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COMPANIES ACT 1990

COMPANIES ACT 1990 - LONG TITLE

AN ACT TO AMEND THE LAW RELATING TO COMPANIES AND TO PROVIDE FOR RELATED MATTERS.

[22nd December, 1990]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

COMPANIES ACT 1990 - PART I

- PRELIMINARY

COMPANIES ACT 1990 - SECT 1

Short title, collective citation and construction.

1.-(1) This Act may be cited as the Companies Act, 1990.

(2) This Act and the Companies Acts, 1963 to 1986, may be cited together as the Companies Acts, 1963 to 1990.

(3) The Companies Acts, 1963 to 1986, and this Act shall be construed together as one Act.

COMPANIES ACT 1990 - SECT 2

Commencement.

2.-This Act shall come into operation on such day or days as may be fixed therefor by order or orders of the Minister, either generally or with reference to a particular purpose or provision, and different days may be so fixed for different purposes and different provisions of this Act.

COMPANIES ACT 1990 - SECT 3

Interpretation.

3.-(1) In this Act, unless the context otherwise requires—

"books and documents" and "books or documents" include accounts, deeds, writings and records made in any other manner;

"child" includes a step-child and an adopted child and "son", "daughter" and "parent" shall be construed accordingly;

"the Companies Acts" means the Companies Act, 1963, and every enactment (including this Act) which is to be construed as one with that Act;

"connected person" has the meaning assigned to it by section 26;

"contravention" includes failure to comply;

"daily default fine" has the meaning assigned to it by section 240

(6);

"the Minister" means the Minister for Industry and Commerce;

"prescribe" means prescribe by regulations;

"the Principal Act" means the Companies Act, 1963;

"recognised stock exchange" has the meaning assigned to it by subsection (2);

"related company" has the meaning assigned to it by section 140;

"shadow director" has the meaning assigned to it by section 27.

(2) (a) A recognised stock exchange for the purposes of any provision of the Companies Acts is an exchange prescribed by the Minister for the purposes of that section.

(b) The definition of "recognised stock exchange" in paragraph (a) is in substitution for the definition in section 2 (1) of the Principal Act.

(3) The Minister may make regulations in relation to any matter referred to in this Act as prescribed or to be prescribed.

(4) In this Act—

(a) a reference to a Part or section is to a Part or section of this Act unless it is indicated that a reference to some other enactment is intended;

(b) a reference to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended; and

(c) a reference to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

COMPANIES ACT 1990 - SECT 4
Periods of time.

4.—(1) Where the time limited by any provision of this Act for the doing of anything expires on a Saturday, Sunday or public holiday, the time so limited shall extend to and the thing may be done on the first following day that is not a Saturday, Sunday or public holiday.

(2) Where in this Act anything is required or allowed to be done within a number of days not exceeding six a day that is a Saturday, Sunday or public holiday shall not be reckoned in computing that number.

COMPANIES ACT 1990 - SECT 5
Orders.

5.—The Minister may by order revoke or amend an order made by him under any provision of this Act, other than section 2.

COMPANIES ACT 1990 - SECT 6
Repeals.

6.—(1) The following provisions of The Principal Act are hereby repealed - sections 147, 162 (inserted by section 6 of the Companies (Amendment) Act, 1982), 163, 165 to 173, 184, 294, 296, 380 and 385, and the Seventh and Tenth Schedules.

(2) The following provisions are also hereby repealed—

(a) Regulation 8 of the European Communities (Companies) Regulations, 1973,

(b) section 6 of the Companies (Amendment) Act, 1977, and

(c) section 21 of the Companies (Amendment) Act, 1986.

COMPANIES ACT 1990 - PART II
- INVESTIGATIONS

COMPANIES ACT 1990 - SECT 7
Investigation of company's affairs.

7.—(1) The court may appoint one or more competent inspectors to investigate the affairs of a company in order to enquire into matters specified by the court and to report thereon in such manner as the court directs—

(a) in the case of a company having a share capital, on the application either of not less than 100 members or of a member or members holding not less than one-tenth of the paid up share capital of the company;

(b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members;

(c) in any case, on the application of the company;

(d) in any case, on the application of a director of the company;

(e) in any case, on the application of a creditor of the company.

(2) The application shall be supported by such evidence as the court may require, including such evidence as may be prescribed.

(3) Where an application is made under this section, the court may require the applicant or applicants to give security, to an amount not less than £500 and not exceeding £100,000, for payment of the costs of the investigation.

(4) Where the court appoints an inspector under this section or section 8, it may, from time to time, give such directions as it thinks fit, whether to the inspector or otherwise, with a view to ensuring that the investigation is carried out as quickly and as inexpensively as possible.

COMPANIES ACT 1990 - SECT 8

Investigation of company's affairs on application of Minister.

8.-(1) Without prejudice to its powers under section 7, the court may on the application of the Minister appoint one or more competent application of Minister. inspectors to investigate the affairs of a company and to report thereon in such manner as the court shall direct, if the court is satisfied that there are circumstances suggesting

(a) that its affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in an unlawful manner or in a manner which is unfairly prejudicial to some part of its members, or that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that it was formed for any fraudulent or unlawful purpose; or

(b) that persons connected with its formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members; or

(c) that its members have not been given all the information relating to its affairs which they might reasonably expect.

(2) (a) The power conferred by section 7 or this section shall be exercisable with respect to a body corporate notwithstanding that it is in course of being wound up.

(b) The reference in subsection (1) (a) to the members of a company shall have effect as if it included a reference to any person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

COMPANIES ACT 1990 - SECT 9

Power of inspectors to extend investigation into affairs of related companies.

9.-If an inspector appointed under section 7 or 8 to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of any other body corporate which is related to such company, he shall, with the approval of the court, have power so to do, and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.

COMPANIES ACT 1990 - SECT 10

Production of documents and evidence on investigation.

10.-(1) It shall be the duty of all officers and agents of the company and of all officers and agents of any other body corporate whose affairs are investigated by virtue of section 9 to produce to the inspectors all books and documents of or relating to the company, or, as the case may be, the other body corporate which are in their custody or power, to attend before the inspectors when required so to do and otherwise to give to the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(2) If the inspectors consider that a person other than an officer or agent of the company or other body corporate is or may be in possession of any information concerning its affairs, they may require that person to produce to them any books or documents in his custody or power relating to the company or other body corporate, to attend before them and otherwise to give them all assistance in connection with the investigation which he is reasonably able to give; and it shall be the duty of that person to comply with the requirement.

(3) If an inspector has reasonable grounds for believing that a director of the company or other body corporate whose affairs the inspector is investigating maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in the State or elsewhere, into or out of which there has been paid—

(a) any money which has resulted from or been used in the financing of any transaction, arrangement or agreement—

(i) particulars of which have not been disclosed in a note to the accounts of any company for any financial year as required by section 41; or

(ii) in respect of which any amount outstanding was not included in the aggregate amounts outstanding in respect of certain transactions, arrangements or agreements as required by section 43 to be disclosed in a note to the accounts of any company for any financial year; or

(iii) particulars of which were not included in any register of certain transactions, arrangements and agreements as required by section 44, or

(b) any money which has been in any way connected with any act or omission, or series of acts or omissions, which on the part of that director constituted misconduct (whether fraudulent or not) towards that company or body corporate or its members;

the inspector may require the director to produce to him all documents in the director's possession, or under his control, relating to that bank account; and in this subsection "bank account" includes an account with any person exempt by virtue of section 7 (4) of the Central Bank Act, 1971, from the requirement of holding a licence under section 9 of that Act, and "director" includes any present or past director or any person connected, within the meaning

of section 26, with such director, and any present or past shadow director.

(4) An inspector may examine on oath, either by word of mouth or on written interrogatories, the officers and agents of the company or other body corporate and such person as is mentioned in subsection (2) in relation to its affairs and may—

(a) administer an oath accordingly,

(b) reduce the answers of such person to writing and require him to sign them.

(5) If any officer or agent of the company or other body corporate or any such person as is mentioned in subsection (2) refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, refuses to attend before the inspectors when required so to do or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company or other body corporate as the case may be, the inspectors may certify the refusal under their hand to the court, and the court may thereupon enquire into the case and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of court.

(6) Without prejudice to its power under subsection (5), the court may, after a hearing under that subsection, make any order or direction it thinks fit, including a direction to the person concerned to attend or re-attend before the inspector or produce particular books or documents or answer particular questions put to him by the inspector, or a direction that the person concerned need not produce a particular book or document or answer a particular question put to him by the inspector.

(7) In this section, any reference to officers or to agents shall include past, as well as present, officers or agents, as the case may be, and "agents", in relation to a company or other body corporate, shall include the bankers and solicitors of the company or other body corporate and any persons employed by the company or other body corporate as auditors, whether those persons are or are not officers of the company or other body corporate.

COMPANIES ACT 1990 - SECT 11
Inspector's reports.

11.—(1) Inspectors appointed under section 7 or 8 may, and if so directed by the court shall, make interim reports to the court and on the conclusion of the investigation, shall make a final report to the court.

(2) Notwithstanding anything contained in subsection (1), an inspector appointed under section 7 or 8 may at any time in the course of his investigation, without the necessity of making an interim report, inform the court of matters coming to his knowledge as a result of the investigation tending to show that an offence has been

committed.

(3) Where inspectors were appointed under section 7 or 8, the court shall furnish a copy of every report of theirs to the Minister and the court may, if it thinks fit—

(a) forward a copy of any report made by the inspectors to the company's registered office,

(b) furnish a copy on request and payment of the prescribed fee to—

(i) any member of the company or other body corporate which is the subject of the report;

(ii) any person whose conduct is referred to in the report;

(iii) the auditors of that company or body corporate;

(iv) the applicants for the investigation;

(v) any other person (including an employee) whose financial interests appear to the court to be affected by the matters dealt with in the report whether as a creditor of the company or body corporate or otherwise;

(vi) the Central Bank, in any case in which the report of the inspectors relates, wholly or partly, to the affairs of the holder of a licence under section 9 of the Central Bank Act, 1971; and

(c) cause any such report to be printed and published.

(4) Where the court so thinks proper it may direct that a particular part of a report made by virtue of this section be omitted from a copy forwarded or furnished under subsection (3) (a) or (b), or from the report as printed and published under subsection (3) (c).

COMPANIES ACT 1990 - SECT 12

Proceedings on inspectors report.

12.—(1) Having considered a report made under section 11, the court may make such order as it deems fit in relation to matters arising from that report including—

(a) an order of its own motion for the winding up of a body corporate, or

(b) an order for the purpose of remedying any disability suffered by any person whose interests were adversely affected by the conduct of the affairs of the company, provided that, in making any such order, the court shall have regard to the interests of any other person who may be adversely affected by the order.

(2) If, in the case of any body corporate liable to be wound up under the Companies Acts, it appears to the Minister from—

(a) any report made under section 11 as a result of an application by the Minister under section 8, or

(b) any report made by inspectors appointed by the Minister under this Act, or

(c) any information or document obtained by the Minister under this Part,

that a petition should be presented for the winding up of the body, the Minister may, unless the body is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable for it to be so wound up.

COMPANIES ACT 1990 - SECT 13

Expenses of investigation of company's affairs.

13.—(1) The expenses of and incidental to an investigation by an inspector appointed by the court under the foregoing provisions of this Act shall be defrayed in the first instance by the Minister for Justice but the court may direct that any person being—

(a) a body corporate dealt with in the report, or

(b) the applicant or applicants for the investigation,

shall be liable, to such extent as the court may direct, to repay the Minister for Justice, provided that no such liability on the part of the applicant or applicants shall exceed in the aggregate £100,000.

(2) Without prejudice to subsection (1), any person who is—

(a) convicted on indictment of an offence on a prosecution instituted as a result of an investigation,

(b) ordered to pay damages or restore any property in proceedings brought as a result of an investigation, or

(c) awarded damages or to whom property is restored in proceedings brought as a result of an investigation,

may, in the same proceedings, be ordered to repay all or part of the expenses referred to in subsection (1) to the Minister for Justice or to any person on whom liability has been imposed by the court under that subsection, provided that, in the case of a person to whom paragraph (c) relates, the court shall not order payment in excess of one-tenth of the amount of the damages awarded or of the value of the property restored, as the case may be, and any such order shall not be executed until the person concerned has received his damages or the property has been restored, as the case may be.

(3) The report of an inspector may, if he thinks fit, and shall, if the court so directs, include a recommendation as to the directions (if any) which he thinks appropriate, in the light of his investigation, to be given under subsection (1).

COMPANIES ACT 1990 - SECT 14

Appointment and powers of inspectors to investigate ownership of company.

14.-(1) The Minister may, subject to subsection (2), appoint one or more competent inspectors to investigate and report on the membership of any company and otherwise with respect to the company for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence the policy of the company.

(2) An appointment may be made by the Minister if he is of the opinion that there are circumstances suggesting that it is necessary-

(a) for the effective administration of the law relating to companies;

(b) for the effective discharge by the Minister of his functions under any enactment; or

(c) in the public interest.

(3) The appointment of an inspector under this section may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.

(4) Subject to the terms of an inspector's appointment his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(5) For the purposes of any investigation under this section, sections 9 to 1111, except section 10 (3), shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, so, however, that-

(a) the said sections shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others and to any other person whom the inspector has reasonable cause to believe possesses information relevant to the investigation, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be;

(b) if the Minister is of opinion that there is good reason for not divulging any part of a report made by virtue of this section he may disclose the report with the omission of that part; and may cause to be kept by the registrar of companies a copy of the report with that part omitted or, in the case of any other

such report, a copy of the whole report; and

(c) for references to the court (except in section 10 (5) and (6)), there shall be substituted references to the Minister.

COMPANIES ACT 1990 - SECT 15

Power to require information as to persons interested in shares or debentures.

15.-(1) Where it appears to the Minister that it is necessary—

(a) for the effective administration of the law relating to companies;

(b) for the effective discharge by the Minister of his functions under any enactment; or

(c) in the public interest;

to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, he may require any person whom he has reasonable cause to believe to have or to be able to obtain any information as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures to give any such information to the Minister.

(2) For the purposes of this section a person shall be deemed to have an interest in a share or debenture if he has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof or if his consent is necessary for the exercise of any of the rights of other persons interested therein or if the other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.

(3) Any person who fails to give any information required of him under this section or who in giving any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence.

COMPANIES ACT 1990 - SECT 16

Power to impose restrictions on shares or debentures.

16.-(1) Where in connection with an investigation or enquiry under section 14 or 15 it appears to the Minister that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), the Minister may by notice in writing direct that the shares shall until further notice be subject to the restrictions imposed by this section.

(2) So long as a direction under subsection (1) in respect of any shares is in force—

(a) any transfer of those shares, or in the case of unissued

shares any transfer of the right to be issued therewith and any issue thereof, shall be void;

(b) no voting rights shall be exercisable in respect of those shares;

(c) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof; and

(d) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(3) Where shares are subject to the restrictions imposed by subsection (2) (a) any agreement to transfer the shares or in the case of unissued shares the right to be issued with the shares shall be void except an agreement to sell the shares pursuant to subsection (6) (b).

(4) Where shares are subject to the restrictions imposed by subsection (2) (c) or (2) (d) any agreement to transfer any right to be issued with other shares in right of those shares or to receive any payment on those shares (otherwise than in a liquidation) shall be void except an agreement to transfer any such right on the sale of the shares pursuant to subsection (6) (b).

(5) Where the Minister directs that shares shall be subject to the said restrictions, or refuses to direct that shares shall cease to be subject thereto, any person aggrieved thereby may apply to the court for an order that the shares shall cease to be subject thereto.

(6) Subject to subsections (7) and (13), an order of the court or a direction of the Minister that shares shall cease to be subject to the restrictions imposed by this section may be made only if

(a) the court or, as the case may be, the Minister is satisfied that the relevant facts about the shares have been disclosed to the company and no unfair advantage had accrued to any person as a result of the earlier failure to make that disclosure; or

(b) the shares are to be sold and the court or the Minister approves the sale.

(7) Where any shares in a company are subject to the restrictions imposed by this section, the court may on the application of the Minister or the company order the shares to be sold, subject to the approval of the court as to the sale, and may also direct that the shares shall cease to be subject to those restrictions.

(8) Where an order has been made under subsection (7) then, on application of the Minister, the company, the person appointed by or in pursuance of the order to effect the sale or any person interested in the shares, the court may make such further order relating to the sale or to the transfer of the shares as it thinks fit.

(9) Where any shares are sold in pursuance of an order made under subsection (7), the proceeds of sale, less the costs of the sale, shall be paid into court for the benefit of the persons who are beneficially interested in the shares; and any such person may apply to the court for the whole or part of those proceeds to be paid to him.

(10) On an application under subsection (9) the court shall, subject to subsection (11), order the payment to the applicant of the whole of the proceeds of sale together with any interest thereon or, if any other person had a beneficial interest in the shares at the time of their sale, such proportion of those proceeds and interest as is equal to the proportion which the value of the applicant's interest in the shares bears to the total value of the shares.

(11) On granting an application for an order under subsection (7) or (8), the court may order that the costs of the applicant shall be paid out of the proceeds of sale; and, where an order under this subsection is made, the applicant shall be entitled to payment of his costs out of the proceeds of sale before any person interested in the shares in question receives any part of those proceeds.

(12) Any order or direction that shares shall cease to be subject to the said restrictions which is expressed to be made or given with a view to permitting a transfer of those shares or which is made under subsection (7) may continue the restrictions mentioned in subsection (2) (c) and (2) (d) in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

(13) Subsection (6) shall not apply in relation to any order of the court or of the Minister directing that shares shall cease to be subject to any restrictions which have been continued in force in relation to those shares by virtue of subsection (12).

(14) Any person who—

(a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to the said restrictions or of any right to be issued with any such shares; or

(b) votes in respect of any such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or

(c) being the holder of any such shares, fails to notify of their being subject to the said restrictions any person whom he does not know to be aware of that fact but does know to be entitled, apart from the said restrictions, to vote in respect of those shares whether as holder or proxy; or

(d) being the holder of any such shares, or being entitled to any such right as is mentioned in subsection (4) enters into an agreement which is void by virtue of subsection (3) or (4);

shall be guilty of an offence.

(15) Where shares in any company are issued in contravention of the said restrictions, the company and every officer of the company who is in default shall be guilty of an offence.

(16) Summary proceedings shall not be instituted under this section except by or with the consent of the Minister.

(17) This section shall apply in relation to debentures as it applies in relation to shares.

(18) The Minister shall cause notice of any direction given by him under this section—

(a) to be sent to the company concerned at its registered office, and

(b) to be delivered to the registrar of companies,

(c) to be published in Iris Oífigi il and in at least two daily newspapers,

as soon as may be after the direction is given.

COMPANIES ACT 1990 - SECT 17

Extension of powers of investigation to certain bodies incorporated outside the State.

17.—Sections 8 to 11, 13, 18 and 22 shall apply to all bodies corporate incorporated outside the State which are carrying on business in the State or have at any time carried on business therein as if they were companies registered under The Principal Act, subject to any necessary modifications.

COMPANIES ACT 1990 - SECT 18

Admissibility in evidence of certain matters.

18.—An answer given by a person to a question put to him in exercise of powers conferred by—

(a) section 10;

(b) section 10 as applied by sections 14 and 17; or

(c) rules made in respect of the winding-up of companies whether by the court or voluntarily under section 68 of the Courts of Justice Act, 1936, as extended by section 312 of the Principal Act;

may be used in evidence against him, and a statement required by section 224 of the Principal Act may be used in evidence against any person making or concurring in making it.

COMPANIES ACT 1990 - SECT 19

Power of Minister to require production of documents.

19.—(1) The Minister may, subject to subsection (2), give directions

to any body being—

(a) a company formed and registered under the Companies Acts;

(b) an existing company within the meaning of those Acts;

(c) a company to which The Principal Act applies by virtue of section 325 thereof or which is registered under that Act by virtue of Part IX thereof;

(d) a body corporate incorporated in, and having a principal place of business in, the State, being a body to which any of the provisions of the said Act with respect to prospectuses and allotments apply by virtue of section 377 of that Act;

(e) a body corporate incorporated outside the State which is carrying on business in the State or has at any time carried on business therein;

(f) any other body, whether incorporated or not, which is, or appears, to the Minister to be, an insurance undertaking to which the Insurance Acts, 1909 to 1990, or regulations on insurance made under the European Communities Act, 1972, would apply,

requiring the body, at such time and place as may be specified in the directions, to produce such books or documents as may be so specified, or may at any time, if he thinks there is good reason so to do, authorise any officer of his, on producing (if required so to do) evidence of his authority, to require any such body as aforesaid to produce to him forthwith any books or documents which the officer may specify.

(2) Directions may be given by the Minister if he is of the opinion that there are circumstances suggesting that—

(a) it is necessary to examine the books and documents of the body with a view to determining whether an inspector should be appointed to conduct an investigation of the body under the Companies Acts; or

(b) that the affairs of the body are being or have been conducted with intent to defraud—

(i) its creditors,

(ii) the creditors of any other person, or

(iii) its members; or

(c) that the affairs of the body are being or have been conducted for a fraudulent purpose other than described in paragraph (b); or

(d) that the affairs of the body are being or have been conducted in a manner which is unfairly prejudicial to some part of its members; or

(e) that any actual or proposed act or omission or series of acts or omissions of the body or on behalf of the body are or would be unfairly prejudicial to some part of its members; or

(f) that any actual or proposed act or omission or series of acts or omissions of the body or on behalf of the body are or are likely to be unlawful; or

(g) that the body was formed for any fraudulent purpose; or

(h) that the body was formed for any unlawful purpose.

(3) Where by virtue of subsection (1) the Minister or an officer authorised by the Minister has power to require the production of any books or documents from any body, the Minister or officer shall have the like power to require production of those books or documents from any person who appears to the Minister or officer to be in possession of them; but where any such person claims a lien on books or documents produced by him, the production shall be without prejudice to the lien.

(4) Any power conferred by or by virtue of this section to require a body or other person to produce books or documents shall include power—

(a) if the books or documents are produced—

(i) to take copies of them or extracts from them; and

(ii) to require that person, or any other person who is a present or past officer of, or is or was at any time employed by, the body in question, to provide an explanation of any of them;

(b) if the books or documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) If a requirement to produce books or documents or provide an explanation or make a statement which is imposed by virtue of this section is not complied with, the body or other person on whom the requirement was so imposed shall be guilty of an offence; but where a person is charged with an offence under this subsection in respect of a requirement to produce any books or documents, it shall be a defence to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement.

(6) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

(7) Nothing in this section shall prevent the Minister from authorising a person other than an officer of his to exercise the functions which an officer of his may exercise under this section and, where the Minister so authorises, such person shall have the same rights, duties and obligations as if he were such officer.

COMPANIES ACT 1990 - SECT 20
Entry and search of premises.

20.-(1) If a District Justice is satisfied on information on oath laid by an officer authorised by the Minister or laid under the authority of the Minister that there are reasonable grounds for suspecting that there are on any premises any books or documents of which production has been required under section 14, 15 or 19, and which have not been produced in compliance with that requirement, the Justice may issue a warrant authorising any member of the Garda Síochána together with any other persons named in the warrant and any other members of the Garda Síochána to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) and to search the premises and take possession of any books or documents appearing to be such books or documents as aforesaid, or to take, in relation to any books or documents so appearing, any other steps which may appear necessary for preserving them and preventing interference with them.

(2) Every warrant issued under this section shall continue in force until the end of the period of one month after the date on which it is issued.

(3) Any books or documents of which possession is taken under this section may be retained for a period of three months or, if within that period there are commenced any such criminal proceedings as are mentioned in section 21 (1) (a) or (1) (b) (being proceedings to which the books or documents are relevant), until the conclusion of those proceedings.

(4) A person who obstructs the exercise of a right of entry or search conferred by virtue of a warrant issued under this section or who obstructs the exercise of a right so conferred to take possession of any books or documents, shall be guilty of an offence.

COMPANIES ACT 1990 - SECT 21
Provision for security of information.

21.-(1) No information, book or document relating to a body which has been obtained under section 19 or 20 shall, without the previous consent in writing of that body, be published or disclosed, except to a competent authority, unless the publication or disclosure is required-

(a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings pursuant to, or arising out of the Companies Acts or any criminal proceedings for an offence entailing misconduct in connection with the management of the body's affairs or misapplication or wrongful retainer of its property;

(b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings pursuant to or arising out of the Exchange Control Acts, 1954 to 1986, or the Insurance Acts, 1909 to 1990, or regulations on insurance made under the European Communities Act, 1972;

(c) for the purpose of complying with any requirement, or exercising any power, imposed or conferred by this Part with respect to reports made by inspectors appointed thereunder by the court or the Minister;

(d) with a view to the institution by the Minister of proceedings for the winding-up under The Principal Act of the body or otherwise for the purposes of proceedings instituted by him for that purpose;

(e) for the purposes of proceedings under section 20.

(2) A person who publishes or discloses any information, book or document in contravention of this section shall be guilty of an offence.

(3) For the purposes of this section "competent authority" includes—

(a) the Minister,

(b) a person authorised by the Minister,

(c) an inspector appointed under this Act,

(d) the Minister for Finance,

(e) an officer authorised by the Minister for Finance,

(f) any court of competent jurisdiction,

(g) a supervisory authority within the meaning of regulations relating to insurance made under the European Communities Act, 1972, and

(h) the Central Bank.

COMPANIES ACT 1990 - SECT 22

Inspector's reports to be evidence.

22.—A document purporting to be a copy of a report of an inspector to be evidence. appointed under the provisions of this Part shall be admissible in any civil proceedings as evidence—

(a) of the facts set out therein without further proof unless the contrary is shown, and

(b) of the opinion of the inspector in relation to any matter contained in the report.

COMPANIES ACT 1990 - SECT 23

Saving for privileged information.

23.—(1) Nothing in this Part shall compel the disclosure by any person of any information which he would, in the opinion of the court, be entitled to refuse to produce on the grounds of legal professional privilege or authorise the taking of possession of any document containing such information which is in his possession.

(2) The Minister shall not, under section 19, require, or authorise an officer of his to require, the production by a person carrying on the business of banking of a document relating to the affairs of a customer of his unless either it appears to the Minister that it is necessary so to do for the purpose of investigating the affairs of the first-mentioned person or the customer is a person on whom a requirement has been imposed by virtue of that section.

(3) The publication, in pursuance of any provision of this Part, of any report, information, book or document shall be privileged.

COMPANIES ACT 1990 - SECT 24
Power to make supplementary regulations.

24.—(1) If, in any respect, any difficulty arises in bringing any provision of this Part into operation or in relation to the operation of any such provision, the Minister may by regulations do anything which appears to him to be necessary or expedient for removing that difficulty, for bringing the provision into operation, or for securing or facilitating its operation, and any such regulations may modify any provision of this Part so far as may be necessary or expedient for carrying such provision into effect for the purposes aforesaid.

(2) Every regulation made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

COMPANIES ACT 1990 - PART III
- TRANSACTIONS INVOLVING DIRECTORS

Preliminary

COMPANIES ACT 1990 - SECT 25
Interpretation of Part III.

25.—(1) In this Part, unless the context otherwise requires—

"credit transactions" has the meaning assigned to it by subsection (3);

"guarantee" includes indemnity;

"quasi-loan" has the meaning assigned to it by subsection (2);

"licensed bank" means the holder of a licence under section 9 of the Central Bank Act, 1971.

(2) For the purposes of this Part—

(a) a quasi-loan is a transaction under which one party ("the creditor") agrees to pay, or pays otherwise than in pursuance of an

agreement, a sum for another ("the borrower") or agrees to reimburse, or reimburses otherwise than in pursuance of an agreement, expenditure incurred by another party for another ("the borrower")—

(i) on terms that the borrower (or a person on his behalf) will reimburse the creditor; or

(ii) in circumstances giving rise to a liability on the borrower to reimburse the creditor;

(b) any reference to the person to whom a quasi-loan is made is a reference to the borrower; and

(c) the liabilities of a borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower.

(3) For the purposes of this Part a credit transaction is a transaction under which one party ("the creditor")—

(a) supplies any goods or sells any land under a hire-purchase agreement or conditional sale agreement;

(b) leases or licenses the use of land or hires goods in return for periodical payments;

(c) otherwise disposes of land or supplies goods or services on the understanding that payment (whether in a lump-sum or instalments or by way of periodical payments or otherwise) is to be deferred.

(4) For the purposes of this Part the value of a transaction or arrangement is—

(a) in the case of a loan, the principal of the loan;

(b) in the case of a quasi-loan, the amount, or maximum amount, which the person to whom the quasi-loan is made is liable to reimburse the creditor;

(c) in the case of a transaction or arrangement, other than a loan or quasi-loan or a transaction or arrangement within paragraph (d) or (e), the price which it is reasonable to expect could be obtained for the goods, land or services to which the transaction or arrangement relates if they had been supplied at the time the transaction or arrangement is entered into in the ordinary course of business and on the same terms (apart from price) as they have been supplied or are to be supplied under the transaction or arrangement in question;

(d) in the case of a guarantee or security, the amount guaranteed or secured;

(e) in the case of an arrangement to which section 31 (2) or 31 (3) applies the value of the transaction to which the arrangement relates less any amount by which the liabilities under the arrangement or transaction of the person for whom the transaction was made have been reduced.

(5) For the purposes of subsection (4), the value of a transaction or arrangement which is not capable of being expressed as a specific sum of money (because the amount of any liability arising under the transaction is unascertainable, or for any other reason) shall, whether or not any liability under the transaction has been reduced, be deemed to exceed £50,000.

(6) For the purposes of this Part, a transaction or arrangement is made for a person if—

(a) in the case of a loan or quasi-loan, it is made to him;

(b) in the case of a credit transaction, he is the person to whom goods or services are supplied, or land is sold or otherwise disposed of, under the transaction;

(c) in the case of a guarantee or security, it is entered into or provided in connection with a loan or quasi-loan made to him or a credit transaction made for him;

(d) in the case of an arrangement to which section 31 (2) or 31 (3) applies, the transaction to which the arrangement relates was made for him; and

(e) in the case of any other transaction or arrangement for the supply or transfer of goods, land or services (or any interest therein), he is the person to whom the goods, land or services (or the interest) are supplied or transferred.

(7) This Part, except sections 41, 43 and 44, does not apply to arrangements or transactions entered into before the commencement of this section but, for the purposes of determining whether an arrangement is one to which section 31 (2) or 31 (3) applies the transaction to which the arrangement relates shall, if it was entered into before the said commencement, be deemed to have been entered into thereafter.

(8) This Part shall have effect in relation to an arrangement or transaction whether governed by the law of the State or of another country.

COMPANIES ACT 1990 - SECT 26

Connected persons.

26.—(1) For the purposes of this Part, a person is connected with a director of a company if, but only if, he is—

(a) that director's spouse, parent, brother, sister or child;

(b) a person acting in his capacity as the trustee of any trust, the principal beneficiaries of which are the director, his spouse or any of his children or any body corporate which he controls; or

(c) a partner of that director;

unless that person is also a director of the company.

(2) A body corporate shall also be deemed to be connected with a director of a company if it is controlled by that director.

(3) For the purposes of this section, a director of a company shall be deemed to control a body corporate if, but only if, he is, alone or together with any of the persons referred to in paragraph (a), (b) or (c) of subsection (1), interested in more than one-half of the equity share capital of that body or entitled to exercise or control the exercise of more than one-half of the voting power at any general meeting of that body.

(4) In subsection (3)–

(a) "equity share capital" has the same meaning as in section 155 of the Principal Act; and

(b) references to voting power exercised by a director shall include references to voting power exercised by another body corporate which that director controls.

(5) The provisions of section 54 shall have effect for the purposes of subsection (3) with the substitution of the words "more than half" for the words "one-third or more" in subsections (5) and (6) of that section.

COMPANIES ACT 1990 - SECT 27
Shadow directors.

27.–(1) Subject to subsection (2), a person in accordance with whose directions or instructions the directors of a company are accustomed to act (in this Act referred to as "a shadow director") shall be treated for the purposes of this Part as a director of the company unless the directors are accustomed so to act by reason only that they do so on advice given by him in a professional capacity.

(2) A shadow director shall not be guilty of an offence under section 44 (8) by virtue only of subsection (1).

(3) section 194 of the Principal Act shall apply in relation to a shadow director of a company as it applies in relation to a director of a company, except that the shadow director shall declare his interest, not at a meeting of the directors, but by a notice in writing to the directors which is either–

(a) a specific notice given before the date of the meeting at which, if he had been a director, the declaration would be required by subsection (2) of that section to be made; or

(b) a notice which under subsection (3) of that section falls to be treated as a sufficient declaration of that interest or would fall to be so treated apart from the proviso;

and section 145 of that Act shall have effect as if the declaration had been made at the meeting in question and had accordingly formed part of the proceedings at that meeting.

Particular transactions involving conflict of interest

COMPANIES ACT 1990 - SECT 28

Contracts of employment of director's.

28.-(1) Subject to subsection (6), a company shall not incorporate employment of directors. in any agreement a term to which this section applies unless the term is first approved by a resolution of the company in general meeting and, in the case of a director of a holding company, by a resolution of that company in general meeting.

(2) This section applies to any term by which a director's employment with the company of which he is the director or, where he is the director of a holding company, his employment within the group is to continue, or may be continued, otherwise than at the instance of the company (whether under the original agreement or under a new agreement entered into in pursuance of the original agreement), for a period exceeding five years during which the employment

(a) cannot be terminated by the company by notice; or

(b) can be so terminated only in specified circumstances.

(3) In any case where—

(a) a person is or is to be employed with a company under an agreement which cannot be terminated by the company by notice or can be so terminated only in specified circumstances; and

(b) more than six months before the expiration of the period for which he is or is to be so employed, the company enters into a further agreement (otherwise than in pursuance of a right conferred by or by virtue of the original agreement on the other party thereto) under which he is to be employed with the company or, where he is a director of a holding company, within the group,

subsection (2) shall apply as if to the period for which he is to be employed under that further agreement there were added a further period equal to the unexpired period of the original agreement.

(4) A resolution of a company approving a term to which this section applies shall not be passed at a general meeting of the company unless a written memorandum setting out the proposed agreement incorporating the term is available for inspection by members of the company both—

(a) at the registered office of the company for not less than the period of 15 days ending with the date of the meeting; and

(b) at the meeting itself.

(5) A term incorporated in an agreement in contravention of this section shall to the extent that it contravenes this section be void; and that agreement and, in a case where subsection (3)

applies, the original agreement shall be deemed to contain a term entitling the company to terminate it at any time by the giving of reasonable notice.

(6) No approval is required to be given under this section by any body corporate unless it is a company within the meaning of The Principal Act or registered under Part IX of that Act or if it is, for the purposes of section 150 of that Act, a wholly owned subsidiary of any body corporate, wherever incorporated.

(7) In this section—

(a) "employment" includes employment under a contract for services; and

(b) "group", in relation to a director of a holding company, means the group which consists of that company and its subsidiaries.

COMPANIES ACT 1990 - SECT 29

Substantial property transactions involving directors, etc.

29.—(1) Subject to subsections (6), (7) and (8), a company shall not enter into an arrangement—

(a) whereby a director of the company or its holding company or a person connected with such a director acquires or is to acquire one or more non-cash assets of the requisite value from the company; or

(b) whereby the company acquires or is to acquire one or more non-cash assets of the requisite value from such a director or a person so connected;

unless the arrangement is first approved by a resolution of the company in general meeting and, if the director or connected person is a director of its holding company or a person connected with such a director, by a resolution in general meeting of the holding company.

(2) For the purposes of this section a non-cash asset is of the requisite value if at the time the arrangement in question is entered into its value is not less than £1,000 but, subject to that, exceeds £50,000 or ten per cent of the amount of the company's relevant assets, and for those purposes the amount of a company's relevant assets is—

(a) except in a case falling within paragraph (b), the value of its net assets determined by reference to the accounts prepared and laid in accordance with the requirements of section 148 of the Principal Act in respect of the last preceding financial year in respect of which such accounts were so laid;

(b) where no accounts have been prepared and laid under that section before that time, the amount of its called-up share capital.

(3) An arrangement entered into by a company in contravention of this section and any transaction entered into in pursuance of the

arrangement (whether by the company or any other person) shall be voidable at the instance of the company unless—

(a) restitution of any money or any other asset which is the subject-matter of the arrangement or transaction is no longer possible or the company has been indemnified in pursuance of subsection (4) (b) by any other person for the loss or damage suffered by it; or

(b) any rights acquired bona fide for value and without actual notice of the contravention by any person who is not a party to the arrangement or transaction would be affected by its avoidance; or

(c) the arrangement is, within a reasonable period, affirmed by the company in general meeting and, if it is an arrangement for the transfer of an asset to or by a director of its holding company or a person who is connected with such a director, is so affirmed with the approval of the holding company given by a resolution in general meeting.

(4) Without prejudice to any liability imposed otherwise than by this subsection, but subject to subsection (5), where an arrangement is entered into with a company by a director of the company or its holding company or a person connected with him in contravention of this section, that director and the person so connected, and any other director of the company who authorised the arrangement or any transaction entered into in pursuance of such an arrangement, shall (whether or not it has been avoided in pursuance of subsection (3)) be liable—

(a) to account to the company for any gain which he had made directly or indirectly by the arrangement or transaction; and

(b) (jointly and severally with any other person liable under this subsection) to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(5) Where an arrangement is entered into by a company and a person connected with a director of the company or its holding company in contravention of this section, that director shall not be liable under subsection (4) if he shows that he took all reasonable steps to secure the company's compliance with this section and, in any case, a person so connected and any such other director as is mentioned in that subsection shall not be so liable if he shows that, at the time the arrangement was entered into, he did not know the relevant circumstances constituting the contravention.

(6) No approval is required to be given under this section by any body corporate unless it is a company within the meaning of The Principal Act or registered under Part IX of that Act or, if it is, for the purposes of section 150 of that Act, a wholly owned subsidiary of any body corporate, wherever incorporated.

(7) Subsection (1) shall not apply in relation to any arrangement for the acquisition of a non-cash asset—

(a) if the non-cash asset in question is or is to be acquired by a holding company from any of its wholly owned subsidiaries or from a holding company by any of its wholly owned subsidiaries or by one wholly owned subsidiary of a holding company from another wholly owned subsidiary of that same holding company; or

(b) if the arrangement is entered into by a company which is being wound up unless the winding up is a members' voluntary winding up.

(8) Subsection (1) (a) shall not apply in relation to any arrangement whereby a person acquires or is to acquire an asset from a company of which he is a member if the arrangement is made with that person in his character as such member.

(9) In this section—

(a) "non-cash asset" means any property or interest in property other than cash, and for this purpose "cash" includes foreign currency;

(b) any reference to the acquisition of a non-cash asset includes a reference to the creation or extinction of an estate or interest in, or a right over, any property and also a reference to the discharge of any person's liability other than a liability for a liquidated sum; and

(c) "net assets", in relation to a company, means the aggregate of the company's assets less the aggregate of its liabilities, and for this purpose "liabilities" includes any provision for liabilities or charges within paragraph 70 of the Schedule to the Companies (Amendment) Act, 1986.

COMPANIES ACT 1990 - SECT 30

Penalisation of dealing by director of a company in options to buy or sell certain shares in, or debentures of, the company or associated companies.

30.—(1) A director of a company who buys—

(a) a right to call for delivery at a specified price and within a specified time of a specified number of relevant shares or a specified amount of relevant debentures; or

(b) a right to make delivery at a specified price and within a specified time of a specified number of relevant shares or a specified amount of relevant debentures; or

(c) a right (as he may elect) to call for delivery at a specified price and within a specified time or to make delivery at a specified price and within a specified time of a specified number of relevant shares or a specified amount of relevant debentures;

shall be guilty of an offence.

(2) In subsection (1)—

(a) "relevant shares", in relation to a director of a company, means shares in the company or in any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company, being shares for which dealing facilities are provided by a stock exchange (whether within the State or elsewhere); and

(b) "relevant debentures", in relation to a director of a company, means debentures of the company or of any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company, being debentures as respects which there has been granted such dealing facilities as aforesaid.

(3) Nothing in this section shall be taken to penalise a person who buys a right to subscribe for shares in, or debentures of, a body corporate or buys debentures of a body corporate that confer upon the holder thereof a right to subscribe for, or to convert the debentures (in whole or in part) into, shares of the body.

(4) For the purposes of this section any reference, however expressed, to any price paid, given or received in respect of any interest in shares or debentures shall be construed as including a reference to any consideration other than money given or received in respect of any such interest, and any reference to a specified price includes a reference to a specified price range.

(5) This section shall also apply to any person (not being a director of the company) who—

(a) buys a right referred to in subsection (1), and

(b) does so on behalf or at the instigation of a director of the company.

COMPANIES ACT 1990 - SECT 31

Prohibition of loans, etc. to director's and connected persons.

31.—(1) Except as provided by sections 32 to 3737, a company shall not—

(a) make a loan or a quasi-loan to a director of the company or of its holding company or to a person connected with such a director;

(b) enter into a credit transaction as creditor for such a director or a person so connected;

(c) enter into a guarantee or provide any security in connection with a loan, quasi-loan or credit transaction made by any other person for such a director or a person so connected.

(2) A company shall not arrange for the assignment to it or the assumption by it of any rights, obligations or liabilities under a transaction which, if it had been entered into by the company, would have contravened subsection (1); but for the purposes of this Part the transaction shall be treated as having been entered into

on the date of the arrangement.

(3) A company shall not take part in any arrangement whereby—

(a) another person enters into a transaction which, if it had been entered into by the company, would have contravened subsection (1) or (2); and

(b) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the company or its holding company or a subsidiary of the company or its holding company.

COMPANIES ACT 1990 - SECT 32
Arrangements of certain value.

32.—(1) Section 31 shall not prohibit a company from entering into an arrangement with a director or a person connected with a director if—

(a) the value of the arrangement, and

(b) the total amount outstanding under any other arrangements entered into by the company with any director of the company, or any person connected with a director, together, is less than ten per cent of the company's relevant assets.

(2) For the purposes of this section—

(a) a company enters an arrangement with a person if it makes a loan or quasi-loan to, or enters into a credit transaction as creditor for, that person, and

(b) the amount of a company's relevant assets shall be determined in accordance with section 29 (2).

COMPANIES ACT 1990 - SECT 33
Reduction in amount of company's relevant assets.

33.—(1) This section applies to a company in respect of which the total amount outstanding under any arrangements referred to in section 32 comes to exceed 10 per cent of the company's relevant assets for any reason, but in particular because the value of those assets has fallen.

(2) Where the directors of a company become aware, or ought reasonably to become aware, that there exists a situation referred to in subsection (1), it shall be the duty of the company, its directors and any persons for whom the arrangements referred to in that subsection were made, to amend, within two months, the terms of the arrangements concerned so that the total amount outstanding under the arrangements again falls within the percentage limit referred to in that subsection.

COMPANIES ACT 1990 - SECT 34
Inter-company loans in same group.

34.—Where a company is a member of a group of companies, consisting of a holding, company and its subsidiaries, section 31 shall not prohibit that company from—

(a) making a loan or quasi-loan to another member of that group; or

(b) entering into a guarantee or providing any security in connection with a loan or quasi-loan made by any person to another member of the group;

by reason only that a director of one member of the group is connected with another.

COMPANIES ACT 1990 - SECT 35
Transactions with holding company.

35.—Section 31 shall not prohibit a company from—

(a) making a loan or quasi-loan to its holding company or entering into a guarantee or providing any security in connection with a loan or quasi-loan made by any person to its holding company;

(b) entering into a credit transaction as creditor for its holding company or entering into a guarantee or providing any security in connection with any credit transaction made by any other person for its holding company.

COMPANIES ACT 1990 - SECT 36
Directors' expenses.

36.—(1) Section 31 shall not prohibit a company from doing anything to provide any of its directors with funds to meet vouched expenditure properly incurred or to be incurred by him for the purposes of the company or the purpose of enabling him properly to perform his duties as an officer of the company or doing anything to enable any of its directors to avoid incurring such expenditure.

(2) Where a company enters into any transaction pursuant to subsection (1), any liability falling on any person arising from any such transaction shall be discharged by him within six months from the date on which it was incurred.

(3) A person who contravenes subsection (2) shall be guilty of an offence.

COMPANIES ACT 1990 - SECT 37
Business transactions.

37.—Section 31 shall not prohibit a company from making any loan or quasi-loan or entering into any credit transaction as creditor for any person if—

(a) the company enters into the transaction concerned in the ordinary course of its business; and

(b) the value of the transaction is not greater, and the terms on which it is entered into are no more favourable, in respect of the person for whom the transaction is made, than that or those which—

(i) the company ordinarily offers, or

(ii) it is reasonable to expect the company to have offered,

to or in respect of a person of the same financial standing as that person but unconnected with the company.

COMPANIES ACT 1990 - SECT 38
Civil remedies for breach of section 31.

38.—(1) Where a company enters into a transaction or arrangement in contravention of section 31 the transaction or arrangement shall be voidable at the instance of the company unless—

(a) restitution of any money or any other asset which is the subject matter of the arrangement or transaction is no longer possible, or the company has been indemnified in pursuance of subsection (2) (b) for the loss or damage suffered by it; or

(b) any rights acquired bona fide for value and without actual notice of the contravention by any person other than the person for whom the transaction or arrangement was made would be affected by its avoidance.

(2) Without prejudice to any liability imposed otherwise than by this subsection but subject to subsection (3), where an arrangement or transaction is made by a company for a director of the company or its holding company or person connected with such a director in contravention of section 31, that director and the person so connected and any other director of the company who authorised the transaction or arrangement shall (whether or not it has been avoided in pursuance of subsection (1)) be liable—

(a) to account to the company for any gain which he has made directly or indirectly by the arrangement or transaction; and

(b) (jointly and severally with any other person liable under this subsection) to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(3) Where an arrangement or transaction is entered into by a company and a person connected with a director of the company or its holding company in contravention of section 31 that director shall not be liable under subsection (2) if he shows that he took all reasonable steps to secure the company's compliance with that section and, in any case, a person so connected and any such other director as is mentioned in the said subsection (2) shall not be so liable if he shows that, at the time the arrangement or transaction was entered into, he did not know the relevant circumstances constituting the contravention.

COMPANIES ACT 1990 - SECT 39

Personal liability for company debts in certain cases.

39.—(1) If a company is being wound up and is unable to pay its debts, and the court considers that any arrangement of a kind described in section 32 has contributed materially to the company's inability to pay its debts or has substantially impeded the orderly winding up thereof, the court, on the application of the liquidator or any creditor or contributory of the company, may, if it thinks it proper to do so, declare that any person for whose benefit the arrangement was made shall be personally liable, without any limitation of liability, for all, or such part as may be specified by the court, of the debts and other liabilities of the company.

(2) In deciding whether to make a declaration under subsection (1), the court shall have particular regard to whether, and to what extent, any outstanding liabilities arising under any arrangement referred to in that subsection were discharged before the commencement of the winding up.

(3) In deciding the extent of any personal liability under this section, the court shall have particular regard to the extent to which the arrangement in question contributed materially to the company's inability to pay its debts or substantially impeded the orderly winding up of the company.

COMPANIES ACT 1990 - SECT 40

Criminal penalties for breach of section 31.

40.—(1) An officer of a company who authorises or permits the Criminal penalties company to enter into a transaction or arrangement knowing or having reasonable cause to believe that the company was thereby contravening section 31 shall be guilty of an offence.

(2) A person who procures a company to enter into a transaction or arrangement knowing or having reasonable cause to believe that the company was thereby contravening section 31 shall be guilty of an offence.

Disclosure of transactions involving directors and others

COMPANIES ACT 1990 - SECT 41

Substantial contracts, etc., with directors and others to be disclosed in accounts.

41.—(1) Subject to subsections (5) and (6) and to section 45, group accounts prepared by a holding company in accordance with the contracts, etc., with the requirements of section 150 of the Principal Act in respect of the relevant period shall contain the particulars specified in section 42 of—

(a) any transaction or arrangement of a kind described in section 31 entered into by the company or by a subsidiary of the company for a person who at any time during the relevant period was a director of the company or its holding company or was connected with such a director;

(b) any agreement by the company or by a subsidiary of the

company to enter into any such transaction or arrangement for a person who at any time during the relevant period was a director of the company or its holding company or was connected with such a director;

(c) any other transaction or arrangement with the company or with a subsidiary of the company in which a person who at any time during the relevant period was a director of the company or its holding company had, directly or indirectly, a material interest.

(2) Subject as aforesaid, accounts prepared by any company other than a holding company in respect of the relevant period shall contain the particulars specified in section 42 of—

(a) any transaction or arrangement of a kind described in section 31 entered into by the company for a person who at any time during the relevant period was a director of the company or of its holding company or was connected with such a director;

(b) any agreement by the company to enter into any such transaction or arrangement for a person who at any time during the relevant period was a director of the company or of its holding company or was connected with such a director;

(c) any other transaction or arrangement with the company in which a person who at any time during the relevant period was a director of the company or of its holding company had, directly or indirectly, a material interest.

(3) Particulars which are required by subsection (1) or (2) to be contained in any accounts shall be given by way of notes to those accounts.

(4) Where by virtue of sections 150 (2) and 154 of The Principal Act a company does not produce group accounts in relation to any financial year, subsection (1) shall have effect in relation to the company and that financial year as if the word "group" were omitted.

(5) For the purposes of subsections (1) (c) and (2) (c)—

(a) a transaction or arrangement between a company and a director of the company or of its holding company or a person connected with such a director shall (if it would not otherwise be so treated) be treated as a transaction, arrangement or agreement in which that director is interested; and

(b) an interest in such a transaction or arrangement is not material if in the opinion of the majority of the directors (other than that director) of the company which is preparing the accounts in question it is not material (but without prejudice to the question whether or not such an interest is material in any case where those directors have not considered the matter).

(6) Subsections (1) and (2) do not apply, for the purposes of any accounts prepared by any company which is, or is the holding company of, a licensed bank, in relation to a transaction or

arrangement of a kind described in section 31, or an agreement to enter into such a transaction or arrangement, to which that licensed bank is a party.

(7) Subsections (1) and (2) do not apply in relation to the following transactions, arrangements and agreements—

(a) a transaction, arrangement or agreement between one company and another in which a director of the first company or of its subsidiary or holding company is interested only by virtue of his being a director of the other;

(b) a contract of service between a company and one of its directors or a director of its holding company or between a director of a company and any of that company's subsidiaries;

(c) a transaction, arrangement or agreement which was not entered into during the relevant period for the accounts in question and which did not subsist at any time during that period; and

(d) a transaction, arrangement or agreement which was made before the commencement of this section and which does not subsist thereafter.

(8) Subsections (1) and (2) apply whether or not—

(a) the transaction or arrangement was prohibited by section 31;

(b) the person for whom it was made was a director of the company or was connected with a director of the company at the time it was made;

(c) in the case of a transaction or arrangement made by a company which at any time during a relevant period is a subsidiary of another company, it was a subsidiary of that other company at the time the transaction or arrangement was made.

(9) In this section and in sections 43 and 45, "relevant period", in relation to a company, means a financial year of the company ending not earlier than 6 months after the commencement of the section concerned.

COMPANIES ACT 1990 - SECT 42

Particulars required to be included in accounts by section 41.

42.—The particulars of a transaction, arrangement or agreement which are required by section 41 to be included in the annual accounts prepared by a company are particulars of the principal terms of the transaction, arrangement or agreement and (without prejudice to the generality of the foregoing provision)—

(a) a statement of the fact either that the transaction, arrangement or agreement was made or subsisted, as the case may be, during the financial year in respect of which those accounts are made up;

(b) the name of the person for whom it was made, and, where

that person is or was connected with a director of the company or of its holding company, the name of that director;

(c) in any case where subsection (1) (c) or (2) (c) of section 41 applies, the name of the director with the material interest and the nature of that interest;

(d) in the case of a loan or an agreement for a loan or an arrangement within section 31 (2) or 31 (3) relating to a loan—

(i) the amount of the liability of the person to whom the loan was or was agreed to be made, in respect of principal and interest, at the beginning and at the end of that period;

(ii) the maximum amount of that liability during that period;

(iii) the amount of any interest which, having fallen due, has not been paid; and

(iv) the amount of any provision (within the meaning of the Sixth Schedule to The Principal Act or the Companies (Amendment) Act, 1986) made in respect of any failure or anticipated failure by the borrower to repay the whole or part of the loan or to pay the whole or part of any interest thereon;

(e) in the case of a guarantee or security or an arrangement within section 31 (2) relating to a guarantee or security—

(i) the amount for which the company (or its subsidiary) was liable under the guarantee or in respect of the security both at the beginning and at the end of the financial year in question;

(ii) the maximum amount for which the company (or its subsidiary) may become so liable; and

(iii) any amount paid and any liability incurred by the company (or its subsidiary) for the purpose of fulfilling the guarantee or discharging the security (including any loss incurred by reason of the enforcement of the guarantee or security); and

(f) in the case of any transaction, arrangement or agreement, other than those mentioned in paragraphs (d) and (e) the value of the transaction or arrangement or, as the case may be, the value of the transaction or arrangement to which the agreement relates; and

(g) in the case of arrangements to which section 32 relates, the aggregate value of such arrangements at the end of the financial year concerned, in relation to any persons specified in that section, expressed as a percentage of the company's relevant assets at that time; and

(h) any amendment of the terms of any such arrangement in accordance with section 33.

COMPANIES ACT 1990 - SECT 43

Particulars of amounts outstanding to be included in accounts.

43.-(1) This section applies in relation to the following classes transactions, arrangements and agreements—

(a) loans, guarantees and securities relating to loans, arrangements of a kind described in section 31 (2) or 31 (3) relating to loans, and agreements to enter into any of the foregoing transactions and arrangements;

(b) quasi-loans, guarantees and securities relating to quasi-loans, arrangements of a kind described in those subsections relating to quasi-loans and agreements to enter into any of the foregoing transactions and arrangements;

(c) credit transactions, guarantees and securities relating to credit transactions and arrangements of a kind described in those subsections relating to credit transactions and agreements to enter into any of the foregoing transactions and arrangements.

(2) The group accounts of a holding company prepared in accordance with the requirements of section 150 of the Principal Act and the accounts of any other company prepared in accordance with the requirements of section 148 of the Principal Act in respect of the relevant period shall contain a statement in relation to transactions, arrangements and agreements made by the company and, in the case of a holding company, by a subsidiary of the company for persons who at any time during the relevant period were officers of the company (but not directors) of the aggregate amounts outstanding at the end of the relevant period under transactions, arrangements and agreements within any paragraph of subsection (1) and the number of officers for whom the transactions, arrangements and agreements falling within each of those paragraphs were made.

(3) Subsection (2) shall not apply, in relation to the accounts prepared by any company in respect of any relevant period, to transactions, arrangements and agreements made by the company or any of its subsidiaries for any officer of the company if the aggregate amount outstanding at the end of that period under the transactions, arrangements and agreements so made for that officer does not exceed £2,500.

(4) Subsection (2) shall not apply in relation to any transaction, arrangement or agreement made by a licensed bank for any of its officers or for any of the officers of its holding company.

(5) The group accounts of a company which is, or is the holding company of, a licensed bank prepared in accordance with the requirements of section 150 of the Principal Act, and the accounts of any other company which is a licensed bank, prepared in accordance with the requirements of section 148 of the Principal Act in respect of the relevant period shall contain a statement in relation to transactions, arrangements or agreements made by the company preparing the accounts, if it is a licensed bank, and (in the case of a holding company) by any of its subsidiaries which is a licensed bank, for persons who at any time during the relevant period were directors of the company, of the aggregate amounts outstanding at the end of the relevant period under transactions,

arrangements and agreements within any paragraph of subsection (1) and the number of persons for whom the transactions, arrangements and agreements falling within each of those paragraphs were made.

(6) (a) The statement referred to in subsection (5) shall also separately contain the like information as is referred to in that subsection in relation to transactions, arrangements or agreements made for persons who at any time during the relevant period were connected with a director of the company.

(b) A transaction, arrangement or agreement to which paragraph (a) applies need not be included in the statement if—

(i) it is entered into by the company concerned in the ordinary course of its business, and

(ii) its value is not greater, and its terms no more favourable, in respect of the person for whom it is made, than that or those which—

(I) the company ordinarily offers, or

(II) it is reasonable to expect the company to have offered,

to or in respect of a person of the same financial standing but unconnected with the company.

(7) Particulars which are required by subsection (2), (5) or (6) to be contained in any accounts shall be given by way of notes to those accounts.

(8) Where by virtue of sections 150 (2) and 154 of The Principal Act, a company does not produce group accounts in relation to any financial year, subsections (2), (5) and (6) shall have effect in relation to the company and that financial year as if the word "group" were omitted.

(9) Subsections (2), (5) and (6) do not apply in relation to a transaction, arrangement or agreement which was made before the commencement of this section and which does not subsist thereafter.

(10) For the purposes of this section, "amount outstanding" means the amount of the outstanding liabilities of the person for whom the transaction, arrangement or agreement in question was made, or, in the case of a guarantee or security, the amount guaranteed or secured.

COMPANIES ACT 1990 - SECT 44

Further provisions relating to licensed banks.

44.—(1) Subject to section 45, a company which is, or is the holding relating to licensed company of, a licensed bank, shall maintain a register containing banks. a copy of every transaction, arrangement or agreement of which particulars would, but for section 41 (6), be required by subsection (1) or (2) of that section to be disclosed in the company's accounts or group accounts for the current financial year and for each of the preceding ten financial

years (but excluding any financial year ending prior to the passing of this Act) or, if such a transaction, arrangement or agreement is not in writing, a written memorandum setting out its terms.

(2) Subsection (1) shall not require a company to keep in its register a copy of any transaction, arrangement or agreement made for a connected person if—

(a) it is entered into in the ordinary course of the company's business, and

(b) its value is not greater, and its terms no more favourable, in respect of the person for whom it is made, than that or those which—

(i) the company ordinarily offers, or

(ii) it is reasonable to expect the company to have offered,

to or in respect of a person of the same financial standing but unconnected with the company.

(3) Subject to section 45, a company which is, or is the holding company of, a licensed bank shall before its annual general meeting make available, at the registered office of the company for not less than the period of 15 days ending with the date of the meeting, for inspection by members of the company a statement containing the particulars of transactions, arrangements and agreements which the company would, but for section 41 (6), be required by subsection (1) or (2) of that section to disclose in its accounts or group accounts for the last complete financial year preceding that meeting and such a statement shall also be made available for inspection by the members at the annual general meeting.

(4) Subsection (3) shall not require the inclusion in the statement of particulars of any transaction, arrangement or agreement if—

(a) it is entered into in the ordinary course of the company's business, and

(b) its value is not greater, and its terms no more favourable, in respect of the person for whom it is made, than that or those which—

(i) the company ordinarily offers, or

(ii) it is reasonable to expect the company to have offered,

to or in respect of a person of the same financial standing but unconnected with the company.

(5) It shall be the duty of the auditors of the company to examine any such statement before it is made available to the members of the company in accordance with subsection (3) and to make a report to the members on that statement; and the report shall be annexed to the statement before it is made so available.

(6) A report under subsection (5) shall state whether in the opinion of the auditors the statement contains the particulars required by subsection (3) and, where their opinion is that it does not, they shall include in the report, so far as they are reasonably able to do so, a statement giving the required particulars.

(7) Subsection (3) shall not apply in relation to a licensed bank which is for the purposes of section 150 of the Principal Act the wholly owned subsidiary of a company incorporated in the State.

(8) Where a company fails to comply with subsection (1) or (3), the company and every person who at the time of that failure is a director of the company shall be guilty of an offence and liable to a fine.

(9) It shall be a defence in proceedings for an offence under subsection (8) for the defendant to prove that he took all reasonable steps for securing compliance with subsection (1) or (3), as the case may be.

COMPANIES ACT 1990 - SECT 45

Arrangements excluded from sections 41 and 44.

45.—(1) Section 41 (1) and (2) and section 44 do not apply to arrangements of the kind mentioned in section 32 (2) entered into by a company or by a subsidiary of the company for a person who at any time during the relevant period was a director of the company or of its holding company or was connected with such a director, if the aggregate of the values of each arrangement so made for that director or any person connected with him, less the amount (if any) by which the liabilities of the person for whom the arrangement was made has been reduced, did not at any time during the relevant period exceed £2,500.

(2) Subsections (1) (c) and (2) (c) of section 41 do not apply, in relation to any accounts prepared by a company in respect of any relevant period, to any transaction or arrangement with a company or any of its subsidiaries in which a director of the company or of its holding company had, directly or indirectly, a material interest if—

(a) the value of each transaction or arrangement within subsection (1) (c) or (2) (c), as the case may be, in which that director had, directly or indirectly, a material interest and which was made after the commencement of that relevant period with the company or any of its subsidiaries; and

(b) the value of each such transaction or arrangement which was made before the commencement of that period less the amount (if any) by which the liabilities of the person for whom the transaction or arrangement was made have been reduced;

did not at any time during the relevant period exceed in the aggregate £1,000 or, if more, did not exceed £5,000 or one per cent of the value of the net assets of the company preparing the accounts in question as at the end of the relevant period for

those accounts, whichever is the less and for this purpose, "net assets" has the same meaning as in section 29 (9).

COMPANIES ACT 1990 - SECT 46

Duty of auditors of company in breach of section 41 or 43.

46.—If in the case of any group or other accounts of a company the requirements of section 41 or 43 are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

COMPANIES ACT 1990 - SECT 47

Disclosure by directors of interests in contracts, etc.

47.—(1) Any reference in section 194 of the Principal Act to a contract shall be construed as including a reference to any transaction or arrangement (whether or not constituting a contract) made or entered into on or after the commencement of this section.

(2) For the purposes of the said section 194, a transaction or arrangement of a kind described in section 31 made by a company for a director of the company or a person connected with such a director shall, if it would not otherwise be so treated (and whether or not prohibited by that section), be treated as a transaction or arrangement in which that director is interested.

(3) The following shall be substituted for subsection (3) of the said section 194—

"(3) Subject to subsection (4), for the purposes of this section, a general notice given to the directors of a company by a director to the effect that—

(a) he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm; or

(b) he is to be regarded as interested in any contract which may after the date of the notice be made with a specified person who is connected with him (within the meaning of section 26 of the Companies Act, 1990),

shall be deemed to be a sufficient declaration of interest in relation to any such contract."

Supplemental

COMPANIES ACT 1990 - SECT 48

Power to alter financial limits under Part III.

48.—(1) The Minister may, by order, alter any of the financial limits specified in this Part.

(2) Every order made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and

if a resolution annulling the order is passed by either House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

COMPANIES ACT 1990 - SECT 49
Cessation of section 192 of Principal Act.

49.—section 192 of the Principal Act shall cease to have effect except—

(a) in relation to accounts and directors' reports prepared in respect of any financial year ending before the commencement of this section; and

(b) in relation to accounts and directors' reports prepared in respect of the first financial year ending after the commencement of this section but only in relation to loans and contracts entered into before the commencement of this section which do not subsist on or after that day.

COMPANIES ACT 1990 - SECT 50
Inspection of director's service contracts.

50.—(1) Subject to the provisions of this section every company shall keep at an appropriate place—

(a) in the case of each director whose contract of service with the company is in writing, a copy of that contract;

(b) in the case of each director whose contract of service with the company is not in writing, a written memorandum setting out the terms of that contract;

(c) in the case of each director who is employed under a contract of service with a subsidiary of the company, a copy of that contract or, if it is not in writing, a written memorandum setting out the terms of that contract;

(d) a copy or written memorandum, as the case may be, of any variation of any contract of service referred to in paragraph (a), (b) or (c);

and all copies and memoranda kept by a company in pursuance of this subsection shall be kept at the same place.

(2) Where a contract of service is only partially in writing, paragraphs (a), (b), (c) and (d), as appropriate, of subsection (1), and subsections (4) and (5), shall also apply to such a contract.

(3) The following shall, as regards a company, be appropriate places for the purposes of subsection (1), namely—

(a) its registered office;

(b) the place where its register of members is kept if other

than its registered office;

(c) its principal place of business.

(4) Every company shall send notice in the prescribed form to the registrar of companies of the place where copies and memoranda required by subsection (1) to be kept by it are kept and of any change in that place, save in a case in which they have at all times been kept at its registered office.

(5) Subsection (1) shall not apply in relation to a director's contract of service with the company or with a subsidiary of the company if that contract required him to work wholly or mainly outside the State, but the company shall keep a memorandum—

(a) in the case of a contract of service with the company, setting out the name of the director and the provisions of the contract relating to its duration;

(b) in the case of a contract of service with a subsidiary of the company setting out the name of the director, the name and place of incorporation of the subsidiary and the provisions of the contract relating to its duration,

at the same place as copies and the memoranda are kept by the company in pursuance of subsection (1).

(6) Every copy and memorandum required to be kept by subsections (1) and (5) shall, during business hours (subject to such reasonable restrictions as the company may 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.

(7) If default is made in complying with subsection (1) or (5) or if an inspection required under subsection (6) is refused, the company and every officer of the company who is in default shall be liable on summary conviction to a fine not exceeding £1,000, and, for continued contravention, to a daily default fine not exceeding £50 and, if default is made for 14 days in complying with subsection (4), the company and every officer of the company who is in default shall be liable to a fine not exceeding £1,000 and, for continued contravention, to a daily default fine not exceeding £50.

(8) In the case of a refusal of an inspection required under subsection (6) of a copy or memorandum the court may by order compel an immediate inspection thereof.

(9) This section shall not require to be kept a copy of, or memorandum setting out the terms of, a contract or a copy of, or memorandum setting out the terms of a variation of, a contract at a time at which the unexpired portion of the term for which the contract is to be in force is less than three years or at a time at which the contract can, within the next ensuing three years, be terminated by the company without payment of compensation.

Register of directors and secretaries.

51.—The Principal Act is hereby amended by the substitution for section 195 of the following section—

"195—(1) Every company shall keep at its registered office a register of its directors and secretaries.

(2) Subject to subsection (3), the said register shall contain the following particulars relating to each director—

(a) his present forename and surname and any former forename and surname; and

(b) his date of birth; and

(c) his usual residential address; and

(d) his nationality; and

(e) his business occupation, if any; and

(f) particulars of any other directorships of bodies corporate, whether incorporated in the State or elsewhere, held by him or which have been held by him.

(3) It shall not be necessary for the said register to contain on any day particulars of any directorship—

(a) which has not been held by a director at any time during the ten years preceding that day;

(b) which is held or was held by a director in bodies corporate of which the company is or was the wholly owned subsidiary or which are or were the wholly owned subsidiaries either of the company or of another body corporate of which the company is or was the wholly owned subsidiary;

and for the purposes of this subsection a body corporate shall be deemed to be the wholly owned subsidiary of another if it has no members except that other and that other's wholly owned subsidiaries and its or their nominees.

(4) Subject to subsection (5), the said register shall contain the following particulars relating to the secretary or, where there are joint secretaries, in relation to each of them—

(a) in the case of an individual, his present forename and surname, any former forename and surname and his usual residential address; and

(b) in the case of a body corporate, the corporate name and registered office.

(5) Where all the partners in a firm are joint secretaries of a company, the name and principal office of the firm may be stated instead of the said particulars.

(6) The company shall, within the period of 14 days from the happening of—

(a) any change among its directors or in its secretary, or

(b) any change in any of the particulars contained in the register,

send to the registrar of companies a notification in the prescribed form of the change and of the date on which it occurred.

(7) A notification sent to the registrar of companies pursuant to subsection (6) of the appointment of a person as a director, secretary or joint secretary of a company shall be accompanied by a consent signed by that person to act as director, secretary or joint secretary, as the case may be.

(8) Without prejudice to subsection (6), a person who has ceased to be a director or secretary of a company may send to the registrar of companies a notification in the prescribed form of such cessation, and of the date on which it occurred.

(9) Subsection (6) shall not apply to any change in the particulars contained in a company's register of directors and secretaries made solely by reason of the coming into force of section 51 of the Companies Act, 1990 but if after any such change has occurred and before the company makes its next annual return, any other change in those particulars occurs, the company shall send to the registrar of companies a notification in the prescribed form of any such earlier changes and the date on which they occurred at the same time as it notifies the registrar of the later changes in accordance with this section.

(10) 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 2 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 one pound or such less sum as the company may prescribe, for each inspection.

(11) It shall be the duty of each director and secretary of a company to give information in writing to the company as soon as may be of such matters as may be necessary to enable the company to comply with this section.

(12) If any inspection required under this section is refused or if default is made in complying with subsection (1), (2), (4), (6) or (7), the company and every officer of the company who is in default shall be liable to a fine not exceeding £1,000 and, for continued contravention, to a daily default fine not exceeding £50.

(13) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(14) A person who fails to comply with subsection (11) shall be

guilty of an offence and liable to a fine.

(15) For the purposes of this section—

(a) in the case of a person usually known by a title different from his surname, the expression 'surname' means that title;

(b) references to a 'former forename' or 'surname' do not include—

(i) in the case of a person usually known by a title different from his surname, the name by which he was known previous to the adoption of or succession to the title; or

(ii) in the case of any person, a former forename or surname where that name or surname was changed or disused before the person bearing the name attained the age of 18 years or has been changed or disused for a period of not less than 20 years; or

(iii) in the case of a married woman, the name or surname by which she was known previous to the marriage.".

COMPANIES ACT 1990 - SECT 52

Directors to have regard to interests of employees.

52.—(1) The matters to which the directors of a company are to have regard in the performance of their functions shall include the interests of the company's employees in general, as well as the interests of its members.

(2) Accordingly, the duty imposed by this section on the directors shall be owed by them to the company (and the company alone) and shall be enforceable in the same way as any other fiduciary duty owed to a company by its directors.

COMPANIES ACT 1990 - PART IV

- DISCLOSURE OF INTERESTS IN SHARES

CHAPTER 1

Share Dealings by Directors, Secretaries and their Families

COMPANIES ACT 1990 - SECT 53

Obligation of director or secretary to notify interests in shares or debentures of company.

53.—(1) Subject to the provisions of this section a person who, at the commencement of this section is a director or secretary of a company and is then interested in 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 or thereafter becomes a director or secretary of a company and, at the time when he becomes a director or secretary of a company, is so interested, shall notify the company in writing—

(a) of the subsistence of his interests at that time, and

(b) of the number of shares of each class in, and the amount of debentures of each class of, the company or any such other body corporate as aforesaid in which each interest of his subsists at that time.

(2) A director or secretary of a company shall notify the company in writing of the occurrence, while he is a director or secretary, of any of the following events and the date on which it occurred—

(a) any event in consequence of whose occurrence he becomes, or ceases to be, interested in 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;

(b) the entering into by him of a contract to sell any such shares or debentures;

(c) the assignment by him of a right granted to him by the company to subscribe for shares in, or debentures of, the company; and

(d) the grant to him by another body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company, of a right to subscribe for shares in, or debentures of, that other body corporate, the exercise of such a right granted to him and the assignment by him of such a right so granted;

stating the number or amount, and class, of shares or debentures involved.

(3) The provisions of section 54 shall have effect for the interpretation of, and otherwise in relation to, subsections (1) and (2).

(4) Section 56 shall have effect with respect to the periods within which obligations imposed by subsections (1) and (2) on persons must be fulfilled by them.

(5) Section 57 shall have effect with respect to certain circumstances in which obligations imposed by subsections (1) and (2) are to be treated as not discharged.

(6) In the case of a person who is a director or secretary of a company at the time when this section comes into operation subsection (2) shall not require the notification by him of the occurrence of an event before that time; and that subsection shall not require the notification by a person of the occurrence of an event whose occurrence comes to his knowledge after he has ceased to be a director or secretary.

(7) A person who fails to fulfil, within the proper period, an obligation to which he is subject by virtue of subsection (1) or (2) shall be guilty of an offence.

(8) An obligation imposed by this section shall be treated as not being fulfilled unless the notice by means of which it purports to

be fulfilled is expressed to be given in fulfilment of that obligation.

(9) This section applies to shadow directors as to directors, but the making of a notification by a person under this section shall not, in itself, be proof that the person making the notification is a shadow director.

(10) Nothing in this section shall operate so as to impose an obligation with respect to shares in a body corporate which is the wholly owned subsidiary of another body corporate; and for this purpose a body corporate shall be deemed to be the wholly owned subsidiary of another if it has no members but that other and that other's wholly owned subsidiaries and its or their nominees.

(11) This section and sections 54, 56, 57 and 59 shall have effect in place of section 190 of the Principal Act and of so much of section 193 of that Act as relates to section 190, and that section and so much of section 193 as relates thereto shall, accordingly, cease to have effect.

COMPANIES ACT 1990 - SECT 54

Nature of an interest within section 53.

54.-(1) The provisions of this section shall apply in determining for the purposes of section 53 whether a person has an interest in shares or debentures.

(2) Any reference to an interest in shares or debentures shall be read as including a reference to any interest of any kind whatsoever in shares or debentures; and accordingly there shall be disregarded any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject.

(3) Where any property is held on trust and any interest in shares or debentures is comprised in that property, any beneficiary of that trust who, apart from this subsection, does not have an interest in the shares or debentures shall be taken to have such an interest; but this subsection is without prejudice to the following provisions of this section.

(4) A person shall be taken to have an interest in shares or debentures if-

(a) he enters into a contract for their purchase by him (whether for cash or other consideration); or

(b) not being the registered holder, he is entitled to exercise any right conferred by the holding of those shares or debentures or is entitled to control the exercise of any such right.

(5) A person shall be taken to be interested in shares or debentures if a body corporate is interested in them and-

(a) that body corporate or its directors are accustomed to act in accordance with his directions or instructions; or

(b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body corporate.

(6) Where a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a body corporate and that body corporate is entitled to exercise or control the exercise of any of the voting power at general meetings of another body corporate (the "relevant voting power"), then, for the purposes of subsection (5) (b), the relevant voting power shall be taken to be exercisable by that person.

(7) A person shall be taken to have an interest in shares or debentures if, otherwise than by virtue of having an interest under a trust—

(a) he has a right to call for delivery of the shares or debentures to himself or to his order; or

(b) he has a right to acquire an interest in shares or debentures or is under an obligation to take an interest in shares or debentures;

whether in any case the right or obligation is conditional or absolute.

(8) For the purposes of subsection (4) (b) a person shall be taken to be entitled to exercise or control the exercise of any right conferred by the holding of shares or debentures if he has a right (whether subject to conditions or not) the exercise of which would make him so entitled or is under an obligation (whether so subject or not) the fulfilment of which would make him so entitled.

(9) A person shall not by virtue of subsection (4) (b) be taken to be interested in any shares or debentures by reason only that he has been appointed a proxy to vote at a specified meeting of a company or of any class of its members and at any adjournment of that meeting or has been appointed by a body corporate to act as its representative at any meeting of a company or of any class of its members.

(10) Without prejudice to subsection (2), rights or obligations to subscribe for any shares or debentures shall not be taken for the purposes of subsection (7) to be rights to acquire, or obligations to take, any interest in shares or debentures.

(11) Where persons have a joint interest each of them shall be deemed to have that interest.

(12) It is immaterial that shares or debentures in which a person has an interest are unidentifiable.

(13) Delivery to a person's order of shares or debentures in fulfilment of a contract for the purchase thereof by him or in satisfaction of a right of his to call for delivery thereof, or failure to deliver shares or debentures in accordance with the terms of such a contract or on which such a right falls to be

satisfied, shall be deemed to constitute an event in consequence of the occurrence of which he ceases to be interested in them, and so shall the lapse of a person's right to call for delivery of shares or debentures.

COMPANIES ACT 1990 - SECT 55

Interest to be disregarded.

55.—(1) The following interests shall be disregarded for the purposes of section 54 and sections 56 to 5858—

(a) where property is held on trust and an interest in shares or debentures is comprised in that property, an interest in reversion or remainder or of a bare trustee and any discretionary interest;

(b) an interest of a person subsisting by virtue of—

(i) his holding units in—

(I) a registered unit trust scheme within the meaning of section 3 of the Unit Trusts Act, 1972;

(II) a unit trust to which section 31 of the Capital Gains Tax Act, 1975, as amended by section 34 of the Finance Act, 1977 relates;

(III) an undertaking for collective investment in transferable securities, within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989);

(ii) a scheme made under section 46 of the Charities Act, 1961;

(c) an interest for the life of himself or another of a person under a settlement in the case of which the property comprised in the settlement consists of or includes shares or debentures, and the conditions mentioned in subsection (3) are satisfied;

(d) an interest in shares or debentures held by a member of a recognised stock exchange carrying on business as a stock broker which is held by way of security only for the purposes of a transaction entered into by the person or body concerned in the ordinary course of business of such person or body;

(e) such interests, or interests of such a class, as may be prescribed for the purposes of this paragraph by regulations made by the Minister.

(2) A person shall not by virtue of section 54 (4) (b) be taken to be interested in shares or debentures by reason only that he has been appointed a proxy to vote at a specified meeting of a company or of any class of its members and at any adjournment of that meeting, or has been appointed by a body corporate to act as its representative at any meeting of a company or of any class of its members.

(3) The conditions referred to in subsection (1) (c) are, in relation to a settlement—

(a) that it is irrevocable, and

(b) that the settlor (within the meaning of section 96 of the Income Tax Act, 1967) has no interest in any income arising under, or property comprised in, the settlement.

COMPANIES ACT 1990 - SECT 56

Periods within which obligations under section 53 must be discharged.

56.—(1) An obligation imposed on a person by section 53 (1) to notify an interest must, if he knows of the existence of the interest on the relevant day (that is to say, in a case in which he is a director or secretary at the beginning of the day on which that section comes into operation, the last previous day, and, in a case in which he thereafter becomes a director or secretary, the day on which he becomes it), be fulfilled before the expiration of the period of five days beginning with the day next following the relevant day; otherwise it must be fulfilled before the expiration of the period of five days beginning with the day next following that on which the existence of the interest comes to his knowledge.

(2) An obligation imposed on a person by section 53 (2) to notify the occurrence of an event must, if at the time at which the event occurs he knows of its occurrence, be fulfilled before the expiration of the period of five days beginning with the day next following that on which it occurs; otherwise, it must be fulfilled before the expiration of the period of five days beginning with the day next following that on which the occurrence of the event comes to his knowledge.

COMPANIES ACT 1990 - SECT 57

Circumstances in which obligation under section 53 is not discharged.

57.—(1) Where an event of whose occurrence a director or secretary is, by virtue of section 53 (2) (a), under obligation to notify a company consists of his entering into a contract for the purchase by him of shares or debentures, the obligation shall be taken not to be discharged in the absence of inclusion in the notice of a statement of the price to be paid by him under the contract, and an obligation imposed on a director or secretary by virtue of section 53 (2) (b) shall be taken not to be discharged in the absence of inclusion in the notice of the price to be received by him under the contract.

(2) An obligation imposed on a director or secretary by virtue of section 53 (2) (c) to notify a company shall be taken not to be discharged in the absence of inclusion in the notice of a statement of the consideration for the assignment (or, if it be the case that there is no consideration, that fact), and where an event of whose occurrence a director is, by virtue of section 53 (2) (d), under obligation to notify a company consists in his assigning a right, the obligation shall be taken not to be discharged in the absence of inclusion in the notice of a similar statement.

(3) Where an event of whose occurrence a director or secretary is, by virtue of section 53 (2) (d), under obligation to notify a company consists in the grant to him of a right to subscribe for shares or debentures, the obligation shall not be taken to be discharged in the absence of inclusion in the notice of a statement of-

(a) the date on which the right was granted,

(b) the period during which or time at which the right is exercisable,

(c) the consideration for the grant (or, if it be the case that there is no consideration, that fact), and

(d) the price to be paid for the shares or debentures.

(4) Where an event of whose occurrence a director or secretary is, by virtue of section 53 (2) (d), under obligation to notify a company consists in the exercise of a right granted to him to subscribe for shares or debentures, the obligation shall be taken not to be discharged in the absence of inclusion in the notice of a statement of-

(a) the number of shares or amount of debentures in respect of which the right was exercised, and

(b) if it be the case that they were registered in his name, that fact, and, if not, the name or names of the person or persons in whose name or names they were registered,

together (if they were registered in the names of two persons or more) with the number or amount thereof registered in the name of each of them.

(5) For the purposes of this section any reference, however expressed, to any price paid, given or received in respect of any interest in shares or debentures shall be construed as including a reference to any consideration other than money given or received in respect of any such interest.

COMPANIES ACT 1990 - SECT 58

Other provisions relating to notification.

58.-(1) Where a person authorises any other person ("the agent") to acquire or dispose of, on his behalf, interests in shares in, or debentures of, a company, he shall secure that the agent notifies him immediately of acquisitions or disposals of interests in such shares or debentures effected by the agent which will or may give rise to any obligation on his part to make a notification under this Chapter with respect to his interest in those shares or debentures.

(2) An obligation to make any notification imposed on any person by this Chapter shall be treated as not being fulfilled unless the notice by means of which it purports to be fulfilled identifies him

and gives his address.

(3) Where a person fails to fulfil, within the proper period, an obligation to which he is subject by virtue of section 53, no right or interest of any kind whatsoever in respect of the shares or debentures concerned shall be enforceable by him, whether directly or indirectly, by action or legal proceeding.

(4) Where any right or interest is restricted under subsection (3), any person in default under that subsection or any other person affected by such restriction may apply to the court for relief against a disability imposed by or arising out of subsection (3) and the court on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief either generally, or as respects any particular right or interest on such terms and conditions as it sees fit.

(5) Where an applicant for relief under subsection (4) is a person referred to in subsection (3), the court may not grant such relief if it appears that the default has arisen as a result of any deliberate act or omission on the part of the applicant.

(6) Subsection (3) shall not apply to an obligation relating to a person ceasing to be interested in shares in, or debentures of, a company.

(7) A person who fails without reasonable excuse to comply with subsection (1) shall be guilty of an offence.

COMPANIES ACT 1990 - SECT 59
Register of interests.

59.—(1) Every company shall keep a register for the purposes of section 53.

(2) Whenever the company receives information from a director or secretary in consequence of the fulfilment of an obligation imposed on him by that section, the company shall enter in the register, against the name of that person, that information and the date of the entry.

(3) Every company shall, whenever it grants to a director or secretary a right to subscribe for shares in, or debentures of, the company, enter in the register against his name—

(a) the date on which the right is granted,

(b) the period during which or time at which it is exercisable,

(c) the consideration for the grant (or, if it be the case that there is no consideration, that fact), and

(d) the description of shares or debentures involved and the number or amount thereof, and the price to be paid therefor.

(4) Whenever such a right as is mentioned in subsection (3) is

exercised by a director or secretary, the company shall enter in the said register against his name that fact (identifying the right), the number or amount of shares or debentures in respect of which it is exercised and, if it be the case that they were registered in his name, that fact, and, if not, the name or names of the person or persons in whose name or names they were registered, together (if they were registered in the names of two persons or more) with the number or amount thereof registered in the name of each of them.

(5) This section applies to shadow directors as to directors.

COMPANIES ACT 1990 - SECT 60
Provisions relating to register.

60.-(1) The register to be kept under section 59 shall be so made up that the entries therein against the several names inscribed therein appear in chronological order.

(2) An obligation imposed by section 59 (2) to (4) shall be fulfilled before the expiration of the period of 3 days beginning with the day next following that on which it arises.

(3) The nature and extent of an interest recorded in the said register of a director or secretary in any shares or debentures shall, if he so requires, be recorded in the said 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-

(a) if the company's register of members is kept at its registered office, be kept there;

(b) if the company's register of members is not so kept, be kept at the company's registered office or at the place where its register of members is kept;

and 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 any member of the company without charge and of any other person on payment of 30p or such less sum as the company may prescribe for each inspection.

(6) The company shall send notice to the registrar of companies of the place where the said register is kept and of any change in that place, save in a case in which it has at all times been kept at its registered office.

(7) Unless the said register is in such a form as to constitute in itself an index, the company shall keep an index of the names entered therein which shall-

(a) in respect of each name, contain a sufficient indication to enable the information inscribed against it to be readily found; and

(b) be kept at the same place as the said register;

and the company shall, within 14 days after the date on which a name is entered in the said register, make any necessary alteration in the index.

(8) Any member of the company or other person may require a copy of the said register, or of any part thereof, on payment of 15p or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied.

The company shall cause any copy so required by any person to be sent to that person within the period of 10 days beginning with the day next following that on which the requirement is received by the company.

(9) The said register shall also be and remain open and accessible to any person attending the company's annual general meeting at least one quarter hour before the appointed time for the commencement of the meeting and during the continuance of the meeting.

(10) If default is made in compliance with subsection (9), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding £1,000; and if default is made for 14 days in complying with subsection (6) the company and every officer of the company who is in default shall be liable to a fine not exceeding £1,000; and if default is made in complying with section 59 or with subsection (1), (2) or (7) of this section or if an inspection required under this section is refused or any copy required thereunder is not sent within the proper period the company and every officer of the company who is in default shall be liable to a fine not exceeding £1,000.

(11) In the case of a refusal of an inspection required under this section of the said register, the court may by order compel an immediate inspection thereof; and in the case of a failure to send within the proper period a copy required under this section, the court may by order direct that the copy required shall be sent to the person requiring it.

COMPANIES ACT 1990 - SECT 61

Removal of entries from register.

61.-(1) A company may remove an entry against a person's name from the register of interests in shares and debentures kept under section 59 if more than 6 years has elapsed since the date of the entry being made, and either—

(a) that entry recorded the fact that the person in question has ceased to have an interest notifiable under this Chapter in shares in, or debentures of, the company, or

(b) it has been superseded by a later entry made under the said section 59 against the same person's name;

and in a case within paragraph (a) the company may also remove that person's name from the register.

(2) Where a name is removed from a company's register of interests in shares or debentures in pursuance of subsection (1), the company shall within 14 days of the date of that removal make any necessary alterations in any associated index.

(3) If default is made in complying with subsection (2), the company and every officer of it who is in default shall be guilty of an offence and liable to a fine.

COMPANIES ACT 1990 - SECT 62
Entries, when not to be removed.

62.-(1) Entries in a company's register of interests in shares and debentures under this Chapter shall not be deleted except in accordance with section 61.

(2) If an entry is deleted from a company's register of interests in shares in contravention of subsection (1), the company shall restore that entry to the register as soon as is reasonable and practicable.

(3) If default is made in complying with subsection (1) or (2), the company and every officer of it who is in default shall be guilty of an offence and liable to a fine.

COMPANIES ACT 1990 - SECT 63
Disclosure of interests in directors' report.

63.-(1) Subject to subsection (2), the directors' report or the notes to the company's accounts in respect of a financial year shall, as respects each person who, at the end of that year, was a director of the company, state—

(a) whether or not he was, at the end of that year, interested in 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;

(b) if he was so interested—

(i) the number and amount of shares in, and debentures of, each body (specifying it) in which he was then interested,

(ii) whether or not he was, at the beginning of that year (or, if he was not then a director, when he became a director), interested in shares in, or debentures of, the company or any other such body corporate, and,

(iii) if he was, the number and amount of shares in, and debentures of, each body (specifying it) in which he was interested at the beginning of that year or, as the case may be, when he

became a director.

(2) The reference in subsection (1) to the directors' report and the notes to the company's accounts are references to the report and notes respectively which are required by virtue of the Companies (Amendment) Act, 1986 to be annexed to the Annual Return and where a company does not annex the report of the directors, as permitted by section 10 (2) of the aforementioned Act, the information required in subsection (1) shall be contained in the notes to the company's accounts.

(3) The references in subsection (1) to the time when a person became a director shall, in the case of a person who became a director on more than one occasion, be construed as referring to the time when he first became a director.

(4) For the purposes of this section "the directors' report" means the report by the directors of a company which, by section 158 (1) of The Principal Act, is required to be attached to every balance sheet of the company.

(5) The information required by subsection (1) to be given in respect of the directors of the company shall also be given in respect of the person who was the secretary of the company at the end of the financial year concerned.

COMPANIES ACT 1990 - SECT 64

Extension of section 53 to spouses and children.

64.-(1) For the purposes of section 53-

(a) an interest of the spouse of a director or secretary of a company (not being himself or herself a director or secretary thereof) in shares or debentures shall be treated as being the director's or secretary's interest, and

(b) the same applies to an interest of a minor child of a director or secretary of a company (not being himself or herself a director or secretary thereof) in shares or debentures.

(2) For those purposes-

(a) a contract, assignment or right of subscription entered into, exercised or made by, or grant made to, the spouse of a director or secretary of a company (not being himself or herself a director or secretary thereof) shall be treated as having been entered into, exercised or made by, or, as the case may be, as having been made to, the director or secretary, and

(b) the same applies to a contract, assignment or right of subscription entered into, exercised or made by, or grant made to, a minor child of a director or secretary of a company (not being himself or herself a director or secretary thereof).

(3) A director or secretary of a company shall be under obligation to notify the company in writing of the occurrence, while he or she is director or secretary, of either of the following events,

namely-

(a) the grant to his or her spouse or minor child by the company, of a right to subscribe for shares in, or debentures of, the company; and

(b) the exercise by the spouse or minor child of such a right as aforesaid granted by the company to the spouse or child.

(4) In a notice given to the company under subsection (3) there shall be stated-

(a) in the case of the grant of a right, the like information as is required by section 53 to be stated by the director or secretary on the grant to him by another body corporate of a right to subscribe for shares in, or debentures of, that other body corporate, and

(b) in the case of the exercise of a right, the like information as is required by that section to be stated by the director or secretary on the exercise of a right granted to him by another body corporate to subscribe for shares in, or debentures of, that other body corporate.

(5) An obligation imposed by subsection (3) on a director or secretary must be fulfilled by him before the expiration of the period of 5 days beginning with the day next following that on which the occurrence of the event that gives rise to it comes to his knowledge.

(6) A person who fails to fulfil, within the proper period, an obligation to which he is subject under subsection (3) shall be guilty of an offence.

(7) The provisions set out in sections 54 and 55 shall have effect for the interpretation of, and otherwise in relation to, subsections (1) and (2), and subsections (8) and (9) of section 53 shall, with any requisite modification, have effect for the purposes of this section as they have effect for the purposes of that section.

(8) For the purposes of section 59 an obligation imposed on a director or secretary by this section shall be treated as if imposed by section 53.

COMPANIES ACT 1990 - SECT 65
Duty of company to notify stock exchange.

65.-(1) Whenever a company in the case of whose shares or debentures dealing facilities are provided by a recognised stock exchange is notified of any matter by a director or secretary in consequence of the fulfilment of an obligation imposed on him by section 53 or 64, and that matter relates to shares or debentures for which such dealing facilities are provided, the company shall be under an obligation to notify that stock exchange of that matter; and the stock exchange may publish, in such manner as it may determine, any information received by it under this subsection.

(2) An obligation imposed by subsection (1) must be fulfilled before the end of the day next following that on which it arises.

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

COMPANIES ACT 1990 - SECT 66
Investigation of share dealing.

66.-(1) If it appears to the Minister that there are circumstances suggesting that contraventions may have occurred, in relation to shares in, or debentures of, a company, of section 30, 53 or 64 (3) to (5) he may appoint one or more competent inspectors to carry out such investigations as are requisite to establish whether or not contraventions have occurred as aforesaid and to report the result of their investigations to the Minister.

(2) The appointment under this section of an inspector may limit the period to which his investigation is to extend or confine it to shares or debentures of a particular class or both.

(3) For the purposes of any investigation under this section, section 10 shall apply—

(a) with the substitution, for references to any other body corporate whose affairs are investigated by virtue of section 9, of a reference to any other body corporate which is, or has at any relevant time been, the company's subsidiary or holding company, and

(b) with the necessary modification of the reference, in section 10 (5), to the affairs of the company or other body corporate, so, however, that it shall apply to members of a recognised stock exchange who are individuals and to officers (past as well as present) of members of such an exchange who are bodies corporate as it applies to officers of the company or of the other body corporate.

(4) The inspectors may, and, if so directed by the Minister, shall, make interim reports to the Minister, and, on the conclusion of the investigation, shall make a final report to the Minister.

(5) Any such report shall be written or printed, as the Minister may direct, and the Minister may cause it to be published.

(6) Sections 9, 16 to 18, 22, 23 (1) and 23 (3) shall, with any necessary modifications, apply for the purposes of this section.

(7) The expenses of an investigation under this section shall be defrayed by the Minister.

(8) Where a person is convicted of an offence on a prosecution instituted as a result of the investigation the High Court may, on the application of the Minister, order that person to pay the said expenses to such extent as the court may direct.

Individual and Group Acquisitions

COMPANIES ACT 1990 - SECT 67

Obligation of disclosure and the cases in which it may arise.

67.-(1) Where a person either-

(a) to his knowledge acquires an interest in shares comprised in a public limited company's relevant share capital, or ceases to be interested in shares so comprised (whether or not retaining an interest in other shares so comprised), or

(b) becomes aware that he has acquired an interest in shares so comprised or that he has ceased to be interested in shares so comprised in which he was previously interested,

then, subject to the provisions of sections 68 to 79, he shall be under an obligation ("the obligation of disclosure") to make notification to the company of the interests which he has, or had, in its shares.

(2) In relation to a public limited company, "relevant share capital" means the company's issued share capital of a class carrying rights to vote in all circumstances at general meetings of the company and it is hereby declared for the avoidance of doubt that-

(a) where a company's relevant share capital is divided into different classes of shares, references in this Chapter to a percentage of the nominal value of its relevant share capital are to a percentage of the nominal value of the issued shares comprised in each of the classes taken separately, and

(b) the temporary suspension of voting rights in respect of shares comprised in issued share capital of a company of any such class does not affect the application of this Chapter in relation to interests in those or any other shares comprised in that class.

(3) Where, otherwise than in circumstances within subsection (1), a person-

(a) is aware at the time when it occurs of any change of circumstances affecting facts relevant to the application of the next following section to an existing interest of his in shares comprised in a company's share capital of any description, or

(b) otherwise becomes aware of any such facts (whether or not arising from any such change of circumstances),

then, subject to the provisions of sections 68 to 79, he shall be under the obligation of disclosure.

(4) The acquisition by any person of an interest in shares or debentures of a company registered in the State shall be deemed to be a consent by that person to the disclosure by him, his agents or intermediaries of any information required to be disclosed in

relation to shares or debentures by the Companies Acts.

COMPANIES ACT 1990 - SECT 68

Interests to be disclosed.

68.-(1) For the purposes of the obligation of disclosure, the interests to be taken into account are those in relevant share capital of the company concerned.

(2) A person has a notifiable interest at any time when he is interested in shares comprised in that share capital of an aggregate nominal value equal to or more than the percentage of the nominal value of that share capital which is for the time being the notifiable percentage.

(3) All facts relevant to determining whether a person has a notifiable interest at any time (or the percentage level of his interest) are taken to be what he knows the facts to be at that time.

(4) The obligation of disclosure arises under section 67 (1) or (3) where the person has a notifiable interest immediately after the relevant time, but did not have such an interest immediately before that time.

(5) The obligation also arises under section 67 (1) where—

(a) the person had a notifiable interest immediately before the relevant time, but does not have such an interest immediately after it, or

(b) he had a notifiable interest immediately before that time, and has such an interest immediately after it, but the percentage levels of his interest immediately before and immediately after that time are not the same.

(6) For the purposes of this section, "the relevant time" means—

(a) in a case within section 67 (1) (a) or (3) (a), the time of the event or change of circumstances there mentioned, and

(b) in a case within section 67 (1) (b) or (3) (b), the time at which the person became aware of the facts in question.

COMPANIES ACT 1990 - SECT 69

"Percentage level" in relation to notifiable interests.

69.-(1) Subject to the qualification mentioned below, "percentage in relation to level", in section 68 (5) (b), means the percentage figure found by expressing the aggregate nominal value of all the shares comprised in the share capital concerned in which the person is interested immediately before or (as the case may be) immediately after the relevant time as a percentage of the nominal value of that share capital and rounding that figure down, if it is not a whole number, to the next whole number.

(2) Where the nominal value of the share capital is greater

immediately after the relevant time than it was immediately before, the percentage level of the person's interest immediately before (as well as immediately after) that time is determined by reference to the larger amount.

COMPANIES ACT 1990 - SECT 70

The notifiable percentage.

70.-(1) The reference in section 68 (2) to the notifiable percentage percentage. is to 5 per cent, or such other percentage as may be prescribed by the Minister under this section.

(2) The Minister may prescribe the percentage to apply in determining whether a person's interest in a company's shares is notifiable under section 67; and different percentages may be prescribed in relation to companies of different classes or descriptions.

(3) Where in consequence of a reduction prescribed under this section in the percentage made by such order a person's interest in a company's shares becomes notifiable, he shall then come under the obligation of disclosure in respect of it; and the obligation must be performed within the period of 10 days next following the day on which it arises.

COMPANIES ACT 1990 - SECT 71

Particulars to be contained in notification.

71.-(1) Subject to section 70 (3) a person's obligation to make a notification under section 67 must be performed within the period of 5 days next following the day on which the obligation arises; and the notification must be in writing to the company.

(2) The notification must specify the share capital to which it relates, and must also-

(a) state the number of shares comprised in that share capital in which the person making the notification knows he was interested immediately after the time when the obligation arose, or

(b) in a case where the person no longer has a notifiable interest in shares comprised in that share capital, state that he no longer has that interest.

(3) A notification with respect to a person's interest in a company's relevant share capital (other than one stating that he no longer has a notifiable interest in shares comprised in that share capital) shall include particulars of-

(a) the identity of each registered holder of shares to which the notification relates, and

(b) the number of those shares held by each such registered holder,

so far as known to the person making the notification at the date when the notification is made.

(4) A person who has an interest in shares comprised in a company's relevant share capital, that interest being notifiable, is under obligation to notify the company in writing—

(a) of any particulars in relation to those shares which are specified in subsection (3), and

(b) of any change in those particulars,

of which in either case he becomes aware at any time after any interest notification date and before the first occasion following that date on which he comes under any further obligation of disclosure with respect to his interest in shares comprised in that share capital.

An obligation arising under this section must be performed within the period of 5 days next following the day on which it arises.

(5) The reference in subsection (4) to an interest notification date, in relation to a person's interest in shares comprised in a public limited company's relevant share capital, is to either of the following—

(a) the date of any notification made by him with respect to his interest under this Part, and

(b) where he has failed to make a notification, the date on which the period allowed for making it came to an end.

(6) A person who at any time has an interest in shares which is notifiable is to be regarded under subsection (4) as continuing to have a notifiable interest in them unless and until he comes under obligation to make a notification stating that he no longer has such an interest in those shares.

COMPANIES ACT 1990 - SECT 72

Notification of family and corporate interests.

72.—(1) For the purposes of sections 67 to 7171 a person is taken to be interested in any shares in which his spouse or any minor child of his is interested.

(2) For those purposes, a person is taken to be interested in shares if a body corporate is interested in them and—

(a) that body or its directors are accustomed to act in accordance with his directions or instructions, or

(b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body corporate.

(3) Where a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a body corporate and that body corporate is entitled to exercise or control the exercise of any of the voting power at general meetings

of another body corporate ("the effective voting power") then, for the purposes of subsection (2) (b), the effective voting power is taken as exercisable by that person.

(4) For the purposes of subsections (2) and (3) a person is entitled to exercise or control the exercise of voting power if—

(a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled, or

(b) he is under an obligation (whether or not so subject) the fulfilment of which would make him so entitled.

COMPANIES ACT 1990 - SECT 73

Agreement to acquire interests in a public limited company.

73.—(1) Subject to the following provisions of this section an agreement between two or more persons which includes provision for the acquisition by any one or more of the parties to the agreement of interests in shares comprised in relevant share capital of a particular public limited company ("the target company") is an agreement to which this section applies if—

(a) it also includes provisions imposing obligations or restrictions on any one or more of the parties to the agreement with respect to their use, retention or disposal of interests in that company's shares acquired in pursuance of the agreement (whether or not together with any other interests of theirs in that company's shares to which the agreement relates); and

(b) any interest in the company's shares is in fact acquired by any of the parties in pursuance of the agreement;

and in relation to such an agreement references in this section, and in sections 74 and 75, to the target company are to the company which is the target company for that agreement in accordance with this section.

(2) The reference in subsection (1) (a) to the use of interests in shares in the target company is to the exercise of any rights or of any control or influence arising from those interests (including the right to enter into any agreement for the exercise, or for control of the exercise, of any of those rights by another person).

(3) Once any interest in shares in the target company has been acquired in pursuance of such an agreement as is mentioned above, this section continues to apply to that agreement irrespective of—

(a) whether or not any further acquisitions of interests in the company's shares take place in pursuance of the agreement, and

(b) any change in the persons who are for the time being parties to it, and

(c) any variation of the agreement, so long as the agreement continues to include provisions of any description mentioned in subsection (1) (a).

References in this subsection to the agreement include any agreement having effect (whether directly or indirectly) in substitution for the original agreement.

(4) In this section, and also in references elsewhere in this Part to an agreement to which this section applies, "agreement" includes any agreement or arrangement; and references in this section to provisions of an agreement—

(a) accordingly include undertakings, expectations or understandings operative under any arrangement, and

(b) (without prejudice to the above) also include any provisions, whether express or implied and whether absolute or not.

(5) This section does not apply to an agreement which is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; nor does the section apply to an agreement to underwrite or sub-underwrite any offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.

COMPANIES ACT 1990 - SECT 74

Obligations of disclosure arising under section 73.

74.—(1) In the case of an agreement to which section 73 applies, each party to the agreement shall be taken (for purposes of the obligation of disclosure) to be interested in all shares in the target company in which any other party to it is interested apart from the agreement (whether or not the interest of the other party in question was acquired, or includes any interest which was acquired, in pursuance of the agreement).

(2) For those purposes, and also for those of section 75, an interest of a party to such an agreement in shares in the target company is an interest apart from the agreement if he is interested in those shares otherwise than by virtue of the application of section 73 and this section in relation to the agreement.

(3) Accordingly, any such interest of the person (apart from the agreement) includes for those purposes any interest treated as his under section 72 or by the application of section 73 and this section in relation to any other agreement with respect to shares in the target company to which he is a party.

(4) A notification with respect to his interest in shares in the target company made to that company under this Part by a person who is for the time being a party to an agreement to which section 73 applies shall—

(a) state that the person making the notification is a party to such an agreement,

(b) include the names and (so far as known to him) the addresses of the other parties to the agreement, identifying them as such, and

(c) state whether or not any of the shares to which the notification relates are shares in which he is interested by virtue of section 73 and this section and, if so, the number of those shares.

(5) Where a person makes a notification to a company under this Part in consequence of ceasing to be interested in any shares of that company by virtue of the fact that he or any other person has ceased to be a party to an agreement to which section 73 applies, the notification shall include a statement that he or that other person has ceased to be a party to the agreement (as the case may require) and also (in the latter case) the name and (if known to him) the address of that other.

COMPANIES ACT 1990 - SECT 75

Obligation of persons acting together to keep each other informed.

75.-(1) A person who is a party to an agreement to which section 73 applies shall be subject to the requirements of this section at any each other time when-

(a) the target company is a public limited company, and he knows it to be so, and

(b) the shares in that company to which the agreement relates consist of or include shares comprised in relevant share capital of the company, and he knows that to be the case, and

(c) he knows the facts which make the agreement one to which section 73 applies.

(2) Such a person shall be under obligation to notify every other party to the agreement, in writing, of the relevant particulars of his interest (if any) apart from the agreement in shares comprised in relevant share capital of the target company-

(a) on his first becoming subject to the requirements of this section, and

(b) on each occurrence after that time while he is still subject to those requirements of any event or circumstances within section 67 (1) (as it applies to his case otherwise than by reference to interests treated as his under section 74 as applying to that agreement).

(3) The relevant particulars to be notified under subsection (2) are-

(a) the number of shares (if any) comprised in the target company's relevant share capital in which the person giving the notice would be required to state his interest if he were under the obligation of disclosure with respect to that interest (apart from the agreement) immediately after the time when the obligation to give notice under subsection (2) arose, and

(b) the relevant particulars with respect to the registered

ownership of those shares, so far as known to him at the date of the notice.

(4) A person who is for the time being subject to the requirements of this section shall be under obligation to notify every other party to the agreement, in writing—

(a) of any relevant particulars with respect to the registered ownership of any shares comprised in relevant share capital of the target company in which he is interested apart from the agreement, and

(b) of any change in those particulars, of which in either case he becomes aware at any time after any interest notification date and before the first occasion following that date on which he becomes subject to any further obligation to give notice under subsection (2) with respect to his interest in shares comprised in that share capital.

(5) The reference in subsection (4) to an interest notification date, in relation to a person's interest in shares comprised in the target company's relevant share capital, is to either of the following—

(a) the date of any notice given by him with respect to his interest under subsection (2), and

(b) where he has failed to give that notice, the date on which the period allowed by this section for giving the notice came to an end.

(6) A person who is a party to an agreement to which section 73 applies shall be under an obligation to notify each other party to the agreement, in writing, of his current address—

(a) on his first becoming subject to the requirements of this section, and

(b) on any change in his address occurring after that time and while he is still subject to those requirements.

(7) A reference to the relevant particulars with respect to the registered ownership of shares is to such particulars in relation to those shares as are mentioned in section 71 (3) (a) or (b).

(8) A person's obligation to give any notice required by this section to any other person must be performed within the period of 5 days next following the day on which that obligation arose.

COMPANIES ACT 1990 - SECT 76
Interest in shares by attribution.

76.—(1) Where section 67 or 68 refers to a person acquiring an interest in shares or ceasing to be interested in shares, that reference in certain cases includes his becoming or ceasing to be interested in those shares by virtue of another person's interest.

(2) This section applies where he becomes or ceases to be interested by virtue of section 72 or (as the case may be) section 74 whether—

(a) by virtue of the fact that the person who is interested in the shares becomes or ceases to be a person whose interests (if any) fall by virtue of either section to be treated as his, or

(b) in consequence of the fact that such a person has become or ceased to be interested in the shares, or

(c) in consequence of the fact that he himself becomes or ceases to be a party to an agreement to which section 73 applies to which the person interested in the shares is for the time being a party, or

(d) in consequence of the fact that an agreement to which both he and that person are parties becomes or ceases to be one to which the said section 73 applies.

(3) The person shall be treated under section 67 as knowing he has acquired an interest in the shares or (as the case may be) that he has ceased to be interested in them, if and when he knows both—

(a) the relevant facts with respect to the other person's interest in the shares, and

(b) the relevant facts by virtue of which he himself has become or ceased to be interested in them in accordance with section 72 or 74.

(4) He shall be deemed to know the relevant facts referred to in subsection (3) (a) if he knows (whether contemporaneously or not) either of the subsistence of the other person's interest at any material time or of the fact that the other has become or ceased to be interested in the shares at any such time; and "material time" is any time at which the other's interests (if any) fall or fell to be treated as his under section 72 or 74.

(5) A person is to be regarded as knowing of the subsistence of another's interest in shares or (as the case may be) that another has become or ceased to be interested in shares if he has been notified under section 75 of facts with respect to the other's interest which indicate that he is or has become or ceased to be interested in the shares (whether on his own account or by virtue of a third party's interest in them).

COMPANIES ACT 1990 - SECT 77

Interests in shares which are to be notified.

77.—(1) This section applies, subject to section 78, in determining for purposes of sections 67 to 71 whether a person has a notifiable interest in shares.

(2) A reference to an interest in shares is to be read as including an interest of any kind whatsoever in the shares.

Accordingly there are to be disregarded any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject.

(3) Where property is held on trust and an interest in shares is comprised in the property, a beneficiary of the trust who apart from this subsection does not have an interest in the shares is to be taken as having such an interest; but this subsection is without prejudice to the following provisions of this section.

(4) A person is taken to have an interest in shares if—

(a) he enters into a contract for their purchase by him (whether for cash or other consideration), or

(b) not being the registered holder, he is entitled to exercise any right conferred by the holding of the shares or is entitled to control the exercise of any such right.

(5) For the purposes of subsection (4) (b), a person is entitled to exercise or control the exercise of any right conferred by the holding of shares if he—

(a) has a right (whether subject to conditions or not) the exercise of which would make him so entitled, or

(b) is under an obligation (whether so subject or not) the fulfilment of which would make him so entitled.

(6) A person is taken to have an interest in shares if, otherwise than by virtue of having an interest under a trust—

(a) he has a right to call for delivery of the shares to himself or to his order, or

(b) he has a right to acquire an interest in shares or is under an obligation to take an interest in shares,

whether in any case the right or obligation is conditional or absolute.

(7) Without prejudice to subsection (2), rights or obligations to subscribe for any shares shall not be taken for the purposes of subsection (6) to be rights to acquire, or obligations to take, any interest in shares.

(8) Where persons have a joint interest each of them shall be taken to have that interest.

(9) It is immaterial that shares in which a person has an interest are unidentifiable.

(10) Delivery to a person's order of shares in fulfilment of a contract for the purchase thereof by him or in satisfaction of a right of his to call for delivery thereof, or failure to deliver shares in accordance with the terms of such a contract or on which such a right falls to be satisfied, shall be deemed to constitute

an event in consequence of the occurrence of which he ceases to be interested in them, and so shall the lapse of a person's right to call for delivery of shares.

COMPANIES ACT 1990 - SECT 78
Interest to be disregarded.

78.—(1) The following interests in shares shall be disregarded for interests to be the purposes of sections 67 to 7171—

(a) where property is held on trust and an interest in shares is comprised in that property, an interest in reversion or remainder or of a bare trustee and any discretionary interest;

(b) an interest of a person subsisting by virtue of—

(i) his holding units in—

(I) a registered unit trust scheme within the meaning of section 3 of the Unit Trusts Act, 1972;

(II) a unit trust to which section 31 of the Capital Gains Tax Act, 1975, as amended by section 34 of the Finance Act, 1977, relates;

(III) an undertaking for collective investment in transferable securities, within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989);

or

(ii) a scheme made under section 46 of the Charities Act, 1961;

(c) an interest for the life of himself or another of a person under a settlement in the case of which the property comprised in the settlement consists of or includes shares, and the conditions mentioned in subsection (3) are satisfied;

(d) an exempt security interest;

(e) an interest of the President of the High Court subsisting by virtue of section 13 of the Succession Act, 1965;

(f) an interest of the Accountant of the High Court in shares held by him in accordance with rules of court;

(g) such interests, or interests of such a class, as may be prescribed for purposes of this paragraph by regulations made by the Minister.

(2) A person shall not by virtue of section 77 (4) (b) be taken to be interested in shares by reason only that he has been appointed a proxy to vote at a specified meeting of a company or of any class of its members and at any adjournment of that meeting, or has been appointed by a body corporate to act as its representative at any meeting of a company or of any class of its

members.

(3) The conditions referred to in subsection (1) (c) are, in relation to a settlement—

(a) that it is irrevocable, and

(b) that the settlor (within the meaning of section 96 of the Income Tax Act, 1967) has no interest in any income arising under, or property comprised in, the settlement.

(4) An interest in shares is an exempt security interest for purposes of subsection (1) (d) if—

(a) it is held by—

(i) the holder of a licence under section 9 of the Central Bank Act, 1971, or an insurance company within the meaning of the Insurance Acts, 1909 to 1990,

(ii) a trustee savings bank (within the meaning of the Trustee Savings Banks Acts, 1863 to 1979) or a Post Office Savings Bank within the meaning of the Post Office Savings Bank Acts, 1861 to 1958,

(iii) Agricultural Credit Corporation plc or Industrial Credit Corporation plc,

(iv) a member of a recognised stock exchange carrying on business as a stockbroker, and

(b) it is held by way of security only for the purposes of a transaction entered into by the person or body concerned in the ordinary course of business of such person or body.

COMPANIES ACT 1990 - SECT 79
Other provisions relating to notification.

79.—(1) Where a person authorises any other person ("the agent") to acquire or dispose of, on his behalf, interests in shares comprised in relevant share capital of a public limited company, he shall secure that the agent notifies him immediately of acquisitions or disposals of interests in shares so comprised effected by the agent which will or may give rise to any obligation on his part to make a notification under this Chapter with respect to his interest in that share capital.

(2) An obligation to make any notification imposed on any person by this Chapter shall be treated as not being fulfilled unless the notice by means of which it purports to be fulfilled identifies him and gives his address, and in a case where he is a director or secretary of the company, is expressed to be given in fulfilment of that obligation.

(3) Where a person—

(a) fails to fulfil, within the proper period, an obligation to

make any notification required by this Chapter; or

(b) in purported fulfilment of any such obligation makes to a company a statement which he knows to be false or recklessly makes to a company a statement which is false; or

(c) fails to fulfil, within the proper period, an obligation to give any other person any notice required by section 75,

no right or interest of any kind whatsoever in respect of any shares in the company concerned, held by him, shall be enforceable by him, whether directly or indirectly, by action or legal proceeding.

(4) Where any right or interest is restricted under subsection (3), any person in default under that subsection or any other person affected by such restriction may apply to the court for relief against a disability imposed by or arising out of subsection (3) and the court on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief either generally, or as respects any particular right or interest on such terms and conditions as it sees fit.

(5) Where an applicant for relief under subsection (4) is a person referred to in subsection (3), the court may not grant such relief if it appears that the default has arisen as a result of any deliberate act or omission on the part of the applicant.

(6) Subsection (3) shall not apply to an obligation relating to a person ceasing to be interested in shares in any company.

(7) A person who—

(a) fails to fulfil, within the proper period, an obligation of disclosure imposed on him by this Chapter, or

(b) fails to fulfil, within the proper period, an obligation to give any other person a notice required by section 75, or

(c) fails without reasonable excuse to comply with subsection (1),

shall be guilty of an offence.

(8) It shall be a defence for a person charged with an offence under subsection (7) (b) to prove that it was not possible for him to give the notice to that other person required by section 75 within the proper period, and either—

(a) that it has not since become possible for him to give the notice so required; or

(b) that he gave that notice as soon after the end of that period as it became possible for him to do so.

Register of interests in shares.

80.—(1) Every public limited company shall keep a register for purposes of sections 67 to 71 and whenever the company receives information from a person in consequence of the fulfilment of an obligation imposed on him by any of those sections, it is under obligation to inscribe in the register, against that person's name, that information and the date of the inscription.

(2) Without prejudice to subsection (1), where a company receives a notification under this Part which includes a statement that the person making the notification, or any other person, has ceased to be a party to an agreement to which section 73 applies, the company shall be under obligation to record that information against the name of that person in every place where his name appears in the register as a party to that agreement (including any entry relating to him made against another person's name).

(3) An obligation imposed by subsection (1) or (2) must be fulfilled within the period of 3 days next following the day on which it arises.

(4) The nature and extent of an interest recorded in the said register of a person in any shares shall, if he so requires, be recorded in the said register.

(5) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares.

(6) The register must be so made up that the entries against the several names entered in it appear in chronological order.

(7) Unless the register is in such form as to constitute in itself an index, the company shall keep an index of the names entered in the register which shall in respect of each name contain a sufficient indication to enable the information entered against it to be readily found; and the company shall, within 10 days after the date on which a name is entered in the register, make any necessary alteration in the index.

(8) If the company ceases to be a public limited company it shall continue to keep the register and any associated index until the end of the period of 6 years beginning with the day next following that on which it ceases to be such a company.

(9) The register and any associated index—

(a) shall be kept at the place at which the register required to be kept by the company by section 59 (register of directors' and secretaries' interests) is kept, and

(b) shall be available for inspection in accordance with section 88.

(10) If default is made in complying with any of the provisions of this section, the company and every officer of it who is in

default shall be liable to a fine not exceeding £1,000, and for continued contravention, to a daily default fine not exceeding £50.

COMPANIES ACT 1990 - SECT 81
Company investigations.

81.-(1) A public limited company may by notice in writing require a person whom the company knows or has reasonable cause to believe to be or, at any time during the 3 years immediately preceding the date on which the notice is issued (but excluding any time before the commencement of this section), to have been interested in shares comprised in the company's relevant share capital-

(a) to confirm that fact or (as the case may be) to indicate whether or not it is the case, and

(b) where he holds or has during that time held an interest in shares so comprised, to give such further information as may be required in accordance with the following subsection.

(2) A notice under this section may require the person to whom it is addressed-

(a) to give particulars of his own past or present interest in shares comprised in relevant share capital of the company (held by him at any time during the 3 year period mentioned in subsection (1)),

(b) where the interest is a present interest and any other interest in shares subsists or, in any case, where another interest in the shares subsisted during that 3 year period at any time when his own interest subsisted, to give (so far as lies within his knowledge) such particulars with respect to that other interest as may be required by the notice,

(c) where his interest is a past interest, to give (so far as lies within his knowledge) particulars of the identity of the person who held that interest immediately upon his ceasing to hold it.

(3) The particulars referred to in subsection (2) (a) and (2) (b) include particulars of the identity of persons interested in the shares in question and of whether persons interested in the same shares are or were parties to any agreement to which section 73 applies or to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.

(4) A notice under this section shall require any information given in response to the notice to be given in writing within such reasonable time as may be specified in the notice.

(5) Sections 72 to 74 and 77 apply for the purpose of construing references in this section to persons interested in shares and to interests in shares respectively, as they apply in relation to sections 67 to 7070 (but with the omission of any reference to section 78).

(6) This section applies in relation to a person who has or

previously had, or is or was entitled to acquire, a right to subscribe for shares in a public limited company which would on issue be comprised in relevant share capital of that company as it applies in relation to a person who is or was interested in shares so comprised; and references in this section to an interest in shares so comprised and to shares so comprised are to be read accordingly in any such case as including respectively any such right and shares which would on issue be so comprised.

COMPANIES ACT 1990 - SECT 82

Registration of interest disclosed under section 81.

82.—(1) Whenever in pursuance of a requirement imposed on a person a company receives information to which this under section 81 applies relating to shares comprised in its relevant share capital, it is under obligation to enter against the name of the registered holder of those shares, in a separate part of its register of interests in shares—

(a) the fact that the requirement was imposed and the date on which it was imposed, and

(b) any information to which this section applies received in pursuance of the requirement.

(2) This section applies to any information received in pursuance of a requirement imposed by section 81 which relates to the present interests held by any persons in shares comprised in relevant share capital of the company in question.

(3) Subsections (3) to (10) of section 80 apply in relation to any part of the register maintained in accordance with subsection (1) of this section, reading references to subsection (1) of that section to include subsection (1) of this section.

COMPANIES ACT 1990 - SECT 83

Company investigations on requisition by members.

83.—(1) A company may be required to exercise its powers under investigations on requisition by section 81 on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as carries at that date the right of voting at general meetings of the company.

(2) The requisition must—

(a) state that the requisitionists are requiring the company to exercise its powers under section 81,

(b) specify the manner in which they require those powers to be exercised, and

(c) give reasonable grounds for requiring the company to exercise those powers in the manner specified,

and must be signed by the requisitionists and deposited at the

company's registered office.

(3) The requisition may consist of several documents in like form each signed by one or more requisitionists.

(4) On the deposit of a requisition complying with this section the company shall exercise its powers under section 81 in the manner specified in the requisition.

(5) If default is made in complying with subsection (4), the court may, on the application of the requisitionists, or any of them, and on being satisfied that it is reasonable to do so, require the company to exercise its powers under section 81 in a manner specified in the order.

COMPANIES ACT 1990 - SECT 84
Company report to members.

84.—(1) On the conclusion of an investigation carried out by a company in pursuance of a requisition under section 83 it is the company's duty to cause a report of the information received in pursuance of that investigation to be prepared, and the report shall be made available at the company's registered office within a reasonable period after the conclusion of that investigation.

(2) Where—

(a) a company undertakes an investigation in pursuance of a requisition under section 83, and

(b) the investigation is not concluded before the end of 3 months beginning with the date immediately following the date of the deposit of the requisition,

the company shall cause to be prepared, in respect of that period and each successive period of 3 months ending before the conclusion of the investigation, an interim report of the information received during that period in pursuance of the investigation. Each such report shall be made available at the company's registered office within a reasonable period after the end of the period to which it relates.

(3) The period for making any report prepared under this section available as required by subsection (1) or (2) shall not exceed 15 days.

(4) The company shall, within 3 days of making any report prepared under this section available at its registered office, notify the requisitionists that the report is so available.

(5) An investigation carried out by a company in pursuance of a requisition under section 83 shall be regarded for the purposes of this section as concluded when the company has made all such inquiries as are necessary or expedient for the purposes of the requisition and in the case of each such inquiry, either a response has been received by the company or the time allowed for a response has elapsed.

(6) A report prepared under this section—

(a) shall be kept at the company's registered office from the day on which it is first available there in accordance with subsection (1) or (2) until the expiration of 6 years beginning with the day next following that day, and

(b) shall be available for inspection in accordance with section 88 so long as it is so kept.

(7) If default is made in complying with subsection (1), (2), (3), (4) or (6) (a), the company and every officer of the company who is in default shall be guilty of an offence and be liable to a fine.

COMPANIES ACT 1990 - SECT 85

Penalty for failure to provide information.

85.—(1) Where notice is served by a company under section 81 on a person who is or was interested in shares of the company and that person fails to give the company any information required by the notice within the time specified in it, the company may apply to the court for an order directing that the shares in question be subject to restrictions under section 16.

(2) Such an order may be made by the court notwithstanding any power contained in the applicant company's memorandum or articles enabling the company itself to impose similar restrictions on the shares in question.

(3) Subject to the following subsections, a person who fails to comply with a notice under section 81 shall be guilty of an offence.

(4) A person shall not be guilty of an offence by virtue of failing to comply with a notice under section 81 if he proves that the requirement to give the information was frivolous or vexatious.

(5) Where an order is made under this section directing that shares shall be subject to restrictions under section 16, the company or any person aggrieved by the order may apply to the court for an order directing that the shares shall cease to be subject thereto.

(6) Subsections (6) to (16) of section 16 shall apply in relation to any shares subject to the restrictions imposed by that section by virtue of an order under this section but with the omission in subsections (6) to (15) of any reference to the Minister.

COMPANIES ACT 1990 - SECT 86

Removal of entries from register.

86.—(1) A company may remove an entry against a person's name from register. from its register of interests in shares if more than 6 years have elapsed since the date of the entry being made, and either—

(a) that entry recorded the fact that the person in question had ceased to have an interest notifiable under this Chapter in relevant share capital of the company, or

(b) it has been superseded by a later entry made under section 80 against the same person's name;

and in a case within paragraph (a) the company may also remove that person's name from the register.

(2) If a person in pursuance of an obligation imposed on him by any provision of this Chapter gives to a company the name and address of another person as being interested in shares in the company, the company shall, within 15 days of the date on which it was given that information, notify the other person that he has been so named and shall include in that notification—

(a) particulars of any entry relating to him made, in consequence of its being given that information, by the company in its register of interests in shares, and

(b) a statement informing him of his right to apply to have the entry removed in accordance with the following provisions of this section.

(3) A person who has been notified by a company in pursuance of subsection (2) that an entry relating to him has been made in the company's register of interests in shares may apply in writing to the company for the removal of that entry from the register; and the company shall remove the entry if satisfied that the information in pursuance of which the entry was made was incorrect.

(4) If a person who is identified in a company's register of interests in shares as being a party to an agreement to which section 73 applies (whether by an entry against his own name or by an entry relating to him made against another person's name as mentioned in subsection (2) (a)) ceases to be a party to that agreement, he may apply in writing to the company for the inclusion of that information in the register; and if the company is satisfied that he has ceased to be a party to the agreement, it shall record that information (if not already recorded) in every place where his name appears as a party to that agreement in the register.

(5) If an application under subsection (3) or (4) is refused (in a case within subsection (4), otherwise than on the ground that the information has already been recorded) the applicant may apply to the court for an order directing the company to remove the entry in question from the register or (as the case may be) to include the information in question in the register; and the court may, if it thinks fit, make such an order.

(6) Where a name is removed from a company's register of interests in shares in pursuance of subsection (1) or (3) or an order under subsection (5), the company shall within 14 days of the date of that removal make any necessary alteration in any associated index.

(7) If default is made in complying with subsection (2) or (6), the company and every officer of it who is in default shall be guilty of an offence and liable to a fine.

COMPANIES ACT 1990 - SECT 87

Entries, when not to be removed.

87.-(1) Entries in a company's register of interests in shares under this Chapter shall not be deleted except in accordance with section 86.

(2) If an entry is deleted from a company's register of interests in shares in contravention of subsection (1), the company shall restore that entry to the register as soon as is reasonably practicable.

(3) If default is made in complying with subsection (1) or (2), the company and every officer of it who is in default shall be guilty of an offence and liable to a fine.

COMPANIES ACT 1990 - SECT 88

Inspection of register and reports.

88.-(1) Any register of interests in shares and any report which is required by section 84 (6) to be available for inspection in accordance with this section shall, during business hours (subject to such reasonable restrictions as the company may in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection) be open to the inspection of any member of the company or of any other person without charge.

(2) The register referred to in subsection (1) shall also be and remain open and accessible to any person attending the company's annual general meeting at least one quarter hour before the appointed time for the commencement of the meeting and during the continuance of the meeting.

(3) Any such member or other person may require a copy of any such register or report, or any part of it, on payment of 15 pence or such less sum as the company may prescribe, for every 100 words or fractional part of 100 words required to be copied; and the company shall cause any copy so required by a person to be sent to him before the expiration of the period of 10 days beginning with the day next following that on which the requirement is received by the company.

(4) If an inspection required under this section is refused or a copy so required is not sent within the proper period, the company and every officer of it who is in default shall be guilty of an offence and liable to a fine.

(5) In the case of a refusal of an inspection required under this section of any register or report, the court may by order compel an immediate inspection of it; and in the case of failure to send a copy required under this section, the court may by order direct that the copy required shall be sent to the person requiring it.

COMPANIES ACT 1990 - SECT 89
The 1988 Directive.

89.—Sections 90 to 96 are for the purpose of giving effect to Council Directive 88/627/EEC of 12th December, 1988*OJ No. L348, 17.12.1988, p.62.* (the 1988 Directive") on the information to be published when a major holding in a listed company is acquired or disposed of.

COMPANIES ACT 1990 - SECT 90
Provisions as to interpretation.

90.—(1) In sections 91 to 96—

"the Exchange" means the Committee of the Irish Unit of the International Stock Exchange of the United Kingdom and the Republic of Ireland Limited;

"functions" includes powers and duties and references to the exercise of functions include, as respects powers and duties, references to the exercise of powers and the carrying out of duties.

(2) For the purposes of sections 91 to 96, each of the following shall be a "relevant authority" in relation to the Exchange—

(i) its committee of management,

(ii) its manager, however described.

COMPANIES ACT 1990 - SECT 91
Obligation to notify certain interests to the Exchange.

91.—(1) This section applies to interests in shares which—

(a) are comprised in relevant share capital of a public limited company, and

(b) are officially listed on the Exchange.

(2) Where a person becomes aware that he has acquired or ceased to have an interest in shares to which this section applies and, following that acquisition or disposal, the percentage level (within the meaning of section 69) of his interest in that share capital exceeds or falls below the percentage levels referred to in subsection (3), he shall, in addition to the obligation of disclosure to which he is subject under section 67, be under an obligation to notify the Exchange of his interest in the shares following the acquisition or cessation, as the case may be.

(3) The percentage levels referred to in subsection (2) are 10 per cent, 25 per cent, 50 per cent and 75 per cent.

(4) The provisions of this Chapter shall apply as regards the interests which are to be notified to the Exchange, and the manner in which they are to be so notified, as they apply to the interests to be notified to a company under this Chapter.

(5) Where the Exchange receives a declaration under this section it shall, subject to subsection (6), publish, in such manner as it shall determine, and within three days of its receipt, the information contained in that declaration.

(6) The Exchange may decide not to publish the information contained in the declaration if, but only if, it is satisfied—

(a) that the disclosure of such information would be contrary to the public interest, or

(b) that such disclosure would be seriously detrimental to the company or companies concerned:

Provided that—

(i) the Exchange shall not decide not to publish the information under paragraph (b) unless it is satisfied that a decision to do so would be unlikely to mislead the public with regard to the facts and circumstances knowledge of which is necessary for the assessment of the interests in question, and

(ii) notwithstanding any decision taken under this subsection, the Exchange may publish the information later than three days after its receipt where it is satisfied that the considerations in paragraph (a) or (b) no longer apply.

COMPANIES ACT 1990 - SECT 92

Duty of relevant authority to report to Director of Public Prosecution.

92.—(1) If it appears to a relevant authority of the Exchange that any person has contravened section 91, such authority shall forthwith of report the matter to the Director of Public Prosecutions and shall Public furnish to the Director of Public Prosecutions such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of such authority and relating to the matter in question, as the Director of Public Prosecutions may require.

(2) Where it appears to a member of the Exchange that any person has contravened section 91, he shall report the matter forthwith to a relevant authority of the Exchange, who shall thereupon come under the duty referred to in subsection (1).

(3) If it appears to a court in any proceedings that any person has committed a contravention as aforesaid, and that no report relating to the matter has been made to the Director of Public Prosecutions under subsection (1), that court may, on the application of any person interested in the proceedings concerned or of its own motion, direct a relevant authority of the Exchange to make such a report, and on a report being made accordingly, this section shall have effect as though the report had been made in pursuance of subsection (1).

(4) If, where any matter is reported or referred to the Director

of Public Prosecutions under this section, he considers that the case is one in which a prosecution ought to be instituted and institutes proceedings accordingly, it shall be the duty of a relevant authority of the Exchange, and of every officer of the company whose securities are concerned, and of any other person who appears to the Director of Public Prosecutions to have relevant information (other than any defendant in the proceedings) to give all assistance in connection with the prosecution which he or they are reasonably able to give.

(5) A relevant authority shall have the same powers and duties for the purposes of this section as it has under section 117.

(6) Where the Minister considers it necessary or expedient to do so for the proper and effective administration of this section, he may make such regulations as he thinks appropriate in relation to—

(a) the powers of authorised persons, or

(b) the matters in respect of which, or the persons from whom, authorised persons may require information under section 117, as applied by subsection (5).

COMPANIES ACT 1990 - SECT 93

Application and amendment of the 1984 Regulation.

93.—(1) The annual report required by Regulation 11 of the European Communities (Stock Exchange) Regulations, 1984 (S.I. No. 282 of 1984) ("the 1984 Regulations") shall include—

(a) the number of written complaints received suggesting possible contraventions of section 91,

(b) the number of reports made under section 92,

(c) the number of instances in which, following the exercise of powers by authorised persons under section 117, as applied by section 92, reports were not so made, and

(d) such other information as may be prescribed.

(2) The First Schedule to the 1984 Regulations is hereby amended by the substitution, for paragraph 5 (c) of Schedule C of the Annex to Council Directive 79/279/EEC of 5 March 1979*OJ No. L66, 16.3.1979, p.21.* set out in that Schedule, of the following:

"(c) The company must inform the public of any changes in the structure (shareholders and breakdown of holdings) of the major holdings in its capital as compared with information previously published on that subject as soon as such changes come to its notice.

In particular, a company which is not subject to Council Directive 88/627/EEC on the information to be published when a major holding in a listed company is acquired or disposed of must inform the public within nine calendar days whenever it comes to its notice that a person or entity has acquired or disposed of a number of

shares such that his or its holding exceeds or falls below one of the thresholds laid down in Article 4 of that Directive.".

COMPANIES ACT 1990 - SECT 94

Obligation of professional secrecy.

94.-(1) Information obtained by any of the following persons by virtue of the exercise by the Exchange of its functions under this Part shall not be disclosed except in accordance with law, namely-

(a) a relevant authority of the Exchange,

(b) an authorised person, or

(c) any person employed or formerly employed by the Exchange.

(2) Subsection (1) shall not prevent a relevant authority of the Exchange from disclosing any information to the Minister under this Part or to a similar authority in another Member State of the European Communities pursuant to section 96.

(3) Any person who contravenes subsection (1) shall be guilty of an offence.

COMPANIES ACT 1990 - SECT 95

Immunity from suit.

95.-A relevant authority of the Exchange shall not be liable in damages in respect of anything done or omitted to be done by the authority in connection with the exercise by it of its functions under sections 91 to 96 unless the act or omission complained of was done or omitted to be done in bad faith.

COMPANIES ACT 1990 - SECT 96

Co-operation between authorities Member States.

96.-A relevant authority of the Exchange in exercising its functions under sections 91 to 94 shall comply with Article 12 (co-operation in between competent authorities in Member States) of the 1988 Directive.

CHAPTER 3

Disclosure Orders: Companies other than Public Limited Companies

COMPANIES ACT 1990 - SECT 97

Application of Chapter 3.

97.-(1) The provisions of this Chapter shall apply to all bodies corporate incorporated in the State other than-

(a) a public limited company;

(b) a society registered under the Industrial and Provident Societies Acts, 1893 to 1978;

(c) a society registered under the Building Societies Act, 1989;

and

(d) any body corporate which is prohibited by statute or otherwise from making any distribution of its income or property among its members while it is a going concern or when it is in liquidation.

(2) Any reference in this Chapter to a company shall be deemed to be a reference to any body corporate to which, by virtue of subsection (1), this Chapter applies.

(3) Any reference in this Chapter to share capital or relevant share capital shall, in relation to a company, be deemed to be a reference to the issued share capital of a class carrying rights to vote in all circumstances at general meetings of the company, and references to shares shall be construed accordingly.

COMPANIES ACT 1990 - SECT 98
Disclosure order.

98.-(1) For the purposes of this Chapter, "disclosure order" means an order of the court which obliges—

(a) any person whom the court believes to have or to be able to obtain any information as to—

(i) persons interested at present, or at any time during a period specified in the order, in the shares or debentures of a company,

(ii) the names and addresses of any of those persons,

(iii) the name and address of any person who acts or has acted on behalf of any of those persons in relation to the shares or debentures,

to give such information to the court; or

(b) any person whom the court believes to be, or at any time during a period specified in the order to have been, interested in shares or debentures of a company to confirm that fact or (as the case may be) to indicate whether or not it is the case and, where he holds or has during that period held any interest in such shares or debentures, to give such further information as the court may require; or

(c) any person interested in shares or debentures of a company specified in the order to disclose to the court the information required under subparagraphs (i) and (ii) and (iii) of paragraph (a) and such further information as the court may require.

(2) Any person who has a financial interest in a company may apply to the court for a disclosure order in respect of all or any of the shares of or debentures in the company.

(3) An application under subsection (2) shall be supported by such evidence as the court may require.

(4) The court may, before hearing an application under subsection (2), require the applicant to give security for payment of the costs of hearing the application or any consequential proceedings.

(5) The court may make a disclosure order only if—

(a) it deems it just and equitable to do so; and

(b) it is of the opinion that the financial interest of the applicant is or will be prejudiced by the non-disclosure of any interest in the shares or debentures of the company.

(6) For the purposes of subsection (2) "financial interest" includes any interest as member, contributory, creditor, employee, co-adventurer, examiner, lessor, lessee, licensor, licensee, liquidator or receiver either in relation to the company in respect of whose shares or debentures a disclosure order is sought or a related company.

(7) Where a person authorises any other person ("the agent") to acquire or dispose of, on his behalf, interests in shares comprised in relevant share capital of a company or in debentures of the company in respect of which a disclosure order is made, he shall, for the duration of that order, ensure that the agent notifies him immediately of acquisitions or disposals of interests in shares or debentures so comprised effected by the agent which will or may give rise to any obligation on his part to provide information in accordance with the terms of the order with respect to his interest in that share capital or those debentures.

COMPANIES ACT 1990 - SECT 99
Procedure on order.

99.—(1) A person intending to apply for the making of a disclosure application for disclosure order shall give not less than 10 days' notice of his intention to the company in respect of whose shares or debentures the order is sought and to the person to whom the order is intended to be directed.

(2) The applicant shall also serve on any person specified by the court such notice of the application as the court may direct.

(3) On the hearing of the application every person notified under subsection (1) or (2) may appear and adduce evidence.

COMPANIES ACT 1990 - SECT 100
Scope of disclosure order.

100.—(1) A disclosure order may require the person to whom it is addressed—

(a) to give particulars of his own past or present interest in shares comprised in relevant share capital of the company or in debentures of the company held by him at any time during the period mentioned in the order;

(b) where the interest is a present interest and any other

interest in the shares or debentures subsists or, in any case, where another interest in the shares or debentures subsisted during that period at any time when his own interest subsisted, to give so far as lies within his knowledge such particulars with respect to that other interest as may be required by the order;

(c) where his interest is a past interest, to give so far as lies within his knowledge particulars of the identity of the person who held that interest immediately upon his ceasing to hold it.

(2) A disclosure order shall specify the information to be supplied to the court under the order in respect of any person, shares or debentures to which it refers and any such information shall be given in writing.

(3) Sections 68 to 79 shall apply as appropriate for the purposes of construing references in this Chapter to persons interested in shares and debentures and to interests in shares and debentures respectively as they apply in relation to section 67 (disregarding section 78) and any reference in those sections to a "percentage level" shall be disregarded.

(4) For the purposes of this section any reference in sections 67 to 79 to "shares" shall, where appropriate and unless the contrary is stated, be deemed to include a reference to debentures.

(5) This section shall apply in relation to a person who has or previously had or is or was entitled to acquire a right to subscribe for shares in or debentures of a company which would on issue be comprised in relevant share capital of that company as it applies in relation to a person who is or was interested in shares so comprised or in debentures of the company; and references in the preceding provisions of this section to an interest in shares so comprised or an interest in debentures and to shares so comprised or debentures shall be read accordingly in any such case as including references respectively to any such right and to shares which would on issue be so comprised.

COMPANIES ACT 1990 - SECT 101
Powers of court.

101.-(1) The court may, on cause shown, rescind or vary a disclosure order.

(2) A disclosure order may specify a person, group or class of persons to which the order applies.

(3) The court may, if it considers—

(a) that it would be just and equitable to do so, and

(b) that the financial interest of the applicant would not be prejudiced thereby,

exempt in whole or in part from the requirements of a disclosure order—

- (i) any person or class of persons,
- (ii) any interest or class of interest in shares or debentures,
- (iii) any share, group or class of shares,
- (iv) any debenture, group or class of debentures.

(4) When the court makes a disclosure order it may impose, for a specific period of time, such conditions or restrictions on the rights or obligations attaching to the shares or debentures in respect of which the order is made as it deems fit.

(5) Any person whose interests are affected by any conditions or restrictions imposed on shares or debentures under subsection (4) may apply to the court for relief from all or any of those conditions and the court may, if it considers it just and equitable to do so, grant such relief in whole or in part and on such terms and conditions as it sees fit.

COMPANIES ACT 1990 - SECT 102
Notice of disclosure order.

102.-(1) The applicant shall cause notice in the prescribed form of the making of a disclosure order together with a copy of the order to be sent by registered post within 7 days of the making of the order to—

(a) the company (at its registered office) in respect of whose shares or debentures the order has been made,

(b) the registrar of companies,

(c) the registered holder of any shares or debentures in respect of which the disclosure order has been made where it appears to the court that—

(i) such holder is not at the date of the making of the order resident in the State, and

(ii) such holder should be notified,

(d) such other person as the court sees fit.

(2) The applicant shall cause notice of the making of a disclosure order to be published, within 7 days of the making of the order, in at least 2 daily newspapers which circulate in the district in which the registered office of the company, in respect of whose shares or debentures the order has been made, is situate.

(3) For the purposes of subsection (1) (a)—

(a) the address of the registered office of the company at the date of the making of the disclosure order shall be deemed to be the address of that office which was last delivered to the registrar of companies or otherwise published, as such case may be (in accordance with and in the manner required by the law relating

to the company) prior to the date of making the order; and

(b) if no address of the registered office has ever been duly delivered to the registrar of companies or if the location of the last delivered address has been destroyed, the requirements of subsection (1) (a) shall be deemed to have been complied with by sending the required notice of the order together with a copy thereof to the registrar of companies.

(4) For the purposes of subsection (1) (c)–

(a) the address of a non-resident registered holder of shares or debentures shall be deemed to be the address of that holder which was last delivered to the registrar of companies or otherwise published, as the case may be (in accordance with and in the manner required by the law relating to the company) prior to the date of making of the order; and

(b) if no address of the non-resident registered holder has ever been duly delivered to the registrar of companies the requirements of subsection (1) (c) shall be deemed to have been complied with by sending the required notice of the is order together with a copy thereof to the registrar of companies.

(5) Any reference in this section to the registered office of a company shall, in the case of a company not registered under the Companies Acts, be construed as a reference to the principal office of the company.

COMPANIES ACT 1990 - SECT 103
Information disclosed under order.

103.–(1) An obligation to provide any information imposed on any person by a disclosure order shall be treated as not being fulfilled unless the notice by means of which it purports to be fulfilled identifies him and gives his current address.

(2) Where information is given to the court in compliance with the terms of a disclosure order, a prescribed officer of the court shall, unless the court otherwise directs, cause such information to be furnished (in whole or in part as the court may direct) to the applicant and to the company in respect of whose shares or debentures the order was made.

(3) In reaching its decision under subsection (2), the court shall have regard to whether the requirements of section 102 have been complied with.

(4) Where any information is furnished to the applicant or the company in pursuance of subsection (2), the court may impose such restrictions as it sees fit as to the publication of the information by the person to whom it has been furnished.

COMPANIES ACT 1990 - SECT 104
Civil consequences of contravention of disclosure order.

104.–(1) Where a person–

(a) fails to fulfil, within the proper period, an obligation to disclosure order provide information required by a disclosure order, or

(b) in purported fulfilment of any such obligation makes to the court a statement which he knows to be false or recklessly makes to the court a statement which is false,

no right or interest of any kind whatsoever in respect of any shares in or debentures of the company concerned held by him shall be enforceable by him whether directly or indirectly, by action or legal proceeding.

(2) Where any right or interest is restricted under subsection (1), any person in default under that subsection or any other person affected by such restriction may apply to the court for relief against a disability imposed by or arising out of subsection (1) and the court on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief either generally, or as respects any particular right or interest on such terms and conditions as it sees fit.

(3) Where an applicant for relief under subsection (2) is a person referred to in subsection (1), the court may not grant such relief if it appears that the default has arisen as a result of any deliberate act or omission on the part of the applicant.

(4) The acquisition by any person of an interest in shares or debentures of a company registered in the State shall be deemed to be a consent by that person to the disclosure by him, his agents or intermediaries of any information required to be disclosed in relation to shares or debentures by the Companies Acts.

CHAPTER 4

General provisions about share registers etc.

COMPANIES ACT 1990 - SECT 105

Power to alter maximum inspection etc. charges.

105.-(1) The Minister may, by order, alter any of the charges referred to in-

(a) section 60 (5) of this Act or section 92 (1), 119 (1) or 195 (10) (inserted by section 51 of this Act) of The Principal Act, or

(b) section 60 (8) or 88 (3) of this Act, or section 92 (2), 92 (3), 119 (2) or 146 (2) of The Principal Act.

(2) The Minister may also, by order, alter the basis of any of the charges referred to in the provisions specified in subsection (1) (b) from the basis referred to in those provisions to some other basis.

(3) In making any order under this section, the Minister shall take into account the general costs incurred by a company in facilitating the inspection, or providing copies, of the registers or other documents referred to in subsection (1).

(4) Every order made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the order is passed by either House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

COMPANIES ACT 1990 - SECT 106
Transitional provisions.

106.—(1) Where on the commencement of this section a person provisions. has an interest which, if it was acquired after such commencement, would be subject to a notification requirement under Chapter 1 or 2 he shall be under an obligation to make to the company the notification with respect to his-interest required by the Chapter concerned.

(2) For the purposes of subsection (1), sections 56 and 71 (1) shall apply as if, for the period of 5 days mentioned in each of those provisions, there were substituted a period of 14 days.

(3) Section 73 shall apply in relation to an agreement not withstanding that it was made before the commencement of this section or that any such acquisition of shares as is mentioned in subsection (1) (b) of that section took place before such commencement.

COMPANIES ACT 1990 - PART V
- INSIDER DEALING

COMPANIES ACT 1990 - SECT 107
Interpretation.

107.—In this Part, except where the context otherwise requires

"dealing", in relation to securities, means (whether as principal or agent) acquiring, disposing of, subscribing for or underwriting the securities, or making or offering to make, or inducing or attempting to induce a person to make or to offer to make, an agreement—

(a) for or relating to acquiring, disposing of, subscribing for or underwriting the securities; or

(b) the purpose or purported purpose of which is to secure a profit or gain to a person who acquires, disposes of, subscribes for or underwrites the securities or to any of the parties to the agreement in relation to the securities;

"director" includes a shadow director within the meaning of section 27;

"officer", in relation to a company, includes—

- (a) a director, secretary or employee;
- (b) a liquidator;
- (c) any person administering a compromise or arrangement made between the company and its creditors;
- (d) an examiner;
- (e) an auditor; and
- (f) a receiver;

"public office" means an office or employment which is remunerated out of the Central Fund or out of moneys provided by the Oireachtas or money raised by local taxation or charges, or an appointment to or employment under any commission, committee, tribunal, board or body established by the Government or any Minister of the Government or by or under any statutory authority;

"recognised stock exchange" includes, in particular, any exchange prescribed by the Minister which provides facilities for the buying and selling of rights or obligations to acquire stock;

"related company", in relation to a company, means any body corporate which is the company's subsidiary or holding company, or a subsidiary of the company's holding company;

"relevant authority", in relation to a recognised stock exchange, means—

- (i) its board of directors, committee of management or other management body, or
- (ii) its manager, however described;

"securities" means—

- (a) shares, debentures or other debt securities issued or proposed to be issued, whether in the State or otherwise, and for which dealing facilities are, or are to be, provided by a recognised stock exchange;
- (b) any right, option or obligation in respect of any such shares, debentures or other debt securities referred to in paragraph (a);
- (c) any right, option or obligation in respect of any index relating to any such shares, debentures or other debt securities referred to in paragraph (a); or
- (d) such interests as may be prescribed;

"underwrite" includes sub-underwrite.

COMPANIES ACT 1990 - SECT 108
Unlawful dealings in securities by insiders.

108.—(1) It shall not be lawful for a person who is, or at any time in the preceding 6 months has been, connected with a company to deal in any securities of that company if by reason of his so being, or having been, connected with that company he is in possession of information that is not generally available, but, if it were, would be likely materially to affect the price of those securities.

(2) It shall not be lawful for a person who is, or at any time in the preceding 6 months has been, connected with a company to deal in any securities of any other company if by reason of his so being, or having been, connected with the first-mentioned company he is in possession of information that—

(a) is not generally available but, if it were, would be likely materially to affect the price of those securities, and

(b) relates to any transaction (actual or contemplated) involving both those companies or involving one of them and securities of the other, or to the fact that any such transaction is no longer contemplated.

(3) Where a person is in possession of any such information as is mentioned in subsection (1) or (2) that if generally available would be likely materially to affect the price of securities but is not precluded by either of those subsections from dealing in those securities, it shall not be lawful for him to deal in those securities if he has received the information, directly or indirectly, from another person and is aware, or ought reasonably to be aware, of facts or circumstances by virtue of which that other person is then himself precluded by subsection (1) or (2) from dealing in those securities.

(4) It shall not be lawful for a person at any time when he is precluded by subsection (1), (2) or (3) from dealing in any securities, to cause or procure any other person to deal in those securities.

(5) It shall not be lawful for a person, at any time when he is precluded by subsection (1), (2) or (3) from dealing in any securities by reason of his being in possession of any information, to communicate that information to any other person if he knows, or ought reasonably to know, that the other person will make use of the information for the purpose of dealing, or causing or procuring another person to deal, in those securities.

(6) Without prejudice to subsection (3), but subject to subsections (7) and (8), it shall not be lawful for a company to deal in any securities at a time when any officer of that company is precluded by subsection (1), (2) or (3) from dealing in those securities.

(7) Subsection (6) does not preclude a company from entering into a transaction at any time by reason only of information in the possession of an officer of that company if—

(a) the decision to enter into the transaction was taken on its behalf by a person other than the officer;

(b) it had in operation at that time written arrangements to ensure that the information was not communicated to that person and that no advice relating to the transaction was given to him by a person in possession of the information; and

(c) the information was not so communicated and such advice was not so given.

(8) Subsection (6) does not preclude a company from dealing in securities of another company at any time by reason only of information in the possession of an officer of the first-mentioned company, being information that was received by the officer in the course of the performance of his duties as an officer of the first-mentioned company and that consists only of the fact that the first-mentioned company proposes to deal in securities of that other company.

(9) This section does not preclude a person from dealing in securities, or rights or interests in securities, of a company if—

(a) he enters into the transaction concerned as agent for another person pursuant to a specified instruction of that other person to effect that transaction; and

(b) he has not given any advice to the other person in relation to dealing in securities, or rights or interests in securities, of that company that are included in the same class as the first-mentioned securities.

(10) This section does not preclude a person from dealing in securities if, while not otherwise taking advantage of his possession of information referred to in subsection (1)—

(a) he gives at least 21 days' notice to a relevant authority of the relevant stock exchange of his intention to deal, within the period referred to in paragraph (b), in the securities of the company concerned, and

(b) the dealing takes place within a period beginning 7 days after the publication of the company's interim or final results, as the case may be and ending 14 days after such publication, and

(c) the notice referred to in paragraph (a) is published by the exchange concerned immediately on its receipt.

(11) For the purposes of this section, a person is connected with a company if, being a natural person—

(a) he is an officer of that company or of a related company;

(b) he is a shareholder in that company or in a related company; or

(c) he occupies a position (including a public office) that may reasonably be expected to give him access to information of a kind to which subsections (1) and (2) apply by virtue of-

(i) any professional, business or other relationship existing between himself (or his employer or a company of which he is an officer) and that company or a related company; or

(ii) his being an officer of a substantial shareholder in that company or in a related company.

(12) For the purposes of subsection (11) "substantial shareholder" means a person who holds shares in a company, the number of which is above the notifiable percentage for the time being in force under section 70.

(13) The prohibitions in subsections (1), (3), (4) and (5) shall extend to dealings in securities issued by the State as if the references in subsections (1), (9) and (11) (other than paragraphs (a) and (b) of the last mentioned subsection) to a company were references to the State.

COMPANIES ACT 1990 - SECT 109
Civil liability for unlawful dealing.

109.-(1) Where a person deals in or causes or procures another person to deal in securities in a manner declared unlawful by section 108 or communicates information in any such manner, that person shall, without prejudice to any other cause of action which may lie against him, be liable-

(a) to compensate any other party to the transaction who was not in possession of the relevant information for any loss sustained by that party by reason of any difference between the price at which the securities were dealt in that transaction and the price at which they would have been likely to have been dealt in such a transaction at the time when the first-mentioned transaction took place if that information had been generally available; and

(b) to account to the company that issued or made available those securities for any profit accruing to the first-mentioned person from dealing in those securities.

(2) The amount of compensation for which a person is liable under subsection (1) or the amount of the profit for which a person is liable to account under that subsection is-

(a) subject to paragraph (b), the amount of the loss sustained by the person claiming the compensation or the amount of the profit referred to in subsection (1) (b), as the case may be; or

(b) if the person so liable has been found by a court to be liable to pay an amount or amounts to any other person or persons by reason of the same act or transaction, the amount of that loss or profit less the amount or the sum of the amounts for which that person has been found to be liable.

(3) For the purposes of subsection (2), the onus of proving that the liability of a person to pay an amount to another person arose from the same act or transaction from which another liability arose lies on the person liable to pay the amount.

(4) An action under this section for recovery of a loss or profit shall not be commenced after the expiration of 2 years after the date of completion of the transaction in which the loss or profit occurred.

COMPANIES ACT 1990 - SECT 110
Exempt transactions.

110.-(1) Nothing in section 108 shall prevent a person from-

(a) acquiring securities under a will or on the intestacy of another person; or

(b) acquiring securities in a company pursuant to an employee profit sharing scheme-

(i) approved by the Revenue Commissioners for the purposes of the Finance Acts, and

(ii) the terms of which were approved by the company in general meeting, and

(iii) under which all permanent employees of the company are offered the opportunity to participate on equal terms relative to specified objective criteria;

(c) entering in good faith into a transaction to which subsection (2) applies.

(2) This subsection applies to the following kinds of transactions-

(a) the obtaining by a director of a share qualification under section 180 of the Principal Act;

(b) a transaction entered into by a person in accordance with his obligations under an underwriting agreement;

(c) a transaction entered into by a personal representative of a deceased person, a trustee, or liquidator, receiver or examiner in the performance of the functions of his office; or

(d) a transaction by way of, or arising out of, a mortgage of or charge on securities or a mortgage, charge, pledge or lien on documents of title to securities.

(3) This Part shall not apply to transactions entered into in pursuit of monetary, exchange rate, national debt management or foreign exchange reserve policies by any Minister of the Government or the Central Bank, or by any person on their behalf.

COMPANIES ACT 1990 - SECT 111
Criminal liability for unlawful dealing.

111.—A person who deals in securities in a manner declared unlawful by section 108 shall be guilty of an offence.

COMPANIES ACT 1990 - SECT 112
Restriction on dealing.

112.—(1) Subject to subsection (2), a person convicted of an offence under section 111 or this section shall not deal within the period of 12 months from the date of the conviction.

(2) Where a person convicted of an offence under subsection (1) has, before the date of his conviction, initiated a transaction under which some element of performance remains to be rendered, subsection (1) shall not prohibit him from completing the transaction where a relevant authority of a recognised stock exchange has indicated in writing, to the parties to the transaction, its satisfaction that—

(a) the transaction was initiated but not completed before the date of the conviction, and

(b) if the transaction were not concluded, the rights of an innocent third party would be prejudiced, and

(c) the transaction would not be unlawful under any other provision of this Part.

(3) A person who contravenes this section shall be guilty of an offence.

COMPANIES ACT 1990 - SECT 113
Duty of agents in relation to unlawful dealing.

113.—(1) A person shall not deal on behalf of another person if he has reasonable cause to believe or ought to conclude that the deal would be unlawful, within the meaning of section 108.

(2) A person who contravenes this section shall be guilty of an offence.

COMPANIES ACT 1990 - SECT 114
Penalties for offences under this Part.

114.—A person who commits an offence under this Part shall be liable—

(a) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding £1,000 or 2 to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine not exceeding £200,000 or to both.

COMPANIES ACT 1990 - SECT 115
Duty of recognised stock exchange in dealing.

115.—(1) If it appears to a relevant authority of a recognised stock exchange that any person has committed an offence under this Part, such authority shall forthwith report the matter to the Director of Public Prosecutions and shall furnish to the Director of Public Prosecutions such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of such authority and relating to the matter in question, as the Director of Public Prosecutions may require.

(2) Where it appears to a member of a recognised stock exchange that any person has committed an offence under this Part, he shall report the matter forthwith to a relevant authority of the recognised stock exchange concerned, who shall thereupon come under the duty referred to in subsection (1).

(3) If it appears to a court in any proceedings that any person has committed an offence as aforesaid, and that no report relating to the matter has been made to the Director of Public Prosecutions under subsection (1), that court may, on the application of any person interested in the proceedings concerned or of its own motion, direct a relevant authority of the recognised stock exchange concerned to make such a report, and on a report being made accordingly, this section shall have effect as though the report had been made in pursuance of subsection (1).

(4) If, where any matter is reported or referred to the Director of Public Prosecutions under this section, he considers that the case is one in which a prosecution ought to be instituted and institutes proceedings accordingly, it shall be the duty of a relevant authority of the recognised stock exchange concerned, and of every officer of the company whose securities are concerned, and of any other person who appears to the Director of Public Prosecutions to have relevant information (other than any defendant in the proceedings) to give all assistance in connection with the prosecution which he or they are reasonably able to give.

(5) If it appears to the Minister, arising from a complaint to a relevant authority of a recognised stock exchange concerning an alleged offence under this Part, that there are circumstances suggesting that—

(a) the relevant authority ought to use its powers under this Part but has not done so, or

(b) that a report ought to be made to the Director of Public Prosecutions under subsection (1), but that the relevant authority concerned has not so reported,

he may direct the relevant authority to use such powers or make such a report, and on a report being made accordingly, this section shall have effect as though the report had been made in pursuance of subsection (1).

(6) Where the Minister gives a direction under subsection (5), the relevant authority concerned shall communicate the results of its investigations, or a copy of its report under subsection (1), as

the case may be, to the Minister.

(7) A relevant authority of a recognised stock exchange shall not be liable in damages in respect of anything done or omitted to be done by the authority in connection with the exercise by it of its functions under this Part unless the act or omission complained of was done or omitted to be done in bad faith.

COMPANIES ACT 1990 - SECT 116

Co-operation with other authorities outside the State.

116.-(1) This section applies where a relevant authority of a recognised stock exchange receives a request for information from a similar authority in another Member State of the European Communities in relation to the exercise by the second-named authority of its functions under any enactment of the European Communities relating to unlawful dealing within the meaning of this Part, whether in the State or elsewhere.

(2) The relevant authority concerned shall, in so far as it is reasonably able to do so, and making use of its powers under this Part where appropriate, obtain the information requested and shall, subject to the following provisions of this section, provide such information accordingly.

(3) Where a relevant authority of a recognised stock exchange receives a request under subsection (1), it shall advise the Minister who, on being satisfied as to any of the matters referred to in subsection (4), may direct the authority to refuse to provide all or part of the information requested.

(4) The matters referred to in subsection (3) are that—

(a) communication of the information requested might adversely affect the sovereignty, security or public policy of the State;

(b) civil or criminal proceedings in the State have already been commenced against a person in respect of any acts in relation to which a request for information has been received under subsection (1);

(c) any person has been convicted in the State of a criminal offence in respect of any such acts.

COMPANIES ACT 1990 - SECT 117

Authorised persons.

117.-(1) In this section and sections 118 and 121, "authorised person" means a person approved by the Minister to be an authorised person for the purposes of this Part being—

(a) the manager, however described, of a recognised stock exchange, or

(b) a person nominated by a relevant authority of a recognised stock exchange.

(2) Where an alleged offence under this Part is investigated by an authorised person, the relevant authorities of the recognised stock exchange concerned shall be under a general duty to ensure that potential conflicts of interest are avoided, as far as possible, on the part of any such authorised person.

(3) For the purpose of obtaining any information necessary for the exercise by a relevant authority of such exchange of the function referred to in section 115, an authorised person may, on production of his authorisation if so required, require any person whom he or such relevant authority has reasonable cause to believe to have dealt in securities, or to have any information about such dealings, to give the authorised person any information which he may reasonably require in regard to—

(a) the securities concerned,

(b) the company which issued the securities,

(c) his dealings in such securities, or

(d) any other information the authorised person reasonably requires in relation to such securities or such dealings,

and give him such access to and facilities for inspecting and taking copies of any documents relating to the matter as he reasonably requires.

(4) Every document purporting to be a warrant or authorisation and to be signed or authenticated by or on behalf of a relevant authority shall be received in evidence and shall be deemed to be such warrant or authorisation without further proof until the contrary is shown.

(5) An authorised person, or any person on whom he has made a requirement under this section, may apply to the court for a declaration under this section.

(6) The court, having heard such evidence as may be adduced and any representations that may be made by the authorised person and a person referred to in subsection (5), may at its discretion declare—

(a) that the exigencies of the common good do not warrant the exercise by the authorised person of the powers conferred on him by this section, or

(b) that the exigencies of the common good do so warrant.

(7) Where the court makes a declaration under subsection (6) (a), the authorised person shall, as soon as may be, withdraw the relevant requirement under this section.

(8) Where the court makes a declaration under subsection (6) (b), the person on whom the requirement was imposed shall, as soon as may be, furnish the required information to the authorised person.

(9) Where, in contravention of subsection (8), a person refuses, or

fails within a reasonable time, to comply with a requirement of an authorised person, the authorised person may certify the refusal under his hand to the court, and the court may, after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of court.

COMPANIES ACT 1990 - SECT 118
Obligation of professional secrecy.

118.—(1) Information obtained by any of the following persons by virtue of the exercise by a recognised stock exchange of its functions under this Part shall not be disclosed except in accordance with law, namely—

- (a) a relevant authority of the exchange,
- (b) an authorised person, or
- (c) any person employed or formerly employed by the exchange.

(2) Subsection (1) shall not prevent a relevant authority of a recognised stock exchange from disclosing any information to the Minister, whether pursuant to a request under section 115 (5) or otherwise, or to a similar authority in another Member State of the European Communities.

(3) Any person who contravenes subsection (1) shall be guilty of an offence.

COMPANIES ACT 1990 - SECT 119
Extension of Council Directive 79/279/EEC.

119.—The provisions of Schedule C.5 (a) of Council Directive 79/279/EEC of 5 March 1979*OJ No. L66, 16.3.1979, p.21.* co-ordinating the conditions for the admission of securities to official stock exchange listing, as given effect by the European Communities (Stock Exchange) Regulations, 1984 (S.I. No. 282 of 1984), shall also apply to securities within the meaning of section 107.

COMPANIES ACT 1990 - SECT 120
Annual report of recognised stock exchange.

120.—(1) An annual report shall be presented to the Minister on behalf of every recognised stock exchange on the exercise of the functions of the relevant authorities of the exchange concerned under this Part and, in particular, the report shall include—

- (a) the number of written complaints received concerning possible contraventions of this Part,
- (b) the number of reports made to the Director of Public Prosecutions under this Part,
- (c) the number of instances in which, following the exercise of powers by authorised persons under this Part, reports were not made to the Director of Public Prosecutions, and

(d) such other information as may be prescribed.

(2) A copy of the report referred to in subsection (1) shall, subject to subsection (3), be laid before each House of the Oireachtas.

(3) If the Minister, after consultation with a relevant authority of the recognised stock exchange concerned, is of the opinion that the disclosure of any information contained in the report referred to in subsection (1) would materially injure or unfairly prejudice the legitimate interests of any person, or that otherwise there is good reason for not divulging any part of such a report, he may lay the report under subsection (2) with that information or that part omitted.

COMPANIES ACT 1990 - SECT 121

Power of Minister to make supplementary regulations.

121.—(1) If, in any respect, any difficulty arises in bringing any provision of this Part into operation or in relation to the operation of any such provision, the Minister may by regulations do anything which appears to him to be necessary or expedient for removing that difficulty, for bringing the provision into operation, or for securing or facilitating its operation, and any such regulations may modify any provision of this Part so far as may be necessary or expedient for carrying such provision into effect for the purposes aforesaid.

(2) Without prejudice to the generality of subsection (1), where the Minister considers it necessary or expedient to do so for the proper and effective administration of sections 115 and 117, he may make such regulations as he thinks appropriate in relation to—

(a) the powers of authorised persons, or

(b) the matters in respect of which, or the persons from whom, authorised persons may require information under this Part.

(3) Every regulation made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

COMPANIES ACT 1990 - PART VI

- WINDING UP AND RELATED MATTERS

Registration of Charges

COMPANIES ACT 1990 - SECT 122

Amendment of section 99 of the Principle Act.

122.—Section 99 of The Principal Act is hereby amended—

(a) in subsection (2), by the substitution for paragraph (h) of the following paragraph—

"(h) a charge on a ship or aircraft or any share in a ship or aircraft;" , and

(b) by the insertion of the following subsections—

"(2A) The Minister may by regulations amend subsection (2) so as to add any description of charge to, or remove any description of charge from, the charges requiring registration under this section.

(2B) The power of the Minister under subsection (2A) shall include a power to amend by regulations the description of any charge referred to in subsection (2).

(2C) Every regulation made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of any thing previously done thereunder."

Winding Up by the Court

COMPANIES ACT 1990 - SECT 123

Amendment of sections 214 and 345 of Principal Act.

123.—Section 214 (a) (which relates to the circumstances in which a company is unable to pay its debts) and Section 345(5) (a) (which relates to unregistered companies) of The Principal Act are hereby amended by the substitution in each case for "£50" of "£1,000".

COMPANIES ACT 1990 - SECT 124

Amendment of section 231 of the Principal Act.

124.—section 231 of the Principal Act is hereby amended by the insertion after subsection (1) of the following subsection—

"(1A) (a) The liquidator of a company shall not sell by private contract a non-cash asset of the requisite value to a person who is, or who, within three years prior to the date of commencement of the winding-up, has been, an officer of the company unless the liquidator has given at least 14 days' notice of his intention to do so to all creditors of the company who are known to him or who have been intimated to him.

(b) In this subsection—

(i) 'non-cash asset' and 'requisite value' have the meanings assigned to them by section 29 of the Companies Act, 1990, and

(ii) 'officer' includes a person connected, within the meaning of section 26 of the Companies Act, 1990, with a director, and a shadow director."

COMPANIES ACT 1990 - SECT 125
No lien over company's books, records etc.

125.—The Principal Act is hereby amended by the insertion after section 244 of the following section—

"244A.—Where the court has appointed a provisional liquidator or a company is being wound up by the court or by means of a creditors' voluntary winding up, no person shall be entitled as against the liquidator or provisional liquidator to withhold possession of any deed, instrument, or other document belonging to the company, or the books of account, receipts, bills, invoices, or other papers of a like nature relating to the accounts or trade, dealings or business of the company, or to claim any lien thereon provided that—

(a) where a mortgage, charge or pledge has been created by the deposit of any such document or paper with a person, the production of the document or paper to the liquidator or provisional liquidator by the person shall be without prejudice to the person's rights under the mortgage, charge or pledge (other than any right to possession of the document or paper),

(b) where by virtue of this section a liquidator or provisional liquidator has possession of any document or papers of a receiver or that a receiver is entitled to examine, the liquidator or provisional liquidator shall, unless the court otherwise orders, make the document or papers available for inspection by the receiver at all reasonable times."

COMPANIES ACT 1990 - SECT 126
Power of court to summon persons for examination.

126.—The Principal Act is hereby amended by the substitution for section 245 of the following section—

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

(2) The court may examine such person on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require such person to produce any accounting records, deed, instrument, or other document or paper relating to the company that are in his custody or power.

(4) The court may, before the examination takes place, require such person to place before it a statement, in such form as the court may direct, of any transactions between him and the company of a type or class which the court may specify.

(5) If, in the opinion of the court, it is just and equitable to do so, it may direct that the costs of the examination be paid by the person examined.

(6) A person who is examined under this section shall not be entitled to refuse to answer any question put to him on the ground that his answer might incriminate him but none of the answers of such person shall be admissible in evidence against him in any other proceedings, civil or criminal, except in the case of any criminal proceedings for perjury in respect of any such answer.

(7) If a person without reasonable excuse fails at any time to attend his examination under this section, he shall be guilty of contempt of court and liable to be punished accordingly.

(8) In a case where a person without reasonable excuse fails at any time to attend his examination under this section or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his examination under this section, the court may cause that person to be arrested and his books and documents and moveable personal property to be seized and him and them to be detained until such time as the court may order.".

COMPANIES ACT 1990 - SECT 127

Order for payment or delivery of property against person examined under section 245 of Principal Act.

127.-The Principal Act is hereby amended by the insertion before section 246 of the following section-

"245A.-If in the course of an examination under section 245 it appears to the court that any person being examined.-

(a) is indebted to the company, or

(b) has in his possession or control any money, property or books and papers of the company,

the court may order such person-

(i) to pay to the liquidator the amount of the debt or any part thereof, or

(ii) to pay, deliver, convey, surrender or transfer to the liquidator such money, property or books and papers or any part thereof,

as the case may be, at such time and in such manner and on such terms as the court may direct.".

Declaration of Solvency

COMPANIES ACT 1990 - SECT 128

Statutory declaration of solvency in case of proposal to wind up voluntarily.

128.—The Principal Act is hereby amended by the substitution for section 256 of the following section—

"256. (1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, at a meeting of the directors, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that having done so, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding 12 months from the commencement of the winding up as may be specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless—

(a) it is made within the 28 days immediately preceding the date of the passing of the resolution for winding up the company and delivered to the registrar of companies not later than the date of the delivery to the registrar, in accordance with the provisions of section 143, of a copy of the resolution for winding up the company;

(b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration and in any event at a date not more than three months before the making of the declaration;

(c) a report made by an independent person in accordance with the provisions of this section is attached thereto;

(d) it embodies a statement by the independent person referred to in paragraph (c) that he has given and has not withdrawn his written consent to the issue of the declaration with the report attached thereto; and

(e) a copy of the declaration is attached to the notice issued by the company of the general meeting at which it is intended to propose a resolution for voluntary winding up under paragraph (a) or (b) of section 251 (1).

(3) The report referred to in paragraph (c) of subsection (2) shall be made by an independent person, that is to say, a person qualified at the time of the report to be appointed, or to continue to be, auditor of the company.

(4) The report shall state whether, in his opinion and to the best of his information and according to the explanations given to him—

(a) the opinion of the directors referred to in subsection (1), and

(b) the statement of the company's assets and liabilities embodied in the said declaration,

are reasonable.

(5) If within 28 days after the resolution for voluntary winding up has been advertised under subsection (1) of section 252, a creditor applies to the court for an order under this subsection, and the court is satisfied that such creditor together with any creditors supporting him in his application represents one-fifth at least in number or value of the creditors of the company, and the court is of opinion that it is unlikely that the company will be able to pay its debts within the period specified in the declaration, the court may order that all the provisions of this Act relating to a creditors' voluntary winding up shall apply to the winding up.

(6) If the court orders that all the provisions of this Act in relation to a creditors' voluntary winding up shall apply to the winding up, the person who held the office of liquidator immediately prior to the making of the order or, if no liquidator is acting, the company shall within 21 days after the making of the order, deliver an office copy of such order to the registrar of companies.

(7) If default is made in complying with subsection (6), any person who is in default shall be liable to a fine not exceeding £1,000.

(8) Where a statutory declaration is made under this section and it is subsequently proved to the satisfaction of the court that the company is unable to pay its debts, the court on the application of the liquidator or any creditor or contributory of the company may, if it thinks it proper to do so, declare that any director who was a party to the declaration without having reasonable grounds for the opinion that the company would be able to pay its debts in full within the period specified in the declaration shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.

(9) Where a company's debts are not paid or provided for in full within the period stated in the declaration of solvency, it shall for the purposes of subsection (8) be presumed, until the contrary is shown, that the director did not have reasonable grounds for his opinion.

(10) Where the court makes a declaration under subsection (8), it may give such further directions as it thinks proper for the purpose of giving effect to that declaration.

(11) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as 'a members' voluntary winding up' and a voluntary winding up in the case of which a declaration has not been made and delivered as aforesaid or in the case of which an order is made under subsection (5) or in the case to which section 261 (3) applies is in this Act referred to as 'a creditors' voluntary winding up'."

Provisions applicable to a Members' Voluntary Winding Up

COMPANIES ACT 1990 - SECT 129

Duty of liquidator to call creditors' meeting if he is of opinion

that company is unable to pay its debts.

129.—The Principal Act is hereby amended by the substitution for section 261 of the following section to pay its debts.

"261.—(1) If the liquidator is at any time of the opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 256 he shall—

(a) summon a meeting of creditors for a day not later than the fourteenth day after the day on which he formed that opinion;

(b) send notices of the creditors' meeting to the creditors by post not less than seven days before the day on which that meeting is to be held;

(c) cause notice of the creditors' meeting to be advertised, at least ten days before the date of the meeting, once in Iris Ofigi il and once at least in two daily newspapers circulating in the locality in which the company's principal place of business in the State was situated during the relevant period; and

(d) during the period before the day on which the creditors' meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require;

and the notice of the creditors' meeting shall state the duty imposed by paragraph (d).

(2) The liquidator shall also—

(a) make out a statement in the prescribed form as to the affairs of the company, including a statement of the company's assets and liabilities, a list of the out standing creditors and the estimated amount of their claims;

(b) lay that statement before the creditors' meeting; and

(c) attend and preside at that meeting.

(3) As from the day on which the creditors' meeting is held under this section, the Companies Acts shall have effect as if—

(a) without prejudice to the powers of the court under section 256, the directors' declaration under that section had not been made; and

(b) the creditors' meeting and the company meetings at which it was resolved that the company be wound up voluntarily were the meetings mentioned in section 266;

and, accordingly, the winding up shall become a creditors' voluntary winding up and any appointment made or committee established by the creditors' meeting shall be deemed to have been made or established by the creditors' meeting so mentioned.

(4) The appointment of a liquidator at a meeting called under this section shall not, subject to subsection (5), affect the validity of any action previously taken by the liquidator appointed by the members of the company.

(5) Where the creditors appoint a liquidator at a meeting called under this section and there is a dispute as to any or all of the costs, charges or expenses incurred by, including the remuneration of, the liquidator appointed by the members of the company, the liquidator appointed by the creditors, or any creditor, may apply to the court to determine the dispute and the court may, on such application, make such order as it deems fit.

(6) Nothing in this section shall be deemed to take away any right in this Act of any person to present a petition to the court for the winding up of a company.

(7) If the liquidator fails to comply with subsection (1) he shall be liable to a fine."

Provisions applicable to a Creditors' Voluntary Winding Up

COMPANIES ACT 1990 - SECT 130
Amendment of section 266 of the Principal Act."

130.—Section 266 of the Principal Act is hereby amended by the insertion in subsection (2) after "advertised" of the following:

"at least ten days before the date of the meeting,".

COMPANIES ACT 1990 - SECT 131
Creditors' voluntary winding up.

131.—(1) This section applies where, in the case of a creditors' voluntary winding up, a liquidator has been nominated by the company.

(2) The powers conferred on the liquidator by section 276 of the Principal Act shall not be exercised, except with sanction of the court, during the period before the holding of the creditors' meeting under section 266 of that Act.

(3) Subsection (2) does not apply in relation to the power of the liquidator—

(a) to take into his custody or under his control all the property to which the company is or appears to be entitled;

(b) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of;

(c) to do all such other things as may be necessary for the protection of the company's assets.

(4) The liquidator shall attend the creditors' meeting held under section 266 of the Principal Act and shall report to the meeting

on any exercise by him of his powers (whether or not under this section or under section 276 or 280 of that Act).

(5) If default is made—

(a) by the company in complying with subsection (1) or (2) of section 266 of the Principal Act, or

(b) by the directors in complying with subsection (3) of the said section,

the liquidator shall, within 7 days of the relevant day, apply to the court for directions as to the manner in which that default is to be remedied.

(6) 'The relevant day' means the day on which the liquidator was nominated by the company or the day on which he first became aware of the default, whichever is the later.

(7) If a liquidator without reasonable excuse fails to comply with this section, he shall be guilty of an offence.

Provisions applicable to every Voluntary Winding Up

COMPANIES ACT 1990 - SECT 132

Amendment of section 275 of the Principal Act.

132.—The Principal Act is hereby amended by the substitution for section 275 of the following section—

"275.—(1) Subject to the provisions of this Act as to preferential payments, the property of a company on its winding up—

(a) shall, subject to subsection (2), be applied in satisfaction of its liabilities *pari passu*, and

(b) shall, subject to such application, and unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

(2) Nothing in paragraph (a) of subsection (1) shall in any way affect any rights or obligations of the company or any other person arising as a result of any agreement entered into (whether before or after the commencement of section 132 of the Companies Act, 1990) by any person under which any particular liability of the company to any general creditor is postponed in favour of or subordinated to the rights or claims of any other person to whom the company may be in any way liable.

(3) In subsection (2)—

'liability' includes a contingent liability; and

'person' includes a class of persons."

COMPANIES ACT 1990 - SECT 133

Consent to appointment as liquidator and notification of appointment.

133.—The Principal Act is hereby amended by the insertion after section 276 of the following section—

"276A.—(1) The appointment of a liquidator shall be of no effect unless the person nominated has, prior to his appointment, signified his written consent to the appointment.

(2) The chairman of any meeting at which a liquidator is appointed shall, within 7 days of the meeting, notify the liquidator in writing of his appointment, unless the liquidator or his duly authorised representative is present at the meeting where the appointment is made.

(3) A person who fails to comply with subsection (2) shall be liable to a fine not exceeding £1,000. "

Provisions applicable to every Winding Up

COMPANIES ACT 1990 - SECT 134
Preferential payments in a winding up.

134.—section 285 of the Principal Act is hereby amended by the payments in a insertion of the following subsection

"(14) The priority conferred by subsection (2) shall apply only to those debts which, within the period of six months after advertisement by the liquidator for claims in at least two daily newspapers circulating in the district where the registered office of the company is situated, either—

(a) have been notified to him; or

(b) have become known to him.".

COMPANIES ACT 1990 - SECT 135
Fraudulent preference.

135.—The Principal Act is hereby amended by the substitution for section 286 of the following section—

"286.—(1) Subject to the provisions of this section, any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company which is unable to pay its debts as they become due in favour of any creditor, or of any person on trust for any creditor, with a view to giving such creditor, or any surety or guarantor for the debt due to such creditor, a preference over the other creditors, shall, if a winding-up of the company commences within 6 months of the making or doing the same and the company is at the time of the commencement of the winding-up unable to pay its debts (taking into account the contingent and prospective liabilities), be deemed a fraudulent preference of its creditors and be invalid accordingly.

(2) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

(3) A transaction to which subsection (1) applies in favour of a connected person which was made within two years before the commencement of the winding up of the company shall, unless the contrary is shown, be deemed in the event of the company being wound up—

(a) to have been made with a view to giving such person a preference over the other creditors, and

(b) to be a fraudulent preference,

and be invalid accordingly.

(4) Subsections (1) and (3) shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the company.

(5) In this section, 'a connected person' means a person who, at the time the transaction was made, was—

(a) a director of the company;

(b) a shadow director of the company;

(c) a person connected, within the meaning of section 26 (1) (a) of the Companies Act, 1990, with a director;

(d) a related company, within the meaning of section 140 of the said Act, or

(e) any trustee of, or surety or guarantor for the debt due to, any person described in paragraph (a), (b), (c) or (d).".

COMPANIES ACT 1990 - SECT 136

Circumstances in which floating charge is invalid.

136.—The Principal Act is hereby amended by the substitution for section 288 of the following section —

"288.— (1) Where a company is being wound up, a floating charge on the undertaking or property of the company created within 12 months before the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except as to money actually advanced or paid, or the actual price or value of goods or services sold or supplied, to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of 5 per cent per annum.

(2) For the purposes of subsection (1) the value of any goods or services sold or supplied by way of consideration for a floating charge is the amount in money which at the time they were sold or supplied could reasonably have been expected to be obtained for the goods or services in the ordinary course of business and on the same terms (apart from the consideration) as those on which they were sold or supplied to the company.

(3) Where a floating charge on the undertaking or property of a company is created in favour of a connected person, subsection (1) shall apply to such a charge as if the period of 12 months mentioned in that subsection were a period of 2 years.

(4) In this section 'a connected person' means a person who, at the time the transaction was made, was—

(a) a director of the company;

(b) a shadow director of the company;

(c) a person connected, within the meaning of section 26 (1) (a) of the Companies Act, 1990, with a director;

(d) a related company, within the meaning of section 140 of the said Act; or

(e) any trustee of, or any surety or guarantor for the debt due to, any person described in paragraph (a), (b), (c) or (d).".

COMPANIES ACT 1990 - SECT 137

Criminal liability of persons concerned for fraudulent trading of company.

137.—The Principal Act is hereby amended by the substitution for section 297 of the following section

"297.—(1) If any person is knowingly a party to the carrying on of the business of a company with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, that person shall be guilty of an offence.

(2) Any person who is convicted of an offence under this section shall be liable—

(a) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding £1,000 or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine not exceeding £50,000 or to both.".

COMPANIES ACT 1990 - SECT 138

Civil liability of persons concerned for fraudulent or reckless trading of company.

138.—The Principal Act is hereby amended by the insertion after section 297 of the following section

"297A.—(1) If in the course of winding up of a company or in the course of proceedings under the Companies (Amendment) Act, 1990, it appears that—

(a) any person was, while an officer of the company, knowingly

a party to the carrying on of any business of the company in a reckless manner; or

(b) any person was knowingly a party to the carrying on of any business of the company with intent to defraud creditors of the company, or creditors of any other-person or for any fraudulent purpose;

the court, on the application of the receiver, examiner, liquidator or any creditor or contributory of the company, may, if it thinks it proper to do so, declare that such person shall be personally responsible, without any limitation of liability, for all or any part of the debts or other liabilities of the company as the court may direct.

(2) Without prejudice to the generality of subsection (1) (a), an officer of a company shall be deemed to have been knowingly a party to the carrying on of any business of the company in a reckless manner if-

(a) he was a party to the carrying on of such business and, having regard to the general knowledge, skill and experience that may reasonably be expected of a person in his position, he ought to have known that his actions or those of the company would cause loss to the creditors of the company, or any of them, or

(b) he was a party to the contracting of a debt by the company and did not honestly believe on reasonable grounds that the company would be able to pay the debt when it fell due for payment as well as all its other debts (taking into account the contingent and prospective liabilities).

(3) Notwithstanding anything contained in subsection (1) the court may grant a declaration on the grounds set out in paragraph (a)of that subsection only if-

(a) paragraph (a), (b) or (c)of section 214 applies to the company concerned, and

(b) an applicant for such a declaration, being a creditor or contributory of the company. or any person on whose behalf such application is made, suffered loss or damage as a consequence of any behaviour mentioned in subsection (1).

(4) In deciding whether it is proper to make an order on the ground set out in subsection (2) (b), the court shall have regard to whether the creditor in question was, at the time the debt was incurred, aware of the company's financial state of affairs and, notwithstanding such awareness, nevertheless assented to the incurring of the debt.

(5) On the hearing of an application under this section, the applicant may himself give evidence or call witnesses.

(6) Where it appears to the court that any person in respect of whom a declaration has been sought under subsection (1) (a), has acted honestly and responsibly in relation to the conduct of the

affairs of the company or any matter or matters on the ground of which such declaration is sought to be made, the court may, having regard to all the circumstances of the case, relieve him either wholly or in part, from personal liability on such terms as it may think fit.

(7) Where the court makes any such declaration, it may—

(a) give such further directions as it thinks proper for the purpose of giving effect to that declaration and in particular may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him or any company or person on his behalf, or any person claiming as assignee from or through the person liable or any company or person acting on his behalf, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection;

(b) provide that sums recovered under this section shall be paid to such person or classes of persons, for such purposes, in such amounts or proportions at such time or times and in such respective priorities among themselves as such declaration may specify.

(8) Subsection (1) (a) shall not apply in relation to the carrying on of the business of a company during a period when the company is under the protection of the court.

(9) This section shall have effect notwithstanding that—

(a) the person in respect of whom the declaration has been sought under subsection (1) may be criminally liable in respect of the matters on the ground of which such declaration is to be made; or

(b) any matter or matters on the ground of which the declaration under subsection (1) is to be made have occurred outside the State.

(10) For the purposes of this section—

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

'company' includes any body which may be wound up under the Companies Acts; and

'officer' includes any auditor, liquidator, receiver, or shadow director."

Power of the court to order the return of assets which have been improperly transferred.

139.-(1) Where, on the application of a liquidator, creditor or contributory of a company which is being wound up, it can be shown to the satisfaction of the court that-

(a) any property of the company of any kind whatsoever was disposed of either by way of conveyance, transfer, mortgage, security, loan, or in any way whatsoever whether by act or omission, direct or indirect, and

(b) the effect of such disposal was to perpetrate a fraud on the company, its creditors or members, the court may, if it deems it just and equitable to do so, order any person who appears to have the use, control or possession of such property or the proceeds of the sale or development thereof to deliver it or pay a sum in respect of it to the liquidator on such terms or conditions as the court sees fit.

(2) Subsection (1) shall not apply to any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company to which section 286 (1) of the Principal Act applies.

(3) In deciding whether it is just and equitable to make an order under this section, the court shall have regard to the rights of persons who have bona fide and for value acquired an interest in the property the subject of the application.

COMPANIES ACT 1990 - SECT 140

Company may be required to contribute to debts of related companies.

140.-(1) On the application of the liquidator or any creditor or contributory of any company that is being wound up, the court, if it is satisfied that it is just and equitable to do so, may order that any company that is or has been related to the company being wound up shall pay to the liquidator of that company an amount equivalent to the whole or part of all or any of the debts provable in that winding up. Any order under this section may be made on such terms and conditions as the court thinks fit.

(2) In deciding whether it is just and equitable to make an order under subsection (1) the court shall have regard to the following matters-

(a) the extent to which the related company took part in the management of the company being wound up;

(b) the conduct of the related company towards the creditors of the company being wound up;

(c) the effect which such order would be likely to have on the creditors of the related company concerned.

(3) No order shall be made under subsection (1) unless the court is satisfied that the circumstances that gave rise to the winding

up of the company are attributable to the actions or omissions of the related company.

(4) Notwithstanding any other provision, it shall not be just and equitable to make an order under subsection (1) if the only ground for making the order is—

(a) the fact that a company is related to another company, or

(b) that creditors of the company being wound up have relied on the fact that another company is or has been related to the first mentioned company.

(5) For the purposes of this Act, a company is related to another company if—

(a) that other company is its holding company or subsidiary; or

(b) more than half in nominal value of its equity share capital (as defined in section 155 (5) of the Principal Act) is held by the other company and companies related to that other company (whether directly or indirectly, but other than in a fiduciary capacity); or

(c) more than half in nominal value of the equity share capital (as defined in section 155 (5) of the Principal Act) of each of them is held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or

(d) that other company or a company or companies related to that other company or that other company together with a company or companies related to it are entitled to exercise or control the exercise of more than one half of the voting power at any general meeting of the company; or

(e) the businesses of the companies have been so carried on that the separate business of each company, or a substantial part thereof, is not readily identifiable; or

(f) there is another company to which both companies are related;

and "related company" has a corresponding meaning.

(6) For the purposes of this section "company" includes any body which is liable to be wound up under the Companies Acts and "creditor" means one or more creditors to whom the company being wound up is indebted by more, in aggregate, than £10,000.

(7) Where an application for an order under subsection (1) seeks to require a licensed bank, within the meaning of section 25, to contribute to the debts of a related company, a copy of every such application shall be sent by the applicant to the Central Bank who shall be entitled to be heard by the court before an order is made.

Pooling of assets of related companies.

141.—(1) Where two or more related companies are being wound up and the court, on the application of the liquidator of any of the companies, is satisfied that it is just and equitable to make an order under this section, the court may order that, subject to such terms and conditions as the court may impose and to the extent that the court orders, the companies shall be wound up together as if they were one company, and, subject to the provisions of this section, the order shall have effect and all the provisions of this Part and Part VI of The Principal Act shall apply accordingly.

(2) In deciding the terms and conditions of an order under this section the court shall have particular regard to the interests of those persons who are members of some, but not all, of the companies.

(3) Where the court makes an order under subsection (1)—

(a) the court may remove any liquidator of any of the companies, and appoint any person to act as liquidator of any one or more of the companies;

(b) the court may give such directions as it thinks fit for the purpose of giving effect to the order;

(c) nothing in this section or the order shall affect the rights of any secured creditor of any of the companies;

(d) debts of a company that are to be paid in priority to all other debts of the company pursuant to section 285 of the Principal Act shall, to the extent that they are not paid out of the assets of that company, be subject to the claims of holders of debentures under any floating charge (as defined in that section) created by any of the other companies;

(e) unless the court otherwise orders, the claims of all unsecured creditors of the companies shall rank equally among themselves.

(4) In deciding whether it is just and equitable to make an order under subsection (1) the court shall have regard to the following matters—

(a) the extent to which any of the companies took part in the management of any of the other companies;

(b) the conduct of any of the companies towards the creditors of any of the other companies;

(c) the extent to which the circumstances that gave rise to the winding up of any of the companies are attributable to the actions or omissions of any of the other companies;

(d) the extent to which the businesses of the companies have been intermingled.

(5) Notwithstanding any other provision, it shall not be just and equitable to make an order under subsection (1) if the only ground for making the order is—

(a) the fact that a company is related to another company, or

(b) that creditors of a company being wound up have relied on the fact that another company is or has been related to the first mentioned company.

(6) Notice of an application to the court for the purposes of this section shall be served on every company specified in the application, and on such other persons as the court may direct, not later than the end of the eighth day before the day the application is heard.

COMPANIES ACT 1990 - SECT 142

Amendment of section 298 of the Principle Act.

142.—The Principal Act is hereby amended by the substitution for Amendment of section 298 of the following section—

"298.—(1) Subsection (2) applies if in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present officer, liquidator, receiver or examiner of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or has been guilty of any misfeasance or other breach of duty or trust in relation to the company.

(2) The court may, on the application of the liquidator, or any creditor or contributory, examine into the conduct of the promoter, officer, liquidator, receiver or examiner, and compel him—

(a) to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or

(b) to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or other breach of duty or trust as the court thinks just.

(3) This section has effect notwithstanding that the offence is one for which the offender may be criminally liable.".

COMPANIES ACT 1990 - SECT 143

Amendment of section 299 of the Principal Act .

143.—Section 299 of the Principle Act is hereby amended by the subsection of the following subsection for subsection (1)—

"(1) If it appears to the court in the course of a winding-up by the court that any past or present officer, or any member, of the company has been guilty of an offence in relation to the company for which he is criminally liable, the court may either on the application of any person interested in the winding-up or of its

own motion direct the liquidator to refer the matter to the Director of Public Prosecutions and in such a case the liquidator shall furnish to the Director of Public Prosecutions such information and give to him such access to and facilities for inspecting and taking any copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as the Director of Public Prosecutions may require."

COMPANIES ACT 1990 - SECT 144

Duty of liquidators and receivers to include certain information in returns etc.

144.—(1) Where a receiver or liquidator of a company is obliged by the Companies Acts to make a periodic account, abstract, statement or return in relation to his activities as receiver or liquidator he shall incorporate in such account, abstract, statement or return a report as to whether, at the date of such account, abstract, statement or return any past or present director or other officer, or any member, of the company is a person—

(a) in respect of whom a declaration has been made under any provision of the Companies Acts that he should be personally liable for all or any part of the debts of a company,

(b) who is, or is deemed to be, subject to a disqualification order under Part VII.

(2) A receiver or liquidator who contravenes subsection (1) shall be guilty of an offence and liable to a fine.

COMPANIES ACT 1990 - SECT 145

Penalty for default of receiver or liquidator in making certain accounts and returns.

145.—(1) Where a receiver or liquidator is in default in relation to the making or filing of a periodic account, abstract, statement or return in pursuance of any provision of the Companies Acts he shall be guilty of an offence and liable—

(a) on summary conviction to a fine not exceeding £1,000 and, for continued contravention, to a daily default fine not exceeding £50;

(b) on conviction on indictment to a fine not exceeding £10,000 and, for continued contravention, to a daily default fine not exceeding £250.

(2) A person convicted of an offence under any of the following provisions, namely section 262, 272, 306, 319 (2) or 321 of The Principal Act, shall, in lieu of the penalty provided in any such section (as increased by section 15 of the Companies (Amendment) Act, 1982), be liable to the penalties specified in subsection (1).

Supplementary Provisions

COMPANIES ACT 1990 - SECT 146

Disqualification for appointment as liquidator.

146.—The Principal Act is hereby amended by the insertion after section 300 of the following section—

"300A.—(1) None of the following persons shall be qualified for appointment as liquidator of a company—

(a) a person who is, or who has within 12 months of the commencement of the winding up been, an officer or servant of the company;

(b) except with the leave of the court, a parent, spouse, brother, sister or child of an officer of the company;

(c) a person who is a partner or in the employment of an officer or servant of the company;

(d) a person who is not qualified by virtue of this subsection for appointment as liquidator of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

References in this subsection to an officer or servant of the company include references to an auditor.

(2) An application for leave under subsection (1) (b) shall be supported by such evidence as the court may require.

(3) If a liquidator becomes disqualified by virtue of this section he shall thereupon vacate his office and give notice in writing within 14 days to—

(a) the court in a court winding up,

(b) the company in a members' voluntary winding up,

(c) the company and the creditors in a creditors' voluntary winding up,

that he has vacated it by reason of such disqualification.

(4) Any person who acts as a liquidator when disqualified by this section from so doing or who fails to comply with subsection (3), if that subsection applies to him, shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding £1,000 and, for continued contravention, a daily default fine not exceeding £50;

(b) on conviction on indictment, to a fine of £10,000 and, for continued contravention, a daily default fine not exceeding £250.

(5) This section shall not apply to a winding-up commenced before the commencement of section 146 of the Companies Act, 1990."

COMPANIES ACT 1990 - SECT 147

Disclosure of interest by creditors etc. at creditors' meeting.

147.—The Principal Act is hereby amended by the insertion after section 301 of the following section—

"301A.—(1) Where, at a meeting of creditors, a resolution is proposed for the appointment of a liquidator, any creditor who has a connection with the proposed liquidator shall, before the resolution is put, make such connection known to the chairman of the meeting who shall disclose that fact to the meeting, together with details thereof.

(2) Subsection (1) shall also apply to any person at the meeting, being a representative of a creditor and entitled to vote on the resolution on his behalf.

(3) Where the chairman of a meeting of creditors has any such connection as is mentioned in subsection (1), he shall disclose that fact to the meeting, together with details thereof.

(4) For the purposes of this section, a person has a connection with a proposed liquidator if he is—

(a) a parent, spouse, brother, sister or child of, or

(b) employed by, or a partner of,

the proposed liquidator.

(5) A person who fails to comply with this section shall be liable to a fine not exceeding £1,000.

(6) In exercising its jurisdiction under section 267 (2) or 272 (2) (which relate to the appointment or removal of a liquidator) the court may have regard to any failure to comply with this section."

COMPANIES ACT 1990 - SECT 148

Extension of power of court to assess damages against directors.

148.—(1) Subsection (2) applies if in the course of winding up a company which is a subsidiary of another company, it appears that any director of the subsidiary's holding company has misapplied or retained or become liable or accountable for any money or property of the subsidiary, or has been guilty of any misfeasance or other breach of duty or trust in relation to the subsidiary.

(2) The court may, on the application of the liquidator, any creditor or contributory of the subsidiary, examine into the conduct of the director concerned and compel him—

(a) to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or

(b) to contribute such sum to the assets of the subsidiary by way of compensation in respect of the misapplication, retainer,

misfeasance or other breach of duty or trust as the court thinks just.

COMPANIES ACT 1990 - PART VII

- DISQUALIFICATIONS AND RESTRICTIONS: DIRECTORS AND OTHER OFFICERS

CHAPTER 1

Restriction on Directors of Insolvent Companies

COMPANIES ACT 1990 - SECT 149

Application of Chapter I.

149.-(1) This Chapter applies to any company if-

(a) at the date of the commencement of its winding-up it is proved to the court, or

(b) at any time during the course of its winding-up the liquidator of the company certifies, or it is otherwise proved, to the court,

that it is unable to pay its debts (within the meaning of section 214 of the Principal Act).

(2) This Chapter applies to any person who was a director of a company to which this section applies at the date of, or within 12 months prior to, the commencement of its winding-up.

(3) This Chapter shall not apply to a company which commences to be wound up before the commencement of this section.

(4) In this Chapter "company" includes a company to which section 351 of the Principal Act applies.

(5) This Chapter applies to shadow directors as it applies to directors.

COMPANIES ACT 1990 - SECT 150

Restriction.

150.-(1) The court shall, unless it is satisfied as to any of the matters specified in subsection (2), declare that a person to whom this Chapter applies shall not, for a period of five years, be appointed or act in any way, whether directly or indirectly, as a director or secretary or be concerned or take part in the promotion or formation of any company unless it meets the requirements set out in subsection (3); and, in subsequent provisions of this Part, the expression "a person to whom section 150 applies" shall be construed as a reference to a person in respect of whom such a declaration has been made.

(2) The matters referred to in subsection (1) are-

(a) that the person concerned has acted honestly and responsibly in relation to the conduct of the affairs of the company and that there is no other reason why it would be just and equitable that

he should be subject to the restrictions imposed by this section,
or

(b) subject to paragraph (a), that the person concerned was a director of the company solely by reason of his nomination as such by a financial institution in connection with the giving of credit facilities to the company by such institution, provided that the institution in question has not obtained from any director of the company a personal or individual guarantee of repayment to it of the loans or other forms of credit advanced to the company, or

(c) subject to paragraph (a), that the person concerned was a director of the company solely by reason of his nomination as such by a venture capital company in connection with the purchase of, or subscription for, shares by it in the first-mentioned company.

(3) The requirements specified in subsection (1) are that—

(a) the nominal value of the allotted share capital of the company shall—

(i) in the case of a public limited company, be at least £100,000,

(ii) in the case of any other company, be at least £20,000,

(b) each allotted share to an aggregate amount not less than the amount referred to in subparagraph (i) or (ii) of paragraph (a), as the case may be, shall be fully paid up, including the whole of any premium thereon, and

(c) each such allotted share and the whole of any premium thereon shall be paid for in cash.

(4) Where a court makes a declaration under subsection (1), a prescribed officer of the court shall cause the registrar of companies to be furnished with prescribed particulars of the declaration in such form and manner as may be prescribed.

(5) In this section—

"financial institution" means—

(a) a licensed bank, within the meaning of section 25, or

(b) a company the ordinary business of which includes the making of loans or the giving of guarantees in connection with loans, and

"venture capital company" means a company prescribed by the Minister the principal ordinary business of which is the making of share investments.

COMPANIES ACT 1990 - SECT 151

Duty of liquidator under this Chapter.

151.—(1) Where it appears to the liquidator of a company to which under this Chapter applies that the interests of any other company or its creditors may be placed in jeopardy by the relevant matters

referred to in subsection (2) the liquidator shall inform the court of his opinion forthwith and the court may, on receipt of such report, make whatever order it sees fit.

(2) The relevant matters are that a person to whom section 150 applies is appointed or is acting in any way, whether directly or indirectly, as a director or is concerned or is taking part in the promotion or formation of such other company as is referred to in subsection (1).

(3) Any liquidator who contravenes subsection (1) shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding £1,000 and, for continued contravention, to a daily default fine not exceeding £50, or

(b) on conviction on indictment, to a fine not exceeding £10,000 and, for continued contravention, to a daily default fine not exceeding £250.

COMPANIES ACT 1990 - SECT 152
Relief.

152.—(1) A person to whom section 150 applies may, within not more than one year after a declaration has been made in respect of him under that section, apply to the court for relief, either in whole or in part, from the restrictions referred to in that section or from any order made in relation to him under section 151 and the court may, if it deems it just and equitable to do so, grant such relief on whatever terms and conditions it sees fit.

(2) Where it is intended to make an application for relief under subsection (1) the applicant shall give not less than 14 days' notice of his intention to the liquidator (if any) of the company the insolvency of which caused him to be subject to this Chapter.

(3) On receipt of a notice under subsection (2), the liquidator shall forthwith notify such creditors and contributories of the company as have been notified to him or become known to him, that he has received such notice.

(4) On the hearing of an application under this section the liquidator or any creditor or contributory of the company, the insolvency of which caused the applicant to be subject to this Chapter may appear and give evidence.

(5) Any liquidator who contravenes subsection (3) shall be guilty of an offence and liable to a fine.

COMPANIES ACT 1990 - SECT 153
Register of restricted persons.

153.—(1) The registrar shall, subject to the provisions of this section, keep a register of the particulars which have been notified to him under section 150, and the following provisions of this section shall apply to the keeping of such a register.

(2) Where the court grants partial relief to a person under section 152 a prescribed officer of the court shall cause the registrar to be furnished with prescribed particulars of the relief, and the registrar shall, as soon as may be, enter the particulars on the register referred to in subsection (1).

(3) Where the court grants full relief to a person under section 152 a prescribed officer of the court shall cause the registrar to be so notified, and the registrar shall, as soon as may be, remove the particulars of any such person from the register referred to in subsection (1).

(4) The registrar shall also remove from the register any particulars in relation to a person on the expiry of five years from the date of the declaration to which the original notification under section 150 relates.

(5) Nothing in this section shall prevent the registrar from keeping the register required by this section as part of any other system of classification, whether pursuant to section 247 or otherwise.

COMPANIES ACT 1990 - SECT 154

Application of this Chapter to receivers.

154.—Where a receiver of the property of a company is appointed, the provisions of this Chapter shall, with the necessary modifications, apply as if the references therein to the liquidator and to winding up were construed as references to the receiver and to receivership.

COMPANIES ACT 1990 - SECT 155

Restrictions on company to which section 150 (3) applies.

155.—(1) This section applies to any company in relation to which a person who is the subject of a declaration under section 150 is appointed or acts in any way, whether directly or indirectly, as a director or secretary or is concerned in or takes part in the promotion or formation of that company.

(2) Subsections (2) to (11) of section 60 of the Principal Act shall not apply to any company to which this section applies.

(3) Sections 32 to 36 of the Companies (Amendment) Act, 1983, shall, with the necessary modifications, apply to any company to which this section applies as if the company were a public limited company so, however, that for the purposes of this subsection those sections shall apply as if—

(a) in subsection (1) of section 32 the words "during the initial period" were deleted;

(b) any other reference in any of those sections to "initial period" were deleted; and

(c) in subsection (2) of section 32 the words "relevant person" were defined to mean "any subscriber to the memorandum, any director

or any person involved in the promotion or formation of the company".

(4) Without prejudice to section 39, sections 32 and 37 shall not apply to any company to which subsection (1) applies.

(5) From the date of a declaration under section 150 a person in respect of whom the declaration was made shall not accept appointment to a position or act in any manner mentioned in subsection (1) of this section in relation to a company unless he has, within the 14 days immediately preceeding such appointment or so acting, sent to the registered office of the company a notification that he is a person to whom section 150 applies.

COMPANIES ACT 1990 - SECT 156

Requirements as to share allotted by a company to which section 155 applies.

156.-(1) Where a company to which section 155 applies allots a shares company to which share which is not fully paid up as required by section 150 (3) (b) the share shall be treated as if its nominal value together with the whole of any premium had been received, but the allottee shall be liable to pay the company in cash the full amount which should have been received in respect of the share under that subsection less the value of any consideration actually applied in payment up (to any extent) of the share and any premium on it, and interest at the appropriate rate on the amount payable under this subsection.

(2) Where a company to which section 155 applies allots a share which is not fully paid for in cash as required by section 150

(3) (c) the allottee of the share shall be liable to pay the company in cash an amount equal to its nominal value, together with the whole of any premium, and shall be liable to pay interest at the appropriate rate on the amount payable under this subsection.

(3) Subsection (1) shall not apply in relation to the allotment of a bonus share which is not fully paid up as required by section 150 (3) (b) unless the allottee knew or ought to have known that the share was so allotted.

(4) Subsection (1) does not apply to shares allotted in pursuance of an employees' share scheme within the meaning of section 2 of the Companies (Amendment) Act, 1983.

(5) In this section, "appropriate rate" has the meaning assigned to it by section 2 of the Companies (Amendment) Act, 1983.

(6) Section 26 (4) of the Companies (Amendment) Act, 1983, shall apply for the purposes of this section as it applies for the purposes of that section.

COMPANIES ACT 1990 - SECT 157

Relief for a company in respect of prohibited transactions.

157.-(1) The court may, if it deems it just and equitable to do so, grant relief to a company to which section 155 applies in

respect of any act or omission which, by virtue of that section, contravened a provision of the Companies Acts or to any person adversely affected thereby, on whatever terms and conditions the court sees fit, including exemption from any such provision.

(2) Relief shall not be granted to the company where the person referred to in section 155 (1) complied with subsection (5) of that section.

COMPANIES ACT 1990 - SECT 158

Power to vary amounts mentioned in section (3).

158.—The Minister may, by order, vary the amounts mentioned in section 150 (3) (a) and the order may— mentioned in.

(a) require any company to which that section applies having an allotted share capital of which the nominal value is less than the amount specified in the order to increase the value to not less than that amount;

(b) make, in connection with any such requirement provision for any of the matters for which provision is made in the Companies Acts in relation to a company's registration, reregistration, change of name, winding-up or dissolution, payment for any share comprised in a company's capital and offers of shares in or debentures of a company to the public, including provision as to the consequences (whether in criminal law or otherwise) of a failure to comply with any requirement of the order, and

(c) contain such supplemental and transitional provisions as the Minister thinks appropriate, specify different amounts in relation to companies of different classes or descriptions and, in particular, provide for any provision of the order to come into operation on different days for different purposes.

CHAPTER 2

Disqualification Generally

COMPANIES ACT 1990 - SECT 159

Interpretation of Chapter 2 and 3.

159.—In this Chapter and Chapter 3, except where the context otherwise requires—

"company" includes every company and every body, whether corporate or unincorporated, which may be wound up under Part X of The Principal Act and, without prejudice to the generality of the foregoing, includes a friendly society within the meaning of the Friendly Societies Acts, 1896 to 1977;

"the court" means the High Court except in relation to a disqualification order made by a court of its own motion under section 160(2), paragraph (a), (b), (c), (d) or (f), in which case it includes any court;

"default order" means an order made against any person under section

371 of the Principal Act by virtue of any contravention of or failure to comply with any relevant requirement (whether on his own part or on the part of any company);

"disqualification order" means—

(a) an order under this Part that the person against whom the order is made shall not be appointed or act as an auditor, director or other officer, receiver, liquidator or examiner or be in any way, whether directly or indirectly, concerned or take part in the promotion, formation or management of any company, or any society registered under the Industrial and Provident Societies Acts, 1893 to 1978, or

(b) an order under section 184 of the Principal Act;

"officer" in relation to any company, includes any director, shadow director or secretary of the company;

"relevant requirement" means any provision of the Companies Acts (including a provision repealed by this Act) which requires or required any return, account or other document to be filed with, delivered or sent to, or notice of any matter to be given to, the registrar of companies.

COMPANIES ACT 1990 - SECT 160

Disqualification of certain persons from acting as directors or auditors of or managing companies.

160.—(1) Where a person is convicted on indictment of any indictable offence in relation to a company, or involving fraud or dishonesty, then during the period of five years from the date of conviction or such other period as the court, on the application of the prosecutor and having regard to all the circumstances of the case, may order—

(a) he shall not be appointed or act as an auditor, director or other officer, receiver, liquidator or examiner or be in any way, whether directly or indirectly, concerned or take part in the promotion, formation or management of any company or any society registered under the Industrial and Provident Societies Acts, 1893 to 1978;

(b) he shall be deemed, for the purposes of this Act, to be subject to a disqualification order for that period.

(2) Where the court is satisfied in any proceedings or as a result of an application under this section that—

(a) a person has been guilty, while a promoter, officer, auditor, receiver, liquidator or examiner of a company, of any fraud in relation to the company, its members or creditors; or

(b) a person has been guilty, while a promoter, officer, auditor, receiver, liquidator or examiner of a company, of any breach of his duty as such promoter, officer, auditor, receiver, liquidator or examiner; or

(c) a declaration has been granted under section 297A of the Principal Act (inserted by section 138 of this Act) in respect of a person; or

(d) the conduct of any person as promoter, officer, auditor, receiver, liquidator or examiner of a company, makes him unfit to be concerned in the management of a company; or

(e) in consequence of a report of inspectors appointed by the court or the Minister under the Companies Acts, the conduct of any person makes him unfit to be concerned in the management of a company; or

(f) a person has been persistently in default in relation to the relevant requirements;

the court may, of its own motion, or as a result of the application, make a disqualification order against such a person for such period as it sees fit.

(3) (a) For the purposes of subsection (2) (f) the fact that a person has been persistently in default in relation to the relevant requirements may (without prejudice to its proof in any other manner) be conclusively proved by showing that in the five years ending with the date of the application he has been adjudged guilty (whether or not on the same occasion) of three or more defaults in relation to those requirements.

(b) A person shall be treated as being adjudged guilty of a default in relation to a relevant requirement for the purposes of this subsection if he is convicted of any offence consisting of a contravention of a relevant requirement or a default order is made against him.

(4) An application under paragraph (a), (b), (c) or (d) of subsection (2) may be made by—

(a) the Director of Public Prosecutions; or

(b) any member, contributory, officer, employee, receiver, liquidator, examiner or creditor of any company in relation to which the person who is the subject of the application—

(i) has been or is acting or is proposing to or being proposed to act as officer, auditor, receiver, liquidator or examiner, or

(ii) has been or is concerned or taking part, or is proposing to be concerned or take part, in the promotion, formation or management of any company,

and where the application is made by a member, contributory, employee or creditor of the company, the court may require security for all or some of the costs of the application.

(5) An application under paragraph (e) of subsection (2) may be made by the Director of Public Prosecutions.

(6) An application under paragraph (f) of subsection (2) may be made by—

(a) the Director of Public Prosecutions; or

(b) the registrar of companies.

(7) Where it is intended to make an application under subsection (2) in respect of any person, the applicant shall give not less than ten days' notice of his intention to that person.

(8) Any person who is subject or deemed subject to a disqualification order by virtue of this Part may apply to the court for relief, either in whole or in part, from that disqualification and the court may, if it deems it just and equitable to do so, grant such relief on whatever terms and conditions it sees fit.

(9) A disqualification order may be made on grounds which are or include matters other than criminal convictions notwithstanding that the person in respect of whom the order is to be made may be criminally liable in respect of those matters.

(10) A reference in any other enactment to section 184 of the Principal Act shall be construed as including a reference to this section.

CHAPTER 3

Enforcement

COMPANIES ACT 1990 - SECT 161

Penalty for acting contrary to the provisions of Chapter 1 or 2.

161.—(1) Any person who, in relation to any company, acts in a manner or capacity which, by virtue of being a person to whom section 150 applies or being subject or deemed to be subject to a disqualification order, he is prohibited from doing shall be guilty of an offence.

(2) Where a person is convicted of an offence under subsection (1) he shall be deemed to be subject to a disqualification order from the date of such conviction if he was not, or was not deemed to be, subject to such an order on that date.

(3) Where a person convicted of an offence under subsection (1) was subject, or deemed to be subject, to a disqualification order immediately prior to the date of such conviction, the period for which he was disqualified shall be extended for a further period of ten years from such date, or such other further period as the court, on the application of the prosecutor and having regard to all the circumstances of the case, may order.

(4) Section 160 (8) shall not apply to a person convicted of an offence under subsection (1) of this section.

(5) Where—

(a) a person who is a person to whom section 150 applies is or becomes a director of a company which commences to be wound up within the period of 5 years after the date of commencement of the winding-up of the company whose insolvency caused that section to apply to him; and

(b) it appears to the liquidator of the first-mentioned company that that company is, at the date of commencement of its winding-up or at any time during the course of its winding up, unable to pay its debts;

the liquidator shall report those matters to the court and the court, on receiving the report and if it considers it proper to do so, may make a disqualification order against that person for such period as it thinks fit.

(6) If the liquidator fails to comply with subsection (5) he shall be liable to a fine not exceeding £1,000.

COMPANIES ACT 1990 - SECT 162

Period of disqualification order to which person is deemed to be subjected.

162.—Where a person is, as a consequence of his conviction of an offence under this Chapter, deemed to be subject to a disqualification order, he shall be deemed to be so subject for a period of five years from the date of such conviction or such other period as the court, on the application of the prosecutor and having regard to all the circumstances of the case, may order.

COMPANIES ACT 1990 - SECT 163

Civil consequences of acting contrary to the provisions of Chapter 1 or 2.

163.—(1) Subsections (2) and (3) apply to any person who acts, in relation to a company, in a manner or capacity which, by virtue of being a person to whom section 150 applies or being subject or deemed to be subject to a disqualification order, he is prohibited from doing.

(2) Where any consideration is given by or on behalf of a company for an act done or service performed by a person referred to in subsection (1) while he was acting in a manner or capacity described in that subsection, the company shall be entitled to recover from him, as a simple contract debt in any court of competent jurisdiction, the consideration or an amount representing its value.

(3) Where—

(a) a person referred to in subsection (1) acts, in relation to a company, in a manner or capacity described in that subsection, and

(b) the company concerned commences to be wound up—

(i) while he is acting in such a manner or capacity, or

(ii) within 12 months of his so acting, and

(c) the company is unable to pay its debts, within the meaning of section 214 of the Principal Act,

the court may, on the application of the liquidator or any creditor of the company, declare that such person shall be personally liable, without any limitation of liability, for all or any part of the debts or other liabilities of the company incurred in the period during which he was acting in such a manner or capacity.

(4) Where a company which has received a notification under section 155 (5) and which carries on business following such notification without the requirements of section 150 (3) being fulfilled within a reasonable period—

(a) is subsequently wound up, and

(b) is at the time of the commencement of the winding-up unable to pay its debts (taking into account the contingent and prospective liabilities),

the court may, on the application of the liquidator or any creditor or contributory of the company, declare that any person who was an officer of the company while the company so carried on business and who knew or ought to have known that the company had been so notified shall be personally responsible, without any limitation of liability, for all or any part of the debts or other liabilities of the company as the court may direct.

(5) In any proceedings brought against a person by virtue of this section the court may if, having regard to the circumstances of the case, it considers it just and equitable to do so, grant relief in whole or in part from the liability to which he would otherwise be subject thereunder and the court may attach to its order such conditions as it sees fit.

COMPANIES ACT 1990 - SECT 164

Penalties for acting under directions of disqualified person.

164.—(1) If any person while a director or other officer or a member of a committee of management or trustee of any company acts in accordance with the directions or instructions of another person knowing that such other person is disqualified or that, in giving the directions or instructions, he is acting in contravention of any provision of this Part he shall be guilty of an offence.

(2) Where a person is convicted of an offence under subsection (1) he shall be deemed to be subject to a disqualification order from the date of such conviction if he was not, or was not deemed to be, subject to such an order on that date.

COMPANIES ACT 1990 - SECT 165

Civil consequences of acting under directions of disqualified person.

165.-(1) A person who is convicted of an offence under section 164 for acting in accordance with the directions or instructions of a disqualified person shall, subject to subsection (2), be personally liable for the debts of the company concerned incurred in the period during which he was so acting.

(2) In any proceedings brought against a person for the recovery of any such debt the court may if, having regard to the circumstances of the case, it considers it just and equitable to do so, grant relief in whole or in part from the liability to which he would otherwise be subject under subsection (1) and the court may attach to its order such conditions as it sees fit.

COMPANIES ACT 1990 - SECT 166
Information to be given by directions to the court.

166.-(1) Where—

(a) a director of a company is charged with an offence or civil proceedings are instituted against such a director, and

(b) the charge or proceedings relate to the company or involve alleged fraud or dishonesty,

the director shall, by notice in writing to the court lodged before the hearing of the case—

(i) give the names of all companies of which he is a director at the date of the notice,

(ii) give the names of all companies of which he was a director within a period commencing not earlier than 12 months prior to the commencement of proceedings and ending at the date of the notice,

(iii) state whether he is at the date of the notice or ever was subject or deemed to be subject to a disqualification order, and

(iv) give the dates and duration of each period in respect of which he is or was disqualified.

(2) This section applies to shadow directors as it applies to directors.

(3) Any person who contravenes subsection (1) shall be guilty of an offence.

COMPANIES ACT 1990 - SECT 167
Information to be supplied to registrar of companies.

167.—Where a court—

(a) makes a disqualification order;

(b) grants or varies relief under section 160 (8); or

(c) convicts a person of an offence

(i) which has the effect of his being deemed to be subject to a disqualification order, or

(ii) under section 161 (1) or 164,

a prescribed officer of the court shall cause the registrar of companies to be furnished with prescribed particulars of the order, relief or conviction at such time and in such form and manner as may be prescribed.

COMPANIES ACT 1990 - SECT 168

Registrar of persons subject to disqualification orders.

168.—(1) The registrar shall, subject to the provisions of this section, keep a register of the particulars which have been notified to him under section 167, and the following provisions of this section orders shall apply to the keeping of such a register.

(2) Where the particulars referred to in section 167 (b) comprise the grant of full relief under section 160 (8), the registrar shall not enter such particulars on the register referred to in subsection (1), but shall, as soon as may be, remove any existing particulars in respect of the person concerned from the register.

(3) The registrar shall also remove from the register any particulars in relation to a person on the expiry of five years from the date of the original notification under section 167, or such other period in respect of which the person concerned is deemed to be subject to a disqualification order, unless the registrar has received a further notification in respect of that person under this section.

(4) Nothing in this section shall prevent the registrar from keeping the register required by this section as part of any other system of classification, whether pursuant to section 247 or otherwise.

COMPANIES ACT 1990 - SECT 169

Prohibition of undischarged bankrupts acting as directors or other officers of companies.

169.—The Principal Act is hereby amended by the substitution for section 183 of the following section—

"183. (1) Subject to subsection (2), if any person being an undischarged bankrupt acts as officer, auditor, liquidator or examiner of, or directly or indirectly takes part or is concerned in the promotion, formation or management of, any company except with the leave of the court, he shall be guilty of an offence.

(2) Where a person is convicted of an offence under subsection (1) he shall be deemed to be subject to a disqualification order from the date of such conviction if he was not, or was not deemed to be, subject to such an order on that date.

(3) In this section 'company' includes a company incorporated outside the State which has an established place of business within the

State.".

COMPANIES ACT 1990 - PART VIII
- RECEIVERS

COMPANIES ACT 1990 - SECT 170
Disqualification for appointment as receiver.

170.—The Principal Act is hereby amended by the substitution for section 315 of the following section—

"315.—(1) None of the following persons shall be qualified for appointment as receiver of the property of a company—

(a) an undischarged bankrupt;

(b) a person who is, or who has within 12 months of the commencement of the receivership been, an officer or servant of the company;

(c) a parent, spouse, brother, sister or child of an officer of the company;

(d) a person who is a partner of or in the employment of an officer or servant of the company;

(e) a person who is not qualified by virtue of this subsection for appointment as receiver of the property of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

References in this subsection to an officer or servant of the company include references to an auditor.

(2) If a receiver of the property of a company becomes disqualified by virtue of this section, he shall thereupon vacate his office and give notice in writing within 14 days to—

(a) the company;

(b) the registrar of companies;

(c) (i) the debenture-holder, if the receiver was appointed by a debenture-holder, or

(ii) the court, if the receiver was appointed by the court, that he has vacated it by reason of such disqualification.

(3) Subsection (2) is without prejudice to sections 107, 319 (2) and 321.

(4) Nothing in this section shall require a receiver appointed before the commencement of section 170 of the Companies Act, 1990, to vacate the office to which he was so appointed.

(5) Any person who acts as a receiver when disqualified by this

section from so doing or who fails to comply with subsection (2), if that subsection applies to him, shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding £1,000 and, for continued contravention, to a daily default fine not exceeding £50;

(b) on conviction on indictment, to a fine not exceeding £5,000 and, for continued contravention, to a daily default fine not exceeding £250."

COMPANIES ACT 1990 - SECT 171

Amendment of section 316 of the Principle Act.

171.—Section 316 of the Principal Act is hereby amended by the substitution for subsection (1) of the following subsections—

"(1) Where a receiver of the property of a company is appointed under the powers contained in any instrument, any of the following persons may apply to the court for directions in relation to any matter in connection with the performance or otherwise by the receiver of his functions, that is to say—

(a) (i) the receiver;

(ii) an officer of the company;

(iii) a member of the company;

(iv) employees of the company comprising at least half in number of the persons employed in a full-time capacity by the company;

(v) a creditor of the company; and

(b) (i) a liquidator;

(ii) a contributory;

and on any such application, the court may give such directions, or make such order declaring the rights of persons before the court or otherwise, as the court thinks just.

(1A) An application to the court under subsection (1), except an application under paragraph (a)(i) of that subsection, shall be supported by such evidence that the applicant is being unfairly prejudiced by any actual or proposed action or omission of the receiver as the court may require.

(1B) For the purposes of subsection (1), 'creditor' means one or more creditors to whom the company is indebted by more, in aggregate, than £10,000."

COMPANIES ACT 1990 - SECT 172

Duty of receiver selling property to get best price reasonably obtainable.

172.—The Principal Act is hereby amended by the insertion after section 316 of the following section—

"316A.— (1) A receiver, in selling property of a company, shall exercise all reasonable care to obtain the best price reasonably obtainable for the property as at the time of sale.

(2) Notwithstanding the provisions of any instrument—

(a) it shall not be a defence to any action or proceeding brought against a receiver in respect of a breach of his duty under subsection (1) that the receiver was acting as the agent of the company or under a power of attorney given by the company; and

(b) notwithstanding anything in section 316 (2), a receiver shall not be entitled to be compensated or indemnified by the company for any liability he may incur as a result of a breach of his duty under this section.

(3) (a) A receiver shall not sell by private contract a non-cash asset of the requisite value to a person who is, or who, within three years prior to the date of appointment of the receiver, has been, an officer of the company unless he has given at least 14 days' notice of his intention to do so to all creditors of the company who are known to him or who have been intimated to him.

(b) In this subsection—

(i) 'non-cash asset' and 'requisite value' have the meanings assigned to them by section 29 of the Companies Act, 1990, and

(ii) 'officer' includes a person connected, within the meaning of section 26 of the Companies Act, 1990, with a director, and a shadow director.".

COMPANIES ACT 1990 - SECT 173

Amendment of section 320 of the Principal Act.

173.—Section 320 of the Principal Act is hereby amended by the substitution for subsection (5) of the following subsection—

"(5) If any person to whom subsection (2) applies makes default in complying with the requirements of this section, he shall, unless he can prove to the satisfaction of the court that it was not possible for him to comply with the requirements of the section, be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding £1,000 or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding three years or to a fine not exceeding £5,000 or to both.".

COMPANIES ACT 1990 - SECT 174

Consequences of contravention of section 319 or 320 of the Principal Act.

174.—The Principal Act is hereby amended by the insertion after of section 320 the following section—

"320A. Where, in contravention of section 319 (1) (b) and section 320, a statement of affairs is not submitted to the receiver as required by those provisions, the court may, on the application of the receiver or any creditor of the company, and notwithstanding the provisions of section 320 (5) (inserted by section 173 of the Companies Act, 1990), make whatever order it thinks fit, including an order compelling compliance with section 319 and section 320."

COMPANIES ACT 1990 - SECT 175
Removal of receiver.

175.—The Principal Act is hereby amended by the insertion after section 322 of the following section—

"322A.—(1) The court may, on cause shown, remove a receiver and appoint another receiver.

(2) Notice of such proceedings shall be served on the receiver and on the person who appointed him not less than 7 days before the hearing of such proceedings and, in any such proceedings, the receiver and the person who appointed him may appear and be heard."

COMPANIES ACT 1990 - SECT 176
Court may determine or limit receivership on application of liquidator.

176.—The Principal Act is hereby amended by the insertion after section 322 of the following section—

"322B.—(1) On the application of the liquidator of a company liquidator. that is being wound up (other than by means of a members' voluntary winding up) and in respect of which a receiver has been appointed (whether before or after the commencement of the winding up), the court may—

(a) order that the receiver shall cease to act as such from a date specified by the court, and prohibit the appointment of any other receiver; or

(b) order that the receiver shall, from a date specified by the court, act as such only in respect of certain assets specified by the court.

An order under this subsection may be made on such terms and conditions as the court thinks fit.

(2) The court may from time to time, on an application made either by the liquidator or by the receiver, rescind or amend an order made under subsection (1).

(3) A copy of an application made under this-section shall be served on the receiver and on the person who appointed him not less than 7 days before the hearing of the application, and the receiver and any such party may appear before and be heard by the court in respect of the application.

(4) Except as provided in subsection (1), no order made under this section shall affect any security or charge over the under taking or property of the company."

COMPANIES ACT 1990 - SECT 177
Resignation of receiver.

177.-The Principal Act is hereby amended by the insertion after section 322 of the following section-

"322C.-(1) A receiver of the property of a company appointed under the powers contained in any instrument may resign, provided he has given one month's notice thereof to-

(a) the holders of floating charges over all or any part of the property of the company;

(b) the company or its liquidator; and

(c) the holders of any fixed charge over all or any part of the property of the company.

(2) A receiver appointed by the court may resign only with the authority of the court and on such terms and conditions, if any, as may be laid down by the court.

(3) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding £1,000."

COMPANIES ACT 1990 - SECT 178
Application of section 139 to receivers.

178.-The provisions of section 139 shall, with the necessary modifications, apply to a company in receivership as if the references therein to the liquidator and to winding up were construed as references to the receiver and to receivership.

COMPANIES ACT 1990 - SECT 179
Application of section 299 (2), (4) and (5) of the Principle Act to receivers.

179.-Section 299 (2), (4) and (5) of The Principal Act shall apply, with the necessary modifications, to receivers as it applies to liquidators.

COMPANIES ACT 1990 - PART IX
- COMPANIES UNDER COURT PROTECTION

COMPANIES ACT 1990 - SECT 180

Amendments to the Companies (Amendment) Act, 1990.

180.-(1) The Companies (Amendment) Act, 1990, is hereby companies amended as follows:

(a) by the substitution in section 3 (6) for "14 days" of "3 days",

(b) by the insertion after section 5 (2) (f) of the following paragraph:

"(g) no order for relief shall be made under section 205 of the Principal Act against the company in respect of complaints as to the conduct of the affairs of the company or the exercise of the powers of the directors prior to the presentation of the petition.",

(c) by the deletion in section 8 (3), of the or past director,",

(d) by the insertion in section 8 (3), after "Act", where it secondly occurs, of "and 'director' includes any present or past director or any person connected, within the meaning of section 26 of the Companies Act, 1990, with such director, and any present or past shadow director",

(e) by the insertion in section 8 of the following subsections:

"(5A) Without prejudice to its power under subsection (5), the court may, after a hearing under that subsection, make any order or direction it thinks fit, including a direction to the person concerned to attend or re-attend before the examiner or produce particular books or documents or answer particular questions put to him by the examiner, or a direction that the person concerned need not produce a particular book or document or answer a particular question put to him by the examiner.

(5B) Section 23 (1) of the Companies Act, 1990 shall apply for the purposes of this section.",

(f) by the substitution in section 10 (1) of "Any" for "Where an order is made under this Act for the winding-up of the company or a receiver is appointed, any",

(g) by the substitution, for section 16 (i), of the following:

"(i) his opinion as to whether the facts disclosed would warrant further inquiries with a view to proceedings under section 297 or 297A of The Principal Act (inserted by the Companies Act, 1990), or both,",

(h) by the insertion in section 23 (5) (b), after "Government" of", a local authority",

(i) by the insertion in section 24 of the following subsection:

"(12) Notwithstanding subsection (4), or any other provision of this Act, where the examiner forms the opinion that the company will be able to survive as a going concern, nothing in this Act shall prevent the examiner from including, in a report under section 15 or 18, proposals which will not involve the impairment of the interests of members or creditors of the company, nor the court from confirming any such proposals."

(2) section 244A of the Principal Act (inserted by section 125 of the Companies Act, 1990) and section 139 of the Companies Act, 1990, shall apply to a company under the protection of the court as they apply to a company being wound up, and any references in those sections to a liquidator or provisional liquidator shall be construed for the purposes of this subsection as a reference to an examiner.

(3) Sections 32 of the Companies (Amendment) Act, 1990, are hereby repealed.

COMPANIES ACT 1990 - SECT 181

Further amendments to the Companies (Amendment) Act, 1990.

181.—(1) The Companies (Amendment) Act, 1990, is hereby further amended as follows:

(a) by the substitution for section 2 (1) (b) of the following.

"(b) no resolution subsists for the winding up of the company, and",

(b) by the substitution in section 4 (5) (f), for "company", of "body corporate",

(c) by the insertion after section 5 (2) (f) of the following paragraph:

"(h) no set-off between separate bank accounts of the company shall be effected, except with the consent of the examiner, and in this paragraph 'bank account' includes an account with any person exempt by virtue of section 7 (4) of the Central Bank Act, 1971, from the requirement of holding a licence under section 9 of that Act,",

(d) by the insertion in section 11 (5), after "towards" of "discharging", and

(e) by the insertion of the following section after section 36:

"Proceedings by registrar.

36A.—Proceedings in relation to an offence under section 11 (6), 12 or 30 may be brought and prosecuted by the registrar of companies."

(2) Section 30 (3) of the Companies (Amendment) Act, 1990, is hereby repealed.

COMPANIES ACT 1990 - PART X
- ACCOUNTS AND AUDIT

COMPANIES ACT 1990 - SECT 182
Interpretation of Part X.

182.-In this Part-

"the Council Directive" means Council Directive No. 84/253/EEC of 10 April, 1984*OJ No. L126, 12.5.1984, p.20.* on the approval of persons responsible for carrying out the statutory audits of accounting documents;

"friendly society" means a society registered under the Friendly Societies Acts, 1896 to 1977;

"practising certificate" means a certificate awarded to a person by a body of accountants entitling that person to practise as auditor of a company or as a public auditor;

"public auditor" means a public auditor for the purposes of the Industrial and Provident Societies Acts, 1893 to 1978, and the Friendly Societies Acts, 1896 to 1977.

COMPANIES ACT 1990 - SECT 183
Appointment and removal of auditors.

183.-section 160 of the Principal Act is hereby amended-

(a) by the substitution of the following subsections for subsection (5)

"(5) Without prejudice to any rights of the auditor in relation to his removal under this subsection, a company may, by ordinary resolution at a general meeting, remove an auditor other than an auditor who is the first auditor or one of the first auditors of the company and appoint in his place any other person who has been nominated for appointment by any member of the company, who is qualified under the Companies Acts to be an auditor of a company and of whose nomination notice has been given to its members.

(5A) (a) A company shall-

(i) within one week of the Minister's power under subsection (4) becoming exercisable, give the Minister notice of that fact, and

(ii) where a resolution removing an auditor is passed, give notice of that fact in the prescribed form to the registrar of companies within 14 days of the meeting at which the resolution removing the auditor was passed.

(b) If a company fails to give notice as required by paragraph (a) of this subsection, the company and every officer of the company who is in default shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £1,000."

and

(b) by the substitution of the following subsection for subsection (7)–

"(7) The directors of a company or the company in general meeting may fill any casual vacancy in the office of auditor, but while any such vacancy continues, the surviving or continuing auditor or auditors, if any, may act.

COMPANIES ACT 1990 - SECT 184

Resolutions relating to appointment and removal of auditors and rights of auditors who have been removed.

184.–(1) section 161 of the Principal Act is hereby amended by the substitution of the following subsections for subsections (1) and (2)–

"(1) Extended notice within the meaning of section 142 shall be removed. be required for

(a) a resolution at an annual general meeting of a company appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be re-appointed,

(b) a resolution at a general meeting of a company removing an auditor before the expiration of his term of office, and

(c) a resolution at a general meeting of a company filling a casual vacancy in the office of auditor.

(2) On receipt of notice of such an intended resolution as is mentioned in subsection (1), the company shall forthwith

(a) if the resolution is a resolution mentioned in paragraph (a)of the said subsection (1), send a copy thereof to the retiring auditor (if any),

(b) if the resolution is a resolution mentioned in paragraph (b) of the said subsection (1), send a copy thereof to the auditor proposed to be removed, and

(c) if the resolution is a resolution mentioned in paragraph (c)of the said subsection (1), send a copy thereof to the person (if any) whose ceasing to hold the office of auditor of the company occasioned the casual vacancy.

(2A) An auditor of a company who has been removed shall be entitled to attend–

(a) the annual general meeting of the company at which, but for his removal, his term of office as auditor of the company would have expired, and

(b) the general meeting of the company at which it is proposed to fill the vacancy occasioned by his removal, and

to receive all notices of, and other communications relating to, any such meeting which a member of the company is entitled to receive and to be heard at any general meeting that such a member attends on any part of the business of the meeting which concerns him as former auditor of the company.".

(2) The reference in subsection (5) of the said section 161 to a resolution to remove the first auditors by virtue of subsection (6) of section 160 of the Principal Act shall be construed as including a reference to a resolution to remove an auditor other than the first auditors before the expiration of his term of office.

COMPANIES ACT 1990 - SECT 185
Registration of auditors.

185.—(1) An auditor of a company may, by a notice in writing that complies with subsection (2) served on the company and stating his intention to do so, resign from the office of auditor to the company; and the resignation shall take effect on the date on which the notice is so served or on such later date as may be specified in the notice.

(2) A notice under subsection (1) shall contain either—

(a) a statement to the effect that there are no circumstances connected with the resignation to which it relates that the auditor concerned considers should be brought to the notice of the members or creditors of the company, or

(b) a statement of any such circumstances as aforesaid.

(3) Where a notice under subsection (1) is served on a company—

(a) the auditor concerned shall, within 14 days after the date of such service, send a copy of the notice to the registrar of companies, and

(b) subject to subsection (4), the company shall, if the notice contains a statement referred to in subsection (2) (b), not later than 14 days after the date of such service send a copy of the notice to every person who is entitled under section 159 (1) of the Principal Act to be sent copies of the documents referred to in the said section 159 (1).

(4) Copies of a notice served on a company under subsection (1) need not be sent to the persons specified in subsection (3) (b) if, on the application of the company concerned or any other person who claims to be aggrieved, the court is satisfied that the notice contains material which has been included to secure needless publicity for defamatory matter and the court may order the company's costs on an application under this section to be paid in whole or in part by the auditor concerned notwithstanding that he is not a party to the application.

(5) This section shall also apply to a notice given by an auditor under section 160 (2) (c) of The Principal Act, indicating his

unwillingness to be re-appointed.

(6) A person who fails to comply with subsection (2) or (3) (a) shall be guilty of an offence.

(7) If default is made in complying with subsection (3) (b), the company concerned, and every officer of such company who is in default, shall be guilty of an offence.

COMPANIES ACT 1990 - SECT 186

Requisitioning of general meeting of company by resigning auditors.

186.—(1) A notice served on a company under section 185 which contains a statement in accordance with subsection (2) (b) of that section may also requisition the convening by the directors of the company of a general meeting of the company for the purpose of receiving and considering such account and explanation of the circumstances connected with his resignation from the office of auditor to the company as he may wish to give to the meeting.

(2) Where an auditor makes a requisition under subsection (1), the directors of the company shall, within 14 days of the service on the company of the said notice, proceed duly to convene a general meeting of the company for a day not more than 28 days after such service.

(3) Subject to subsection (4), where—

(a) a notice served on a company under section 185 contains a statement in accordance with subsection (2) (b) of that section, and

(b) the auditor concerned requests the company to circulate to its members—

(i) before the general meeting at which, apart from the notice, his term of office would expire, or

(ii) before any general meeting at which it is proposed to fill the vacancy caused by his resignation or convened pursuant to a requisition under subsection (1),

a further statement in writing prepared by the auditor of circumstances connected with the resignation that the auditor considers should be brought to the notice of the members,

the company shall—

(I) in any notice of the meeting given to members of the company state the fact of the statement having been made, and

(II) send a copy of the statement to the registrar of companies and to every person who is entitled under section 159 (1) of the Principal Act to be sent copies of the documents referred to in the said section 159 (1).

(4) Subsection (3) need not be complied with by the company concerned if, on the application either of the company or any other

person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the court may order the company's costs on an application under this section to be paid in whole or in part by the auditor concerned notwithstanding that he is not a party to the application.

(5) An auditor of a company who has resigned from the office of auditor shall be permitted by the company to attend—

(a) the annual general meeting at which, but for his resignation, his term of office would have expired, and

(b) any general meeting at which it is proposed to fill the vacancy caused by his resignation or convened pursuant to a requisition of his under subsection (1),

and the company shall send him all notices of, and other communications relating to, any such meeting that a member of the company is entitled to receive and the company shall permit him to be heard at any such meeting which he attends on any part of the business of the meeting which concerns him as a former auditor of the company.

(6) If default is made in complying with subsection (2), (3) or (5), the company concerned, and every officer of the company who is in default, shall be guilty of an offence.

COMPANIES ACT 1990 - SECT 187

Qualification for appointment as auditor.

187.—(1) Subject to section 190, a person shall not be qualified for appointment either as auditor of a company or as a public auditor unless—

(a) (i) he is a member of a body of accountants for the time being recognised by the Minister for the purposes of this section and holds a valid practising certificate from such a body, or

(ii) he holds an accountancy qualification that is, in the opinion of the Minister, of a standard which is not less than that required for such membership as aforesaid and which would entitle him to be granted a practising certificate by that body if he were a member of it, and is for the time being authorised by the Minister to be so appointed, or

(iii) he was, on the 31st day of December, 1990, a member of a body of accountants for the time being recognised under section 162 (1) (a) of The Principal Act, or

(iv) he was authorised by the Minister before the 3rd day of February, 1983, and is for the time being authorised by the Minister to be so appointed, or

(v) he is a person to whom section 188 applies, or

(vi) he is a person to whom section 189 applies, and is for the

time being authorised by the Minister to be so appointed, and

(b) the particulars required by sections 199 and 200 in respect of such a person have been forwarded to the registrar of companies.

(2) None of the following persons shall be qualified for appointment as auditor of a company—

(a) an officer or servant of the company,

(b) a person who has been an officer or servant of the company within a period in respect of which accounts would fall to be audited by him if he were appointed auditor of the company.

(c) a parent, spouse, brother, sister or child of an officer of the company,

(d) a person who is a partner of or in the employment of an officer of the company, .

(e) a person who is disqualified under this subsection for appointment as auditor of any other body corporate that is a subsidiary or holding company of the company or a subsidiary of the company's holding company, or would be so disqualified if the body corporate were a company,

(f) a person who is disqualified under subsection (3) for appointment as a public auditor of a society that is a subsidiary or holding company of the company or a subsidiary of the company's holding company,

(g) a body corporate.

(3) None of the following persons shall be qualified for appointment as a public auditor of a society—

(a) an officer or servant of the society,

(b) a person who has been an officer or servant of the society within a period in respect of which accounts would fall to be audited by him if he were appointed auditor of the society,

(c) a parent, spouse, brother, sister or child of an officer of the society,

(d) a person who is a partner of or in the employment of an officer of the society,

(e) a person who is disqualified under this subsection for appointment as a public auditor of any other society that is a subsidiary or holding company of the society or a subsidiary of the society's holding company, .

(f) a person who is disqualified under subsection (2) for appointment as auditor of a company that is a subsidiary or holding company of the society,

(g) a body corporate.

(4) None of the following persons shall be qualified for appointment as a public auditor of a friendly society—

(a) an officer or servant of the friendly society,

(b) a person who has been an officer or servant of the friendly society within a period in respect of which accounts would fall to be audited by him if he were appointed auditor of the friendly society,

(c) a parent, spouse, brother, sister or child of an officer of the friendly society,

(d) a person who is a partner of or in the employment of an officer of the friendly society,

(e) a body corporate.

(5) A person shall not, by virtue of subsection (3) or (4), be disqualified for appointment as public auditor of a society or a friendly society at any time during the period of 2 years from the commencement of this section if on such commencement he stands duly appointed as public auditor of the society or friendly society, as the case may be.

(6) Subject to subsection (5), a person shall not act as auditor of a company or as a public auditor at a time when he is disqualified under this section for appointment to that office.

(7) If, during his term of office as auditor of a company or public auditor, a person becomes disqualified under the Companies Acts for appointment to that office, he shall thereupon vacate his office and give notice in writing to the company, society or friendly society that he has vacated his office by reason of such disqualification.

(8) This section shall not apply to the Comptroller and Auditor General.

(9) A person who contravenes subsection (6) or (7) shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding £1,000, and, for continued contravention, to a daily default fine not exceeding £50, or

(b) on conviction on indictment, to a fine not exceeding £5,000 and, for continued contravention, to a daily default fine not exceeding £100.

(10) (a) In this section "society" means a society registered under the Industrial and Provident Societies Acts, 1893 to 1978.

(b) References in this section to an officer or servant do not include references to an auditor or a public auditor.

(11) A recognition or authorisation by the Minister under section 162 of the Principal Act shall, notwithstanding the repeal of that section by this Act, continue in force as if given under this section—

(a) in the case of a recognition, until the time limit provided expires, or the Minister's decision is communicated to the body concerned, under section 191, whichever is the earlier, and

(b) in the case of an authorisation, until the time limit for the person to make the notification required by section 199 (3) expires.

COMPANIES ACT 1990 - SECT 188

Persons undergoing training on 1 January, 1990.

188.—(1) Without prejudice to section 187, a person to whom this section applies shall also be qualified for appointment as auditor of a company or a public auditor.

(2) This section applies to a person—

(a) who on the 1st day of January, 1990, was a person to whom Article 18 of the Council Directive applies, and

(b) who, following his admission, before the 1st day of January, 1996, to the membership of a body of accountants recognised under section 191, was subsequently awarded a practising certificate by that body, and

(c) in respect of whom such certificate remains valid.

COMPANIES ACT 1990 - SECT 189

Approval of qualifications obtained outside the State.

189.—(1) Without prejudice to section 187, the Minister may Approval of declare that, subject to subsection (2), persons who hold—

(a) a qualification entitling them to audit accounts under the law of a specified country outside the State, or

(b) a specified accountancy qualification recognised under the law of a country outside the State,

shall be regarded as qualified for appointment as auditor of a company or a public auditor.

(2) Before making a declaration under subsection (1), the Minister—

(a) must be satisfied that the qualification concerned is of a standard not less than is required by the Companies Acts to qualify a person for appointment as auditor of a company or a public auditor, and

(b) may direct that such a person shall not be treated as qualified for the purposes of subsection (1) unless he holds such

additional educational qualifications as the Minister may specify for the purpose of ensuring that such persons have an adequate knowledge of the law and practice in the State relevant to the audit of accounts, and

(c) may have regard to the extent to which persons qualified under the Companies Acts for appointment as auditor of a company or a public auditor are recognised by the law of the country in question as qualified to audit accounts there.

(3) Different directions may be given under subsection (2) (b) in relation to different qualifications.

(4) The Minister may, if he thinks fit, revoke or suspend for a specified period, in such manner and on such conditions as he may think appropriate, any declaration previously made under subsection (1)–

COMPANIES ACT 1990 - SECT 190

Consultation by Minister regarding standard and qualifications .

190.–(1) Before granting, renewing, withdrawing, revoking, suspending or refusing a recognition of a body of accountants under the Companies Acts, the Minister may consult with any person or body of persons as to the conditions imposed or standards required by the body of accountants concerned in connection with membership of that body or the awarding to persons of practising certificates.

(2) The Minister may also consult with any person or body of persons before forming any opinion or making any declaration in relation to the qualifications held by any person or class of persons as respects qualification for appointment as auditor of a company or a public auditor.

COMPANIES ACT 1990 - SECT 191

Recognition of bodies of accountants.

191.–(1) Where a body of accountants recognised under section 162 of the Principal Act satisfies the Minister, within three months after the commencement of this section–

(a) that the standards relating to training, qualifications and repute required by that body for the awarding to a person of a practising certificate are not less than those specified in Articles 3 to 6, 8 and 19 of the Council Directive, and

(b) as to the standards it applies to its members in the areas of ethics, codes of conduct and practice, independence, professional integrity, technical standards, disciplinary procedures,

the Minister shall renew such recognition.

(2) Where a body of accountants referred to in subsection (1) does not satisfy the Minister as to the matters specified in that paragraph, he shall withdraw the recognition of that body until he is so satisfied.

(3) Where a body of accountants which has not previously been recognised by the Minister under section 162 of the Principal Act applies for such recognition after the commencement of this section, the Minister may grant such recognition if he is satisfied as to the matters referred to in subsection (1) in relation to that body or may refuse such recognition if he is not so satisfied.

COMPANIES ACT 1990 - SECT 192

Provisions in relation to recognition and authorisation by Minister under section 187.

192.-(1) The Minister may, at the time it is granted or at any time during the currency of a recognition or authorisation under section 187 by notice in writing given to the body of accountants or individual concerned, attach to the recognition or authorisation, as the case may be, such terms and conditions as he thinks necessary or expedient and specified in the notice.

(2) The Minister may, at any time during the currency of a recognition or authorisation under section 187, by notice in writing given to the body of accountants or individual concerned, amend its terms or conditions or insert into it or delete from it other terms or conditions.

(3) The Minister may, at any time during its currency, by notice in writing given to the body of accountants or individual concerned, revoke, or suspend for a specified period, a recognition or authorisation under the said section 187.

(4) (a) The Minister may require a body of accountants recognised for the purposes of the said section 187 to prepare and, within such period as may be specified in the requirement, to submit to the Minister for his approval a code prescribing standards of professional conduct for its members and providing for sanctions for breaches of the code, and the body of accountants shall comply with the requirement.

(b) A body of accountants may, at any time, prepare and submit to the Minister a code amending or revoking a code prepared by it under this subsection.

(c) The Minister may approve of a code submitted to him under this subsection.

(d) A code approved of by the Minister under this section shall be brought into operation and enforced by the body of accountants concerned in accordance with its terms.

(e) Where the Minister approves a code under this subsection, he may direct that such provisions of the code as relate to the professional integrity of auditors shall apply, with any necessary modifications approved by the Minister, to persons individually authorised by him,

(f) The Minister may, by regulations, make provision for the function of monitoring compliance by individuals with the code in accordance with paragraph (e). Such regulations may in particular

provide for this function to be performed on behalf of the Minister by any body or person specified in the regulations. The regulations may also contain such incidental, consequential, transitional or supplementary provision as may appear to be necessary or proper to ensure compliance with the specified provisions of the code by the individuals concerned.

(g) Every regulation made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(5) References in this section to recognitions under section 187 include references to recognitions under Section 162 (inserted by the Companies (Amendment) Act, 1982) of The Principal Act and references in this section to an authorisation under section 187 include references to authorisations under the said section 162.

COMPANIES ACT 1990 - SECT 193

Auditors' report and access to books and of attendance and audiences at general meetings.

193.-(1) The auditors of a company shall make a report to the members on the accounts examined by them, and on every balance sheet and profit and loss account, and all group accounts, laid before the company in general meeting during their tenure of office.

(2) The auditors' report shall be read at the annual general meeting of the company and shall be open to inspection by any member.

(3) Every auditor of a company shall have a right of access at all reasonable times to the books, accounts and vouchers of the company and shall be entitled to require from the officers (within the meaning of section 197 (5)) of the company such information and explanations that are within their knowledge or can be procured by them as he thinks necessary for the performance of the duties of the auditors.

(4) The auditors' report shall state—

(a) whether they have obtained all the information and explanations which, to the best of their knowledge and belief, are necessary for the purposes of their audit,

(b) whether, in their opinion, proper books of account have been kept by the company,

(c) whether, in their opinion, proper returns adequate for their audit have been received from branches of the company not visited by them, .

(d) whether the company's balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account

are in agreement with the books of account and returns,

(e) except in the case of a company that has taken advantage of any of the provisions of Part III of the Sixth Schedule to The Principal Act, whether, in their opinion, the company's balance sheet and profit and loss account and (if it is a holding company submitting group accounts) the group accounts have been properly prepared in accordance with the provisions of the Companies Acts 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 (if it is not framed as a consolidated profit and loss account), of the company's profit and loss for its financial year,

(iii) in the case of group accounts submitted by a holding company, of the state of affairs and profit or loss of the company and its subsidiaries dealt with thereby, so far as concerns members of the company,

(f) in the case of a company that has taken advantage of any of the provisions of Part III of the Sixth Schedule to The Principal Act, whether, in their opinion, its balance sheet and profit and loss account and (if it is a holding company submitting group accounts) the group accounts have been properly prepared in accordance with the provisions of the Companies Acts and give a true and fair view of the matters referred to in subparagraphs (i) and (ii) and, where appropriate, subparagraph (iii) of paragraph (e) subject to the non-disclosure of any matters (to be indicated in the report) which by virtue of the said Part III are not required to be disclosed, and

(g) whether, in their opinion, there existed at the balance sheet date a financial situation which under section 40 (1) of the Companies (Amendment) Act, 1983, would require the convening of an extraordinary general meeting of the company.

(5) The auditors of a company shall be entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to, any general meeting which any member of the company is entitled to receive and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

(6) A person who is appointed as auditor of a company or as a public auditor shall be under a general duty to carry out such audit with professional integrity.

(7) Any reference in The Principal Act to section 163 of or the Seventh Schedule to that Act shall be construed as references to this section.

COMPANIES ACT 1990 - SECT 194

Duty of auditors if proper books of account not being kept.

194.-(1) If, at any time, the auditors of a company form the opinion that the company is contravening, or has contravened, section 202 by failing to cause to be kept proper books of account (within the meaning of that section) in relation to the matters specified in subsection (1) and (2) of that section, the auditors shall-

(a) serve a notice on the company as soon as may be stating their opinion, and

(b) not later than 7 days after the service of such notice on the company, notify the registrar of companies in the prescribed form of the notice.

(2) Where the auditors form the opinion that the company has contravened section 202 but that, following such contravention, the directors of the company have taken the necessary steps to ensure that proper books of account are kept as required by that section, subsection (1) (b) shall not apply.

(3) This section shall not require the auditors to make the notifications referred to in subsection (1) if they are of opinion that the contraventions concerned are minor or otherwise immaterial in nature.

(4) A person who contravenes subsection (1) shall be guilty of an offence.

COMPANIES ACT 1990 - SECT 195

Prohibition on acting in relation to adult while disqualification order in force.

195.-(1) If a person who is subject or deemed to be subject to a disqualification order-

(a) becomes, or remains after 28 days from the date of the making of the order, a partner in a firm of auditors.

(b) gives directions or instructions in relation to the conduct of any part of the audit of the accounts of a company, or

(c) works in any capacity in the conduct of an audit of the accounts of a company,

he shall be guilty of an offence.

(2) Where a person is convicted of an offence under subsection (1), the period for which he was disqualified shall be extended for a further period of ten years from such date, or such other further period as the court, on the application of the prosecutor and having regard to all the circumstances of the case, may order.

(3) In this section-

(a) "company" has meaning assigned to it by section 159, and also includes any society registered under the Industrial and Provident Societies Act, 1893 to 1978.

(b) "disqualification order" has the meaning assigned to it by section 159.

COMPANIES ACT 1990 - SECT 196

Powers of auditors in relation to subsidiaries.

196.-(1).Where a company (referred to in this section as "the holding company") has a subsidiary, then—

(a) in case the subsidiary is a body corporate incorporated in the State, it shall be the duty of the subsidiary and its auditors to give to the auditors of the holding company such information and explanations as those auditors may reasonably require for the purposes of their duties as auditors of the holding company,

(b) in any other case, it shall be the duty of the holding company, if required by its auditors to do so, to take all such steps as are reasonably open to it to obtain from the subsidiary such information and explanations as aforesaid.

(2) If a company or an auditor fails to comply with subsection (1) within five days of the making of the relevant requirement under that subsection, the company and every officer thereof who is in default, or the auditor, as the case may be, shall be guilty of an offence.

(3) In a prosecution for an offence under this section, it shall be a defence for the defendant to show that it was not reasonably possible for him to comply with the requirement under subsection (1) to which the offence relates within the time specified in subsection (2) but that he complied therewith as soon as was reasonably possible after the expiration of such time.

(4) A person guilty of an offence under this section shall be liable to a fine.

COMPANIES ACT 1990 - SECT 197

Penalty for false statement to auditors.

197.-(1) An officer of a company who knowingly or recklessly makes a statement to which this section applies that is misleading, false or deceptive in a material particular shall be guilty of an offence.

(2) This section applies to any statement made to the auditors of a company (whether orally or in writing) which conveys, or purports to convey, any information or explanation which they require under the Companies Acts, or are entitled so to require, as auditors of the company.

(3) An officer of a company who fails to provide to the auditors of the company or of the holding company of the company, within two days of the making of the relevant requirement, any information or explanations that the auditors require as auditors of the company or of the holding company of the company and that is within the knowledge of or can be procured by the officer shall be guilty of an offence.

(4) In a prosecution for an offence under this section, it shall be a defence for the defendant to show that it was not reasonably possible for him to comply with the requirement under subsection (3) to which the offence relates within the time specified in that subsection but that he complied therewith as soon as was reasonably possible after the expiration of such time.

(5) In this section "officer", in relation to a company, includes any employee of the company.

COMPANIES ACT 1990 - SECT 198
Register of auditor.

198.-(1) The registrar of companies shall maintain a register containing the names and addresses of persons who have been notified to him as qualified for appointment as auditor of a company or as a public auditor.

(2) In this section and in section 199, "address", in relation to a person, means his usual residential or business address.

COMPANIES ACT 1990 - SECT 199
Transitional provisions concerning register.

199.-(1) Subject to subsection (2), a body of accountants whose recognition has been renewed by the Minister under section 191(1) or which has been recognised under section 191 (3) shall, within one month after such renewal or recognition, deliver to the registrar of companies the name and address of each of its members who is qualified for appointment under the Companies Acts as auditor of a company or as a public auditor.

(2) Without prejudice to the generality of subsection (1), a body of accountants based outside the State, whose recognition is renewed or granted as aforesaid, shall notify details of those of its members who wish to practise in the State.

(3) Every person who, immediately before the commencement of this section, holds an authorisation from the Minister under the Companies Acts to act as auditor of a company or as a public auditor (otherwise than by virtue of membership of a recognised body of accountants) shall, within one month after such commencement, deliver his name and address to the registrar of companies.

(4) If default is made in complying with subsection (1), the body of accountants concerned shall be guilty of an offence.

COMPANIES ACT 1990 - SECT 200
Duty to keep registrar informed.

200.-(1) Subject to subsection (2), where, by virtue of his becoming a member of a body of accountants, a person (other than a person referred to in section 199 (1)) becomes qualified for appointment as auditor of a company or as a public auditor, the body concerned shall, within one month of his becoming so qualified, deliver his name and address to the registrar of

companies for inclusion in the register referred to in section 198.

(2) Without prejudice to the generality of subsection (1), a recognised body of accountants based outside the State shall notify details of those of its members who wish to practise in the State.

(3) Every person who, after the commencement of this section, is granted an authorisation by the Minister under the Companies Acts to act as auditor of a company or as a public auditor (otherwise than by virtue of membership of a recognised body of accountants) shall, within one month after such grant, deliver his name and address to the registrar of companies.

(4) If default is made in complying with subsection (1), the body of accountants concerned shall be guilty of an offence.

COMPANIES ACT 1990 - SECT 201

Power to make supplementary regulations.

201.-(1) The Minister may make such supplementary regulations as he considers necessary for the proper and effective implementation of the Council Directive.

(2) Without prejudice to the generality of subsection (1), if, in any respect, any difficulty arises in regard to the implementation of the Directive, the Minister may by regulations do anything which appears to him to be necessary or expedient for removing that difficulty, and any such regulations may modify any provision of this Part so far as may be necessary or expedient to implement the Directive but no regulations shall be made under this subsection in relation to any provision of this Part after the expiration of 3 years commencing on the day on which the relevant provision of this Part came into operation.

(3) Every regulation made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

COMPANIES ACT 1990 - SECT 202

Keeping of books of account.

202.-(1) Every company shall cause to be kept proper books of account account, whether in the form of documents or otherwise, that-

(a) correctly record and explain the transactions of the company,

(b) will at any time enable the financial position of the company to be determined with reasonable accuracy,

(c) will enable the directors to ensure that any balance sheet, profit and loss account or income and expenditure account of the company complies with the requirements of the Companies Acts, and

(d) will enable the accounts of the company to be readily and properly audited.

(2) The books of account of a company shall be kept on a continuous and consistent basis, that is to say, the entries therein shall be made in a timely manner and be consistent from one year to the next.

(3) Without prejudice to the generality of subsections (1) and (2), books of account kept pursuant to those subsections shall contain—

(a) entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place,

(b) a record of the assets and liabilities of the company,

(c) if the company's business involves dealing in goods—

(i) a record of all goods purchased, and of all goods sold (except those sold for cash by way of ordinary retail trade), showing the goods and the sellers and buyers in sufficient detail to enable the goods and the sellers and buyers to be identified and a record of all the invoices relating to such purchases and sales,

(ii) statements of stock held by the company at the end of 3 each financial year and all records of stocktakings from which any such statement of stock has been, or is to be, prepared, and

(d) if the company's business involves the provision of services, a record of the services provided and of all the invoices relating thereto.

(4) For the purposes of subsections (1), (2) and (3), proper books of account shall be deemed to be kept if they comply with those subsections and give a true and fair view of the state of affairs of the company and explain its transactions.

(5) Subject to subsection (6), the books of account shall be kept at the registered office of the company or at such other place as the directors think fit.

(6) If books of account are kept at a place outside the State, there shall be sent to and kept at a place in the State and be at all reasonable times open to inspection by the directors such accounts and returns relating to the business dealt with in the books of account so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding 6 months and will enable to be prepared in accordance with the Companies Acts the company's balance sheet, its profit and loss account or income and expenditure account and any document annexed to any of those documents giving information which is required by the said Acts and is thereby allowed to be so given.

(7) Books of account required by this section to be kept, and accounts and returns referred to in subsection (6), shall be kept

either in written form in an official language of the State or so as to enable the books of account and the accounts and returns to be readily accessible and readily convertible into written form in an official language of the State.

(8) A company shall make its books of account, and any accounts and returns referred to in subsection (6), available in written form in an official language of the State at all reasonable times for inspection without charge by the officers of the company and by other persons entitled pursuant to the Companies Acts to inspect the books of account of the company.

(9) A record, being a book of account required by this section to be kept or an account or return referred to in subsection (6), shall be preserved by the company concerned for a period of at least 6 years after the latest date to which it relates.

(10) A company that contravenes this section and a person who, being a director of a company, fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, shall be guilty of an offence:

Provided, however, that—

(a) in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by a company with the requirements of this section, it shall be a defence to prove that he had reasonable grounds for believing and did believe that a competent and reliable person was charged with the duty of ensuring that those requirements were complied with and was in a position to discharge that duty, and

(b) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court, the offence was committed wilfully.

COMPANIES ACT 1990 - SECT 203

Liability of officers of company to penalty where proper books of account not kept.

203.—(1) If—

(a) a company that is being wound up and that is unable to pay all of its debts, has contravened section 202, and

(b) the court considers that such contravention has contributed to the company's inability to pay all of its debts or has resulted in substantial uncertainty as to the assets and liabilities of the company or has substantially impeded the orderly winding up thereof,

every officer of the company who is in default shall be guilty of an offence and liable—

(i) on summary conviction, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 6 months or to both, or

(ii) on conviction on indictment, to a fine not exceeding £10,000 or to imprisonment for a term not exceeding 5 years or to both.

(2) In a prosecution for an offence under this section it shall be a defence for the person charged with the offence to show that—

(a) he took all reasonable steps to secure compliance by the company with section 202, or

(b) he had reasonable grounds for believing and did believe that a competent and reliable person, acting under the supervision or control of a director of the company who has been formally allocated such responsibility, was charged with the duty of ensuring that that section was complied with and was in a position to discharge that duty.

COMPANIES ACT 1990 - SECT 204

Personal liability of officers of company where proper books of account not kept.

204.—(1) Subject to subsection (2), if—

(a) a company that is being wound up and that is unable to pay all of its debts has contravened section 202, and

(b) the court considers that such contravention has contributed to the company's inability to pay all of its debts or has resulted in substantial uncertainty as to the assets and liabilities of the company or has substantially impeded the orderly winding up thereof,

the court, on the application of the liquidator or any creditor or contributory of the company, may, if it thinks it proper to do so, declare that any one or more of the officers and former officers of the company who is or are in default shall be personally liable, without any limitation of liability, for all, or such part as may be specified by the court, of the debts and other liabilities of the company.

(2) On the hearing of an application under this subsection, the person bringing the application may himself give evidence or call witnesses.

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

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

(4) The court shall not make a declaration under subsection (1) in respect of a person if it considers that—

(a) he took all reasonable steps to secure compliance by the company with section 202, or

(b) he had reasonable grounds for believing and did believe that a competent and reliable person, acting under the supervision or control of a director of the company who has been formally allocated such responsibility, was charged with the duty of ensuring that that section was complied with and was in a position to discharge that duty.

(5) This section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.

(6) In this section "officer", in relation to a company, includes a person who has been convicted of an offence under section 194, 197 or 242 in relation to a statement concerning the keeping of proper books of account by the company.

COMPANIES ACT 1990 - SECT 205
Commencement of Part X.

205.—Each of the following provisions, that is to say sections 202 to 204 shall apply as respects the accounts of a company for each financial year of the company beginning or ending after such date after the commencement of the provision as may be specified by the Minister by order.

COMPANIES ACT 1990 - PART XI
- ACQUISITION OF OWN SHARES AND SHARES IN HOLDING COMPANY

COMPANIES ACT 1990 - SECT 206
Interpretation.

206.—In this Part—

'the Act of 1983' means the Companies (Amendment) Act, 1983;

"company" means a company to which section 207 relates;

"distribution" has the meaning assigned to it by section 51 (2) of the Act of 1983 (as amended by section 232 (d) and (e) of this Act);

"redeemable shares" includes shares which are liable at the option of the company or the shareholder to be redeemed.

COMPANIES ACT 1990 - SECT 207

Power to issue redeemable shares.

207.—(1) Subject to the provisions of this Part, a company limited Power to issue by shares or limited by guarantee and having a share capital may, so authorised by its articles, issue redeemable shares and redeem them accordingly.

(2) The issue and redemption of shares by a company pursuant to subsection (1) shall be subject to the following conditions—

(a) No redeemable shares shall be issued or redeemed at any time when the nominal value of the issued share capital which is not redeemable is less than one tenth of the nominal value of the total issued share capital of the company.

(b) No such shares shall be redeemed unless they are fully paid.

(c) The terms of redemption must provide for payment on redemption.

(d) (i) Subject to subparagraph (ii), no such shares shall be redeemed otherwise than out of profits available for distribution.

(ii) Where the company proposes to cancel shares on redemption pursuant to section 208, such shares may also be redeemed out of the proceeds of a fresh issue of shares made for the purposes of redemption.

(e) The premium, if any, payable on redemption, must, subject to paragraph (f), have been provided for out of the said profits of the company.

(f) Where the shares were issued at a premium, any premium payable on their redemption (being a redemption to which paragraph (d) (ii) applies) may be paid out of the proceeds of a fresh issue of shares made for the purposes of the redemption, up to an amount equal to—

(i) the aggregate of the premiums received by the company on the issue of the shares redeemed, or

(ii) the current amount of the company's share premium account (including any sum transferred to that account in respect of premiums on the new shares),

whichever is the less, and in any such case the amount of the company's share premium account shall, notwithstanding anything in section 62 (1) of the Principal Act, be reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made by virtue of this paragraph out of the proceeds of the issue of the new shares.

(3) Subject to the provisions of this Part, the redemption of shares may be effected on such terms and in such manner as may be

provided by the articles of the company.

COMPANIES ACT 1990 - SECT 208
Cancellation of shares on redemption.

208.—Shares redeemed pursuant to this Part may be cancelled on shares on redemption. redemption, in which case the following provisions shall apply as respects those shares:

(a) The amount of the company's issued share capital shall be reduced by the nominal value of the shares redeemed but no such cancellation shall be taken as reducing the amount of the company's authorised share capital.

(b) Where the shares are—

(i) redeemed wholly out of the profits available for distribution, or

(ii) redeemed wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds (disregarding any part of those proceeds used to pay any premium on redemption) is less than the aggregate nominal value of the shares redeemed ("the aggregable difference"),

then a sum equal to, in the case of subparagraph (i), the nominal amount of the shares redeemed and, in the case of subparagraph (ii), the aggregable difference shall be transferred to a reserve fund ("the capital redemption reserve fund") and the provisions of The Principal Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company.

(c) Where a company—

(i) has redeemed and cancelled shares, or

(ii) is about to redeem shares and cancel them upon redemption,

it shall have the power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued and for the purposes of section 68 of the Finance Act, 1973, shares issued by a company in place of shares redeemed under this Part shall constitute a chargeable transaction if, but only if, the actual value of the shares so issued exceeds the actual value of the shares redeemed at the date of their redemption and, where the issue of shares does constitute a chargeable transaction for those purposes, the amount on which stamp duty on the relevant statement relating to that transaction is chargeable under section 69 of the Finance Act, 1973, shall be the difference between—

(I) the amount on which the duty would be so chargeable if the shares had not been issued in place of shares redeemed under this section, and

(II) the value of the shares redeemed at the date of their redemption.

(d) Where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of paragraph (c) unless the old shares are redeemed within one month after the issue of the new shares

(e) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up unissued shares of the company (other than redeemable shares) to be allotted to members of the company as fully paid bonus shares.

COMPANIES ACT 1990 - SECT 209
Treasury shares.

209.—(1) Subject to the provisions of this section, a company may instead of cancelling shares upon their redemption hold them (as "treasury shares") and shares so held may be dealt with by the company in the manner provided for in subsection (4) but not otherwise.

(2) (a) The nominal value of treasury shares held by a company may not, at any one time, exceed ten per cent of the nominal value of the issued share capital of the company.

(b) For the purposes of paragraph (a), the following shall also be deemed to be shares held by the company—

(i) shares held in the company by any subsidiary in pursuance of section 224, and

(ii) shares held in the company by any subsidiary in pursuance of section 9 of the Insurance Act, 1990, and

(iii) shares held in the company by any person acting in his own name but on the company's behalf.

(3) For so long as the company holds shares as treasury shares—

(a) the company shall not exercise any voting rights in respect of those shares and any purported exercise of those rights shall be void; and

(b) no dividend or other payment (including any payment in a winding up of the company) shall be payable to the company in respect of those shares.

(4) Treasury shares may either be—

(a) cancelled by the company in which case the provisions of section 208 shall apply as if the shares had been cancelled on redemption, or

(b) subject to subsections (5) and (6), may be re-issued as shares of any class or classes.

(5) A re-issue of shares under this section shall be deemed for all the purposes of the Companies Acts to be an issue of shares but the issued share capital of the company shall not be regarded for any purpose (including the purposes of any enactments relating to stamp duties) as having been increased by the re-issue of the shares.

(6) (a) The maximum and minimum prices at which treasury shares may be re-issued off-market ("the re-issue price range") shall be determined in advance by the company in general meeting in accordance with paragraphs (b), (c) and (d) and such determination may fix different maximum and minimum prices for different shares.

(b) Where the treasury shares to be re-issued are derived in whole or in part from shares purchased by the company in accordance with the provisions of this Part the re-issue price range of the whole or such part (as the case may be) of those shares shall be determined by special resolution of the company passed at the meeting at which the resolution authorising the said purchase has been passed and such determination shall, for the purposes of this subsection, remain effective with respect to those shares for the requisite period.

(c) Where the treasury shares to be re-issued are derived in whole or in part from shares redeemed by the company in accordance with the provisions of this Part the re-issue price range of the whole or such part (as the case may be) of those shares shall be determined by special resolution of the company passed before any contract for the re-issue of those shares is entered into and such determination shall, for the purposes of this subsection, remain effective with respect to those shares for the requisite period.

(d) The company may from time to time by special resolution vary or renew a determination of re-issue price range under paragraph (b) or (c) with respect to particular treasury shares before any contract for re-issue of those shares is entered into and any such variation or renewal shall, for the purposes of this subsection, remain effective as a determination of the re-issue price range of those shares for the requisite period.

(e) (i) For the purposes of determining in this subsection whether treasury shares are re-issued off-market, the provisions of section 212 (off-market and market purchases) shall have effect with the substitution of the words "re-issue", "off-market re-issue" and "reissued" respectively for the words "purchase", "off market purchase" and "purchased" in subsection (1) (a) of that section.

(ii) In this subsection, "the requisite period" means the period of eighteen months from the date of the passing of the resolution determining the re-issue price range or varying or renewing (as the case may be) such determination or such lesser period of time as the resolution may specify.

(7) A re-issue by a company of treasury shares in contravention of any of the provisions of subsection (6) shall be unlawful.

COMPANIES ACT 1990 - SECT 210

Power to convert shares into redeemable shares.

210.-(1) Subject to subsections (2), (3), (4) and (5) and the provisions of the Companies Acts governing the variation of rights attached to classes of shares and the alteration of a company's memorandum or articles, a company may convert any of its shares into redeemable shares.

(2) A conversion of shares under subsection (1) shall not have effect with respect to any shares, the holder of which notifies the company, before the date of conversion, of his unwillingness to have his shares converted but, subject to that and the other provisions of this section, the conversion shall have effect according to its terms.

(3) Subsection (2) shall not, where a shareholder objects to a conversion, prejudice any right he may have under the Companies Acts or otherwise to invoke the jurisdiction of the court to set aside the conversion or otherwise provide relief in respect thereof.

(4) No shares shall be converted into redeemable shares if as a result of the conversion the nominal value of the issued share capital which is not redeemable would be less than one tenth of the nominal value of the total issued share capital of the company.

(5) The provisions of sections 207, 208 and 209 shall apply to shares which have been converted into redeemable shares under this section.

COMPANIES ACT 1990 - SECT 211

Power of company to purchase own shares.

211.-(1) Subject to the following provisions of this Part, a company may, if so authorised by its articles, purchase its own shares (including any redeemable shares).

(2) Sections 207 (2), 208 and 209 shall apply in relation to the purchase by a company under this section of any of its own shares as those sections apply in relation to the redemption of shares by a company under section 207.

(3) A company shall not purchase any of its shares under this section if as a result of such purchase the nominal value of the issued share capital which is not redeemable would be less than one tenth of the nominal value of the total issued share capital of the company.

COMPANIES ACT 1990 - SECT 212

Off-market and market purchases.

212.-(1) For the purposes of sections 213 and 215, a purchase by market purchases. a company of its own shares is

(a) an "off-market purchase" if the shares are purchased either

(i) otherwise than on a recognised stock exchange, or

(ii) on a recognised stock exchange but are not subject to a marketing arrangement on that stock exchange,

(b) a "market purchase" if the shares are purchased on a recognised stock exchange and are subject to a marketing arrangement.

(2) For the purposes of subsection (1), a company's shares are subject to a marketing arrangement on a recognised stock exchange if either

(a) they are listed on that stock exchange, or

(b) the company has been afforded facilities for dealings in those shares to take place on that stock exchange without prior permission for individual transactions from the authority governing that stock exchange and without limit as to the time during which those facilities are to be available.

COMPANIES ACT 1990 - SECT 213

Authority for off-market.

213.-(1) A company shall not make an off-market purchase of its own shares otherwise than in pursuance of a contract authorised in advance in accordance with this section.

(2) The terms of the proposed contract of purchase shall be authorised by special resolution before the contract is entered into and any such authority may be varied, revoked or from time to time renewed by special resolution.

(3) A special resolution under subsection (2) shall not be effective for the purposes of this section if any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution and the resolution would not have been passed if he had not done so.

(4) Notwithstanding anything contained in section 137 of the Principal Act or in a company's articles, any member of the company may demand a poll on a special resolution under subsection (2).

(5) A special resolution under subsection (2) shall not be effective unless a copy of the proposed contract of purchase or, if the contract is not in writing, a written memorandum of its terms is available for inspection by members of the company both-

(a) at the registered office of the company for not less than the period of 21 days ending with the date of the meeting at which the resolution is passed, and

(b) at the meeting itself.

(6) Any memorandum of the terms of the contract of purchase made available for the purposes of this section must include the names of any members holding shares to which the contract relates, and any copy of the contract made available for those purposes must

have annexed to it a written memorandum specifying any such names which do not appear in the contract itself.

(7) A company may agree to a variation of an existing contract of purchase approved under this section only if the variation is authorised by special resolution of the company before it is agreed to, and subsections (2) to (5) shall apply in relation to that authority save that a copy or memorandum (as the case may require) of the existing contract must also be available for inspection in accordance with subsection (5).

COMPANIES ACT 1990 - SECT 214
Contingent purchase contract.

214.-(1) In this section "contingent purchase contract" means a contract entered into by a company and relating to any of its shares which does not amount to a contract to purchase those shares but under which the company may become entitled or obliged to purchase those shares.

(2) A company shall only make a purchase of its own shares in pursuance of a contingent purchase contract if the terms of the contract have been authorised by a special resolution of the company before the contract is entered into and subsections (2) to (7) of section 213 shall apply to such contract and resolution.

COMPANIES ACT 1990 - SECT 215
Authority for market purchase.

215.-(1) A company shall not make a market purchase of its own shares unless the purchase has first been authorised by the company in general meeting and any such authority may be varied, revoked or from time to time renewed by the company in general meeting. This subsection shall not be construed as requiring any particular contract for the market purchase of shares to be authorised by the company in general meeting and for the purposes of this Part where a market purchase of shares has been authorised in accordance with this section any contract entered into pursuant to that authority in respect of such a purchase shall be deemed also to be so authorised.

(2) section 143 of the Principal Act shall apply to a resolution under subsection (1).

(3) In the case of a public limited company, any authority granted under subsection (1) shall

(a) specify the maximum number of shares authorised to be acquired; and

(b) determine both the maximum and minimum prices which may be paid for the shares.

(4) A resolution to which subsection (3) applies may determine either or both the prices mentioned in paragraph (b) of that subsection by-

(a) specifying a particular sum; or

(b) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

COMPANIES ACT 1990 - SECT 216

Duration of authority granted by public limited companies to purchase own shares.

216.-(1) Without prejudice to the generality of sections 213, 214 and 215, in the case of a public limited company, any authority granted under those sections shall specify the date on which the authority is to expire which shall not be later than 18 months after the date on which the special resolution or ordinary resolution, as the case may be, granting the authority is passed.

(2) A public limited company may make a purchase after the expiry of any time limit imposed by virtue of subsection (1) in any case where the contract of purchase was concluded before the authority expired and the terms of the authority permit the company to make a contract of purchase which would or might be executed wholly or partly after the authority expired.

COMPANIES ACT 1990 - SECT 217

Assignment or release of company's right to purchase own shares.

217.-(1) Any purported assignment of the rights of a company under any contract authorised under section 213, 214 or 215 shall be void.

(2) Nothing in subsection (1) shall prevent a company from releasing its right under any contract authorised under section 213, 214 or 215 provided that, in the case of a contract authorised under section 213 or 214, the release has been authorised by special resolution of the company before the release is entered into, and any such purported release by a company which has not been authorised as aforesaid shall be void.

(3) Subsections (2) to (7) of section 213 shall apply to a resolution under subsection (2).

COMPANIES ACT 1990 - SECT 218

Incidental payments with respect to purchase of own shares.

218.-(1) Any payment made by a company in consideration of-

(a) acquiring any right with respect to the purchase of its own shares in pursuance of a contract authorised under section 214, or

(b) the variation of a contract authorised under section 213 or 214, or

(c) the release of any of the company's obligations with respect to the purchase of any of its own shares under a contract authorised under section 213, 214 or 215

shall be unlawful if any such payment is made otherwise than out of distributable profits of the company.

(2) If the requirements of subsection (1) are not satisfied in relation to a contract—

(a) in a case to which paragraph (a) of that subsection applies, no purchase by the company of its own shares in pursuance of that contract shall be lawful under this Part;

(b) in a case to which paragraph (b) of that subsection applies, no such purchase following the variation shall be lawful under this Part; and

(c) in a case to which paragraph (c) of that subsection applies, the purported release shall be void.

COMPANIES ACT 1990 - SECT 219
Effect of company's failure to redeem or purchase.

219.—(1) This section applies to—

(a) redeemable shares issued after the coming into operation of or purchase. this Part;

(b) shares which have been converted into redeemable shares pursuant to section 210; and

(c) shares which a company has agreed to purchase pursuant to section 213, 214 or 215.

(2) Without prejudice to any other right of the holder of any shares to which this section applies a company shall not be liable in damages in respect of any failure on its part to redeem or purchase any such shares.

(3) The court shall not grant an order for specific performance of the terms of redemption or purchase of the shares to which this section applies if the company shows that it is unable to meet the cost of redeeming or purchasing the shares out of profits available for distribution.,

(4) Where at the commencement of the winding up of a company any shares to which this section applies have not been redeemed or purchased then, subject to subsections (5), (6) and (7), the terms of redemption or purchase may be enforced against the company and the shares when so redeemed or purchased under this subsection shall be treated as cancelled.

(5) Subsection (4) shall not apply if

(a) the terms of redemption or purchase provided for the redemption or purchase to take place at a date later than that of the commencement of the winding-up, or

(b) during the period beginning with the date on which the redemption or purchase was to have taken place and ending with the

commencement of the winding-up the company could not at any time have lawfully made a distribution equal in value to the price at which the shares were to have been redeemed or purchased.

(6) There shall be paid in priority to any amount for which the company is liable by virtue of subsection (4) to pay in respect of any shares—

(a) all other debts and liabilities of the company other than any due to members in their character as such, and

(b) if other shares carry rights, whether as to capital or to income, which are preferred to the rights as to capital attaching to the first mentioned shares, any amount due in satisfaction of those preferred rights,

but subject as aforesaid, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.

(7) Where by virtue of the application by section 284 of the Principal Act of the rules of bankruptcy in the winding-up of insolvent companies a creditor of a company is entitled to payment of any interest only after payment of all other debts of the company, the company's debts and liabilities shall for the purposes of subsection (6) include the liability to pay that interest.

COMPANIES ACT 1990 - SECT 220

Redemption of existing redeemable preference shares.

220.—section 64 of the Principal Act is hereby repealed but any redeemable preference shares issued by a company limited by shares before the coming into operation of this Part which could but for the repeal of section 64 have been redeemed under that section shall be subject to redemption in accordance with the provisions of this Part save that any premium payable on redemption may, notwithstanding section 207 (2) (e) and (f), be paid out of the share premium account instead of out of profits or may be paid partly out of that account and partly out of profits available for distribution.

COMPANIES ACT 1990 - SECT 221

Construction of reference to redeemable preference shares.

221.—A references to redeemable preference shares. in—

(a) section 69 (1) (e) of, and the Second, Third, Fourth and Sixth Schedules to, The Principal Act, and

(b) section 55 (1) (h) of the Act of 1983,

shall be construed as a reference to redeemable shares.

COMPANIES ACT 1990 - SECT 222

Retention and inspection of documents.

222.—(1) Every company which enters into a contract under section.

213, 214 or 215 shall, until the expiration of ten years after the contract has been fully performed, keep at its registered office a copy of that contract or, if it is not in writing, a memorandum of its terms.

(2) Every document required to be kept under subsection (1) shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day be allowed for inspection) be open to the inspection of any member and, if the company is a public limited company, of any other person.

(3) If a company fails to comply with this section, the company and every officer of the company who is in default shall be guilty of an offence.

(4) In the case of a refusal of an inspection of a document required under subsection (2), the court may, on the application of a person who has requested an inspection and has been refused, by order require the company to allow the inspection of that document.

COMPANIES ACT 1990 - SECT 223

Application of section 108 (6) to dealings by company in its own securities.

223.—Subsection (6) of , section 108, in its application to dealings by a company in its own securities, shall not preclude a company from dealing in its own shares at any time by reason only of information in the possession of an officer of that company if—

(a) the decision to enter into the transaction was taken on its behalf by a person other than the officer, and

(b) the information was not communicated to that person and no advice relating to the transaction was given to him by a person in possession of the information.

COMPANIES ACT 1990 - SECT 224

Holding by subsidiary of shares in its holding company.

224.—(1) Notwithstanding sections 32 and 60 of the Principal Act a company may, subject to the provisions of this section, acquire, and hold shares in a company which is its holding company

(2) The acquisition and holding by a subsidiary under subsection (1) of shares in its holding company shall be subject to the following conditions:

(a) The consideration for the acquisition of such shares shall be provided for out of the profits of the subsidiary available for distribution.

(b) Upon the acquisition of such shares and for so long as the shares are held by the subsidiary—

(i) the profits of the subsidiary available for distribution shall for all purposes be restricted by a sum equal to the total cost

of the shares acquired;

(ii) the shares shall, for the purposes of the consolidated accounts prepared by the holding company in accordance with sections 150 to 152 of The Principal Act, be treated in the same manner as is required in respect of shares held as treasury shares under section 43A of the Act of 1983 (inserted by section 232 (c) of this Act); and.

(iii) the subsidiary shall not exercise any voting rights in respect of the shares and any purported exercise of those rights shall be void.

(3) A contract for the acquisition (whether by allotment or transfer) by a subsidiary of shares in its holding company shall not be entered into without being authorised in advance both by the subsidiary and its holding company and the provisions of sections 212 to 217 shall apply, with the necessary modifications, to the granting, variation, revocation and release of such authority.

(4) For the purposes of this section, a subsidiary's profits available for distribution shall not include the profits attributable to any shares in the subsidiary for the time being held by the subsidiary's holding company so far as they are profits for the period before the date on or from which the shares were acquired by the holding company.

(5) This section shall not apply to shares held by a subsidiary in its holding company in the circumstances permitted by section 32 of the Principal Act.

(6) This section, except subsection (2) (b) (iii), shall not apply to shares subscribed for, purchased or held by a subsidiary in its holding company pursuant to section 9 (1) of the Insurance Act, 1990.

COMPANIES ACT 1990 - SECT 225

Civil liability for improper purchase in holding company.

225.—(1) Where the winding-up of a company which has acquired shares in its holding company in accordance with section 224 commence within six months after such acquisition and the company is at the time of the commencement of the winding-up unable to pay its debts (taking into account the contingent and prospective liabilities), the court, on the application of a liquidator, creditor, employee or contributory of the company, may subject to subsection (2), declare that the directors of the company shall be jointly and severally liable to repay to the company the total amount paid by the company for the shares.

(2) Where it appears to the court that any person in respect of whom a declaration has been sought under subsection (1) believed on reasonable grounds that the said purchase was in the best interests of the company, the court may relieve him, either wholly or in part, from personal liability on such terms as it may think fit.

COMPANIES ACT 1990 - SECT 226

Return to be made to registrar.

226.—(1) Every company which has purchased shares pursuant to this Part shall, within 28 days after delivery to the company of those shares, deliver to the registrar for registration a return in the prescribed form stating with respect to shares of each class purchased the number and nominal value of those shares and the date on which they were delivered to the company.

(2) In the case of a public limited company, the return shall also state—

(a) the aggregate amount paid by the company for the shares, and

(b) the maximum and minimum prices paid in respect of each class purchased.

(3) Particulars of shares delivered to the company on different dates and under different contracts may be included in a single return to the registrar, and in such a case the amount required to be stated under subsection (2) (a) shall be the aggregate amount paid by the company for all the shares to which the return relates.

(4) If a company fails to comply with the requirements of this section, the company and every officer who is in default shall be guilty of an offence.

(5) Summary proceedings in relation to an offence under this section may be brought and prosecuted by the registrar of companies.

COMPANIES ACT 1990 - SECT 227
Amendment of section 89 of the Principal Act.

227.—The following section is hereby substituted for section 89 of the Principal Act:

"Validation of invalid issue, redemption or purchase of shares.

89.—(1) If a company has created or issued shares in its capital or acquired any of its shares by a redemption or purchase in purported compliance with Part XI of the Companies Act, 1990, and if there is reason to apprehend that such shares were invalidly created, issued or acquired as aforesaid, the court may, on the application of the company, any holder or former holder of such shares or any member or former member or creditor, or the liquidator, of the company, declare that such creation, issue or acquisition shall be valid for all purposes if the court is satisfied that it would be just and equitable to do so and thereupon such shares shall from the creation, issue or acquisition thereof, as the case may be, be deemed to have been validly created, issued or acquired.

(2) Where shares have been redeemed or purchased in contravention of paragraph (d), (e) or (f) of section 207 (2) or section 207 (3) of the Companies Act, 1990, then the court shall not make a

declaration under subsection (1) above in respect of those shares.

(3) The grant of relief by the court under this section shall, if the court so directs, not have the effect of relieving the company or its officers of any liability incurred under section 41 (3) of the Companies (Amendment) Act, 1983."

COMPANIES ACT 1990 - SECT 228
Regulations as to purchase of shares.

228.-(1) The Minister may make regulations governing the purchase by companies of their own shares or of shares in their holding company and the sale by companies of their own shares held as treasury shares and such regulations may relate to companies in general or to a particular category or class of company.

(2) Without prejudice to the generality of subsection (1), regulations under this section may provide for in particular-

(a) the class or description of shares which may (or may not) be purchased or sold,

(b) the price at which they may be purchased or sold,

(c) the timing of such purchases or sales,

(d) the method by which the shares may be purchased or sold, and

(e) the volume of trading in the shares which may be carried out by companies.

(3) If a company fails to comply with the provisions of regulations made under this section, the company and every officer who is in default shall be guilty of an offence.

COMPANIES ACT 1990 - SECT 229
Duty of company to notify stock exchange.

229.-(1) Whenever shares for which dealing facilities are provided on a recognised stock exchange have been purchased either by the company which issued the shares or by a company which is that company's subsidiary, the company whose shares have been purchased shall be under an obligation to notify that stock exchange of that matter; and the stock exchange may publish, in such manner as it may determine, any information received by it under this subsection.

(2) An obligation imposed by subsection (1) shall be fulfilled before the end of the day next following that on which it arises.

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

COMPANIES ACT 1990 - SECT 230
Duty of stock exchange in relation to unlawful purchases.

230.—(1) If it appears to a relevant authority of a recognised stock exchange that a company in the case of whose shares dealing facilities relation to have been provided on that stock exchange has committed an offence under section 228 or 229, such authority shall forthwith report the matter to the Director of Public Prosecutions and shall furnish to the Director of Public Prosecutions such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of such authority and relating to the matter in question, as the Director of Public Prosecutions may require.

(2) Where it appears to a member of a recognised stock exchange that any person has committed an offence under section 228 or 229, he shall report the matter forthwith to a relevant authority of the recognised stock exchange concerned, who shall thereupon come under the duty referred to in subsection (1).

(3) If it appears to a court in any proceedings that any person has committed an offence as aforesaid, and that no report relating to the matter has been made to the Director of Public Prosecutions under subsection (1), that court may, on the application of any person interested in the proceedings concerned or of its own motion, direct the relevant authority of the recognised stock exchange concerned to make such a report, and on a report being made accordingly, this section shall have effect as though the report had been made in pursuance of subsection (1).

(4) If, where any matter is reported or referred to the Director of Public Prosecutions under this section, he considers that the case is one in which a prosecution ought to be instituted and institutes proceedings accordingly, it shall be the duty of a relevant authority of the recognised stock exchange concerned, and of every officer of the company whose shares are concerned, and of any other person who appears to the Director of Public Prosecutions to have relevant information (other than any defendant in the proceedings) to give all assistance in connection with the prosecution which he or they are reasonably able to give.

(5) If it appears to the Minister, arising from a complaint to a relevant authority of a recognised stock exchange concerning an alleged offence under section 228 or 229, that there are circumstances suggesting that

(a) the relevant authority ought to use its powers under this section but has not done so, or

(b) that a report ought to be made to the Director of Public Prosecutions under subsection (1), but that the relevant authority concerned has not so reported,

he may request the relevant authority to use such powers or make such a report, and on a report being made accordingly, this section shall have effect as though the report had been made in pursuance of subsection (1).

(6) Where the Minister makes a request under subsection (5), the

relevant authority concerned shall communicate the results of its investigations, or a copy of its report under subsection (1), as the case may be, to the Minister.

(7) A relevant authority of a recognised stock exchange shall not be liable in damages in respect of anything done or omitted to be done by the authority in connection with the exercise by it of its functions under this section unless the act or omission complained of was done or omitted to be done in bad faith.

(8) For the purposes of this section each of the following shall be a "relevant authority" in relation to a recognised stock exchange—

(i) its board of directors, committee of management or other management body,

(ii) its manager, however described.

(9) A relevant authority shall have the same powers and duties for the purposes of this section as it has under sections 117 and 120.

(10) Where the Minister considers it necessary or expedient to do so for the proper and effective administration of this section, he may make such regulations as he thinks appropriate in relation to—

(a) the powers of authorised persons, or

(b) the matters in respect of which, or the persons from whom, authorised persons may require information under section 117, as applied by subsection (9).

COMPANIES ACT 1990 - SECT 231

Amendments to the Principal Act in respect of share capital.

231.—(1) The Principal Act is hereby amended—

(a) in section 62 (1) by the insertion after "except as provided in this section" of "and section 207 (2) of the Companies Act, 1990,";

(b) in section 62 (2) by the deletion of "preference" where it first appears and the insertion after "on redemption of any redeemable preference shares" of "in pursuance of section 220 of the Companies Act, 1990, "; and

(c) in section 72 (1) by the deletion of "to purchase any of its shares or".

(2) The Sixth Schedule to The Principal Act is hereby amended by the substitution of the following subparagraph for subparagraph (d) 5 of paragraph 12:

"(d) the amounts respectively provided for purchase of the company's share capital, for redemption of share capital and for redemption of loans;".

COMPANIES ACT 1990 - SECT 232
Amendments to the Act of 1983.

232.—The Act of 1983 is hereby amended—

(a) by the substitution in section 41 (4) of the following paragraph for paragraph (a):

"(a) the redemption of preference shares in pursuance of section 65 of the Principal Act or the redemption or purchase of shares in pursuance of Part XI of the Companies Act, 1990,"

(b) by the deletion of section 43 (13);

(c) by the insertion after section 43 of the following new section:

"Accounting for own shares

43A.—Where a company or a nominee of a company holds shares in the company or an interest in such shares, such shares shall not be shown in the balance sheet of the company as an asset, but—

(a) the deduction of the cost of the acquired shares from the profits available for distribution, and

(b) the nominal value of such shares,

shall be disclosed in the notes to the accounts and the profits available for distribution shall accordingly be restricted by the amount of such deduction.";

(d) by the substitution in section 51 (2) of the following paragraph for paragraph (b):

"(b) the redemption of preference shares pursuant to section 65 of the Principal Act out of the proceeds of a fresh issue of shares made for the purposes of redemption;" and

(e) by the addition of the following paragraph after the paragraph inserted by paragraph (d):

"(bb) the redemption or purchase of shares pursuant to Part XI of the Companies Act, 1990 out of the proceeds of a fresh issue of shares made for the purposes of the redemption or purchase and the payment of any premium out of the company's share premium account on a redemption pursuant to section 220 in the said Part;".

COMPANIES ACT 1990 - SECT 233
Amendments to the Companies (Amendment) Act, 1986,.

233.—(1) Section 14 of the Companies (Amendment) Act, 1986, is hereby amended—

(a) in paragraph (vi) by the substitution of "acquisition or disposal" for "disposal"; and

(b) by the insertion of the following paragraph after paragraph (vi):

"(vii) the reasons for the acquisition, lien or charge, as the case may be."

(2) Part I of the Schedule to the Companies (Amendment) Act, 1986, is hereby amended—

(a) by the deletion in Format 1 of the balance sheet formats of items A .III .7, B. III. 2 and H.I.V. 2;

(b) by the deletion in Format 2 of the balance sheet formats—

(i) under "Assets", of items A. III. 7 and B. M.2 (Assets), and.

(ii) under "Liabilities", of item A. IV. 2; and

(c) by the deletion of note (3) in the notes on the balance sheet formats following the aforesaid formats.

(3) Part IV of the Schedule to the Companies (Amendment) Act, 1986, is hereby amended—

(a) by the insertion of the following paragraph after paragraph 32:

"32A. Particulars of any restriction on profits available for distribution by virtue of section 224 (2) (b) (i) of the Companies Act, 1990, must also be stated."; and

(b) by the substitution of the following subparagraph for subparagraph (3) of paragraph 39:

"(3) The amounts respectively provided for the purchase of the company's share capital, for redemption of share capital and for redemption of loans."

COMPANIES ACT 1990 - SECT 234
Offences under this Part.

234.—(1) A company which contravenes any of the following provisions shall be guilty of an offence, namely sections 207 to 211, 218 and 222 to 224.

(2) Section 241 shall apply to an offence under this Part.

COMPANIES ACT 1990 - PART XII
- GENERAL

COMPANIES ACT 1990 - SECT 235
Amendment of section 2 of the Principal Act.

235.—(1) Unless the context otherwise requires, "the court", used in any provision of the Companies Acts in relation to a company, means

(a) the High Court, or

(b) where another court is prescribed for the purposes of that provision, that court

(2) The definition of "the court" in subsection (1) is in substitution for the definition in section 2 (1) of the Principal Act.

COMPANIES ACT 1990 - SECT 236

Qualifications of secretary of public limited company.

236.—It shall be the duty of the directors of a public limited company to take all reasonable steps to secure that the secretary (or each joint secretary) of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company and who—

(a) on the commencement of this section held the office of secretary of the company; or

(b) for at least three years of the five years immediately preceding his appointment as secretary held the office of secretary of a company; or

(c) is a member of a body for the time being recognised for the purposes of this section by the Minister; or

(d) is a person who, by virtue of his holding or having held any other position or his being a member of any other body, appears to the directors to be capable of discharging those functions.

COMPANIES ACT 1990 - SECT 237

Qualifications of liquidators and receivers.

237.—(1) The Minister may, if he considers it necessary or expedient to do so in the interests of the orderly and proper regulation of the winding-up of companies generally, by regulations add to the list of persons in section 300A of the Principal Act (inserted by section 146) who shall not be qualified for appointment as liquidator of a company.

(2) The Minister may, if he considers it necessary or expedient to do so in the interests of the orderly and proper regulation of receiverships generally, by regulations add to the list of persons in section 315 of the Principal Act (inserted by section 170) who shall not be qualified for appointment as receiver of the property of a company.

(3) Every regulation made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

COMPANIES ACT 1990 - SECT 238
Amendment of section 61 of the Principal Act.

238.—section 61 of the Principal Act is hereby amended by the insertion after subsection (2) of the following subsection:

"(3) As respects debentures which, under the terms of issue, must be repaid within five years of the date of issue, an offer for subscription or sale to a person whose ordinary business is to buy or sell shares or debentures (whether as principal or agent) shall not be deemed an offer to the public for the purposes of this Part."

COMPANIES ACT 1990 - SECT 239
Power to make regulations for transfer of securities.

239.—(1) The Minister may make provision by regulations for enabling title to securities to be evidenced and transferred without a written instrument.

(2) In this section—

(a) "securities" means shares, stock, debentures, debenture stock, loan stock, bonds, units in undertakings for collective investments in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989), and other securities of any description;

(b) references to title to securities include any legal or equitable interest in securities; and

(c) references to a transfer of title include a transfer by way of security.

(3) The regulations may make provision—

(a) for procedures for recording and transferring title to securities, and

(b) for the regulation of those procedures and the persons responsible for or involved in their operation, and

(c) for dispensing with the obligations of a company under section 86 of the Principal Act to issue certificates and providing for alternative procedures.

(4) The regulations shall contain such safeguards as appear to the Minister appropriate for the protection of investors and for ensuring that competition is not restricted, distorted or prevented.

(5) (a) The regulations may for the purpose of enabling or facilitating the operation of the new procedures make provision with respect to the rights and obligations of persons in relation to securities dealt with under the procedures.

(b) The regulations shall be framed so as to secure that the

rights and obligations in relation to securities dealt with under the new procedures correspond, so far as practicable, with those which would arise apart from any regulations under this section.

(6) (a) The regulations may include such supplementary, incidental and transitional provisions as appear to the Minister to be necessary or expedient.

(b) In particular, provision may be made for the purpose of giving effect to—

(i) the transmission of title of securities by operation of law;

(ii) any restriction on the transfer of title to securities arising by virtue of the provisions of any enactment or instrument, court order or agreement;

(iii) any power conferred by any such provision on a person to deal with securities on behalf of the person entitled.

(7) The regulations may for the purposes mentioned in this section make provision with respect to the persons who are to be responsible for the operation of the new procedures and for those purposes may empower the Minister to delegate to any person willing and able to discharge them any functions of his under the regulations.

(8) The regulations may make different provision for different cases.

(9) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

COMPANIES ACT 1990 - SECT 240
Offences.

240.—(1) A person guilty under any provision of the Companies Acts of an offence for which no punishment is specifically provided shall be liable—

(a) on summary conviction, to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment, to a fine not exceeding £10,000 or, at the discretion of the court, to imprisonment for a term not exceeding 3 years or to both.

(2) A person guilty under any provision of the Companies Acts of an offence made punishable by a fine of an unspecified amount shall be liable—

(a) on summary conviction to a fine not exceeding £1,000, or

(b) on conviction on indictment, to a fine not exceeding £10,000.

(3) Every offence under the Companies Acts made punishable by a fine not exceeding £1,000 or by imprisonment for a term not exceeding 12 months, or by both, may be prosecuted summarily.

(4) Summary proceedings in relation to an offence under the Companies Acts may be brought and prosecuted by the Director of Public Prosecutions or the Minister.

(5) Notwithstanding section 10 (4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under the Companies Acts may be instituted within 3 years from the date of the offence.

(6) Where, in relation to a contravention of any provision of the Companies Acts, it is provided that for continued contravention a person shall be liable to a daily default fine, he shall be guilty of contravening the provision on every day on which the contravention continues after conviction of the original contravention and for each such offence he shall be liable to a fine not exceeding the amount specified in the provision, instead of the penalty specified for the original contravention.

COMPANIES ACT 1990 - SECT 241
Offences by certain bodies.

241.—(1) Where an offence under section 19, 21, 79 or 242 which is committed by a body to which any such section applies is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any person being a director, manager, secretary or other officer of the body, or any person who was purporting to act in any such capacity, that person shall also be guilty of an offence under that section.

(2) Where the affairs of a body are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director or manager of the body.

COMPANIES ACT 1990 - SECT 242
Furnishing false information.

242.—(1) A person who, in purported compliance with any provision of the Companies Acts, answers a question, provides an explanation, makes a statement or produces, lodges or delivers any return, report, certificate, balance sheet or other document false in a material particular, knowing it to be false, or recklessly answers a question, provides an explanation, makes a statement or produces, lodges or delivers any such document false in a material particular shall be guilty of an offence.

(2) Where a person is guilty of an offence under subsection (1) and the court is of opinion that any act, omission or conduct which constituted that offence has—

(a) substantially contributed to a company being unable to pay its debts;

(b) prevented or seriously impeded the orderly winding-up of the company; or

(c) substantially facilitated the defrauding of the creditors of the company or creditors of any other person,

that person shall be liable on conviction on indictment to imprisonment for a term not exceeding 7 years or to a fine not exceeding £10,000 or to both.

COMPANIES ACT 1990 - SECT 243

Penalisation of destruction, mutilation or falsification of documents.

243.—(1) A person, being an officer of any such body as is mentioned in paragraphs (a) to (e) of section 19 (1) who destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of any book or document affecting or relating to the property or affairs of the body, or makes or is privy to the making of a false entry therein, shall, unless he proves that he had no intention to defeat the law, be guilty of an offence.

(2) Any such person who fraudulently either parts with, alters or makes an omission in any such book or document, or who is privy to fraudulent parting with, fraudulent altering or fraudulent making of an omission in, any such book or document, shall be guilty of an offence.

COMPANIES ACT 1990 - SECT 244

Increase of penalties.

244.—Sections 125 (2), 126 (4), 127 (2) and 128 (3) of The Principal Act shall have effect as if for the sums mentioned therein there were substituted "£1,000" in each case.

COMPANIES ACT 1990 - SECT 245

Amendment of section 12 of Companies (Amendment) Act, 1982.

245.—Section 12 (1) of the Companies (Amendment) Act 1982.(which relates to failure to make annual returns) is hereby amended by the substitution for "three consecutive years" of "two consecutive years".

COMPANIES ACT 1990 - SECT 246

Restoration to register of company struck off.

246.—The Principal Act is hereby amended by the insertion after section 311 of the following section—

"311A.—(1) Without prejudice to the provisions of section 311 (8) of this Act and section 12 (6) of the Companies (Amendment) Act, 1982, if a company feels aggrieved by having been struck off the register, the registrar of companies, on an application made in the prescribed form by the company before the expiration of twelve months after the publication in Iris Ofigi il of the notice

striking the company name from the register, and provided he has received all annual returns outstanding, if any, from the company, may restore the name of the company to the register.

(2) Upon the registration of an application under subsection (1) and on payment of such fees as may be prescribed, the company shall be deemed to have continued in existence as if its name had not been struck off.

(3) Subject to any order made by the court in the matter, the restoration of the name of a company to the register under this section shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into by, to, with or on behalf of, the company between the date of its dissolution and the date of such restoration."

COMPANIES ACT 1990 - SECT 247

System of classification of information.

247.-(1) Where, under the Companies Acts, any information relating to any person is required to be delivered to the registrar of companies and is so received by him, the registrar may apply such system of classification as he considers appropriate to such information and may assign symbols of identification to persons or classes of persons to whom any such information relates.

(2) The Minister may make regulations requiring that the symbol assigned under subsection (1) to any person or persons of any class shall be entered on all documents which, under any provision of the Companies Acts, are required to contain the name of that person.

(3) Regulations under subsection (2) may, in particular, specify particular persons whose duty it shall be to comply or ensure compliance with the regulations.

(4) A person who makes default in complying with regulations under subsection (2) shall be guilty of an offence and liable to a fine.

COMPANIES ACT 1990 - SECT 248

Delivery to the registrar of documents in legible form.

248.-(1) This section applies to the delivery to the registrar under any provision of the Companies Acts of documents in legible form.

(2) The document must—

(a) state in a prominent position the registered number of the company to which it relates,

(b) satisfy any requirements prescribed for the purposes of this section as to the form and content of the document, and

(c) conform to such requirements as may be prescribed for the purpose of enabling the registrar to copy the document.

(3) If a document is delivered to the registrar which does not comply with the requirements of this section, he may serve on the

person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.

(4) Where the registrar serves such notice, then, unless a replacement document—

(a) is delivered to him within 14 days after the service of the notice, and

(b) complies with the requirement of this section or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him.

(5) For the purposes of any provision imposing a penalty for failure to deliver a document, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after the service of the registrar's notice under subsection (3).

(6) Regulations made for the purposes of this section may make different provision as to the form and content of the document with respect to different descriptions of document.

(7) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(8) In this section, "document" includes any periodic account, abstract, statement or return required to be delivered to the registrar.

COMPANIES ACT 1990 - SECT 249

Delivery to the registrar of documents otherwise than in legible form.

249.—(1) This section applies to the delivery to the registrar under any provision of the Companies Acts of documents otherwise than in legible form (whether by electronic means or otherwise).

(2) Any requirement to deliver a document to the registrar, or to deliver a document in the prescribed form, shall be satisfied by the communication to the registrar of the requisite information in any non-legible form prescribed for the purposes of this section.

(3) Where any document is required to be signed or sealed, it shall instead be authenticated in such manner as may be prescribed for the purposes of this section.

(4) The document must—

(a) contain in a prominent position the registered number of the company to which it relates,

(b) satisfy any requirements prescribed for the purposes of this section, and

(c) be furnished in such manner and conform to such requirements as may be prescribed for the purposes of enabling the registrar to read and copy the document.

(5) If a document is delivered to the registrar which does not comply with the requirements of this section, he may serve on the person by whom the document was delivered (or if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.

(6) Where the registrar serves such notice, then, unless a replacement document—

(a) is delivered to him within 14 days after the service of the notice, and

(b) complies with the requirement of this section or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him.

(7) For the purposes of any provision imposing a penalty for failure to deliver a document, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after the service of the registrar's notice under subsection (5).

(8) The Minister may by regulations make further provision with respect to the application of this section in relation to instantaneous forms of communication.

(9) Regulations made for the purpose of this section may make different provision with respect to different descriptions of documents and different forms of communication.

(10) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(11) In this section, "document" includes any periodic account, abstract, statement or return required to be delivered to the registrar.

Amendment of section 377 of, and Ninth Schedule to, the Principal Act.

250.—(1) The Principal Act is hereby amended—

(a) by the substitution for section 377 (1) of the following subsection—

"(1) The provisions specified in the Ninth Schedule shall apply to all bodies corporate incorporated in and having a principal place of business in the State, other than those mentioned in subsection (2), as if they were companies registered under this Act and subject to such adaptations and modifications (if any) as may be prescribed.", and

(b) by the substitution for the Ninth Schedule of the provisions set out in the Schedule to this Act.

(2) The Minister may, if he considers it necessary to do so in the interests of the orderly and proper regulation of the business of unregistered companies, make regulations adding to, or subtracting from, the list of the provisions of the Companies Acts specified in the Ninth Schedule to The Principal Act.

(3) Every regulation made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

COMPANIES ACT 1990 - SECT 251

Application of certain provisions to companies not in liquidation.

251.—(1) This section applies in relation to a company that is not being wound up where—

(a) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(b) it is proved to the satisfaction of the court that the company is unable to pay its debts, taking into account the contingent and prospective liabilities of the company, and

it appears to the court that the reason or the principal reason for its not being wound up is the insufficiency of its assets.

(2) The following sections, with the necessary modifications, shall apply to a company to which this section applies, notwithstanding that it is not being wound up—

(a) sections 139, 140, 203, and 204 of this Act, and

(b) the provisions of The Principal Act mentioned in the Table to this section.

(3) References in the sections mentioned in subsection (2) to the commencement of the winding-up of a company, the appointment of a provisional liquidator or the making of a winding up order and to the "relevant date" shall, for the purposes of this section, be construed as references to the date—

(a) of the judgment, decree or order mentioned in subsection (1) (a); or

(b) on which the court determines that the company is unable to pay its debts.

(4) Where, by virtue of this section, proceedings are instituted under section 139, 140 or 204 of this Act or section 245A, 297A or 298 of The Principal Act, section 297A (7) (b) of The Principal Act shall apply in relation to any order made as a result of those proceedings.

(5) Where section 295 of the Principal Act is applied by virtue of this section, it shall apply as if the words "which is subsequently ordered to be wound up or subsequently passes a resolution for voluntary winding-up" were deleted therefrom.

TABLE

Sections of Principal Act to which this section applies

Section	Subject	Comment
243	Inspection of books by creditors and contributories	
245	Power of court to summon persons for examination	Inserted by section 126 of this Act
245A	Order for payment or delivery of property against person examined under section 245	Inserted by section 127 of this Act
247	Power to arrest absconding contributory	295
295	Frauds by officers of companies which have gone into liquidation	297
297	Criminal liability for fraudulent trading	Inserted by section 137 of this Act
297A	Civil liability for fraudulent trading	Inserted by section 138 of this Act
298	Power of court to assess damages against directors	Amended by section 142 of this Act

COMPANIES ACT 1990 - PART XIII
- INVESTMENT COMPANIES

COMPANIES ACT 1990 - SECT 252
Interpretation of his Part.

252.—(1) In this Part—

"the Bank" means the Central Bank of Ireland;

"investment company" means a company to which this Part applies and "company" shall be construed accordingly;

"property" means real or personal property of whatever kind (including securities);

"the UCITS Regulations" means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989

(S.I. No. 78 of 1989).

(2) For the purposes of the application by this Part of certain provisions of the UCITS Regulations to investment companies, the said provisions shall be construed as one with the Companies Acts.

COMPANIES ACT 1990 - SECT 253

Share capital of investment companies.

253.—(1) Notwithstanding anything in the Companies Acts, the memorandum of a company to which this Part applies may in respect of the share capital of the company state in lieu of the matters specified in paragraph (a) of section 6 (4) of the Principal Act—

(a) that the share capital of the company shall be equal to the value for the time being of the issued share capital of the company, and

(b) the division of that share capital into a specified number of shares without assigning any nominal value thereto,

and the form of memorandum set out in Table B of the First Schedule to The Principal Act or Part I of the Second Schedule to the Companies (Amendment) Act, 1983, as may be appropriate, shall have effect with respect to such company with the necessary modifications.

(2) This Part applies to a company limited by shares (not being a company to which the UCITS Regulations apply)—

(a) the sole object of which is stated in its memorandum to be the collective investment of its funds in property with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds; and

(b) the articles or memorandum of which provide—

(i) that the actual value of the paid up share capital of the company shall be at all times equal to the value of the assets of any kind of the company after the deduction of its liabilities, and

(ii) that the shares of the company shall, at the request of any of the holders thereof, be purchased by the company directly or indirectly out of the company's assets.

(3) For the purposes of subsection (2) (b) (ii), action taken by a company to ensure that the stock exchange value of its shares does not deviate from its net asset value by more than a percentage specified in its articles (which deviation shall not be so specified as greater than 5 per cent) shall be regarded as the equivalent of purchase of its shares by the company.

(4) The memorandum or articles of a company shall be regarded as providing for the matters referred to in paragraphs (a) and (b) of subsection (2) notwithstanding the inclusion in the memorandum or articles with respect thereto of incidental or supplementary provisions.

(5) In the Companies Acts—

(a) a reference to a company limited by shares shall be construed as including an investment company within the meaning of this Part and a reference to a share in, or the share capital of, a company limited by shares shall be construed accordingly, and

(b) a reference to the nominal value of an issued or allotted share in, or of the issued or allotted share capital of, a company limited by shares shall be construed, in the case of an investment company, as a reference to the value of the consideration for which the share or share capital (as the case may be) has been issued or allotted.

COMPANIES ACT 1990 - SECT 254

Power of company to purchase own shares.

254.—(1) Subject to subsection (2), the purchase by an investment company of its own shares shall be on such terms and in such manner as may be provided by its articles.

(2) An investment company shall not purchase its own shares unless they are fully paid.

(3) For the avoidance of doubt, nothing in the Companies Acts shall require an investment company to create any reserve account.

COMPANIES ACT 1990 - SECT 255

Treatment of purchased shares.

255.—(1) Shares of an investment company which have been purchased by the company shall be cancelled and the amount of the company's issued share capital shall be reduced by the amount of the consideration paid by the company for the purchase of the shares.

(2) (a) Where a company has purchased or is about to purchase any of its own shares, it shall have the power to issue an equal number of shares in place of those purchased and for the purposes of section 68 of the Finance Act, 1973, the issue of those replacement shares shall constitute a chargeable transaction if, but only if, the actual value of the shares so issued exceeds the actual value of the shares purchased at the date of their purchase and, where the issue of shares does constitute a chargeable transaction for those purposes, the amount on which stamp duty on the relevant statement relating to that transaction is chargeable under section 69 of the Finance Act, 1973, shall be the difference between—

(i) the amount on which the duty would be so chargeable if the shares had not been issued in place of shares purchased under this section, and

(ii) the value of the shares purchased at the date of their purchase.

(b) Where new shares are issued before the purchase of the old

shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of paragraph (a) unless the old shares are purchased within one month after the issue of the new shares.

COMPANIES ACT 1990 - SECT 256
Authorisation by Bank.

256.-(1) An investment company shall not carry on business in the State unless it has been authorised to do so by the Bank on the basis of criteria approved by the Minister.

(2) A person shall not carry on business on behalf of an investment company, insofar as relates to the purchase or sale of the shares of the investment company, unless the investment company has been authorised in the manner referred to in subsection (1).

(3) The Bank shall not authorise an investment company to carry on business in the State unless the company has paid up share capital which, in the opinion of the Bank, will be sufficient to enable it to conduct its business effectively and meet its liabilities.

(4) An application by an investment company for the authorisation referred to in subsection (1) shall be made in writing to the Bank and contain such information as the Bank may specify for the purpose of determining the application (including such additional information as the Bank may specify in the course of determining the application).

(5) Where the Bank proposes to grant an authorisation to an investment company under this section and the Bank is satisfied that the company will raise capital by promoting the sale of its shares to the public, the Bank shall, in granting the authorisation, designate the company as an investment company which may raise capital in that manner, and "designated company" in this section and section 257 shall be construed accordingly.

(6) In the event that a designated company does not promote the sale of its shares to the public within a period, not greater than six months, which shall be specified in the authorisation under this section, the company shall, on the expiry of the period so specified, be deemed to have ceased to be a designated company.

(7) An investment company which is not a designated company shall not raise capital by promoting the sale of its shares to the public.

(8) A company incorporated outside the State which, if it were incorporated in the State, would be a company to which this Part applies shall not advertise or market its shares in any way in the State without the approval of the Bank, which approval may be subject to such conditions as the Bank considers appropriate and prudent for the purposes of the orderly and proper regulation of so much of the business of companies of that type as is conducted in the State.

(9) This section is without prejudice to sections 6 of the

Companies (Amendment) Act, 1983.

COMPANIES ACT 1990 - SECT 257
Powers of Bank.

257.-(1) Notwithstanding any other powers which may be available to the Bank under any other enactment, order or regulation, the Bank may impose such conditions for the granting of an authorisation to a company under section 256 as it considers appropriate and prudent for the purposes of the orderly and proper regulation of the business of investment companies.

(2) Conditions imposed under subsection (1) may be imposed generally, or by reference to particular classes of company or business (including, but not limited to, whether or not an investment company is a designated company), or by reference to any other matter the Bank considers appropriate and prudent for the purposes of the orderly and proper regulation of the business of investment companies.

(3) The power to impose conditions referred to in subsection (1) shall include a power to impose such further conditions from time to time as the Bank considers appropriate and prudent for the purposes of the orderly and proper regulation of the business of investment companies.

(4) Without prejudice to the generality of subsections (1), (2) and (3), conditions imposed by the Bank on an investment company may make provision for any or all of the following matters—

(a) the prudential requirements of the investment policies of the company,

(b) prospectuses and other information disseminated by the company,

(c) the vesting of the assets or specified assets of the company in a person nominated by the Bank with such of the powers or duties of a trustee with regard to the company as are specified by the Bank,

(d) such other supervisory and reporting requirements and conditions relating to its business as the Bank considers appropriate and prudent to impose on the company from time to time for the purposes referred to in the aforesaid subsections.

(5) A company shall comply with any conditions relating to its authorisation or business imposed by the Bank.

COMPANIES ACT 1990 - SECT 258
Adaptation of certain, provisions of the UCITS Regulations .

258.—Regulations 14, 30, 63, 83 (2) to (7), and 99 to 105 of the UCITS Regulations shall apply to an investment company as they apply to the bodies to which those Regulations relate subject to the following modifications—

(a) a reference in those Regulations to a term or expression specified in the second column of the Table to this section at any reference number shall be construed, where the context admits, as a reference to the term or expression specified in the third column of the said Table at that reference number, and

(b) references to cognate terms or expressions in those Regulations shall be construed accordingly.

TABLE

Ref. No Term or expression referred to in UCITS Regulations Construction of term or expression for purposes of this section(1)(2)(3)1."repurchase" "purchase"2."these Regulations" "Part XIII of the Companies Act, 1990"3.UCITS"investment company"4."unit" "share"5."unit-holder" "shareholder"

COMPANIES ACT 1990 - SECT 259

Default of investment company or failure in performance of its investments.

259.—An authorisation by the Bank under section 256 of an investment company shall not constitute a warranty by the Bank as to the creditworthiness or financial standing of that company and the Bank shall not be liable by virtue of that authorisation or by reason of its exercise of the functions conferred on it by this Part (or any regulations made under this Part) in relation to investment companies for any default of the company unless the Bank acted in bad faith in exercising such functions.

COMPANIES ACT 1990 - SECT 260

Restriction of certain provisions of Companies .

260.—(1) None of the following provisions of The Principal Act shall apply to an investment company, namely sections 60, 69, 70, 72, 119 and 125.

(2) None of the following provisions of the Companies (Amendment) Act, 1983, shall apply to an investment company, namely sections 5 (2), 23 to 25, 40, 41 and Part IV.

(3) Section 14 of the Companies (Amendment) Act, 1986, shall not apply to an investment company.

(4) None of the following provisions of this Act shall apply to an investment company, namely Chapters 2 to 4 of Part IV, and Part XI

COMPANIES ACT 1990 - SECT 261

Power to make supplementary necessary regulations.

261.—The Minister may make such regulations as he considers necessary for the purposes of giving full effect to the provisions of this Part.

COMPANIES ACT 1990 - SECT 262

Offences.

262.—Where a company contravenes—

(a) any of the provisions of this Part, or

(b) any regulations made in relation thereto (whether under this Part or under any other enactment), or

(c) any condition in relation to its authorisation or business imposed by the Bank under section 257,

the company and every officer thereof who is in default shall be guilty of an offence.

Section 250.

SCHEDULE

PROVISIONS SUBSTITUTED FOR NINTH SCHEDULE TO PRINCIPAL ACT

Section 377.

"NINTH SCHEDULE

PROVISIONS APPLIED TO UNREGISTERED COMPANIES

PRINCIPAL ACT

Subject matter Provisions applied Acts done by company (ultra vires rule). Section 8. Pre-incorporation contracts Section 37 (1) and (2). Prospectuses and allotments Sections 43 to 52, 56, 57, 61 and the Third Schedule. Registered office Section 113 (inserted by the Companies (Amendment) Act, 1982). Annual Return Sections 125 to 129 and the Fifth Schedule. Accounts and Audit Sections 148 to 153, 155 to 161, 191 and the Sixth Schedule (except subparagraphs (a) to (d) of paragraph 2, subparagraphs (c) to (e) of paragraph 3 and subparagraph (d) of paragraph 8), as amended by the Companies (Amendment) Act, 1986. Validity of acts of directors Section 178. Register of directors and secretaries. Particulars relating to directors to be shown on all business letters of the company. Sections 195 (inserted by the Companies Act, 1990) and 196. Registration of documents, enforcement and other supplemental matters. Sections 2, 193, 369 to 371, 378, 379, 383, 384, 386, 387, 395 (1) and the Eighth Schedule. Liability of officers and others for negligence etc. Sections 200 and 391.

COMPANIES (AMENDMENT) ACT, 1977

Subject matter Provisions applied Share certificates Sections 2 and 3. Company records Section 4.

COMPANIES (AMENDMENT) ACT, 1983

Subject matter Provisions applied Maintenance of capital. Restrictions on distribution of profits and assets Sections 40 to 42, 45, 45A (inserted by the Companies (Amendment) Act, 1986) and 49 to 51. Sections 43, 44, 46 and 47, with the modification that those sections shall apply to all bodies corporate to which section 377

(1) The Principal Act applies other than those which, if they were registered, would be private companies.

EUROPEAN COMMUNITIES (STOCK EXCHANGE) REGULATIONS, 1984

(S.I. No. 282 of 1984)

Provisions applied

All of the Regulations.

COMPANIES (AMENDMENT) ACT, 1986

Subject matter Provisions applied Power to alter form of accounts Section 24.

EUROPEAN COMMUNITIES (MERGERS AND DIVISIONS OF COMPANIES) REGULATIONS, 1987

(S.I. No. 137 of 1987)

Provisions applied

All of the Regulations. COMPANIES (AMENDMENT) ACT, 1990

Provisions applied

The whole Act. COMPANIES ACT, 1990

Provisions applied

Parts I to 111.

Part 1V, with the modification that Chapter 2 of that Part shall apply to all bodies corporate to which section 377 (1) of the Principal Act applies other than those which, if they were registered, would be private companies and Chapter 3 of that Part shall apply to all such bodies corporate which, if they were registered, would be private companies.

Part V.

Part VI, except sections 122, 128 to 131 and 133.

Parts VII, IX, X and XII.