during which the default continues; and

(*b*) in respect of any other company, be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five thousand rupees.

Explanation. The term "chief accountant" shall include the chief accountant or any other person, by whatever name called, who is charged with the responsibility of maintenance of books of accounts of the company.

(8) The provisions of this section except those of sub-section (6), shall apply *mutatis mutandis* to the books of account which a liquidator is required to maintain and keep.

Synopsis

1. Assets and liabilities.
2. Director, right of to inspect books of account.
3. Member has no right to inspect books through agent.
4. Accounting standards, directions as to.
5. Production of accounts.

1. Assets and liabilities. The words "assets and liabilities" do not mean 'real' assets and liabilities but include over all assets and liabilities of a company.[9]

2. Director, right of to inspect books of account. Object of sections 230 & 233, Companies Ordinance is to enable Directors at any time to obtain, by inspection of books, true view of the state of affairs of the company. This would be defeated where company had failed to keep uptodate accounts. Therefore Company would not be absolved from complying with provisions of section 230 of the Ordinance even if it claimed to have complied with provisions of section 233 of the Ordinance.[10]

A director is entitled to look into company's books to find out whether a payment has been made or not. Other directors are under no liability in law to furnish such information to him.[11]

Inspection through agent. A director of a company is entitled to take inspection of accounts not only personally but through an agent also, provided there is no objection to the person so chosen as an agent and such agent does not misuse the information so obtained. Articles of Association preventing a director from inspecting accounts through an agent are *ultra vires* of the company as restricting the statutory rights of the director.[12]

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9. AIR 1944 Bom. 107 = ILR 1944 Bom. 302 = 45 Cr.L.J. 612 (FB).
10. 1996 CLC 1863 = NLR 1996 Civ. 315.
11. AIR 1965 Cal. 98.
12. AIR 1948 Bom. 301 = ILR 1948 Bom. 439.

3. Member has no right to inspect books agent. A member even if a woman has no right to inspect the accounts of the company through a proxy.[13]

4. Accounting standards, directions as to. Corporate Law Authority has directed that the following accounting standards shall be followed in regard to the accounts and preparation of the balance sheets and profit and loss accounts of listed companies, namely:--

(*a*) International Accounting Standards 1, 2, 4 to 14 and 16 to 21 issued by the International Accounting Standards Committee; and

(*b*) Statement of Standard Accounting Practice (SSAP-1) issued by the Institute of Chartered Accountants of Pakistan dealing with the subject of "classification of stores and spares in financial statements":

Provided that the Authority may of its own motion or upon application grant exemption to any company or any class of companies from compliance with all or any of the requirements of the aforesaid standards.[14]

5. Production of accounts. Articles of Association and Memorandum of Association, bind Company and Members whereby they are deemed to have covenanted to carry out rights and obligations in specified manner. Directors of Company are equally responsible to ensure necessary compliance with regard to furnishing copy of balance sheet and reports, etc., to shareholders at least fourteen days prior to holding of annual general meeting. In case of failure to maintain proper account books or balance sheets, etc, responsibility is equally extended to all Directors within purview of section 230 (7). Unless any justifiable circumstances are indicated or any prejudice is shown to have been caused to petitioners, notice would not be deemed to suffer from any material defect. Where account books were available for inspection and some of the Directors of Company were supplied with relevant accounts and balance sheet much prior to the date of meeting. Violation concerning failure to provide balance sheet, audit report, etc., alongwith notice being directory, would not vitiate the proceedings.[15] Where the Chief Executive of the Company failed to submit half-yearly profit and loss accounts and the balance-sheet for the half-year ending on 30th June, 1987, by 31.8.1987, and as such, a complaint was filed against the appellant under section 230(7). The facts on record indicated that non-production of the accounts in time was due to unavoidable circumstances and, therefore, while maintaining the conviction and sentence of the appellant on the first count of default, the fine on second count of default was reduced from Rs. 5,000 to Rs. 2,000.[16]

231. *Inspection of books of account by registrar, etc.* (1) The books of account and books and papers of every company shall be open to inspection by the registrar or by any officer authorised by the Authority in this behalf if, for reasons to be recorded in writing, the registrar or the authority considers it necessary so to do.

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13. AIR 1926 Sind 295.
14. S.R.O. 777(1)/86, dated 10.8.1986.
15. 1987 CLC 726=NLR 1987 UC 352.
16. 1991 P. Cr. L.J. 831.

(2) It shall be the duty of every director, officer or other employee of the company to produce to the person making inspection under sub-section (1) all such books of account and books and papers of the company in his custody or under his control, and to furnish him with any such statement, information or explanation relating to the affairs of the company, as the said person may require of him within such time and at such place as he may specify.

(3) It shall also be the duty of every director, officer or other employee of the company to give to the person making inspection under this section all assistance in connection with the inspection which the company may be reasonably expected to give.

(4) The person making the inspection under this section may, during the course of inspection,--

(*i*) make or cause to be made copies of books of account and other books and papers, or

(*ii*) place or cause to be placed by marks of identification thereon in token of the inspection having been made.

(5) Where an inspection of the books of account and books and papers of the company has been made under this section by an officer authorised by the Authority, such officer shall make a report to the Authority.

(6) Any officer authorised to make an inspection under this section shall have all the powers that the registrar has under this Ordinance in relation to the making of inquiries.

232. *Default in compliance with provisions of section 231.* (1) If default is made in complying with the provisions of section 231, every person who is in default shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than ten thousand rupees.

(2) Where a director or any other officer of a company has been convicted of an office under this section, he shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and, on such vacation of office, shall be disqualified for holding such office in any company, for a period of five years.

233. *Annual accounts and balance-sheet.* (1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calender year lay before the company in annual general

meeting a balance-sheet and profit and loss account or in the case of a company not trading for profit an income and expenditure account for the period, in the case of the first account for the period since the incorporation of the company and in any other case since the preceding account, made up to a date not earlier tan the date of the meeting by more than six months:

Provided that, in the case of a listed company the Authority, and in any other case the registrar, may, for any special reason, extend the period for a term not exceeding three months.

(2) The period to which the accounts aforesaid relate shall not exceed twelve months except where special permission has been granted in that behalf by the registrar.

(3) The balance-sheet and the profit and loss account or income and expenditure account shall be audited by the auditor of the company, in the manner hereinafter provided, and the auditor's report shall be attached thereto.

(4) Every company shall send a copy of such balance-sheet and profit and loss account or income and expenditure account so audited together with a copy of the auditor's report and the director's report to the registered address of every member of the company at least twenty-one days before the meeting at which it is to be laid before the members of the company, and shall keep a copy at the registered office of the company for the inspection of the members of the company during a period of at least twenty-one days before that meeting.

(5) A listed company shall, simultaneously with the despatch of the balance-sheet and profit and loss account together with the reports referred to in sub-section (4), send five copies each of such balance-sheet and profit and loss account and other documents to the Authority, the stock exchange and the registrar.

(6) The provisions of sub-section (7) of section 230 shall apply to any person who is a party to the default in complying with any of the provisions of this section.

Synopsis

1. Scope.
2. Extension of time.
3. Balance sheet, issue of.
4. General meeting not held.
5. Failure to comply with provisions.
6. Meeting held under orders of Court--Procedure.

1. **Scope.** There can be no conviction in respect of the same year for offences both under section 231 and 242.[17]

Bogus or incomplete audit accounts. Chief Executive of Company in connivance with Company Auditor preparing and circulating bogus and incomplete Audit Accounts, would be liable for action under sections 230, 233, 412 to 415.[18]

2. **Extension of time.** Registrar's power of extension is exercisable both with regard to the period during which the accounts should be laid before the general meeting and the period for which it should be prepared. Therefore, in a proper case, he could extend the period of 18 months specified in the section.[19] Registrar condoning delay in holding general meeting should also be deemed to have condoned the delay in filing the balance-sheet before it.[20]

3. **Balance-sheet, issue of.** A company is under statutory duty to issue a proper balance-sheet and the existence of disputes regarding the amount due to the company is no excuse.[21] In a prosecution under section 233 for failure to get the accounts balanced and prepare a balance-sheet it is no defence to say that as the accounts had been called for by various criminal Courts the account could not be balanced nor could the balance-sheet be prepared.[1]

4. **General meeting not held.** Where at the relevant time the managing director was the sole member of a company; it was held that as the holding of a general meeting was an impossibility when there was no second member, the managing director could not be punished either for not holding a meeting or for his failure to place before the meeting the balance-sheet and profit and loss account as required by section 233 of the Ordinance.[2] Even otherwise if it is found by the Court that no general meeting could be held because of reasons beyond the control of the Directors, *viz.*, as the books had been sealed and an application was filed in the High Court for winding up the company, etc., the question of laying of balance sheet and profit and loss account would not arise. In such a case the directors cannot be held guilty of contravening the provisions of this section.[3]

5. **Failure to comply with provisions.** It is not open to the managing director to plead in answer to a charge under sections 233 and 241 (3) of the Companies Ordinance his prior default in respect of the calling of the general bodies meeting.[4] On the contrary the Directors can be punished for non-compliance with this section notwithstanding their previous conviction for not holding the annual general meeting within the time specified by the Ordinance.[5]

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17. AIR 1937 Mad. 341=38 Cr. L.J. 695.
18. NLR 1993 UC 476=1993 CLC 1413.
19. AIR 1954 Mad. 276+AIR 1955 Mad. 28 (DB).
20. AIR 1941 Mad. 504=42 Cr. L.J. 683.
21. AIR 1933 Lah. 301.
1. AIR 1934 Cal. 63=35 Cr. L.J. 492.
2. AIR 1958 Ker. 41=ILR 1957 Ker. 989=1968 Cr. L.J. 177 (DB).
3. AIR 1963 A.M. 389.
4. AIR 1961 SC 186+AIR 1952 Mad. 800+AIR 1953 Mad. 558.
5. AIR 1964 Orissa 14.

The plea of the directors, who are prosecuted under sections 233 and 241, that they are not guilty of wilful default inasmuch as it was the Managing Director who was entitled to call the general meeting and place the balance-sheet before it, they were helpless in the matter, will not be entertained. Each director has his own responsibility and cannot plead innocence on the ground of helplessness and throw the entire blame on the managing director.[6] Where the directors refrained from complying with the provisions of section 233 (1) and continued to give flimsy excuses for their default in spite of repeated reminders from the Registrar; it was held that their default was clearly wilful and that they were guilty of an offence under this section.[7]

Default committed before enforcement of Ordinance. Where default to file annual accounts was committed when Companies Act, 1913 was applicable. Default so committed thus could not be punished under provisions of Companies Ordinance, 1984, because the punishment under section 230(7) of the Ordinance is different and higher than the one provided under the Act. Therefore, such a provision of the Companies Ordinance could not be made applicable retrospectively in respect of an offence or default committed under the Companies Act.[8]

Failure cannot be condoned. The Registrar under proviso to sub-section (1) can neither condone the failure to hold a general meeting in any particular year nor the failure to lay the accounts before the general meeting.[9]

Persons not holding office at time of default. Persons who were neither directors nor officers, nor even share-holders, when default occurred, are not liable in respect of an offence under section 233.[10]

6. Meeting held under orders of Court--procedure. Where a meeting of share-holders was held on the orders of the Court and an objection was made that no balance-sheet, Director's report, auditor's report and statement of accounts were sent along with the notices as required under S. 233 (4) and Article 139 of the Articles of Association. It was held that this meeting was not an ordinary annual general meeting held in accordance with the ordinary provisions of law or of the Articles of Association but it was a meeting on the direction of the High Court and the Court had laid down the procedure to be adopted by the Chairman for holding such meeting. In any case no prejudice was caused to any of the share-holders who had full opportunity to inspect the records available at the office of the Company and that was pointed out but by the Chairman long before the meeting as recorded in the proceeding.[11]

234. *Contents of balance-sheet.* (1) Every balance-sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every profit and

6. AIR 1952 Mad. 800 = 1983 Cr L J 19.
7. AIR 1957 Mad. 675 = 1457 Cr L J 1279.
8. 1989 CLC 2103 = NLR 1989 Cr. 715.
9. AIR 1948 Cal 42 = 48 Cr L J 236.
10. AIR 1914 Lah. 222 (DB) + AIR 1937 Mad. 341.
11. PLD 1968 Dhaka 352 = 19 DLR 280.

loss account or income and expenditure account of a company shall give a true and fair view of the profit and loss of the company for the financial year so, however, that every item of expenditure fairly chargeable against the year's income shall be brought into account and, in case where any item of expenditure which may in fairness be distributed over several years has been incurred in any one financial year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the financial year.

(2) The balance-sheet and profit and loss account or the income and expenditure account shall,--

(*i*) in the case of a listed company, comply with the requirements of the Fourth Schedule so far as applicable thereto; and

(*ii*) in the case of any other company, comply with the requirements of the Fifth Schedule so far as applicable thereto:

Provided that, except to the extent otherwise notified in the official Gazette by the Authority, this sub-section shall not apply to an insurance or banking company or to any other class of companies for which the requirements of balance-sheet and profit and loss account are specified in the law regulating such class of companies.

(3) Subject to the provisions of this Ordinance, in the case of a listed company--

(i) such International Accounting Standards and other standards shall be followed in regard to the accounts and preparation of the balance-sheet and profit and loss account as are notified for the purpose in the official Gazette by the Authority;

(*ii*) a statement of changes in financial position or statement of sources and application of funds shall form part of the balance-sheet and profit and loss account; and

(*iii*) accounting policies shall be stated and, where there is any change in such policies, the auditor shall report whether he agrees with the change.

Explanation. "International Accounting Standards" shall be understood in the terms in which it is understood in the accounting circles.

(4) The Federal Government may, of its own motion or upon application by a company, modify, in relation to that company, the requirements of the Fourth Schedule or the Fifth Schedule for the purpose of adapting them to the circumstances of the company.

(5) The Federal Government shall have power from time to time to grant exemption to any company or any class of companies if it is in the public interest so to do, from compliance with all or any of the requirements of the Fourth Schedule or in the Fifth Schedule.

(6) The provisions of sub-section (7) of section 230 shall apply to any person who is a party to the default in complying with any of the provisions of this section.

Synopsis

1. Balance-sheet. 2. False balance-sheet.
3. Auditors, opinion of.

1. **Balance-sheet.** A balance-sheet must be pictorial representation of the trading position of the company which can be easily appreciated by persons who can reasonably be expected to understand commercial expression and commercial conditions. It is not sufficient if it amounts to a mere inventory.[12]

Assets and liabilities. The words "assets and liabilities" have the same meaning for the purposes of both section 230 and section 234. They do not mean "real" assets and liabilities only under section 234 while they mean "all" assets and liabilities under section 230. The assets and liabilities shown in the balance-sheet should be according to the entries in the account books and not something different.[13]

Debts and liabilities. There is difference between a 'debt' and a 'liability'. For example, a dividend, when proposed, does not become a debt, but only becomes a debt when declared. The case of "provisions for taxation" is a liability. All debts are liabilities, but all liabilities are not debts.[14] Similarly a loan and a deposit are quite different for one is an asset and other a liability. Consolidating the two and presenting them as one item is a case of non-disclosure amounting to suppression of truth.[15]

12. AIR 1936 Cal. 680 + ILR (1937) 1 Cal. 328 (DB).
13. AIR 1944 Bom. 107 = 45 Cr Jour 612 = ILR 1944 Bom. 302 (FB).
14. AIR 1961 Cal. 649.
15. AIR 1936 Cal. 680 = 38 Cr L Jour 151 = ILR (1937) 1 Cal 328 (DB).

Book debts. Under the item "book debts" in the balance-sheet all debts due to the company as shown in the books must be brought in.[16] All genuine book debts whether they are considered good, doubtful or bad must be shown in an entry against the item. Considerations as to the object of balance-sheet cannot whittle down the clear provisions of the prescribed form.[17] It is not necessary that a balance-sheet should disclose nature of bad and doubtful debts.[18] But the balance-sheet must reveal any part of a secret reserve availed of to meet bad and doubtful book-debts.[19]

Reserve. The true nature of reserve shown in the balance-sheet is that it represents the profits expressly set aside by the directors as such reserve. Unutilized profits in the absence of such reservation by the directors do not amount to a reserve.[20]

Forfeited shares. The reference to 'forfeited' shares in the prescribed form of balance-sheet is not confined to shares forfeited for non-payment of calls but refers also to shares forfeited under the articles of the company for any other reason provided however the forfeiture does not offend against the provisions of the Ordinance or the general law of the land.[1]

Loans to Directors of Banking Company. The balance-sheet of a company need not contain specific and separate mention of loans taken by directors of a Banking Company from the company and paid off during the same year.[2]

2. False balance-sheet. Directors are bound to deal with the money of the investing public as trustees. They cannot be allowed to publish false balance-sheets, betraying the confidence of the public to conceal their own improper conduct.[3] Chief Executive of Company in connivance with Company Auditor preparing and circulating bogus and incomplete Audit Accounts, would be liable for action under sections 230, 233, 412 to 415 and 492.[4]

3. Auditors, opinion of. Auditor, under Companies Ordinance, 1984, is confined to examination of accounts of Company primarily to see that balance sheet and profits and loss accounts have been drawn up in conformity with law. Balance-sheet and profit and loss account would give a true and fair view of profit and loss of company for relevant financial year. Where Auditor oversteps such functions and enters into examination of manner in which business of company was conducted, he would clearly be acting in excess of his authority.[5]

When a balance-sheet does not disclose true state of affairs of a company, the opinion of Auditor that it is properly drawn is of no value.[6]

16. AIR 1944 Bom. 107 = 45 Cr L Jour 612 = ILR 1944 Bom. 302 (FB).
17. AIR 1927 Bom. 414 (DB) (Debts when written off as bad cease to be book debts).
18. AIR 1949 Mad. 657 = 50 Cr L Jour 917.
19. AIR 1927 Bom. 414 = 28 Cr L Jour 568 (DB).
20. AIR 1953 SC 501 = 1954 SCR 203.
1. ILR (1950) 1 Cal 235 (DB).
2. AIR 1943 Mad. 657 = 50 Cr L Jour 917.
3. AIR 1936 Cal. 680 = ILR (1937) 1 Cal 328 (DB).
4. NLR 1993 UC 476 = 1993 CLC 1413.
5. 1992 CLC 1668 (DB).
6. AIR 1936 Cal. 680 = ILR (1937) 1 Cal. 328 (DB).

235. *Treatment of surplus arising out of revaluation of fixed assets.* (1) Where a company revalues its fixed assets, the increase in, or sums added by writing up of, the value of such assets as appearing in the books of accounts of the company shall be transferred to an account to be called "Surplus on Revaluation of Fixed Assets Account" and shown in the balance-sheet of the company after Capital and Reserves.

(2) Except and to the extent actually realised on disposal of the assets which are revalued, the surplus on revaluation of fixed assets shall not be applied to set off or reduce any deficit or loss, whether past, current or future, or in any manner applied, adjusted or treated so as to add to the income, profit or surplus of the company, or utilised directly or indirectly by way of dividend or bonus:

Provided that the surplus on revaluation of fixed assets may be applied by the company in setting off or in diminution of any deficit arising from the revaluation of any other fixed asset of the company.

(3) The requirements of sub-sections (1) and (2) shall also apply to any account representing any increase in or addition to the value of any asset as a result of any revaluation of any fixed assets done before the commencement of this Ordinance, howsoever described, to the extent of the amount thereof appearing in the books of account of the company on such commencement.

(4) After revaluation as aforesaid, depreciation on the assets so revalued shall be provided with reference to the value assigned to such assets on revaluation.

(5) If default is made in complying with any requirements of this section, the directors of the company who are knowingly and wilfully in default shall be punishable with fine not exceeding twenty thousand rupees and shall also be jointly and severally liable to the company for any loss sustained by the company on account of such default.

236. *Director's report.* (1) The directors shall make out and attach to every balance-sheet a report with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to the Reserve Fund, General Reserve or Reserve Account shown specifically in the balance-sheet or to a

Reserve Fund, General Reserve or Reserve Account to be shown specifically in a subsequent balance-sheet.

(2) In the case of a public company or a private company which is a subsidiary of a public company, the directors' report shall, in addition to the matters specified in sub-section (1),--

(*a*) disclose any material changes and commitments affecting the financial position of the company which have occurred between the end of the financial year of the company to which the balance-sheet relates and the date of the report;

(*b*) so far as is material for the appreciation of the state of the company affairs by its members, deal with any changes that have occurred during the financial year concerning the nature of the business of the company or of its subsidiaries, or in the classes of business in which the company has interest, whether as a member of another company or otherwise, unless the Authority exempts any company from making such disclosure on the ground that such disclosures would be prejudicial to the business of the company;

(*c*) contain the fullest information and explanation in regard to any reservation, observation, qualification or adverse remarks contained in the auditor's report;

(*d*) circulate with it information about the pattern of holding of the shares in the form prescribed; and

(*e*) state the name and country of incorporation of its holding company, if any, where such holding company is established outside Pakistan.

(3) The report referred to in sub-section (1) shall be signed by the chairman of the directors or the chief executive of the company on behalf of the directors if authorised in that behalf by the directors and, when not so authorised, shall be signed by the chief executive and such number of directors as are required to sign the balance-sheet and profit and loss account under section 241.

(4) If a company fails to comply with any of the requirements of this section, every director, including the chief executive, of the company who has knowingly by his act or omission been the cause of any default by the company in complying with the requirements of this section shall,--

(*a*) in respect of a listed company, be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than ten thousand rupees nor more than twenty thousand rupees, and with a further fine which may extend to two thousand rupees for every day after first during which the default continues; and

(*b*) in respect of any other company, be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five thousand rupees.

237. *Balance-sheet of holding company to include certain particulars as to its subsidiaries.* (1) There shall be attached to the balance-sheet of a holding company having a subsidiary or subsidiaries at the end of the financial year at which the holding company's balance-sheet is made out, the following documents in respect of such subsidiary or of each such subsidiary, as the case may be,--

(*a*) a copy of its balance-sheet;

(*b*) a copy of its profit and loss account or income and expenditure account, as the case may be;

(*c*) a copy of the report of its directors;

(*d*) a copy of the report of its auditors;

(*e*) a statement of the holding company's interest in the subsidiary as specified in sub-section (6);

(*f*) the statement referred to in sub-section (8) if any; and

(*g*) the report referred to in sub-section (9), if any.

(2) The balance-sheet referred to in clause (*a*) of sub-section (1) shall be prepared in accordance with the requirements of the Fourth Schedule or the Fifth Schedule, as the case may be,--

(*i*) as at the end of the financial year of the subsidiary, where such financial year coincides with the financial year of the holding company;

(*ii*) as at the end of the financial year of the subsidiary last before that of the holding company, where the financial year of the subsidiary does not coincide with that of the holding company.

(3) The profit and loss account or the income and expenditure account and the reports of the directors and of the auditors, referred to in clauses (*b*), (*c*) and (*d*) of sub-section (1), shall be made out, in accordance with the requirements of this Ordinance, for the financial year of the subsidiary referred to in sub-section (2).

(4) Where the financial year of the subsidiary does not coincide with that of the holding company, the financial year aforesaid of the subsidiary shall not end on a day which precedes the day on which the holding company's financial year ends by more than six months.

(5) Where the financial year of a subsidiary is shorter in duration than that of its holding company, references to the financial year of the subsidiary in sub-sections (2), (3) and (4) shall be construed as references to two or more financial years of the subsidiary the duration of which, in the aggregate, is not less than the duration of the holding company's financial year.

(6) The statement referred to in clause (*e*) of sub-section (1) shall specify--

(*a*) the extent of the holding company's interest in the subsidiary at the end of the financial year or of the last of the financial years of the subsidiary referred to in sub-section (2);

(*b*) the net aggregate amount, so far as it concerns members of the holding company and is not dealt with in the company's accounts, of the subsidiary's profits after deducting its losses of *vice versa*--

(*i*) for the financial year or years of the subsidiary aforesaid; and

(*ii*) for the previous financial years of the subsidiary since it became the holding company's subsidiary;

(*c*) the net aggregate amount of the profits of the subsidiary after deducting its losses or *vice versa*--

(*i*) for the financial year or years of the subsidiary aforesaid; and

(*ii*) for the previous financial years of the subsidiary since it became the holding company's subsidiary;

so far as those profits are dealt with, or provision is made for those losses, in the company's accounts.

(7) Clauses (*b*) and (*c*) of sub-section (6) shall apply only to the profits and losses of the subsidiary which may properly be treated in the holding company's account as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the holding company or any other of its subsidiaries shall not, for that or any other purpose, be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the company or any of its subsidiaries, except that they may in an appropriate case be so treated where,--

(*a*) the company is itself the subsidiary of another body corporate; and

(*b*) the shares were acquired from that body corporate or its subsidiary;

and, for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period, the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during the year and be apportioned accordingly.

(8) Where the financial year or years of a subsidiary referred to in sub-section (2) does not or do not coincide with the financial year of the holding company, a statement containing information on the following matters shall also be attached to the balance-sheet of the holding company, namely:--

(*a*) whether there has been any, and if so, what, change in the holding company's interest in the subsidiary between the end of the financial year or of the last of the financial years of the subsidiary and the end of the holding company's financial year,

(*b*) details of any material changes which have occurred between the end of the financial year or of the last of the financial years of the subsidiary and the end of the holding company's financial year in respect of---

(*i*) the subsidiary's fixed assets;

(*ii*) the investment;

(*iii*) the moneys lent by it; and

(*iv*) the moneys borrowed by it for purpose other than that of meeting current liabilities.

(9) If, for any reason, the directors of the holding company are unable to obtain information on any of the matters required to be specified by sub-section (7), a report in writing to that effect shall be attached to the balance-sheet of the holding company.

(10) The documents referred to in clauses (*e*), (*f*) and (*g*) of sub-section (1) shall be signed by the persons by whom the balance-sheet of the holding company is required to be signed.

(11) The Authority may, on the application or with the consent of the directors of the company, direct that, in relation to any subsidiary, the provisions of this section shall not apply or shall apply only to such extent as may be specified in the direction.

(12) If a company fails to comply with any requirements of this section, every officer of the company shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five thousand rupees in respect of each offence unless he shows that he took all reasonable steps for securing compliance by the company with such requirements and that the non-compliance or default on his part was wilful and intentional.

238. *Financial year of holding company and subsidiary.* (1) The directors of a holding company shall ensure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiaries coincides with the company's own financial year.

(2) Where it appears to the Authority desirable for a holding company or a holding company's subsidiary to extend its financial year so that the subsidiary's financial year may end with that of the holding company and for that purpose to postpone the submission of the relevant accounts to a general meeting from one calendar year to the next, the Authority may on the application or with the consent of the directors of the company whose financial year is to be extended direct that, in the case of that company, the submission of accounts to a general meeting, the holding of an annual general meeting or the making of an annual return shall not be required in the earlier of the said calender years.

239. *Rights of holding company's representatives and members.* (1) A holding company may, by resolution, authorise representatives named in the resolution to inspect the books of account kept by any of its subsidiaries; and the books of account of any such subsidiary shall be open to inspection by those representatives at any time during business hours.

(2) The rights conferred by section 265 upon members of a company may be exercised, in respect of any subsidiary, by members of the holding company as if they also were members of the subsidiary.

240. *Balance-sheet of modaraba company to include modaraba accounts, etc.* (1) There shall be attached to the balance-sheet of a *modaraba* company, the annual accounts and other reports circulated in pursuance of the provisions of section 14 of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980), made out--

(*a*) as at the end of the financial year of the *modaraba* where such financial year coincides with the financial year of the *modaraba* company; and

(*b*) as at the end of the financial year of the *modaraba* last before that of the *modaraba* company, where the financial year of the *modaraba* company does not coincide with that of the *modaraba* company.

(2) The provisions of sub-section (12) of section 237 shall apply to any person who is a party to the default in complying with any of the provisions of this section.

241. *Authentication of balance-sheet.* (1) Save as provided by sub-section (2), the balance-sheet and profit and loss account or income and expenditure account shall be approved by the directors and shall be signed by the chief executive and at least one director.

(2) When the chief executive is for the time being not in Pakistan, then the balance-sheet and profit and loss account or income and expenditure account of the company shall be signed by not less than two directors for the time being in Pakistan, but in such a case there shall be subjoined to the balance-sheet and profit and loss account or income and expenditure account a statement signed by such directors explaining the reasons for non-compliance with the provisions of sub-section (1).

(3) If a company makes default in complying with the requirement of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding five thousand rupees.

Synopsis

1. Acknowledgment of debt by balance-sheet.
2. Default.
3. Punishment.

1. Acknowledgment of debt by balance-sheet. Statement made in the balance-sheet of a company that the company owed a specific sum to a share-holder to whom the balance-sheet was sent in the ordinary way, can amount to an acknowledgement within the meaning of the Limitation Act. But where that statement amounts to an acknowledgment by the directors acting as a board, of a debt due to one of themselves it cannot be relied upon by the director in whose favour the acknowledgment is made.[7]

Extension of limitation by such acknowledgment. Before a balance-sheet of a company could be relied upon as an acknowledgment it has to be shown that the balance-sheet acknowledged a liability and that the liability has been acknowledged under the signature of a person who was a duly authorised agent of the Company. In view of the provisions of section 241, a balance-sheet in order the be authenticated so as to be a valid acknowledgment under section 19 of the Limitation Act has to be signed not only by the Chief Executive of the company but also by one director. A balance-sheet signed by a Manager not authorised to sign it cannot be used as an acknowledgement of a debt mentioned therein.[8]

2. **Default.** Where there has been default under this section the Director cannot plead in defence that there has been no default as no general meeting has been held during the period.[9]

3. **Punishment.** The offences under section 158 and 241 are not merely technical offences. They are real offences deserving substantial punishment. No doubt the legislature has only fixed the maximum of the sentence that could be awarded, the question of adequacy of sentence to be awarded, in a particular case being left to the discretion of the Court. But such discretion has to be judicially exercised. The Court must be guided by a sense of proportion in fixing the quantum of fine in any particular case. It must bear some reasonable proportion to the upper limit sanctioned by the statute.[10]

242. *Copy of balance-sheet to be forwarded to the registrar.* (1) Without prejudice to the provisions of sub-section (5) of section 233, after the balance-sheet and profit and loss account or the income and expenditure account, as the case may be, have been laid before the company at the annual general meeting, such

7. (1958) 1958-1 WLR 822.
8. AIR 1963 All 284 (DB).
9. AIR 1941 SC 186.
10. 1958 Mad L Jour (Cr) 332.

number of copies thereof alongwith the reports and documents required to be annexed to the same, not being less than five in the case of a listed company or three in the case of any other company, as may be prescribed, signed by the chief executive, directors, chairman of directors, or the auditors of the company, as the case may be, in the manner provided by sections 236, 241 and 257, shall be filed with the registrar within thirty days from the date of such meeting.

(2) If the general meeting before which a balance-sheet is laid does not adopt the balance-sheet and profit and loss account or the income and expenditure account or defers consideration thereof or is adjourned, a statement of that fact and of the reasons therefor shall be annexed to the said documents and also to the copies thereof required to be filed with the registrar.

(3) Nothing in this section shall apply to a private company.

(4) If a company makes default in complying with the requirements of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable,--

(*a*) if the default relates to a listed company, to a fine which may extend to ten thousand rupees and to a further fine which may extend to two hundred rupees for every day after the first during which the default continues; and

(*b*) if the default relates to any other company, to a fine which may extend to two thousand rupees and to a further fine which may extend to fifty rupees for every day after the first during which the default continues.

Synopsis

1. Private company.
2. Default by company.
3. Prosecution.
4. Conviction.
5. Fine, payment of.
6. Appeal.

1. Private company. A private company ceases to be private and becomes a public company by issuing debentures to the public and is bound to file the balance-sheet and profit and loss account with the Registrar. Default by the company in complying with that requirement renders the company and its directors liable to penalty under the section.[11]

2. Default by company. The provisions of section 242 are mandatory as regards the company and the company will render itself liable to the penalties

11. AIR 1946 Bom. 18 = II.R 1945 Bom 863 = 47 Cr L Jour 361.

imposed by it when it makes default in compliance will its provisions.[12] Directors who presumably know the duties imposed upon them by the Ordinance, must be held to have wilfully and knowingly permitted the company to fail to carry out the duties when they make no attempt to see that the duties are carried out.[13] But where at the time the Registrar called for the balance-sheet under section 242, the annual general meeting was not yet due; it was held that no duty arose to file the balance-sheet with the Registrar and hence there was no offence committed under the section by a failure to do so.[14]

3. Prosecution. There is nothing in the Companies Ordinance to suggest that complaint of the Registrar is necessary before the prosecution of a company or of a director for default under the section can be entertained.[15] But where the Registrar alone is authorised by the Regulations framed under the Ordinance to make a complaint regarding wilful default in filing the accounts and balance-sheet, the proceedings of a Magistrate taken on a complaint by the clerk of the registrar and countersigned by the public prosecutor is *ultra vires*.[16]

Complaint by person other than Registrar. Ordinarily the Magistrate should hesitate to proceed, without reference to the registrar, upon a complaint filed by a party other than the registrar, alleging against a director the offence of default in filing before the registrar the balance-sheet of the company within the specified time.[17]

4. Conviction. To convict an officer of a company for an offence under section 242 it must be shown that he authorised or permitted the default knowingly and wilfully.[18] The offence under the section is complete if the officer of the company knew of the defaults and permitted them, and it is not necessary to prove that he wilfully authorised those defaults.[19]

Managing Agent. The managing agents of a company cannot escape punishment for an offence under section 242 merely because one of the members of their firm has been convicted as a director for that offence.[20]

Defence. A director prosecuted under this section cannot plead impossibility to comply with the section when such impossibility arose out of his own default in placing the balance-sheet before the share-holders at the general meeting.[1] In prosecution under this section for default in submitting the copies of the balance-sheet and the profit and loss account with the Registrar of Companies, the accused cannot plead their own default in holding annual general meeting of the company, by way of defence for not submitting the documents required by sub-section (1) of this section.[2]

12. AIR 1934 Cal 63 = 35 Cr L Jour 492.
13. AIR 1948 Cal 42 + AIR 1917 Cal 1 = 18 Cr L Jour 787 (DB).
14. AIR 1932 Mad 497 = 33 Cr L Jour 589.
15. AIR 1948 Cal 42 = 48 Cr L Jour 236.
16. 11 Cr L Jour 577 (Lah).
17. 12 Cr L Jour 506 (All).
18. AIR 1934 Cal. 63 = 35 Cr L Jour 492.
19. AIR 1936 Cal 237 = 37 Cr L Jour 552.
20. AIR 1916 Lah 199 = 17 Cr L Jour 306.
1. AIR 1948 Cal 42 + AIR 1917 Cal 1 = 45 Cal. 486 (DB).
2. AIR 1963 Raj. 134 (DB) + AIR 1961 SC 186.

The defence of directors to a charge under section 242 that they were merely figureheads having no active part in the control of the company would be of no avail.[3]

No general meeting held. When no general meeting has been convened or held at which the balance-sheet and profit and loss account have been laid, no obligation to file the copies before the registrar arises and therefore there is no default in complying with the section and no offence is committed.[4]

No balance-sheet prepared. The liability under section 242(4) will arise only where the balance-sheet had been placed before the general meeting and not where it had not been so placed. Hence a person cannot be punished both under section 233 and this section with respect to the same year.[5]

5. Fine, payment of. An order directing the Directors individually to pay the fine imposed on the company is illegal.[6]

6. **Appeal.** Where conviction is not of the managing director but of the company an appeal is not properly instituted unless the appeal is by the company through some authorised agent.[7]

243. *Right of member of company to copies of the balance-sheet, etc. and the auditor's report.* Save as otherwise provided in this Ordinance, a member of a company shall be entitled to be furnished with copies of the balance-sheet and the profit and loss account or the income and expenditure account, the director's report and the auditor's report on payment of such sum as the company may fix not exceeding the maximum amount prescribed.

1. **Scope.** The right to demand and obtain copies of balance-sheet and the other documents referred to under section 243 belongs only to members and therefore a person whose name has been removed from the register of members, whether such removal is *ultra vires* or otherwise, cannot obtain them.[8]

244. *Penalty for improper issue, circulation or publication of balance-sheet or profit and loss account.* If any copy of a balance-sheet is issued, circulated or published without there being annexed or attached thereto, as the case may be, a copy each of (*i*) the profit and loss account or income and expenditure account, (*ii*) any accounts, reports, notes or statements referred therein, (*iii*) the auditor's report, and (*iv*) the directors' report, the company, and every officer of the company who is knowingly and wilfully in

3. AIR 1948 Cal 42=48 Cr L Jour 236.
4. AIR 1948 Bom 357=ILR 1948 Cal 190=18 Cr L Jour 325 (DB).
5. AIR 1937 Mad 341+AIR 1934 Cal. 63=35 Cr L Jour 492.
6. AIR 1924 Lah. 489=26 Cr L Jour 799.
7. AIR 1934 Cal 63=35 Cr L Jour 492.
8. 52 Cal W N 590.

default shall be punishable with fine which may extend to five thousand rupees.

245. *Half-yearly accounts of listed companies.* (1) Every listed company shall,--

(*a*) within two months of the close of the first half of its year of account, prepare and transmit to the members and the stock exchange in which the shares of the company are listed a profit and loss account for, and balance-sheet as at the end of, that half-year, whether audited or otherwise; and

(*b*) simultaneously with the transmission of the half-yearly profit and loss account and balance-sheet to the members and the stock exchange, file with the registrar and the Authority such number of copies thereof, not being less than five, as may be prescribed.

(2) The provisions of sub-sections (1) and (2) of section 241 shall apply to the half-yearly accounts.

(3) The provisions of sub-section (7) of section 230 shall apply to any person who is a party to the default in complying with any of the provisions of this section.

246. *Power of Authority to require submission of additional statements of accounts and reports.* (1) The Authority may, by general or special order, require companies generally, or any class of companies or any particular company, to prepare and send to the members, the registrar, any authority, a stock exchange and any other person such periodical statements of accounts, information or other reports in such form and manner and within such time, as may be specified in the order.

(2) In the event of a default in complying with the order of the Authority issued under sub-section (1), the company, and every officer of the company who knowingly and wilfully authorises or permits the default, shall be liable to a fine which may extend to one thousand rupees for every day during which the default continues.

247. *Rights of debenture-holders, etc. as to receipt and inspection of report, etc.* The holders of debentures, including the trustees for holders of debentures, of a company shall have the same right to receive and obtain on payment copies of the balance-sheet and profit and loss accounts or the income and expenditure account of

the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

DIVIDENDS AND MANNER AND TIME OF PAYMENT THEREOF

248. *Certain restrictions on declaration of dividends.* (1) The company in general meeting may declare dividends; but no dividend shall exceed the amount recommended by the directors.

(2) No dividend shall be declared or paid by a company for any financial year out of the profits of the company made from the sale or disposal of any immovable property or assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of selling and purchasing any such property or assets, except after such profits are set off or adjusted against losses arising from the sale of any such immovable property or assets of a capital nature.

Synopsis

1. Dividend.
2. Reserve fund.
3. Preference shares, dividend on.
4. Limitation.

1. Dividend. Dividend is a share of the profits declared by a company as liable to be distributed among the share-holders.[9]

Company being a separate legal entity from its shareholders, shareholders cannot lay any claim against any assets of the company while it is operating except against declared dividend. Merely showing a particular sum in the account as reserved for dividend, does not give any cause of action to a shareholder to ask for the payment of any amount out of such sum unless and until dividend is declared in the general meeting of the shareholders in accordance with law.[10] An investor becomes entitled to participate in the profits of the company in which he holds shares and it is this right and not the declaration by the company which is the effective source of his profits, namely the dividend. The absence of a declaration by the company of dividend only postpones his enjoyment of the profits.[11] Where a dividend has been declared, it is to be treated as a debt owing to the share-holders, but being held by the company that declared the dividend. It is a special debt and each share-holder is entitled to sue the company for his portion.[12] However, neither the declaration by the company that dividend is payable nor the entry made by it in its books disclosing its liability for the dividend makes it a trustee for its share-holders. To put the company in the position of trustee there

9. AIR 1955 SC 74 = 1955-1 SCR 876.
10. 1987 CLC 1408 = KLR 1987 CC 678 (DB).
11. AIR 1955 SC 74 = 1955-1 SCR 876 (AIR 1953 Bom 1, *Reversed* on this point).
12. 1982 CLC 463.

must be something more, such as the setting apart of any special part of its assets as being or representing the dividend, or a notice given to the share-holders or some other step taken by it.[13]

Nationalization of Company, who may declare dividend. Where on the nationalization of State Life Insurance Company an agreement between State Life Insurance Corporation and the Nationalized Company allocated a certain amount to the shareholder's account from surplus of the company. The nationalized company failed to pass on the said amount to the Company for crediting in the shareholder's account. It was held that the amount would remain vested in the Company till the time the dividend was declared in the general meeting of the shareholders. Even unclaimed declared dividend remained vested in the Company. The Company, therefore, had the *locus standi* to file the suit in case it could establish a binding agreement between itself and the corporation or a statutory obligation on the part of the corporation. Assumption that company was claiming amount of dividend though it was not declared by the Corporation was not correct as dividend was to be declared by the Company and not by the Corporation.[14]

Purchaser of shares not paying price. Where the buyer had contracted to purchase shares and after the contract but before the price of the share was actually paid the dividend accrued on the shares. It was held that he cannot claim to retain a fair measure of the profit earned or the expense saved by reason of the price being unpaid without denying the vendor a correlative equity and ignoring the quality and character of the relief which he has sought. In this case the parties agreed that the buyer should pay interest at the unpaid purchase price at the rate of 4½%.[15]

2. **Reserve fund.** Where the articles of association authorise the company to capitalize its profits it can do so, provided it acts genuinely, by carrying over the profits to a reserve fund or by adding it to its nominal capital. The individual share-holders who have no right in the undistributed profits cannot insist upon the profit being distributed as dividend.[16]

3. **Preference shares, dividend on.** The provision as to declaration of dividend apply equally to shares on which a fixed preferential dividend is payable. The necessity for declaration of a dividend as a condition precedent to an action to recover is stated in general terms in "Lindley on Companies" and where the reserve fund article applies it is obvious that such a declaration is essential, for a share-holder has no right to any payment until the corporate body has determined that the money can be properly paid away. The opposite conclusion might enable the preference share-holders to ruin the company and would lead to great inconvenience in enabling them to compel payment out of the last penny without carrying forward any balance.[17]

13. (1896) 1896-1 Ch 559.
14. 1987 CLC 1408 = KLR 1987 CC 678 (DB).
15. PLD 1949 PC 305.
16. AIR 1949 Mad. 521 = ILR 1949 Mad 519.
17. (1902) 1902-1 Ch 353.

Dividend subject to payment of Income-tax. Where the dividends on the second preference shares are declared by the company "subject to Income-tax" it cannot be said that there is no declaration of dividend except after deduction of tax at the standard rate. The words 'subject to tax' mean no more than subject to tax properly deductible and therefore in a case where no tax is properly deductible, the words have no effect on the amount of dividend declared.[18]

4. Limitation. On the declaration of dividend made by a company on its shares a debt in respect of the dividend declared becomes immediately payable and the share-holder entitled to the dividend can sue at law for the same. Hence the statute of Limitation begins to run immediately.[19]

249. *Dividend to be paid only out of profits.* No dividend shall be paid by a company otherwise than out of profits of the Company.

Synopsis

1. Dividend.
2. Dividend, to be declared out of profit.

1. Dividend. The ordinary meaning of 'dividend' is the receipt by the share-holder by reason of his being a share-holder of part of the profits of the company of which he is a share-holder.[20] The view that until a dividend is declared there is no right in a share-holder to participate in the profits is not correct. The right to participate in the profits exists independently of any declaration by the company with the only difference that the enjoyment of the profits is postponed until the dividends are declared.[1] A company can make no payment by way of return of capital to its share-holders except as a step in an authorised reduction of capital. Any other payment made by it by means of which it parts with its money to its share-holders can only be made by way of dividing profits whether that payment is described as dividend or bonus or by any other name.[2] Where what a person receives is a part of the profits or income of a company of which he is a share-holder and the receipt is not attributable to its capital, it is dividend irrespective of the fact that the formalities and technicalities attached to declaration of a dividend have not been properly gone through before it was paid to the share-holder.[3]

The amount credited upon a share may as between one share-holder and another, while the company is a going concern, determine the proportion of profits receivable by him as dividend. But by crediting such amount the company in no sense becomes the debtor in respect of that amount.[4]

Dividend 'in specie'. A dividend need not be declared in cash but it may be *in specie*. Therefore where a company, which had acquired certain rights having money value and which could be cashed transferred those rights instead of cashing

18. AIR 1940 Bom. 97 = ILR 1940 Bom. 165 (FB).
19. (1896) 1896-1 Ch 559.
20. AIR 1956 Bom. 381 = ILR 1956 Bom. 640 (DB).
1. AIR 1955 SC 74 = 1955-1 SCR 876.
2. AIR 1930 PC 302.
3. AIR 1956 Bom. 381 (DB) (Case under Income-tax Act).
4. AIR 1930 PC 151 (Case under Income-tax Act. *But see* 1982 CLC 463).

them to the share-holders, the transfer of such rights *in specie* was payment of dividend to share-holders.[5]

2. Dividend to be declared out of profit. So long as a company is a going concern and is not restricted as to the profits out of which it may pay dividends, it may distribute as dividends to its share-holders the excess of its revenue receipts over expenses properly chargeable to revenue account. The balance to the credit of profit and loss account may in many cases be divided as dividends even if the company's capital account is in debit.[6] Profits does not mean necessarily an amount actually netted. It only means the amount by which the credit side exceeds the debit side in the account books. The proper ascertainment of profits in the case of a company is of great importance to avoid the possibility of payment of dividend wholly or partially out of capital which is strictly forbidden.[7]

250. *Dividend not to be paid except to registered share-holders or to their order or to their bankers.* (1) No dividend shall be paid by a company in respect of any share therein except to the registered holder of such share or to his order or to his bankers or to a financial institution nominated by him for the purpose.

(2) Nothing contained in sub-section (1) shall be deemed to require the bankers of a registered shareholder or the financial institution nominated by him to make a separate application to the company for payment of the dividend.

(3) The dividend warrant shall be sent by a company by registered post unless the share-holder entitled to receive the dividend requires otherwise in writing.

1. Dividend, to whom payable. A company is bound to pay dividend to its members whose names are registered in the books of the company and the company could not take notice of any private arrangement entered into between the vendor and the vendee of certain shares regarding apportionment of dividends.[8]

251. *Period for payment of dividend.* (1) When a dividend has been declared it shall not be lawful for the directors or the company to withhold or defer its payment and the chief executive of the company shall be responsible to make the payment in the manner provided in section 250 within forty-five days of the declaration in the case of a listed company and within thirty days in the case of any other company.

Explanation. Dividend shall be deemed to have been declared on the date of the general meeting in case of a dividend declared

5. AIR 1956 Bom. 381 = ILR 1956 Bom. 640 (DB) (Case under Income-tax Act).
6. AIR 1930 PC 302.
7. AIR 1943 Sind 12 = 26 Sind L R 211 = 33 Cr L Jour 891.
8. AIR 1945 All 47 = ILR 1945 All 15.

or approved in the general meeting and on the date of commencement of closing of share transfer for purposes of determination of entitlement of dividend in the case of an interim dividend and where register of members is not closed for such purpose, on the date on which such dividends is approved by the directors.

(2) Where a dividend has been declared by a company but is not paid within the period specified in sub-section (1), the chief executive of the company shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to one million rupees:

Provided that no offence shall be deemed to have been committed within the meaning of the foregoing provisions in the following cases, namely--

(*a*) where the dividend could not be paid by reason of the operation of any law;

(*b*) where a share-holder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with;

(*c*) where there is a dispute regarding the right to receive the dividend;

(*d*) where the dividend has been lawfully adjusted by the company against any sum due to it from the share-holder; or

(*e*) where, for any other reason, the failure to pay the dividend or to post the warrant within the period aforesaid was not due to any default on the part of the company; and

the Authority has, on an application of the company on the prescribed form made within forty-five days from the date of declaration of the dividend, and after providing an opportunity to the share-holder or person who may seem to be entitled to receive the dividend of making representation against the proposed action, permitted the company to withhold or defer payment as may be ordered by the Authority.

(3) A chief executive convicted under sub-section (2) shall from the day of the conviction cease to hold the office of chief executive of the company and shall not, for a period of five years

from that day, be eligible to be the chief executive or a director of that company or any other company.

AUDIT

252. *Appointment and remuneration of auditors.* (1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting.

(2) Appointment of a partnership by a firm name to be the auditors of a company shall be deemed to be the appointment of all the persons who are partners in the firm at the time of appointment.

(3) The first auditor or auditors of a company shall be appointed by the directors within sixty days of the date of incorporation of the company; and the auditor or auditors so appointed shall hold office until the conclusion of the first annual general meeting:

Provided that--

(*a*) the company in a general meeting may remove any such auditor or auditors and appoint in his or their place any other person or persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting; and

(*b*) if the directors fail to exercise their powers under this sub-section, the company in general meeting may appoint the first auditor or auditors.

(4) The directors may fill any casual vacancy in the office of an auditor; but, while any such vacancy continues, the surviving or continuing auditor or auditors, if any, may act.

(5) Any auditor appointed to fill in any casual vacancy shall hold office until the conclusion of the next annual general meeting.

(6) Where the first auditors are not appointed under clause (*b*) of the proviso to sub-section (3) within one hundred and twenty days of the date of incorporation of the company, or where at an annual general meeting no auditors are appointed, or where auditors appointed are unwilling to act as auditor of the company, or where a casual vacancy in the office of an auditor is not filled

within thirty days after the occurrence of the vacancy, the Authority may appoint a person to fill the vacancy.

(7) The company shall, within one week of the Authority's power under sub-section (6) becoming exercisable, give notice of that fact to the Authority.

(8) The remuneration of the auditors of a company shall be fixed,--

(*a*) in the case of an auditor appointed by the directors or by the Authority, by the directors or by the Authority, as the case may be; and

(*b*) in all other cases, by the company in general meeting or in such manner as the general meeting may determine.

Synopsis

1. Appointment of auditors.
2. Removal of auditor.
3. Liability of auditor for loss, etc.

1. **Appointment of auditors.** The requirement of the section is mandatory. The Company has to appoint at its annual general meeting an auditor for the ensuing years. Where the company has made an appointment but subsequently a vacancy occurs in the office of Auditor, it is a casual vacancy. It is not a vacancy created by any deliberate omission on the part of the Company to appoint an auditor in its annual general meeting.[9]

2. **Removal of auditor.** Section 252 only provides the tenure of service of an auditor. It does not, however, lay down that if the Company chooses for one reason or the other to terminate the services of an auditor so appointed, earlier than stipulated in the resolution of appointment or the statutory period of one year, the High Court has any jurisdiction under the Companies Ordinance to stop the company from adopting such a course, however illegal it might be.[10]

3. **Liability of auditor for loss, etc.** As an auditor is not an officer of the company, he will not be entitled to the benefit of the clause in the articles which provide indemnity to the officers of the company as regards loss which arises as a result of their acts or defaults which are not wilful.[11]

253. *Provision as to resolutions relating to appointment and removal of auditors.* (1) A notice shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor.

(2) The notice referred to in sub-section (1) shall be given by a member of the company to the company not less than fourteen

9. AIR 1955 Assam 8 (DB).
10. PLD 1972 Lah. 795.
11. AIR 1929 All 826 (DB).

days before the annual general meeting, and the company shall forthwith send a copy of such notice to the retiring auditor and shall also give notice thereof to its members not less than seven days before the date fixed for the annual general meeting and, if the company is a listed company, shall also publish it at least in one issue each of a daily newspaper in English language and a daily newspaper in Urdu language having circulation in the Province in which the stock exchange on which the company is listed is situate.

(3) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company not exceeding a reasonable length and requests its communication to the members of the company, the company shall, unless the representation is received by it too late for it to do so,--

(*a*) in any notice of any resolution given to members of the company, state the fact of the representation having been made; and

(*b*) send a copy of the representation to every member of the company to whom notice of the meeting is sent whether before or after receipt of the representation by the company;

and if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may, without prejudice to his right to be heard in person, require that the representation shall be read out at the meeting:

Provided that it shall not be necessary to send out or to read out the representation at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the registrar is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the registrar may order the company's costs on an application under this section to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(4) Sub-section (3) of this section shall apply to a resolution to remove the first auditors by virtue of sub-section (3) of section 252 as it applies in relation to a resolution that a retiring auditor shall not be re-appointed.

(5) Every company shall, within fourteen days from the date of any appointment of an auditor, send to the registrar intimation

thereof, together with the consent in writing of the auditor concerned.

(6) Every company shall, within fourteen days from the date of retirement, removal or otherwise ceasing to hold office of an auditor, send intimation thereof to the registrar.

254. *Qualification and disqualification of auditors.* (1) A person shall not be qualified for appointment as auditor of--

(*a*) a public company; or

(*b*) a private company which is a subsidiary of a public company;

unless he is chartered accountant within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961).

(2) A firm whereof all the partners practising in Pakistan are Chartered Accountants may be appointed by its firm name as auditors of a company referred to in sub-section (1) and may act in its firm name.

(3) None of the following persons shall be appointed as auditor of a company, namely:-

(*a*) a person who is, or at any time during the preceding three years was, a director, other officer or employee of the company;

(*b*) a person who is a partner of, or in the employment of, a director, officer or employee of the company;

(*c*) the spouse of a director of the company;

(*d*) a person who is indebted to the company; and

(*e*) a body corporate.

Explanation. Reference in this section to an "officer" or "employee" shall be construed as not including reference to an auditor.

(4) A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of the provisions of sub-section (3), disqualified for appointment as auditor of any other company which is that company's subsidiary or holding company or a subsidiary of that holding company.

(5) If, after his appointment, an auditor becomes subject to any of the disqualifications specified in this section, he shall be deemed to have vacated his office as auditor with effect from the date on which he becomes so disqualified.

(6) A person who, not being qualified to be an auditor of a company, or being or having become subject to any disqualification to act as such, acts as auditor of a company shall be liable to fine which may extend to five thousand rupees.

(7) The appointment as auditor of a company of an unqualified person, or of a person who is subject to any disqualifications to act as such, shall be void, and, where such an appointment is made by a company, the Authority may appoint a qualified person in place of the auditor appointed by the company.

255. *Powers and duties of auditors.* (1) Every auditor of a company shall have a right of access at all times to the books, papers, accounts and vouchers of the company, whether kept at the registered office of the company or elsewhere, and shall be entitled to require from the company and the directors and other officers of the company such information and explanation as he thinks necessary for the performance of the duties of the auditors.

(2) In the case of a company having a branch office outside Pakistan, it shall be sufficient if the auditor is allowed access to such copies of, and extracts from, the books and papers of the branch as have been transmitted to the principal office of the company in Pakistan.

(3) The auditors shall make a report to the members of the company on the account and books of account of the company and on every balance-sheet and profit and loss account or income and expenditure account and on every other document forming part of the balance-sheet and profit and loss account or income and expenditure account, including notes, statements or schedules appended thereto, which are laid before the company in general meeting during his tenure of office, and the report shall state--

(*a*) whether or not they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purposes of the audit;

(*b*) whether or not in their opinion proper books of accounts as required by this Ordinance have been kept by the company;

(*c*) whether or not in their opinion the balance-sheet and profit and loss account or the income and expenditure account have been drawn up in conformity with this Ordinance and are in agreement with the books of accounts;

(*d*) whether or not in their opinion and to the best of their information and according to the explanations given to them, the said accounts give the information required by this Ordinance in the manner so required and give a true and fair view--

(*i*) in the case of the balance-sheet, of the state of the company's affairs as at the end of its financial year;

(*ii*) in the case of the profit and loss account or the income and expenditure account, of the profit or loss or surplus or deficit, as the case may be, for its financial year; and

(*iii*) in the case of the statement of changes in financial position or sources and application of funds of a listed company, of the changes in the financial position or the sources and application of funds for its financial year;

(*e*) whether or not in their opinion--

(*i*) the expenditure incurred during the year was for the purpose of the company's business; and

(*ii*) the business conducted, investments made and expenditure incurred during the year were in accordance with the objects of the company; and

(*f*) whether or not in their opinion *zakat* deductible at source under the Zakat and Ushr Ordinance, 1980 (XVIII of 1980), was deducted by the company and deposited in the Central Zakat Fund established under section 7 of that Ordinance.

Explanation. Where the auditors' report contains a reference to any other report, statement or remarks which they have made on the balance-sheet and profit and loss account or income and expenditure account examined by them, such statement or remarks shall be annexed to the auditors' report and shall be deemed to be a part of the auditors' report.

(4) Where any of the matters referred to in sub-section (3) is answered in the negative or with a qualification, the report shall state the reason for such answer alongwith the factual position to the best of the auditors' information.

(5) The Federal Government may, by general or special order, direct that in the case of all companies generally or such class or description of companies as may be specified in the order, the auditors' report shall also include a statement of such additional matters as may be so specified.

(6) The auditor of a company shall be entitled to attend any general meeting of the company, and to receive all notices of, and any communication relating to, any general meeting which any member of the company is entitled to receive, and to be heard at any general meeting which he attends on any part of the business which concerns him as auditor:

Provided that, in the case of a listed company, the auditor or a person authorised by him in writing shall be present in the general meeting in which the balance-sheet and profit and loss account and the auditors' report are to be considered.

(7) If any officer of a company refuses or fails, without lawful justification, the onus whereof shall lie on him, to allow any auditor access to any books and papers in his custody or power, or to give any such information possessed by him as and when required, or otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers or fails to give notice of any general meeting to the auditor, he shall be liable to fine which may extend to five thousand rupees and in the case of a continuing offence to a further fine which may extend to one hundred rupees for every day after the first during which the default, refusal or contravention continues.

(8) The provisions of this section apply *mutatis mutandis* to the auditor appointed for audit of the books of account of a liquidator.

Synopsis

1. Auditor, position of. 2. Duties of auditor.

1. Auditor, position of. An auditor is the servant of the share-holders whose duty it is to examine the affairs of the company on their behalf at the end of the year and report to them what he has found.[12] *Vis-a-vis* the share-holders, the auditor holds a position of trust and it is his bounden duty to honour that trust by

12. AIR 1956 Cal 414 (DB) + AIR 1957 Cal 387 (DB).

being candid with the share-holders and telling them frankly and fully everything with regard to the affairs of the company which has come to his knowledge and which it is material for the share-holders to know.[13]

Auditor nominated by Government on application of C.B.A. An auditor nominated by Government on the application of C.B.A. of company has all the powers and authority akin to that of the auditor of company under S.255, of the Ordinance, to audit accounts of factory to whose workers, CBA concerned represented, and none of the other projects of the company.[14]

2. Duties of auditor. An auditor is placed by the share-holders to look into the accounts of a company and to report to them what the true condition of its affairs is and whether that condition is correctly reflected in the accounts published.[15] The business of auditor is to ascertain and state the true financial position of the company at the time of the audit and his duty is confined to that. He has nothing to do with the question whether the business of a company is being conducted prudently or imprudently, profitably or unprofitably and he has no duty to advise either the directors or share-holders on that matter. But in regard to the ascertainment of the true financial position of the company he would not be discharging his duty if he were to make no enquiry and take no trouble to see that the books themselves show the company's true position. An audit would be worse than an idle farce if he does not take reasonable care to ascertain that the books show the true position.[16] It is the duty of the auditor not to confine himself merely to the task of verifying the arithmetical accuracy of the balance-sheet but to inquire into its substantial accuracy, and to ascertain that it contained the particulars specified in the articles of association and consequently a proper income and expenditure account was properly drawn up, so as to contain a true and correct representation of the state of the company's affairs.[17]

Reasonable care and skill to be exercised. While examining the accounts of a company an Auditor is required to employ reasonable skill and care. What is reasonable care and skill must depend on the circumstances of each case.[18] If an auditor does not take reasonable care and skill before he comes to believe that what he certifies is true or even when he generally displays the highest degree of care and skill but falls short of the strict duty of an auditor even in one instance he must be held to have been negligent, if not worse. But if the auditor exercises reasonable care and skill he will be regarded as having discharged his duty properly even if his certificate turns out to be inaccurate either as to the true position of the affairs of the company or as to the correctness of the balance-sheet in relation to the books.[19]

The duty of an auditor is to examine the books not merely for the purpose of ascertaining what they do show but also for the purpose of satisfying himself that

13. AIR 1956 Cal 414 (DB).
14. 1992 CLC 1668 (DB).
15. AIR 1963 Mad 99 (DB)+AIR 1957 Cal 33 (DB)+AIR 1949 Mad. 657.
16. (1895) 1895-2 Ch 673.
17. AIR 1953 Mad 1080=1954 Cr L Jour 1634 (DB).
18. AIR 1956 Cal 414 (DB)+AIR 1954 Mad 1080 (DB)+AIR 1949 Mad 657+AIR 1963 Mad 99 (DB).
19. AIR 1956 Cal 414 (DB).

they show the true financial position of the company. An auditor, however, is not bound to do more than exercise reasonable care and skill in making enquiries and investigations. An auditor is not bound to be a detective or to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watchdog but not a blood-hound.[20] In other words failure in duty on the part of the auditor makes him jointly and severally liable with those who are responsible for the management of the company although he is not guilty of any dishonesty.[1] But where suspicion is aroused the auditor must probe into the matter.[2] Thus when the auditor finds that in the particular year large sums of money due from others were consolidated and written off as bad debts while the very same debts in the balance-sheet of the previous years were shown as good ones, he is certainly bound to investigate into the circumstances leading up to the writing off of such debts, to ascertain whether there were vouchers for such debts and if he is of the opinion from the vouchers maintained in respect of those debts that they were valueless, to disclose that fact in his report and not merely give a clean certificate to the balance-sheet. Even if there were vouchers, which were apparently regular it would be necessary for him to see that those vouchers were for the amounts received and were given by person entitled to bind the company. In short if there were circumstances in the accounts of the company which called for an enquiry, the auditor must make that enquiry and disclose the result of such enquiry to the directors and the share-holders.[3] Where an auditor does not inform the share-holders frankly and directly what the facts are which cause misgivings in his mind but employs language which conveys no definite information, a finding of negligence against the auditor is justified.[4]

Accuracy of books. An auditor has to ascertain and report not merely whether the balance-sheet exhibits the true state of the company's affairs as shown in the books of the company but also whether the books of the company themselves exhibit the true state of the company's affairs.[5]

Experts, view of to be considered. An auditor is perfectly justified in acting on the opinion of an expert where special knowledge is required.[6]

Cash balance to be checked. It is the duty of the auditor, except in special circumstances, to verify the cash in hand on the material date as that alone could disclose fraudulent device, if any, on the part of the management.[7] Where the auditor, after feeling the necessity of confirmation of cash balance and asking for it, form the branches of the bank, hurried to certify the balance-sheet before the confirmation is received, the auditor is guilty of negligence in performing his duties with requisite skill and diligence.[8]

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20. AIR 1963 Mad 99 (DB).
1. AIR 1925 All 519 = 47 All 669 (DB).
2. AIR 1949 Mad 657 = 50 Cr L Jour 917.
3. AIR 1963 Mad 99 (DB).
4. AIR 1956 Cal 414 (DB).
5. AIR 1956 Cal. 414 (DB) + AIR 1949 Mad 657 + AIR 1925 All 519 (DB) + AIR 1963 Mad 99 (DB).
6. AIR 1954 Mad 1080 = 1954 Cr L Jour 1634 (DB).
7. AIR 1954 Mad. 1080 = 1954 Cr L Jour 1634 (DB).
8. AIR 1956 Cal 414 (DB).

256. *Reading and inspection of auditors' report.* The auditors' report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

257. *Signature on audit report, etc.* (1) Only the person appointed as auditor of the company, or where a firm is so appointed in pursuance of sub-section (2) of section 254, only a partner in the firm practising in Pakistan, shall sign the auditor's report or sign or authenticate any other documents of the company required by law to be signed or authenticated by the auditor.

(2) The report of auditors shall be dated and indicate the place at which it is signed.

1. **Acknowledgment of liability.** An entry relating to the item of sundry creditor in a balance-sheet signed by the auditor of the company can operate as an acknowledgment to save limitation in favour of a creditor whose debt is shown to be included in the item under that entry.[9]

258. *Audit of cost accounts.* (1) Where any company or class of companies is required under clause (*e*) of sub-section (1) of section 230 to include in its books of account the particulars referred to therein, the Federal Government may direct that an audit of cost accounts of the company shall be conducted in such manner and with such stipulations as may be specified in the order by an auditor who is a chartered accountant within the meaning of the Chartered Accounts Ordinance, 1961 (X of 1961), or a cost and management accountant within the meaning of the Cost and Management Accounts Act, 1966 (XIV of 1966); and such auditor shall have the same powers, duties and liabilities as an auditor of a company and such other powers, duties and liabilities as may be prescribed.

259. *Penalty for non-compliance with provisions by companies.* If default is made by a company in complying with any of the provisions of sections 252 to 254 or 256 to 258, the company and every officer of the company who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to two thousand rupees.

260. *Penalty for non-compliance with provisions by auditors.* (1) If any auditor's report is made, or any document of the company is signed or authenticated otherwise than in conformity with the requirements or section 157, section 255 or section 257 or is otherwise untrue or fails to bring out material facts about the

9. AIR 1952 Mad 136.

affairs of the company or matters to which it purports to relate, the auditor concerned and the person, if any, other than the auditor who signs the report or signs or authenticates the document, and in the case of a firm all partners of the firm, shall, if the default is wilful, be punishable with fine which may extend to two thousand rupees.

(2) If the auditor's report to which sub-section (1) applies is made with the intent to profit such auditor or any other person or to put another person to a disadvantage or loss for a material consideration, the auditor shall, in addition to the penalty provided by that sub-section, be punishable with imprisonment for a term which may extend to six months and with fine which may extend to two thousand rupees.

1. **Failure of auditor to perform his duty.** It is the duty of the Auditor to make a full, careful and truthful report in default of which he must be held to have failed in the discharge of his obligation.[10] If an auditor were to rely upon statements of the management even in respect of matters which were capable of direct verification, his appointment by the share-holders to examine the account of the company would be perfectly useless and would serve no purpose at all.[11]

Liability of auditor. No term in the Articles of Association of a company can exempt an auditor from any statutory duty or liability.[12] The failure in duty on the part of the auditor makes him jointly and severally liable with those who are responsible for the management of the company although he is not guilty of any dishonestly.[13]

Penalty. Where a Chartered Accountant fails to perform his duties in respect of auditing, the accounts of a banking company with the requisite skill and diligence, the ends of justice would not be served unless a substantial penalty is imposed on him.14 Where the auditor fails in his duty to check and verify the accounts and gives a clear certificate to the balance-sheet without calling for inquiry in doubtful cases, the removal of the auditor from the membership of the institute of Chartered Accountants would not ordinarily be an inappropriate punishment. But where there is more than a suspicion that the management of the company conscious of their irregular way of dealing with the finances of the concern pitched upon the comparatively unsuccessful auditor who could be overawed by the status and apparent respectability of those in virtual control of the management and persuaded him to accept their own statements and assurances as to the propriety of their dealings, and the auditor evidently subscribed to the certificate believing that everything was above board in the conduct of the financial affairs of the company by the directors and failed in his duty when he accepted the assurances of persons in power and authority. It must

10. AIR 1956 Cal. 414 (DB).
11. AIR 1956 Cal 387 (DB)+AIR 1956 Cal 414 (DB).
12. AIR 1956 Cal. 414 (DB).
13. AIR 1925 All 519=47 All 669 (DB).
14. AIR 1956 Cal 414 (DB).

be held that the auditor did not conform to the high standards, efficiency and integrity which the institute of Chartered Accountants expects of its members, but at the same time it must be considered that in the circumstances of the case when particularly there has been no suggestion of any moral turpitude on the part of the auditor, it would be sufficient if a severe reprimand is administered to him for his gross negligence in discharging his duties as an auditor.15

POWER OF REGISTRAR TO CALL FOR INFORMATION, ETC.

261. *Power of registrar to call for information or explanation.* (1) Where, on perusal of any document which is submitted to him under this Ordinance, or any notice, advertisement or other communication, or otherwise, the registrar is of opinion that any information, explanation or document is necessary with respect to any matter, he may, by a written order, call upon the company and any of its present or past directors, officers or auditors to furnish such information or explanation in writing, or such document, within such time not being less than fourteen days as he may specify in the order:--

Provided that a director, officer or auditor who ceased to hold office more than six years before the date of the order of the registrar shall not be compelled to furnish information or explanation or document under this sub-section.

(2) On the receipt of an order under sub-section (1) it shall be the duty of the company and all persons who are or have been directors, officers or auditors of the company to furnish such information, explanation or documents to the best of their power.

(3) If no information or explanation is furnished within the time specified or if the information or explanation furnished is, in the opinion of the registrar, inadequate, the registrar may if he deems fit, by written order, call on the company and any such person as is referred to in sub-section (1) or (2) to produce before him for his inspection such books and papers as he considers necessary within such time as he may specify in the order; and it shall be the duty of the company and of such persons to produce such books and papers.

(4) If any such company or any such person as is referred to in sub-section (1), (2) or (3) refuses or makes default in furnishing any such information or in producing any such books or papers the company shall be liable in respect of each offence to a fine which

15. AIR 1963 Mad 99 (DB).

may extend to twenty thousand rupees and to a further fine which may extend to five hundred rupees for every day after the first during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits, or is a party to, the default shall be punishable with imprisonment of either description for a term which may extend to one year, and shall also be liable to fine and the authority trying the offence may, on the application of the registrar and upon notice to the company, make an order directing the company to produce such books or papers as in its opinion may reasonably be required by the registrar for his investigation.

(5) On receipt of such information or explanation or production of any books and papers, the registrar may annex the same or any copy thereof or extract therefrom to the original document submitted to him; and any document so annexed shall be subject to the provisions as to inspection and the taking of extracts and furnishing of copies to which the original document is subject.

(6) If the information or explanation or book or paper required by the registrar under sub-section (1) is not furnished within the specified time, or if after perusal of such information or explanation or books or papers the registrar is of opinion that the document in question or the information or explanation or book or paper discloses an unsatisfactory state of affairs, or that it does not disclose a full and fair statement of the matter to which it purports to relate, the registrar shall without prejudice to any other provisions, and whether or not action under sub-section (3) or sub-section (4) has been taken, report in writing the circumstances of the case to the Authority.

Synopsis

1. Investigation by Registrar. 2. Complaint.

1. Investigation by Registrar. The Registrar, fulfils a *quasi*-judicial function and he is authorised to make such investigations as may be found necessary for the proper discharge of his duties.[16] Where the Registrar forms the opinion mentioned in sub-section (6) of the section, namely, that the documents is question disclosed an unsatisfactory state of affairs, and therefore, it was his duty to report the matter in writing to the Authority. On receipt of the Registrar's report it was open to the Authority under section 263, to appoint one or more competent inspectors to investigate the affairs of the Company and to report thereon in such manner as the Authority may direct.[17]

16. PLD 1968 Dacca 211 (DB).
17. 1979 SCMR 62 = PLJ 1979 SC 380 = NLR 1979 Civ 822.

Registrar not to record findings. Sub-section (6) does not require the Registrar to record any finding. Nor does the sub-section say that the Registrar has to be satisfied that the representations are true; it is enough if he is of opinion that the affairs of the company are being carried on in the manner specified in sub-section (1). 'Opinion' does not denote the same state of mind as is indicated by the word 'finding' or 'satisfaction'. The three words indicate varying stages of the intellectual process.[18]

2. Complaint. Section 261(4) has no relation to a prosecution for an offence under section 492. Registrar's complaint is necessary only where there is a failure to provide information required by him, for the Court to order production of documents.[19]

Complaint to police. The Registrar acts neither illegally nor in a manner prohibited by law, when he, instead of exercising the powers under this section and the other provisions of the Act, addresses a letter to the police complaining of the commission of the offences under section 406 and 409 of the Penal Code by the officers of a company.[20]

262. *Seizure of documents by registrar.* (1) Where, upon information in his possession or otherwise, the registrar has reasonable ground to believe that books and papers of, or relating to, any company or any chief executive or officer of such company or any associate of such person may be destroyed, mutilated, altered, falsified or secreted, the registrar may, after obtaining permission of the Magistrate of the first class or the Court, search and seize such books and papers.

(2) For the purposes of sub-section (1), the registrar may, after he has obtained the permission of the Magistrate or Court under that sub-section, also authorise any officer subordinance to him, not inferior in rank to an assistant registrar,--

(*a*) to enter, with such assistance as may be required, the place where such books and papers are kept;

(*b*) to search that place in the manner specified in the order; and

(*c*) to seize such books and papers as he considers necessary.

(3) The registrar shall return the books and papers seized under this section as soon as may be and in any case not later than the thirtieth day after such seizure, to the company or, as the case may be, to the chief executive or any other person from whose custody or power they were seized:

18. AIR 1959 Mad 229.
19. AIR 1942 Sind 9=43 Cr L Jour 304.
20. AIR 1957 Mad 65=1957 Cr L Jour 205.

Provided that the Authority may, after providing to the company an opportunity to show cause against the order proposed to be made by it, allow the registrar to retain any books and papers for a further period not exceeding thirty days:

Provided further that the registrar may, before returning books and papers as aforesaid, take copies of, or extracts from them or put such marks of identification thereon as he considers necessary.

(4) Save as otherwise provided in this section, every search of seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), relating to searches or seizures made under that Code.

1. **Defaulting officials, order against.** Directions of the nature contemplated under Ss. 262 & 272 against defaulting officials of Company cannot be obtained from High Court by petitioners. Corporate Law Authority is proper forum for issuance of such directions.[1]

INVESTIGATION AND RELATED MATTERS

263. *Investigation of affairs of company on application by members or report by registrar.* The Authority may appoint one or more competent persons as inspectors to investigate the affairs of any company and to report thereon in such manner as the Authority may direct--

(*a*) in the case of a company having a share capital, on the application of members holding not less than one-tenth of the total voting power therein;

(*b*) in the case of a company not having a share capital, on the application of not less than one-tenth in number of the persons entered on the company's register of members;

(*c*) in the case of any company, on receipt of a report under sub-section (5) of section 231 or on a report by the registrar under sub-section (6) of section 261.

Synopsis

1. Scope.
2. Applicability.
3. Appointment of Inspector.
4. Inspector, duties of.

1. **Scope.** Persons who feel aggrieved by the constitution of a company on the ground that it was formed for the purpose of depriving them of a benefit conferred on their class by a statute and that its affairs are conducted to their detriment can seek redress under sections 22 and 263, from the authorities

1. 1987 CLC 2079.

concerned. An application for a writ to rescind the registration of the company is not a remedy open to them.[2] The sections provide ample means for investigation, exposition and remedying of all misdeeds, if any really existed, of prior management. The fact that persons moving for such an investigation have to satisfy the Government of good reasons for requiring such investigation is not a real hurdle in the matters, meriting avoidance of the same and resorting to a compulsory winding up as a direct proceeding for that end.[3]

Question raised before Corporate Law Authority dealt with by High Court. Where Corporate Law Authority issued show cause notice to Secretary and Director of Company on application of shareholder. Issues raised in application as well as in show-cause notice were pending in High Court which were dealt with by High Court before case came up for hearing before Authority. Parties informed Authority at the time of hearing, that all the issues contained in show-cause notice had been resolved and applicant had been elected as Chief Executive of the company. Perusal of documents produced by applicant and the Company showed that affairs of the Company had been agitated due to family disputes and almost all the issues had been dealt with by the High Court. Show-cause notice issued to Secretary and Director of the Company was vacated.[4]

2. **Applicability.** Sections 263 and 270 appear in Part VIII of the Ordinance, which relates to management and administration, clearly refer to companies which have not gone into liquidation.[5]

Section 263 does not bar a prosecution upon a private complaint of an offence under section 492.[6]

Sections 265A and 263. Section 265-A is a complete code in itself and no person is bound to approach first the Corporate Law Authority under section 263 of the Ordinance before invoking jurisdiction under section 265-A as there is nothing in both the sections to that effect.[7]

3. **Appointment of Inspector.** Where the Registrar called upon a company to furnish explanation and to produce certain documents, and on receipt of the reply by the Company formed the opinion mentioned in sub-section (6) of section 261, namely, that the documents in question disclosed an unsatisfactory state of affairs, and therefore, it was his duty to report the matter in writing to the Authority. On receipt of the Registrar's report it was open to the Authority, under section 263 to appoint one or more competent inspectors to investigate the affairs of the Company and to report thereon in such manner as the Authority may direct.[8]

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2. AIR 1963 Andh Pra. 123.
3. AIR 1962 Ker. 148+AIR 1942 Bom. 231+1939-1 All E R 99+AIR 1936 PC 114+AIR 1922 Cal. 365.
4. 1991 CLC 378.
5. AIR 1959 Cal. 387=1959 Cr. L. Jour 707.
6. AIR 1942 Sind 9=43 Cr. L. Jour 304.
7. 1996 CLC 516.
8. 1979 SCMR 62=PLJ 1979 SC 380=NLR 1979 Civ. 822.

Appointment of Inspector by company. A company is not prevented from appointing an Inspector by an ordinary resolution. The only effect of such an appointment will be that the Inspector will not possess the drastic powers conferred by the section on an Inspector appointed by special resolution.[9]

Inspectors appointed by Corporate Law Authority. The Corporate Law Authority, constituted under section 11 has been empowered to appoint one or more competent persons as Inspectors to investigate the affairs of the company and to report thereon in such manner as the Authority may direct in the case of a company having a share capital, on the application of members holding not less than one-tenth of the total voting power therein. But the powers of investigation vesting in the Authority under section 263 are not the same as vesting in the Court under the Companies Ordinance, 1984 or the Companies Act, 1913.[10]

4. **Inspector, duties of.** This duties of an Inspector under this section being neither judicial nor *quasi*-judicial in their nature his bias will not disqualify him for making the inquiry.[11] Therefore the Inspector cannot be prohibited by a writ from proceeding with an enquiry. The enquiry is not a proceeding of such nature in respect of which the writ can issue.[12]

264. *Application by members to be supported by evidence and power to call for security.* An application by members of a company under clause (*a*) or clause (*b*) of section 263 shall be supported by such evidence as the Authority may require for the purpose of showing that the applicants have good reason for requiring the investigation, and the Authority may, before appointing an Inspection, require the applicants to give such security for payment of the costs of the investigation as the Authority may specify.

1. **Scope.** Provisions for inspection and Audit provide ample means for investigation, exposition and remedying of all misdeeds, if any really existed, of prior management. The fact that persons moving for such an investigation have to satisfy the Government of good reasons for requiring such investigation is not a real hurdle in the matter, meriting avoidance of the same and resorting to compulsory winding up as a direct proceedings for that end.[13]

265. *Investigation of company's affairs in other cases.* Without prejudice to its power under section 263, the Authority--

(*a*) shall appoint one or more competent persons as Inspectors to investigate the affairs of a company and to report thereon in such manner as the Authority may direct, if--

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9. AIR 1945 Bom. 475=ILR 1945 Bom. 687.
10. PLD 1990 Kar. 198=NLR 1992 CLJ 557.
11. AIR 1959 Mad. 229.
12. (1897) 76 L T 387.
13. AIR 1962 Ker. 148+AIR 1942 Bom. 231+1939-1 All E R 99+AIR 1936 PC 114+AIR 1922 Cal. 365.

(*i*) the company, by a resolution in general meeting, or

(*ii*) the Court, by order,

declares that the affairs of the company ought to be investigated by an Inspector appointed by the Authority; and

(*b*) may appoint one or more competent persons as Inspectors to investigate the affairs of a company and to report thereon in such manner as the Authority may direct if in the opinion of the Authority there are circumstances suggesting--

(*i*) that the business of the company is being or has been conducted with intent to defraud its creditors, members, or any other persons or for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose; or

(*ii*) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance, breach of trust or other misconduct towards the company or towards any of its members or have been carrying on unauthorised business; or

(*iii*) that the affairs of the company have been so conducted or managed as to deprive the members thereof of a reasonable return; or

(*iv*) that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect; or

(*v*) that any shares of the company have been allotted for inadequate consideration; or

(*vi*) that the affairs of the company are not being managed in accordance with sound business principles or prudent commercial practices; or

(*vii*) that the financial position of the company is such as to endanger its solvency;

Provided that, before making an order under clause (*b*), the Authority shall give the company an opportunity to show cause against the action proposed to be taken.

Synopsis

1. Scope.
2. Appointment of Inspector by company.
3. Duty of Inspector.
4. Bias in Inspector--effect.
5. Restraint order against company.

1. **Scope.** Section 265-A, Companies Ordinance, 1984, empowering Court to make declaration that affairs of a company ought to be investigated by Inspectors appointed by Corporate Law Authority is independent provision of law and such power may be invoked independently from section 263 of the Companies Ordinance. No person, seeking declaration under section 265A is bound to approach first, Corporate Law Authority under section 263 of the Ordinance before invoking jurisdiction under section 265-A.[14]

Persons aggrieved by the constitution of a company on the ground that it was formed for the purpose of depriving them of a benefit conferred on their class by a statute and that its affairs are conducted to their detriment can seek redress from the authorities under section 265. A writ to rescind the registration which had been granted to the company cannot be granted to them.[15] Where it was contended before the High Court by opposing party that applicants for appointment of Inspector having received valuable consideration and their shares of the companies/units allocated to them in Memorandum of Understanding were precluded from seeking order for appointment of Inspector. High Court had dealt with the aspect of the matter and had found that various Memoranda of understanding had not become effective and enforceable for the reason that they were not signed by all the members of the companies and registers of companies with the Joint Registrar regarding the transfer of shares by one group to the other, had not been rectified with the result that all the shareholders in the record still continued to be shareholders. It was held that High Court, had rightly found that the applicants before it had the locus standi to maintain the application under section 265.[16]

2. **Appointment of Inspector by company.** To order appointment of Inspectors, the Court has only to satisfy itself, prima facie, on the basis of the material placed before it, that case for investigation through an Inspector is called for.[17] In doing so the Court should not act arbitrarily but should form opinion on basis of some material which could be used as prima facie and tangible evidence justifying investigation of affairs of company by Inspectors appointed by Authority. Allegations against some of the Directors for manipulation of accounts was one of the matters in which investigation could be made. Where documents produced by petitioners provided overwhelming prima facie evidence for obtaining declaration that affairs of companies ought to be investigated. Respondents would have chance to provide material or evidence in rebuttal in order to show prima facie that said material was not worth consideration or did not provide reasonable ground for making such declaration. Where no tangible material/evidence was, however, produced by respondents in rebuttal, Court, on basis of material on record declared

14. 1996 CLC 516+PLD 1965 Lah. 264.
15. AIR 1960 Andh Pra. 123.
16. PLD 1995 SC 320=PLJ 1995 SC 456=NLR 1995 Civ. 427=1995 Law Notes (SC) 306.
17. PLD 1995 SC 320=PLJ 1995 SC 456=NLR 1995 Civ. 427=1995 Law Notes (SC) 306.

that affairs of companies ought to be investigated by Inspectors appointed by Corporate Law Authority.[18] Where C.L.A. called upon Company Executive to show cause in writing as to why Inspector should not be appointed to investigate into affairs of the company. But he neither challenged the figures in show cause notice nor factum of annual accounts examination of company up to specified date had been questioned. Prima facie, it was evident that company was heavily indebted and its current obligations were more than its current assets. Company Executives although claimed to have earned huge profits, yet the profits so earned were admittedly never distributed among shareholders nor dividends were declared for the last 16 years. Corporate Law Authority under section 265 of the Companies Ordinance was competent to issue show-cause notice.[19] Even when correctness of financial liabilities of the company as given by the appellant before the Court, in a chart was disputed during arguments, but no counter-chart was produced with certificate from the Banks showing that the said statement was not correct. No misreading or disregard of any relevant material by High Court was pointed out. Discretion exercised by the High Court in appointing the Inspector, was not open to any exception.[20]

A company is not prevented from appointing an Inspector by an ordinary resolution. The only effect of such an appointment will be that the Inspector will not possess the drastic powers conferred by the section on an Inspector appointed by special resolution.[1]

Order of appointment, nature of. Where High Court ordered investigation in the affairs of the company by Inspector to be appointed by Corporate Law Authority. Such order of the High Court, was an interim/interlocutory order made under section 292 of the Companies Ordinance, 1984 pending the making of a final order in a petition under section 290 of the Ordinance.[2]

3. **Duty of Inspector.** Inspector has to ascertain and determine the truth or otherwise of the allegation made against the company during the investigation to be conducted by him whereafter he has to submit the report to the concerned authority. Matter in fact vests in the discretion of the Court, to be decided after following the summary procedure as laid down in S.9, Companies Ordinance, 1984.[3]

Objection to appointment. Where contention of the petitioners was that the matter of appointment was disposed of by the High Court in a rolled up manner because each application had not been dealt with separately although application pertained to different companies, which were independent juristic legal entities. No prejudice having been shown to have been caused to the petitioners by such disposal by the High Court, the order of appoint was upheld.[4]

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18. 1996 CLC 516.
19. PLD 1995 Kar. 132=PLJ 1995 Kar. 75=1995 Law Notes (Kar) 97 (DB).
20. PLD 1995 SC 320=PLJ 1995 SC 456=NLR 1995 Civ. 427=1995 Law Notes (SC) 306.
1. AIR 1945 Bom. 475=ILR 1945 Bom. 687.
2. PLD 1996 SC 543=PLJ 1996 SC 1265=NLR 1996 Civ. 506.
3. PLD 1995 SC 320=PLJ 1995 SC 456=NLR 1995 Civ. 427=1995 Law Notes (SC) 306.
4. PLD 1995 SC 320=PLJ 1995 SC 456=NLR 1995 Civ. 427=1995 Law Notes (SC) 306.

4. **Bias in Inspector--effect.** The duties of an Inspector appointed by the Authority under section 265 being neither judicial nor *quasi*-judicial his bias becomes irrelevant and does not act as disqualification.[5]

5. **Restraint order against company.** On an application for investigation of affairs of Company by shareholders/Directors of Company, interim order restraining respondents from removing and selling their stock of sugar was issued during pendency of main application regarding investigation of affairs of company. It was held that provisions of section 265-A, Companies Ordinance, 1984, being complete code in itself was limited only to making declaration that affairs of company ought to be investigated, therefore, order for restraining respondents from removing and selling stocks and sealing godowns where sugar had been stocked, was withdrawn. Besides interim order could not remain operative after disposal of main case *i.e.*, application under S. 265-A, Companies Ordinance, 1984.[6]

266. *Inspector to be a Court for certain purposes.* (1) A person appointed as Inspector under section 263 or section 265 shall, for the purposes of this investigation, 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*) enforcing the attendance of persons and examining them on oath or affirmation;

(*b*) compelling the discovery and production of books and papers and any material objects; and

(*c*) issuing commission for the examination of witnesses;

and every proceeding before such person shall be deemed to be "judicial proceeding" within the meaning of sections 193 and 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

(2) Any contravention of or non-compliance with any orders, directions or requirement of the Inspector exercising powers of a Court under sub-section (1) shall, in all respects, entail the same liabilities, consequences and penalties as are provided for such contravention, non-compliance or default under the Code of Civil Procedure, 1908 (Act V of 1908), and Pakistan Penal Code, 1860 (Act XLV of 1860).

267. *Power of Inspectors to carry investigation into affairs of associated companies.* (1) If an Inspector appointed under section 263 or section 265 to investigate the affairs of a company thinks it

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5. AIR 1959 Mad. 229 (His position is analogous to that of a Sub-Inspector of police who investigates a crime).
6. 1996 CLC 516.

necessary for the purposes of his investigation to investigate also the affairs of--

(*a*) any other body corporate which is, or has at any relevant time been, the company's associated company or its subsidiary or holding company, or a subsidiary of its holding company, or a holding company of its subsidiary;

(*b*) any other body corporate which is, or has at any relevant time been, managed as chief executive by any person who is or was at the relevant time the chief executive of the company;

(*c*) any person who is or has at any relevant time been the company's chief executive or managing agent or an associate of such chief executive or managing agent;

the Inspector shall, subject to the provisions of sub-section (2) have power so to investigate and shall report on the affairs of the other body corporate or of the chief executive or the managing agent or an associate of the chief executive or managing agent, as the case may be, so far as he thinks that the results of his investigation thereof are relevant to the investigation of the affairs of the company.

(2) In the case of any body corporate or the chief executive referred to in clause (*b*) or clause (*c*) of sub-section (1), the Inspector shall not exercise his power of investigation into, and reporting on, its or his affairs without first having obtained the approval of the Authority, by a properly verified application in which he shall state the facts in detail and the grounds on which he applies for such approval:

Provided that, before giving approval under this sub-section, the Authority shall give the body corporate or chief executive concerned a reasonable opportunity to show cause why such approval should not be given.

1. **Inspector appointed under Act of 1913.** An Inspector appointed under section 138 Companies Act 1913, who has carried on part of his enquiry under section 140 of the Act of 1913 should be looked upon as an Inspector appointed under section 263 of the present Ordinance. Therefore he can exercise powers under section 267 with the approval of the Authority under sub-section (2) of the section.[7]

268. *Duty of officers, etc., to assist the Inspector.* (1) It shall be the duty of all officers and other employees and agents of the

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7. AIR 1959 Bom. 320=ILR 1959 Bom. 952 (DB).

company and all persons who have dealings with the company to give to the Inspector all assistance in connection with the investigation which they are reasonably able to give.

(2) Any such person who makes default in complying with the provisions of sub-section (1) shall, without prejudice to any other liability, be punishable in respect of each offence with imprisonment of either description for a term which may extend to one year and shall also be liable to a fine which may extend to ten thousand rupees.

(3) In this section,--

(*a*) the expression "agents", in relation to any company, body corporate or person, includes the bankers, legal advisers and auditors of the company;

(*b*) the expression "officer", in relation to any company or body corporate, includes any trustee for the debenture-holders of such company or body corporate; and

(*c*) any reference to officers and other employees and agents shall be construed as a reference to past as well as present officers and other employees and agents, as the case may be.

269. *Inspector's report.* (1) The Inspectors may, and if so directed by the Authority shall, make interim reports to the Authority, and on the conclusion of the investigation, shall make a final report to the Authority; and any such report shall be typed or printed as the Authority may direct.

(2) The Authority--

(*a*) shall forward a copy of any report made by the Inspectors to the company at its registered office with such directions as the Authority thinks fit;

(*b*) may, if it thinks fit, furnish a copy thereof, on request and on payment of the prescribed fee, to any person--

(*i*) who is a member of the company or other body corporate or is interested in the affairs of the company;

(*ii*) whose interests as a creditor of the company or other body corporate appear to the Authority to be affected;

(*c*) shall, when the Inspectors are appointed under clause (*a*) or clause (*b*) of section 263, furnish, at the request of the applicants for the investigation, a copy of the report to them;

(*d*) shall, where the Inspectors are appointed under section 265 in pursuance of an order of the Court furnish a copy of the report to the Court;

(*e*) may forward a copy of the report to the registrar with such directions as it may deem fit; and

(*f*) may also itself cause the report or any part thereof to be published or direct the company to do so or send the same to its share-holders.

270. *Prosecution.* (1) If, from any report made under section 269, it appears to the Authority that any person has, in relation to the company or in relation to any other body corporate, whose affairs have been investigated by virtue of section 267, been guilty of any offence for which he is criminally liable, the Authority may, after taking such legal advice as it thinks fit, prosecute such person for the offence, and it shall be the duty of all officers and other employees and agents of the company or body corporate, as the case may be, other than the accused in the proceedings, to give the Authority or any person nominated by it in this behalf all assistance in connection with the prosecution which they are reasonably able to give.

(2) Sub-section (3) of section 268 shall apply for the purpose of this section as it applies for the purposes of that section.

Synopsis

1. Scope. 2. Criminal liability.

3. Prosecution.

1. **Scope.** Sections 263 and 270 appear in Part VIII of the Ordinance which relates to the management and administration and they clearly refer to a company which has not gone into liquidation.[8]

2. **Criminal liability.** The words 'of any offence in relation to the company for which he is criminal liable' in section 270 mean, not only criminally liable under the Ordinance but criminally liable under the Penal Code as well.[9] The section does not deprive a police officer of his jurisdiction to investigate into the complaint alleging the commission of offences under sections 406 and 409, P.P.C. and initiate proceedings in the Court even if the acts in respect of which the

8. AIR 1959 Cal. 387=1959 Cr. L. Jour 707.
9. AIR 1942 Sind 9=43 Cr. L. Jour 304.

offences arise were committed in relation to the affairs of a company.[10] It is however to be noted that a company despite being a person within the meaning of S. 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.[11]

3. Prosecution. Although section 270 casts a duty on the Advocate-General or the Public Prosecutor to institute proceedings in certain circumstances and on the officers of the company to assist them in the prosecution, its language is quite different from that of sections 352 and 354 which bar the jurisdiction of Criminal Court except upon the complaints of the persons specified in them.[12] The section does not bar prosecution by private individuals,[13] or persons other than those mentioned in the section from preferring complaints in respect of offences relating to the company. Hence the Registrar is competent to prefer a complaint against the directors of a company for an offence punishable under section 492.[14]

271. *Power of Authority to initiate action against management.* (1) If from any report made under section 269 the Authority is of the opinion that--

(*a*) the business of the company is being or has been conducted with intent to defraud its creditors, members of any other person or for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose; or

(*b*) the person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance, breach of trust or other misconduct towards the company or towards any of its member or have been carrying on unauthorised business; or

(*c*) the affairs of the company have been so conducted or managed as to deprive the share-holders thereof of a reasonable return; of

(*d*) that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect; or

(*e*) any shares of the company have been allotted for inadequate consideration; or

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10. AIR 1957 Mad. 65=1957 Cr. L. Jour 205.
11. NLR 1986 Cr. 520 (DB).
12. AIR 1940 Cal. 232=ILR (1940) 1 Cal. 575+41 Cr. L. Jour 625 (DB).
13. AIR 1942 Sind 9+AIR 1940 Cal. 232+AIR 1942 Mad. 283.
14. AIR 1960 Ker. 155=1960 Cr. L. Jour 597.

(*f*) the affairs of the company are not being managed in accordance with sound business principles or prudent commercial practices; or

(*g*) the financial position of the company is such as to endanger its solvency;

the Authority may apply to the Court and the Court may, after taking such evidence as it may consider necessary, by an order--

(*i*) remove from office any director including the chief executive, managing agent or other officer of the company; or

(*ii*) direct that the directors of the company should carry out such changes in the management or in the accounting policies of the company as may be specified in the order; or

(*iii*) notwithstanding anything contained in this Ordinance or any other law for the time being in force, direct the company to call a meeting of its members to consider such matters as may be specified in the order and to take appropriate remedial actions; or

(*iv*) direct that any existing contract which is to the detriment of the company or its members or is intended to or does benefit any officer or director shall be annulled or modified to the extent specified in the order:

Provided that no such order shall be made so as to have effect from any date preceding the date of the order:

Provided further that any director, including a chief executive, managing agent or other officer who is removed from office under clause (*i*), unless the Court specifies a lesser period, shall not be a director, chief executive, managing agent, or officer of any company for a period of five years from the date of his removal.

(2) No order under this section shall be made unless the director or other officer likely to be affected by such order has been given an opportunity of being heard.

(3) The action taken under sub-section (1) shall be in addition to and not in substitution of any other action or remedy provided in any other law for the time being in force.

272. *Effect of Court's order.* On the issue of the Court's order under the preceding section removing from office any director,

including chief executive, managing agent, or other officer, such director, managing agent or other officer shall be deemed to have vacated his office and--

(*i*) if the Court's order has removed a director, the casual vacancy in the office of director shall be filled in accordance with the relevant provisions contained in the articles of association of the company; and

(*ii*) if the Court's order has removed from office a chief executive, the remaining directors shall elect another person to be the chief executive; and

(*iii*) if the Court's order has removed from office all the directors including the chief executive, a general meeting of the company shall be called forthwith for electing new directors.

273. *No compensation to be payable for annulment or modification of contract.* Notwithstanding anything contained in any other law for the time being in force, and except as ordered by the Court for special reasons to be recorded in writing, no director, chief executive, managing agent or other officer of the company shall be entitled to be paid any compensation for annulment or modification of a contract to which he is a party or of which he is a beneficiary, if such contract is annulled or modified by an order issued by the Court under section 271.

274. *No right to compensation for loss of office.* No person shall be entitled to or be paid any compensation or damages for the loss of office by reason of an order issued under section 271.

275. *Application for winding up of company or an order under section 290.* If any company or other body corporate the affairs of which have been investigated by Inspectors is liable to be wound up under this Ordinance, and it appears to the Authority from any report made under section 269 that it is expedient so to do by reason of any such circumstances as are referred to in sub-clause (*i*) or sub-clause (*ii*) or sub-clause (*iii*) or sub-clause (*vi*) or sub-clause (*vii*) of clause (*b*) of section 265, the Authority may, unless the company or other body corporate is already being wound up by the Court, cause to be presented to the Court by the registrar or any person authorized by the Authority in this behalf--

(*a*) a petition for the winding up of the company or body corporate, on the ground that it is just and equitable that it should be wound up;

(*b*) an application for an order under section 290; or

(*c*) both a petition and an application as aforesaid.

1. **Scope.** Persons aggrieved by the constitution of a company on the ground that it had been formed to deprive them of a benefit conferred on their class by statute and that its affairs are conducted to their detriment can seek redress under sections 261, 263, 265 and 275 from the authorities. The Court will not issue any writ to the registrar to rescind the registration of the company by him.[15]

276. *Proceedings for recovery of damages or property.* (1) If from any report referred to in sub-section (1) of section 269 it appears to the Authority that proceedings ought, in the public interest, to be brought by the company or any body corporate whose affairs have been investigated in pursuance of clause (*a*), clause (*b*) or clause (*c*) of sub-section (1) of section 267--

(*a*) for the recovery of damages in respect of any fraud, misfeasance, breach of trust or other misconduct in connection with the promotion or formation or the management of the affairs, of such company or body corporate; or

(*b*) for the recovery of any property of such company or body corporate which has been misapplied or wrongfully retained;

the Authority may itself bring proceedings for that purpose in the name of such company or body corporate.

(2) The Authority shall be indemnified by such company or body corporate against any costs or expenses incurred by it in, or in connection with, any proceedings brought by virtue of sub-section (1) and the Court or other authority before which proceedings are brought shall pass an order accordingly.

277. *Expenses in investigation.* (1) When an investigation is ordered to be made under section 263 or section 265, the expenses of and incidental to the investigation shall in the first instance be defrayed by the Authority; but the following persons shall, to the extent mentioned below, be liable to reimburse the Authority in respect of such expenses, namely:--

(*a*) any person who is convicted on a prosecution instituted in pursuance of section 270 or is ordered to pay damages or restore any property as a result of proceedings under section 276 may in the same proceedings be ordered to pay the said

15. AIR 1960 Andh Pra. 123.

expenses to such extent as may be specified by the Authority or the court convicting such person or ordering him to pay such damages or restore such property, as the case may be;

(*b*) any company or body corporate in whose name proceedings are brought as aforesaid shall be liable, to the extent of the amount or value of any sums or property recovered by it as a result of the proceedings;

(*c*) where the investigation was ordered by the Authority under clause (*c*) of section 263 or under section 265, the company or body corporate dealt with by the report shall be liable except so far as the Authority otherwise directs; and

(*d*) where the investigation was ordered under section 263 on an application of the members, the members making the application and the company or body corporate dealt with by the report shall be liable to such extent, if any, as the Authority may direct.

(2) The amount of expenses which any company, body corporate or person is liable under this section to reimburse to the Authority shall be recoverable from that company, body corporate or person as an arrear of land revenue.

(3) For the purposes of this section, any costs or expenses incurred by the Authority in or in connection with proceedings brought by the Authority under section 276 shall be treated as expenses of the investigation giving rise to the proceedings.

(4) Any liability to reimburse the Authority imposed by clauses (*a*) and (*b*) of sub-section (1) shall, subject to satisfaction of the right of the Authority to reimbursement, be a liability also to indemnify all persons against liability under clause (*c*) of that sub-section.

(5) Any such liability imposed by clause (*a*) of sub-section (1) shall, subject as aforesaid, be a liability also to indemnify all persons against liability under clause (*b*) of that sub-section.

(6) Any person liable under clause (*a*) or clause (*b*) or clause (*c*) of sub-section (1) shall be entitled to contribution from any other person liable under the same clause according to the amount of their respective liabilities thereunder.

(7) In so far as the expenses to be defrayed by the Authority under this section are not recovered thereunder, they shall be borne by the Federal Government.

1. **Scope.** The section provides elaborate provisions as to the person who would be liable for the expenses, the right of contribution *inter se* between the several persons liable and the Government's rights to a first charge, etc. Moreover, the liability which arises under the section can be recovered as arrears of land revenue.[16]

278. *Inspector's report to be evidence.* A copy of any report of any Inspector or Inspectors appointed under section 263 or section 265 authenticated in such manner, if any, as may be prescribed, shall be admissible in any legal proceeding as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report.

279. *Imposition of restrictions on shares and debentures and prohibition of transfer of shares or debentures in certain cases.* (1) Where it appears to the Authority in connection with any investigation that there is good reason to find out the relevant facts about any shares, whether issued or to be issued, and the Authority is of opinion that such facts cannot be found out unless the restrictions specified in sub-section (2) are imposed, the Authority may, by order, direct that the shares shall be subject to the restrictions imposed by sub-section (2) for such period not exceeding one year as may be specified in the order:

Provided that, before making an order under this sub-section, the Authority shall provide an opportunity of showing cause against the proposed action to the company and the persons likely to be affected by the restriction.

(2) So long as any shares are directed to be subject to the restrictions imposed by this sub-section,--

(*a*) any transfer of those shares shall be void;

(*b*) where those shares are to be issued, they shall not be issued; and any issue thereof or any transfer of the right to be issued therewith, shall be void;

(*c*) no voting right shall be exercisable in respect of those shares;

(*d*) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof; and any issue of such shares or any transfer of the right to be issued therewith, shall be void;

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16. AIR 1931 Lah. 351 = 12 Lah. 678 (DB).

(*e*) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of dividend, capital or otherwise; and

(*f*) no change other than a change by operation of law shall be made in the directors, chief executive or the managing agent.

(3) Where a transfer of shares in a company has taken place and as a result thereof a change in the directors of the company is likely to take place and the Authority is of opinion that any such change would be prejudicial to the public interest, the Authority may, by order, direct that--

(*i*) the voting rights in respect of those shares shall not be exercisable for such period not exceeding one year as may be specified in the order; and

(*ii*) no resolution passed or action taken to effect a change in the directors before the date of the order shall have effect unless confirmed by the Authority.

(4) Where the Authority has reasonable ground to believe that a transfer of shares in a company is likely to take place as a result of which a change in the directors of the company will follow and the Authority is of opinion that any such change would be prejudicial to the public interest, the Authority may, by order, prohibit any transfer of shares in the company during such period not exceeding one year as may be specified in the order.

(5) The Authority may, by order, at any time vary or rescind any order made by it under sub-section (1) or sub-section (3) or sub-section (4).

(6) Where the Authority makes an order under sub-section (1) or sub-section (3) or sub-section (4) or sub-section (5) or refuses to rescind any such order, any person aggrieved thereby may apply to the Court and the Court may, if it thinks fit, by order, vacate any such order of the Authority:

Provided that no order, whether interim or final, shall be made by the Court without giving the Authority an opportunity of being heard.

(7) Any order of the Authority rescinding an order, under sub-section (1), or any order of the Court vacating any such order, which is expressed to be made with a view to permitting a transfer of any

shares, may continue the restrictions mentioned in clauses (*d*) and (*e*) of sub-section (2), either in whole or in part, so far as they relate to any right acquired, or offer made, before the transfer.

(8) Any order made by the Authority under sub-section (5) shall be served on the company within fourteen days of the making of the order.

(9) Any person who--

(*a*) exercises or purports to exercise any right to dispose of any shares or of any right to be issued with any such shares when to his knowledge he is not entitled to do so by reason of any of the restrictions applicable to the case under sub-section (1); or

(*b*) votes in respect of any shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof, when to his knowledge he is not entitled by reason of any of the restrictions applicable to the case under sub-section (2) or by reason of any order made under sub-section (3); or

(*c*) transfers any shares in contravention of any order made under sub-section (4); or

(*d*) being the holder of any shares in respect of which an order under sub-section (2) or sub-section (3) has been made, fails to give notice of the fact of their being subject to any such order to any person whom he does not know to be aware of that fact but whom he knows to be otherwise entitled to vote in respect of those shares, whether as holder or a proxy;

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

(10) Where shares in any company are issued in contravention of any restrictions applicable to the case under sub-section (2), the company, and every officer of the company who is knowingly and wilfully in default, shall be liable to a fine not exceeding five thousand rupees.

(11) A prosecution shall not be instituted under this section except by, or with the consent of, the Authority.

(12) This section shall also apply in relation to debentures as it applies in relation to shares.

280. *Saving for legal advisers and bankers.* Nothing in sections 262 to 270 or 275 to 279 shall require the disclosure to the registrar or to the Authority or to an Inspector appointed by the Authority--

(*a*) by a legal adviser, of any privileged communication made to him in that capacity, except as respects the name and address of his client; or

(*b*) by the bankers of any company, body corporate, or other person, referred to in the sections aforesaid, as such bankers, of any information as to the affairs of any of their customers other than such company, body corporate, or person.

281. *Enquiries and investigations not to be affected by winding up, etc.* An inspection, enquiry or investigation may be initiated or proceeded with under sections 231, 261, 262, 263, 265 and 267 and consequential action taken in accordance with any provisions of this Ordinance notwithstanding that--

(*a*) the company has passed a resolution for winding up;

(*b*) a petition has been submitted to the Court for winding up of the company; or

(*c*) any other civil or criminal proceedings have been initiated against the company or its officers under any provision of this Ordinance.

282. *Application of sections 261 to 281 to liquidators and foreign companies.* The provisions of sections 261 to 281 shall apply *mutatis mutandis* to companies in the course of winding up, their liquidators and foreign companies.