2. EXTRAORDINARY

Sect. 141 (1) of the Companies Act, 1948, provides that—

A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

Such a resolution is necessary for certain alterations of capital under Sect. 61 if the articles so provide (but only an ordinary resolution is normally required); to wind up voluntarily on the ground that the company cannot continue business by reason of its liabilities (Sect. 278); to dispose of books in members' voluntary winding-up (Sect. 341); to sanction an arrangement (Sect. 306) or compromise (Sect. 303).

3. SPECIAL

It is provided by sub-sect. (2) of the same section—

A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given. Provided that, if it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than ninety-five per cent in nominal value of the shares giving that right, or, in the case of a company not having a share capital, together representing not less than ninety-five per cent of the total voting rights at that meeting of all the members, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

Such a resolution is essential to change the company's name (Sect. 18); alter the objects (Sect. 5); alter the Articles (Sect. 10); create reserve liability (Sect. 60); application to the Board of Trade to appoint inspectors (Sect. 165); make liability of directors unlimited (Sect. 203); pay interest out of capital (Sect. 65)
approve assignment of office by a director (Sect. 204); wind up by the Court (Sect. 222) or voluntarily in general cases (Sect. 278); reduce share capital (Sect. 66).

4. Resolutions requiring a special majority in accordance with some Act of Parliament or Statutory Rules; for example, in the case of a compromise between the company and its creditors or any class thereof, or between the company and its members or any class thereof under Sect. 206 of the Companies Act, 1948, a majority in number and three-fourths in value of creditors or particular class of creditors, or of the shareholders or particular class of shareholders who vote, is necessary.

In cases where a special or extraordinary resolution is required, the terms of the resolution must be framed before the meeting, and be incorporated in the notice convening the meeting.

Drafting Resolutions

The drafting of resolutions demands care and skill in order that full effect may be given to the intention for which the resolution is to be passed.

In the framing of resolutions, there is no room for inaccuracies—these may lead to unexpected consequences. All resolutions should be explicitly worded, capable of one interpretation, and that the correct one.

In certain circumstances, for example, complicated reductions of capital, reorganizations, etc., it may be desirable to have the necessary resolutions framed by company counsel.

Specimen Resolutions

A comprehensive selection of specimen resolutions is given below.

Allotment of Shares

That ten thousand ordinary shares of one pound each, numbered 1 to 10,000, be, and are hereby, allotted to those
persons whose applications have been recommended for acceptance in the proportions set opposite to their respective names in the Application and Allotment Sheets submitted by the Application Committee, which Application and Allotment Sheets are signed by the Chairman for purpose of identification, and that the Secretary be, and he is hereby, instructed to forward Letters of Allotment to the Allotees, and Letters of Regret returning application moneys to those persons to whom no allotment has been made.

Making a Call

That the final call of five shillings per share be made upon the Ordinary Shares (numbered 1 to 10,000), such call to be payable on the 2nd day of December, 19... to the Company's Bankers, the Midland Bank, Ltd., 91 Exe Street, E.C.2.

The Secretary was instructed to issue the necessary call notices and to make arrangements with the Company's Bankers for the collection of the call moneys.

Resolution to Forfeit Shares

That William James McArthur, being in arrear with the final call of five shillings per share payable on the 2nd day of December, 19..., due on the 100 Ordinary Shares of one pound each numbered 1515 to 1614 (inclusive) registered in his name, and having failed to comply with the notice served upon him on the 10th day of February, 19..., in accordance with articles numbered 14 and 15, the said shares be, and are hereby, forfeited.

Re-issue of Forfeited Shares

That the 100 Ordinary Shares of one pound each, 15s. per share paid up, and numbered 1515 to 1614 (inclusive), having been forfeited by resolution of the Directors dated 15th March 19..., be, and they are hereby, re-issued as fully paid to Mr. Kenneth Keen, of Sutton, Surrey, at 10s. per share, representing the unpaid final call of 5s. per share and 5s. per share premium, and that the seal be affixed to the transfer of the said shares to the said Kenneth Keen, and that the said transfer be, and is hereby, passed for registration and that a certificate for the said shares in the name of Mr. Kenneth Keen be signed and sealed.

Increase of Capital

That the capital of the company be increased to £250,000 by the creation of 50,000 shares of £1 each, ranking for dividend and in all other respects pari passu with the existing shares of the company (or ranking for dividend as from the .................day of...............................19..., but being in all other respects pari passu, etc.).
RESOLUTIONS

ISSUE OF NEW SHARES TO MEMBERS PRO RATA TO THEIR HOLDINGS

That the capital of the Company be increased to two hundred thousand pounds, by the creation of one hundred thousand 7 per cent Cumulative Preference Shares of one pound each, to rank pari passu in all respects with the Preference Shares of the original capital of the company, such shares to be offered in the first instance at par to the members of the company in proportion to their holdings (of whatever class of shares), as shown by the books of the company on the ...............day of..........................19..., and That all such new shares as are not taken up by the present members on or before the..............day of..........................19..., may be disposed of by the Board on such conditions and at such times as they shall deem fit.

ISSUING A NEW CLASS OF SHARES

That the capital of the Company be increased from £100,000 divided into Shares of £1 each, to £150,000 by the creation of 50,000 new shares of £1 each to be called Preferred Ordinary Shares having the following special rights and advantages—

(a) The right to receive in priority to the Ordinary Shares a fixed non-cumulative dividend at the rate of 10 per cent per annum.

(b) The right in the event of the winding up of the Company to have the amount paid up thereon repaid in priority to the repayment of capital on the Ordinary Shares, but without any further right to participate in the profits or assets of the Company.

SUBDIVISION OF ONE CLASS OF SHARES INTO SHARES OF DIFFERENT CLASSES

That the Ordinary share capital of £100,000 divided into 100,000 shares of £1 each, fully paid, be divided into 50,000 Preference Shares and 50,000 Ordinary Shares by dividing each £1 Ordinary Share into one 10s. Preference Share and one 10s. Ordinary Share, both credited as fully paid up, and that the said new Preference Shares shall have the following rights—

(a) The right to a fixed cumulative preference dividend at the rate of 8 per cent per annum.

(b) In the event of liquidation of the Company, the right to repayment of capital and payment of all arrears of dividend in priority to any repayment of capital to ordinary shareholders, but no further right to participate in the profits or assets of the Company. (This form of resolution would, mutatis mutandis, serve for subdivision of stock.)

SUBDIVISION OF SHARES

That the share capital of the Company be £200,000 divided into 400,000 fully-paid shares of 10s. each, in lieu of the
200,000 shares of £1 each, at present issued and fully paid up.

That each of the present outstanding Ordinary Shares of £5 in the capital of the Company on which there has been paid up the sum of £4 per share be subdivided into five Ordinary Shares of £1 each credited as paid up to the extent of 16s. per share.

**Issue of Bonus Shares**

That, permission of the Treasury having been given, £100,000 of the Company's Reserves be capitalized and applied in making payment in full at par of 100,000 Ordinary Shares of £1 each, and that the said shares be allotted as fully paid to the Members of the Company who are registered in the books of the Company on the.......... day of........................., 19., in proportion to their holdings (fractions being ignored), and that such new share shall rank pari passu as regards dividends and in all other respects with the existing Ordinary Shares. And that any shares remaining after such allotment as aforesaid be sold by the Company's Brokers, and the net proceeds of Sale distributed pro rata amongst those holders who would otherwise have been entitled to fractional parts of shares.

**Consolidation of Shares**

That the 200,000 fully-paid Ordinary Shares of 10s. each in the capital of the Company be consolidated and divided into 100,000 fully-paid Ordinary Shares of £1 each.

That the 200,000 Ordinary Shares of 10s. each in the capital of the Company on which there has been paid the sum of 5s. per share be consolidated and divided into 100,000 Ordinary Shares of £1 each credited as paid up to the extent of 10s. per share.

**Consolidation of Shares of Two Classes into Shares of One Class**

That the capital of the Company be reorganized by consolidating the existing 100,000 fully-paid Ordinary Shares of £1 each and 100,000 fully-paid Preference Shares of £1 each into one class of 200,000 fully-paid Ordinary Shares of £1 each, ranking pari passu as regards dividends and in all other respects, and that the provisions of the Memorandum of Association be altered accordingly.

**Reduction of Capital**

That the capital of the Company be reduced from £200,000 divided into 100,000 Ordinary Shares of £2 each, on which there has been paid the sum of £1 per share, to £100,000 divided into 100,000 Ordinary Shares of £1 each, credited as fully paid by extinguishing the liability on each share to the extent of £1;

*or*

That the capital of the Company be reduced from £200,000...
divided into 100,000 Ordinary Shares of £2 each, fully paid, to £100,000 divided into 100,000 fully-paid Ordinary Shares of £1 each, by repaying to each shareholder the sum of £1 per share, being capital in excess of the wants of the Company:

or

That the capital of the Company be reduced from £200,000 divided into 100,000 fully-paid Ordinary Shares of £2 each to £100,000 divided into 100,000 fully-paid Ordinary Shares of £1 each, and that such reduction be effected by cancelling capital which has been lost, and which is not represented by the available assets to the extent of £1 per share.

**CONVERSION OF SHARES INTO STOCK**

That the 100,000 fully-paid Ordinary Shares of £1 each in the capital of the Company be converted into Stock, such Stock to be known as Ordinary Stock.

*(Note. If the Articles do not contain the necessary provisions concerning stock, for example, whether transfers of stock in fractions less than £1 are prohibited, or what holding of stock instead of shares is to constitute a Directors' qualification, etc., the articles should be altered by Special Resolution.)*

**CONVERSION OF STOCK INTO SHARES**

That the £100,000 Ordinary Stock of the Company which was created by the conversion of Ordinary Shares, be reconverted into 200,000 fully-paid Ordinary Shares of 10s. each.

**CANCELLATION OF UNISSUED SHARES**

That the Nominal Capital of the Company be reduced from £220,000 to £200,000 by the cancellation of unissued shares amounting to £20,000.

**CLOSING TRANSFER BOOKS**

That the Transfer Books of the Company be closed from the eighth day of February, 19..., to the twenty-first day of February, 19..., both days inclusive.

**PASSING TRANSFERS**

That Transfers Numbers 251 to 276 inclusive be passed and the Seal affixed to the new Certificates numbered 4151 to 4176 inclusive, and that the names of the transferees be entered in the Register of Members forthwith.

**DECLARATION OF AN INTERIM DIVIDEND**

That an Interim Dividend of 10 per cent less tax on the Ordinary Shares of the Company for the half-year ended 30th June, 19..., be, and is hereby, declared, and that the said dividend be paid forthwith to those Shareholders whose names appear on the Register of Members at this date.
PRACTICAL SECRETARIAL WORK

CALLING ANNUAL GENERAL MEETING

That the Third Annual General Meeting of the Company be convened for Wednesday, the 11th June, 19..., to be held at the Registered Office of the Company, 99 Lune Street, E.C.I, at 3 p.m., and that the Secretary be, and he is hereby, instructed to prepare and dispatch the necessary notices and make the other necessary arrangements for giving effect to this Resolution.

CALLING EXTRAORDINARY GENERAL MEETING TO SUBMIT RESOLUTION FOR ALTERING ARTICLES

That an Extraordinary General Meeting of the Company be convened for Friday, the 6th June, 19..., to be held at the Common Hall, Victoria Street, S.W.1, at 3 p.m., for the purpose of considering and, if thought fit, passing (with or without modification) the following Resolution in the manner required for a special Resolution—

That the following Article be substituted for Article No. 76. The Board of Directors may raise for the purpose of the Company such sums by way of loans as the Directors acting together may from time to time decide, and further the directors are hereby authorized to raise loans upon such security and upon such terms and conditions as they shall decide.

That the Secretary be, and he is hereby, instructed to prepare and dispatch the necessary Notices convening the Extraordinary General Meeting referred to and to make all necessary arrangements for putting into effect this Resolution.

AUTHORIZING PAYMENT OF ACCOUNTS AND DRAWING OF CHEQUES

That the undernoted Accounts be passed for payment, and that Cheques in discharge of the amounts so due be drawn and signed by any two Directors and countersigned by the Secretary—

<table>
<thead>
<tr>
<th>Accountant</th>
<th>£</th>
<th>s.</th>
<th>d.</th>
</tr>
</thead>
<tbody>
<tr>
<td>J. J. Johnson, Ltd., London</td>
<td>117</td>
<td>17</td>
<td>7</td>
</tr>
<tr>
<td>R. W. Welsby &amp; Co., Newcastle</td>
<td>37</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>G. K. France, Ltd., Liverpool</td>
<td>57</td>
<td>17</td>
<td></td>
</tr>
</tbody>
</table>

RESOLUTION CALLING UPON THE CASHIER TO RESIGN Owing to Inefficiency

*That Mr. V. Underwork be requested to resign the office of Cashier to the Company as from 30th June, 19..., and that the Secretary be, and he is hereby, instructed to communicate to him the terms of this resolution.
RESOLUTION THAT THE DIVIDEND RECOMMENDED BY THE DIRECTORS BE PAID

That the Dividend recommended by the Directors, viz., 20 per cent on the Ordinary Shares for the year ended 31st March, 19___, be, and is hereby, declared, and that the said dividend, after deduction of Income Tax, be paid forthwith to those Shareholders whose names appear on the Register of Members at the date of this Resolution.

RESOLUTION APPOINTING AB & Co., AUDITORS

That Messrs. AB & Co., Chartered Accountants, 199 Lime Street, E.C.3, be, and are hereby, appointed Auditors to the Company at a fee of Three hundred guineas per annum upon such terms to be embodied in an agreement to be prepared by the Company’s Solicitor.

RESOLUTION TO WIND UP VOLUNTARILY

Ordinary Resolution

That the purposes for which the Company was formed having been fulfilled, the Company be wound up voluntarily.

Extraordinary Resolution

That the Company cannot by reason of its liabilities, continue its business, and that it is advisable to wind up and that the Company be wound up voluntarily.

Special Resolution

That the Company be wound up voluntarily.

RESOLUTION APPOINTING A DIRECTOR OF “A” COMPANY, LIMITED, TO ATTEND AND REPRESENT “A” COMPANY AT THE ANNUAL GENERAL MEETING OF “B” COMPANY, LIMITED

That Mr. H. Honor, a director of the Company, be, and he is hereby, appointed to represent this Company at the Annual General Meeting of “B” Company, Ltd., to be held at Bee House, Bee Street, London, S.W., on...............day of............... at 12 noon, with full power to act and vote as he deems right and in the best interests of the Company, and that the Chairman shall sign the necessary form of proxy.

FILING OF RESOLUTIONS WITH REGISTRAR

The following resolutions must, in accordance with Sect. 143, be filed with the Registrar of Companies within fifteen days after the passing or making of them—

1. Special resolutions.
2. Extraordinary resolutions.

3. Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special or as extraordinary resolutions.

4. Resolutions or agreements which have been agreed to by all the members of some class of shareholders, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members.

5. Resolutions requiring a company to be wound up voluntarily.

Sect. 143 (5 and 6) provides penalties on the company and every officer of the company for default in complying with the filing requirements. And in this connection, it should be noted that when filing a copy of any such resolution with the Registrar of Companies, the official form must be used for that purpose (impressed fee stamp 5s.), and the copy resolution must be printed on the prescribed form; written, typewritten, or duplicated copies will not be accepted.

At first sight, the necessity for filing only printed copies of resolutions may appear to be a somewhat onerous obligation, but at the same time as a resolution is being printed on the official form, an additional number of copies may be printed for attaching to the articles in compliance with Sect. 143 before mentioned.

Whenever it is necessary in accordance with the Act to annex to the memorandum, or articles of association, any statements or copy resolutions, a neat and practical method of doing this is to have the matter printed on slips of paper of a size uniform with the memorandum or articles, and to paste such slips either
at the front of, or in an appropriate space in, the copies in stock.

When it becomes necessary to print additional copies of the memorandum and articles, all alterations and amendments should be incorporated into the text in suitable places, with a marginal note as to the date on which the change became operative.
CHAPTER XVI

RECONSTRUCTION, REORGANIZATION, AND AMALGAMATION

The subject of this chapter is very often approached with misgivings and uneasiness or lack of interest. The effort required to obtain a thorough grasp of the principles involved and the method of applying them, would often rather be shirked by students, especially because the study of this subject must necessarily be undertaken at an advanced stage of their studies—a time when the wish fathers the thought, that a less uncongenial task would be to utilize study hours in acquiring a knowledge of any other subject but this, backed up by shrewd guesses that as there will probably be only a single examination question upon reconstruction, etc., such a question could very well be neglected, without seriously interfering with their chances of passing. Such an attitude of mind is really not to be wondered at. Legislation on this subject is not at all voluminous, but the circumstances in which its aid is invoked often vary so entirely, that illustrations of its application bewilder the student who is confronted with the double task of appreciating the economic principles and commercial practices underlying or prompting schemes of reconstruction, reorganization, or amalgamation, and at the same time understanding the legal requirements necessary in order to carry them into effect. Mere knowledge of the relevant legislation is not very serviceable without collateral knowledge of the circumstances in which such legislation can be used with advantage.

This subject is really very interesting, but is intricate, and it is hoped that the treatment of it in this chapter will prove instructive, and that the reader
will be amply repaid by a careful perusal of the following pages; but the earnest student will amplify and sound his knowledge by studying Press reports and advertisements concerning reconstructions and amalgamations, etc., of public companies, and will in this way gain much valuable information on the subject in both its legal and its economic aspects.

**Objects and Reasons**

It is considered desirable, in the first place, to attempt an analysis of the objects and reasons for reconstruction, reorganization, and amalgamation, with some indication of the appropriate legislation for carrying them into effect, and to deal purely with the legal principles and requirements subsequently.

1. **Raising of Fresh Capital by a Not Too Prosperous Company Which Finds It Difficult to Raise New Capital on Suitable Terms.** For example, a company earning little or no profit because it is handicapped by lack of working capital has not for some years paid any dividends on its shares, which are fully paid. Clearly, an offer of shares or debentures would meet with poor response. What is the company to do? Its only hope lies in the possibility that its shareholders may be willing to risk a little more capital with the object of saving what capital they have already sunk in the concern. If the shareholders are willing to subscribe the necessary additional capital, well and good; but if a majority of them were not willing to subscribe *pro rata*, sufficient could only be raised by others taking the greater risk of sinking more capital than is proportionate to their interest in the company, and they might object to take on themselves a risk which may fructify for the benefit of others not willing to share that risk, with the consequence that the scheme would not materialize, because of the inability of the company to compel a majority of the shareholders to
put up new capital _pro rata_ to their holdings. A common way out of such a situation is to sell the undertaking to a new company which would issue _partly-paid_ shares to the members of the old company, and to call up the unpaid liability on such shares. In this way, the majority of the shareholders will be obliged to invest more capital proportionate to their holdings, so that all take a fair risk. It may be argued that there are no means of compelling shareholders to sanction such a scheme. The reply is that it is to their advantage—there is every possibility that the new company having additional working capital will make good. The shareholders are, it is true, asked to accept less than the nominal value of their holdings in the old company, but is that holding worth its nominal value? Probably not, and if the shareholders did not sanction the scheme, the company might eventually go into liquidation and the shareholders get little or nothing.

Such a scheme is effected under the provisions of Sect. 287, which makes provision for protection of dissentients. Creditors or debenture-holders of the old company would have to agree to look to the new company for payment of their claims, or if they were not agreeable to this, they would have to be paid off. However, if there was any difficulty, a scheme of arrangement with creditors and/or debenture-holders could be proposed under the provisions of Sect. 206, whereby a majority in favour could bind a dissenting minority; or the whole scheme for sale of assets to the new company and compromise with creditors and/or debenture-holders could be carried out under the joint provisions of Sects. 206 and 208.

2. **Rehabilitation of a Company which is in Difficulties owing to Burdensome Liabilities, Over-capitalization, Heavy Loss of Capital, Mis-management, etc.** For example, creditors may be
asked to agree to a moratorium, or to accept a composi-
tion, or to accept shares or debentures in satis-
faction of their claims. (See head 4.) In the case of
over-capitalization, or heavy loss of capital, the capital
would certainly be reduced, and brought more into
accord with the true value of the assets, and this would
necessitate the usual procedure for reduction of capital
(see Chapter XI). It may be pointed out in connection
with reduction of capital that, where the capital lost
equals or exceeds the amount of the ordinary share
capital, the ordinary shareholders could hardly com-
plain if their shares were written down to nil, because
they have lost all they are entitled to, and would not
receive a penny in the event of liquidation. But such
a course is not usually practicable, because the ordinary
shareholders would not vote in favour of a scheme in
which they are annihilated, and it is usual to reserve
a small interest in the reduced capital for the ordinary
shareholders, in order to ensure their assent to the
proposed reduction. Consequently, one observes cases
in which, say, £1 ordinary shares are written down to
a low figure—6d. or 1s. Looking at the subject broad-
mindedly, we see that the nominal value is no guide to
the actual value of ordinary shares which are entitled
to the equity in a company, i.e. those which receive
the surplus profits and assets. Each ordinary share
entitles its holder to a fixed and definite proportion of
the profits and assets, whether its nominal value is rd.
or £100, and, therefore, the writing down of an ordinary
share by a very considerable amount does not prejudice
the position of its holder in the slightest way whatever.
The holder of, say, one-tenth of the issued ordinary
capital of a company would be entitled to one-tenth of
the surplus profits and assets, even though the nominal
value of his shares was written down by 99.99 per cent.
Thus, in cases where the whole or most of the ordinary
share capital has been lost, and the ordinary shares
are written down considerably, it is not unusual to find that, as part of the proposed scheme of reduction and reorganization, the rights of ordinary shares are taken away in other directions (for example, by limiting their dividends, giving preference shareholders additional rights to participate in profits, giving preference shareholders rights to surplus assets, dividing preference shares partly into ordinary shares and partly into preference shares, etc.), because otherwise the ordinary shareholders would stand to benefit most by the future prosperity of the company by reason of the fact that (as shown above) the effect of writing down ordinary shares is more apparent than real. It must be pointed out that these remarks apply only to ordinary shares which are entitled to the "equity" in the company as explained previously. In some cases, the equity vests in the holders of deferred, founders', or management shares, and in such circumstances the position of the ordinary shareholders is to some extent comparable with that of preference shareholders in the above remarks.

Sometimes capital is reorganized as well as reduced; for example, the capital arrangements of some companies are not satisfactory—the preference capital may greatly exceed the ordinary capital, and thus the preference shares are virtually ordinary shares entitled to a fixed dividend because they have provided most of the capital, and in the event of liquidation, though they may have priority as to capital over the ordinary shareholders, such priority is mythical because of the smallness of the ordinary share capital, which, as it takes the surplus profits, thus benefits from the prosperity of the company and should bear the burden in the event of liquidation. In such circumstances, when reorganization is being effected, it is not uncommon to divide the preference holdings partly into ordinary shares and partly into preference shares, and thus the original
preference shareholders will stand to benefit as is their just right, viz., the proportion of their holdings which remain as preference shares will ensure them a prior claim on any profits, and some real priority as to capital in the event of liquidation, but at the same time, by the conversion of the other part of their holdings into ordinary shares, they will be entitled to share in the surplus profits which would otherwise accrue to the original ordinary shareholders, who would thus stand to benefit most by future successful working of the company. The same principles are usually applied where there are issues of founders', deferred or management shares which, whilst contributing only a small fraction of the capital, nevertheless claim a large portion of the surplus profits and assets.

Such schemes of reorganization are carried out by application to the Court under Sect. 206, but if the memorandum or articles authorize modification of rights, alterations of rights can be effected under those provisions. Any consolidation of shares of different classes into shares of one class, or subdivision of shares of one class into shares of several classes, must, however, be sanctioned by the Court under Sect. 206.

As regards mismanagement, an attempt may be made to rectify it by reconstituting the board of directors, and a reorganization of the executive staff of the company, and by creditors, debenture-holders, or their representatives, joining the board. This may necessitate alteration of the articles where directors must be qualified by holding shares.

3. Effecting of Compromises with Shareholders. For example, a company owing to lean times has accumulated large arrears of preference dividends. These have to be met before dividends can be resumed on the preference and ordinary shares. The company may propose that the arrears be cancelled, and to
prevent the same state of affairs occurring in the future, may propose that the preference shares be made non-cumulative, or be converted into ordinary shares, or that the preference dividend be reduced, and so on. Modification of rights in this manner may be carried out under provisions in that behalf contained in the memorandum or articles (see page 341), but if the memorandum or articles do not authorize the modification, the sanction of the Court to a scheme of arrangement under Sect. 206 would be necessary.

4. Effecting Compromises with Creditors and Debenture-holders. These may become necessary, either alone or as part of a general scheme of reconstruction or amalgamation. For example, creditors may be asked to agree (a) to a moratorium, (b) to accept a composition, (c) to accept payment of their debts in fixed instalments and agree to forbear from taking proceedings provided such instalments are paid, (d) to accept shares or debentures in satisfaction of their claims. From the point of view of the company, it is obviously better if the creditors will accept shares, because if debentures are issued there is the obligation to pay interest and repay principal, although income debentures are often issued, thereby relieving the company of the liability for interest in the event of its earnings not being sufficient to pay the interest (see page 268).

Concerning compromises with debenture-holders, they may be asked (a) to forgo arrears of interest, (b) to accept a lower rate of interest or to accept further debentures in lieu of cash for arrears of interest, (c) to extend time for repayment, (d) to consent to issue of debentures ranking in priority, (e) to accept shares or income debentures in lieu of their holdings. Sometimes, if a receiver is in possession on behalf of the debenture-holders, a compromise is reached whereby the receiver is withdrawn on the company undertaking
to pay arrears of interest, to expedite repayment of principal by annual appropriations from future profits, etc.

Any of these arrangements or agreements may be entered into without recourse to the Court, provided all the creditors or debenture-holders (as the case may be) agree. If some stand out, the scheme would fall through, unless their claims were satisfied, and if a large number thought that they could thus benefit at the expense of the others in agreement with the scheme, very few would be found willing to assent to the scheme. Thus, the most effective method of compromising with creditors and debenture-holders is to apply to the Court under Sect. 206 to sanction the scheme of arrangement or compromise, and in this way a dissenting minority, which might otherwise wreck the scheme, would be bound by the wishes of the majority.

5. **Amalgamations and Acquisition of Controlling Interests** with the object of (a) meeting destructive competition and effecting economies in production—what is now familiarly termed "rationalization" of industry, (b) enlarging the scope of the company's activities. A company may find it desirable to undertake activities not permitted by its objects clause, and rather than go to the expense of applying to the Court for extension of its powers (but note in this connection that Sect. 5 does not now require Court sanction if there are few or no dissentients), and then commencing to conduct such activities on its own account, the company may consider it more advantageous to amalgamate with, or purchase, or acquire a controlling interest in, an established company conducting those activities. Amalgamations may be effected in various ways—

(a) Company A purchases the assets of company B, allotting shares or paying cash for the purchase consideration, and company B goes into liquidation. Such a scheme is usually effected under Sect. 287, but the
cannot by that sanction authorize a reduction of capital although it is an essential part and parcel of the scheme; the Court must be specially petitioned to sanction the reduction of capital after the passing of the necessary resolution.

The various legal requirements involved in carrying out schemes of reconstruction, etc., will now be dealt with. The appropriate provisions of the Companies Act, 1948, are reprinted for purposes of convenience.

Section 287

(1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called "the transferee company") the liquidator of the first-mentioned company (in this section called "the transferor company") may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

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

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

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

(6) For the purposes of an arbitration under this section, the provisions of the Companies Clauses Consolidation Act, 1845, or, in the case of a winding up in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845, with respect to the settlement of disputes by arbitration, shall be incorporated with this Act, and in the construction of those provisions this Act shall be deemed to be the special Act and "the company" shall mean the transferor company, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary or any two of the directors may be made under the hand of the liquidator, or, if there is more than one liquidator, then of any two or more of the liquidators.

Observe that—

1. This section applies only where a company is in course of or is proposed to be wound up voluntarily.

2. The sale must be to a company (it can be to a foreign company) and not to an individual, although an individual can purchase on behalf of an intended company provided he does not make any profit. If it is desired to sell to an individual, the reconstruction would have to be effected under the provisions of Sect. 206.

3. Where the company is to go into liquidation in order to carry out the scheme (for example, as on amalgamation), a special resolution will usually be necessary, because the company is winding up primarily for purpose of reconstruction and not because of its inability to pay its debts or carry on its business. The sanctioning of the scheme requires a special resolution. This resolution may be passed before or concurrently with the resolution to wind up voluntarily (Subsec. (5)). Usually the two resolutions are passed together, and made interdependent; otherwise, if the scheme does not materialize, the company will be in liquidation without a scheme of reconstruction.

Appropriate notice of the meeting to sanction the
scheme will be necessary, and it must state that a sale under Sect. 287 is proposed, and any benefits accruing to directors must be disclosed (Sect. 193). A copy of the scheme is invariably sent with the notice. The resolution usually authorizes the liquidator to carry out the scheme "with or without modification," to obviate the necessity for obtaining sanction to subsequent alterations in details that may be necessary. Observe that it is not essential that there should be a definite scheme ready—a general authority to enter into any scheme may be conferred on the liquidator.

4. The shares to be issued by the purchasing company may be either fully or partly paid. Members of the old company cannot be compelled to take partly-paid shares in the new company, even though they have not dissented from the scheme. The scheme will usually provide as to what is to be done with the new shares which members refuse to take up. The liquidator is often empowered to sell them, and the proceeds will belong to the members who refuse to take them up, as the other members by accepting the new shares, or dissentients by being paid out, will have received all they are entitled to.

The usual arrangement for vesting the new shares in the members of the old company, is for the liquidator to issue forms inviting applications from members for the number of new shares in the purchasing company to which they are entitled, a time limit for application being fixed. The liquidator lists the applicants, and the purchasing company allots the shares direct to the applicants. If fractions are involved, fractional certificates may be issued or the fractions may be satisfied by a cash payment by the purchasing company. The forms of application are usually accompanied by a letter indicating the number of new shares which each member may apply for, the method of dealing with fractions (if any), the time limit for
sending in applications, and that the old share certificates must be surrendered with the application forms. A letter of renunciation may also be annexed to enable members to renounce their right of allotment in favour of others, as it must be remembered that no transfers can be registered (except with the consent of the liquidator) because the old company is in liquidation.

5. Note the position of dissentient shareholders. Shareholders of the old company may either assent to the scheme, dissent from the scheme, or they may neither assent nor dissent, in which latter case their rights will depend on the terms of the scheme as to the method of dealing with the shares not taken up by the members entitled thereto. For a dissent to be valid—

(a) The dissentient must not have voted in favour of the resolution sanctioning the scheme.

(b) He must, within seven days after the passing of the resolution, give written notice of his dissent to the liquidator, requiring the liquidator to refrain from carrying the resolution into effect or to purchase the dissentient's interest. The dissentient cannot choose which course he would prefer the liquidator to adopt.

(c) The notice must be left at the registered office of the company.

A dissentient may also petition the Court for a compulsory or supervised winding-up order, if he considers the scheme prejudicial, provided the petition is presented before the agreement for sale is executed (Consolidated South Rand Mines Deep (1909); Imperial Bank of China (1866)). Subsec. (5) provides—

"... if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court."

6. The position of creditors and debenture-holders can be summed up as follows: A scheme for selling a
company's business under Sect. 287 does not bind creditors, but they can sue the purchasing company if it takes over the liabilities of the old company (Craig's Claim (1895)). Usually debenture-holders are paid off or are invited to accept debentures in the purchasing company for their holdings in the old company, and creditors are either paid off or asked to substitute the purchasing company for the old company as their debtor (novation), those debenture-holders and creditors who do not agree being paid out. If there is likely to be any trouble with creditors and debenture-holders, a scheme of arrangement may be proposed under Sect. 306 or Sect. 206, which would enable the majority to bind the minority. The conditions of the debentures may contain provisions enabling compromises to be effected. Of course, if all debenture-holders and creditors agree to the company's proposal, or if they are paid off, no difficulties will arise. A dissatisfied creditor may, of course, petition for a winding-up order, and if such an order was made within a year from the passing of the resolution authorizing the scheme, the resolution is not valid unless sanctioned by the Court (Sect. 287 (5)). It has been suggested that if there is any possibility of a scheme being invalidated in this manner, the liquidator or a friendly creditor may petition for a compulsory order and obtain the consent of the Court to the scheme, which consent will, of course, be refused if the creditors are prejudiced.

7. The consideration for the sale of the business must be distributed amongst the members of the old company in strict accordance with their respective rights, and the scheme cannot provide for a distribution otherwise, unless the shareholders affected agree to the proposal. Consequently, where there are different classes of shares in the old company, difficulties might arise. For example (to take a simple illustration), the capital of the old company is divided into 25,000 £
preference and 25,000 £1 ordinary shares, both fully paid, and the purchasing company proposes to allot 50,000 £1 ordinary shares fully paid as the purchase consideration. How are these to be distributed between the preference and ordinary shareholders of the old company? If they are allotted equally, the preference shareholders will not be in any better position than the ordinary shareholders. The position will be much more difficult if partly-paid shares are to be issued, as preference shareholders would not readily assume further liabilities if they consider that their priority as to capital would ensure them more advantage in a straightforward liquidation of the old company. Greater complications will arise if there are several classes of shares. These difficulties are sometimes met by provisions in the articles enabling the rights of different classes of shares to be modified (note Sect. 72 as protecting shareholders who object). If the shareholders of each class affected unanimously agree to the proposed distribution, all will be well, but if there is any difficulty in ensuring the assent of all, a scheme of arrangement may be submitted under Sect. 206. Of course, if any shareholder dissents from the whole scheme apart from the question of modification of his rights, if the scheme proceeds, he must be paid out in full, even though other shareholders of the class agree to modification of their rights.

Some schemes of reconstruction involve compromises with shareholders, debenture-holders, and creditors, in addition to the sale of the business, and in such cases the Court may sanction the whole scheme under Sect. 206 (and Sect. 208 if applicable), and the Court in sanctioning such a scheme may, if it thinks fit, insist on dissentient shareholders being given the same rights and privileges of dissenting as if the scheme had been carried out under Sect. 287. Where a scheme for selling a business is essentially one to be carried out under
Sect. 287, the company cannot override its obligations to dissentients under Sect. 287 by calling the sale a scheme of arrangement under Sect. 206, as the Court would not sanction the scheme. (*Anglo Continental Supply Co. (1922).*

Applications to the Court involve expense and delay—some schemes cannot be carried out except with the sanction of the Court—but where expense is a question of prime importance, wherever possible every effort will usually be made to ensure that the scheme can be effected without the necessity for appealing to the Court.

By way of summarization—a reconstruction under Sect. 287 will necessitate—

1. Drafting the scheme, which would make provision for dealing with creditors, and where the purchase consideration is to be distributed otherwise than in accordance with the rights of shareholders, the method of obtaining the assent of the shareholders should be given attention. When it is ascertained that the scheme is acceptable to the leading shareholders and creditors if they are affected—

2. Convene the meeting to pass special resolutions for winding up and sanctioning the scheme (see note 3 as to notice of the meeting). Any meetings necessary for the purpose of compromising with creditors, shareholders, etc., should also be convened for the same or a near date.

3. The resolution to wind up must be gazetted within fourteen days (Sect. 279) and copies of the special resolutions filed with the Registrar within fifteen days (Sect. 143).

4. Duties incidental to the liquidation of the old company must be undertaken.

5. The agreement for the sale of the assets will in due course be entered into between the liquidator and the purchasing company. If a new company is being
formed to take over the assets, before the agreement can be entered into, the new company must, of course, be registered and should have received the certificate entitling it to commence business (Sect. 109 (2) will probably apply).

6. The purchase consideration will then be distributed amongst the members of the old company in either cash or shares, according to the terms of the scheme.

7. The old company will subsequently be completely wound up.

**Section 206**

(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) If a majority in number representing three fourths in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) of this section shall have no effect until an office copy of the order has been delivered to the registrar of companies for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(5) An order under subsection (1) of this section pronounced in Scotland by the judge acting as vacation judge in pursuance
of section four of the Administration of Justice (Scotland) Act, 1933, shall not be subject to review, reduction, suspension or stay of execution.

(6) In this and the next following section the expression "company" means any company liable to be wound up under this Act, and the expression "arrangement" includes a reorganization of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

It is at once apparent that there is a considerable difference in scope between Sect. 287 and Sect. 206. Whereas the former is intended to cover the case of a sale of the assets of a company to another company in exchange for cash, shares, policies, or other like interests in the purchasing company, Sect. 206 is of general and not particular application; for example, any scheme of arrangement or compromise may be made with creditors, debenture-holders, or members, alone, or with any class of such persons alone, or there may be one comprehensive scheme involving compromises with shareholders, creditors, and debenture-holders, and the sale of the business to another company or even to an individual. If the scheme of arrangement is passed by the necessary majority and sanctioned by the Court, the minority are bound by it—there is no provision as to dissentients—but where a sale of the assets in exchange for shares in a purchasing company is involved, the Court may insist on dissentient shareholders being paid out just as though the scheme was being effected under Sect. 287. Moreover, the scheme is binding on all concerned from the moment it is sanctioned by the Court, whereas under Sect. 287 the scheme is invalidated if a winding-up order is made within twelve months from the passing of the scheme unless the Court sanctions the scheme (Sect. 287 (5)).

No scheme will be sanctioned by the Court unless it is fair to all concerned.
It should also be observed that the majority necessary to pass the scheme is a majority in number and three-fourths in value of those concerned who are present and vote at the meeting either in person or by proxy, and thus, if only a tenth of those summoned attend and vote at the meeting, their majority vote is sufficient to bind all the other members of their class, unless the Court considers that the class of persons concerned was not properly represented at the meeting. Furthermore, schemes of arrangement can be sanctioned whether the company is or is not in course of liquidation; for example, in a liquidation, creditors or contributories or a class of creditors or contributories may arrange a compromise of their claims or rights; or a scheme for continuing the business may be entered into, one creditor taking over the assets and paying the costs of liquidation and a composition to the creditors.

Sect. 207 contains an important new provision to the effect that where a meeting is summoned under Sect. 206 a statement must be sent to creditors or members explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors or otherwise, and the effect thereon if different from the effect on other persons. Where the notice is given by advertisement, there must be included either such a statement or a notification of the place where and the manner in which creditors or members may obtain copies, which are to be supplied gratis. Sect. 207 also provides for the rights of debenture-holders where the compromise or arrangement affects them. In such cases the statement must give a similar explanation regarding the trustees of any deed for securing the issue of debentures as it would if directors were concerned.

Briefly, the procedure in a scheme under Sect. 206 is as follows—
1. Drafting of the scheme of arrangement; and when it is ascertained that it is acceptable to the leading shareholders, creditors or debenture-holders, as the case may be (there is no purpose served in incurring the expense of putting forward a scheme which is sure to meet with violent and weighty opposition)—

2. Applying to the Court for an order convening the necessary meeting or meetings.

The Court will direct that the meetings be convened by circular and/or advertisement (see Sect. 207 above), and will appoint a chairman, who will report the result of the meeting(s) to the Court. A separate meeting must be convened for each class of creditors or persons concerned, e.g. secured creditors would be in a different position from unsecured creditors, and where calls have been paid in advance on some shares and not on others of the same class, a separate meeting must be convened of those who have paid calls in advance (United Provident Assurance Co. (1910)). A proxy can now be granted to a person who is not a member of the class at whose meeting he is to use the proxy (see Sect. 136 (5)). Holders of share warrants and debentures to bearer must deposit their warrants or securities in order to entitle them to attend and vote at the meeting.

3. Convening of the necessary meetings in manner directed by the Court.

Circular notices must be accompanied by a copy of the scheme of arrangement and form of proxy, whilst in the case of Press notices it must be stated where a copy of the scheme (with the full details now required by Sect. 207) may be inspected and proxy forms obtained. The scheme is invariably passed "with or without such modification as the Court may require" to obviate the necessity for convening meetings to authorize such modifications as they are usually inconsequential.

4. The holding of the meeting(s).

In order to ascertain whether the statutory majority
is obtained, it will, of course, be necessary to know the names and values of the interests of those voting, and the proceedings will be conducted somewhat like a poll. The secretary should prepare a list of members, creditors, or debenture-holders (as the case may require) showing the value of the interest of every person. In the case of holders of share warrants or bearer debentures, the information as to the value of their holdings will be ascertained when they deposit their securities in order to entitle them to attend and vote.

5. If the meeting(s) pass the resolution agreeing to the scheme, a petition is presented to the Court for its sanction, and the Court makes such order as it deems fit.

6. If the Court confirms the scheme, an office copy of the Order of Court must be filed with the Registrar of Companies (order not effective until this is done) and a copy of the order must be annexed to every copy of the memorandum subsequently issued, under a penalty (see Sect. 206 (3)). It is probable that where a meeting of a class of shareholders has been held, and passed a resolution agreeing to the scheme, there must also be filed a copy of that resolution in compliance with Sect. 143 (4) (d).

The subsequent procedure will depend entirely on the nature of the scheme; for example, if creditors are accepting shares or debentures in lieu of their debts, shares or debentures must be allotted and issued to the creditors; if the shareholders have agreed to a modification of their rights, the share certificates may be called in for endorsement or renewal; if a sale of the assets is to be effected, the agreement therefor will be executed and carried out, and so on.

Section 208

(1) Where an application is made to the court under section two hundred and six of this Act for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown
to the court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "a transferor company") is to be transferred to another company (in this section referred to as "the transferee company"), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters—

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(d) the dissolution, without winding up, of any transferor company;

(e) the provision to be made for any persons, who within such time and in such manner as the court directs, dissent from the compromise or arrangement;

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy thereof to be delivered to the registrar of companies for registration within seven days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(4) In this section the expression "property" includes property; rights and powers of every description, and the expression "liabilities" includes duties.
(5) Notwithstanding the provisions of subsection (6) of section two hundred and six of this Act, the expression "company" in this section does not include any company other than a company within the meaning of this Act.

This section extends the powers of the Court in sanctioning schemes of arrangement under Sect. 206. Subsecs. (a), (b), and (d) are particularly useful and convenient provisions, as will be gathered from their nature and the remarks made in the earlier part of this chapter.

Section 306

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

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

This section enables a company which is being wound up voluntarily to effect compromises with its creditors as a whole, if the compromise is sanctioned by an extraordinary resolution of the company and a majority of three-fourths in number and value of all the creditors, subject to the right of creditors to appeal to the Court. A meeting of the creditors is not necessary—their consents may be obtained separately in writing. The necessary majority of creditors is difficult to obtain especially if the number of creditors is very large and if there is any opposition, as one creditor for a large amount may wreck the scheme, and there is no power to bind a class of creditors. It is often more satisfactory to proceed under Sect. 206 as the majority required under that section (i.e. majority in number and three-fourths in value of those present and voting) is more easily secured, there is no right of appeal, and it is possible
to bind a class of creditors, but the expense of an application to the Court may be a factor which may militate against Sect. 206 being invoked.

Section 209

(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company, whether a company within the meaning of this Act or not (in this section referred to as "the transferee company"), has, within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and when such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company:

Provided that where shares in the transferor company of the same class or classes as the shares whose transfer is involved are already held as aforesaid to a value greater than one tenth of the aggregate of their value and that of the shares (other than those already held as aforesaid) whose transfer is involved, the foregoing provisions of this subsection shall not apply unless—

(a) the transferee company offers the same terms to all holders of the shares (other than those already held as aforesaid) whose transfer is involved, or, where those shares include shares of different classes, of each class of them; and

(b) the holders who approve the scheme or contract, besides holding not less than nine tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three fourths in number of the holders of those shares.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the
date of the transfer comprise or include nine tenths in value of
the shares in the first-mentioned company or of any class of
those shares, then—

(a) the transferee company shall within one month from
the date of the transfer (unless on a previous transfer in
pursuance of the scheme or contract it has already complied
with this requirement) give notice of that fact in the pre-
scribed manner to the holders of the remaining shares or of
the remaining shares of that class, as the case may be, who
have not assented to the scheme or contract; and

(b) any such holder may within three months from the
giving of the notice to him require the transferee company
to acquire the shares in question;

and where a shareholder gives notice under paragraph (b) of
this subsection with respect to any shares, the transferee
company shall be entitled and bound to acquire those shares
on the terms on which under the scheme or contract the shares
of the approving shareholders were transferred to it, or on such
other terms as may be agreed or as the court on the application
of either the transferee company or the shareholder thinks fit
to order.

(3) Where a notice has been given by the transferee company
under subsection (1) of this section and the court has not, on an
application made by the dissenting shareholder, ordered to the
contrary, the transferee company shall, on the expiration of
one month from the date on which the notice has been given, or,
if an application to the court by the dissenting shareholder is
then pending, after that application has been disposed of,
transmit a copy of the notice to the transferor company
together with an instrument of transfer executed on behalf of
the shareholder by any person appointed by the transferee
company and on its own behalf by the transferee company, and
pay or transfer to the transferor company the amount or other
consideration representing the price payable by the transferee
company for the shares which by virtue of this section that
company is entitled to acquire, and the transferor company
shall thereupon register the transferee company as the holder
of those shares. Provided that an instrument of transfer shall
not be required for any share for which a share warrant is for
the time being outstanding.

(4) Any sums received by the transferor company under
this section shall be paid into a separate bank account, and
any such sums and any other consideration so received shall
be held by that company on trust for the several persons
entitled to the shares in respect of which the said sums or
other consideration were respectively received.

(5) In this section the expression "dissenting shareholder"
includes a shareholder who has not assented to the scheme or
contract and any shareholder who has failed or refused to
transfer his shares to the transfeere company in accordance with the scheme or contract.

Note: There is a subsection (6) to Sect. 209, but its contents are now immaterial.

Where a company makes an offer to purchase the shares of another company from the holders thereof, and within four months after the making of the offer nine-tenths in value of the holders agree to sell on the purchasing company's terms, the purchasing company can by virtue of this section compel the remaining shareholders to sell their holdings on the same terms. This is a very useful enactment for the purpose of facilitating amalgamations. Secretaries should note particularly Subsec. (3) whereby the purchasing company becomes entitled to be registered as the proprietor of the shares of a dissentient on paying the requisite consideration to, and handing to the company whose shares are being purchased, a copy of the notice which it has served on the dissentient informing him that it desires to acquire his shares. Thus, an alteration would have to be made in the register of members without the production of a transfer or an order of Court. Dissenting shareholders whose shares are thus compulsorily transferred will still, however, retain their share certificates.

The transfers of shares to a purchasing company may be carried out in the following manner. The shareholders are circularized and asked to sign a form of acceptance, if they agree to the purchasing company's proposals. When acceptances sufficient in value to satisfy the requirements of the purchasing company have been received, forms of transfer of each acceptor's shares to the purchasing company are prepared, and forwarded to the acceptors, and arrangements made with bankers to pay the agreed purchase moneys to the transferors on their depositing the duly executed transfers and relevant share certificates with the bankers.
A time may be prescribed for verification of the documents. Where the purchasing company is allotting shares or debentures to the acceptors, the transfers will set out the allotment to be made (and cash payment representing any fractions), and on execution and surrender of the transfer, accompanied by the share certificates, the new shares or debentures will be allotted and certificates therefor issued in due course.

The Power of a Company to Sell Its Undertaking

A company may wish to sell its undertaking in exchange for cash or shares in a purchasing company, and then either to wind up and divide the consideration for sale amongst its members, or to continue as a holding company retaining the shares allotted as the purchase price or investing the cash received on the sale. The question is: "Has the company power to do this?" With this object in view, companies sometimes take power in their memorandum to sell the whole undertaking in exchange for cash or for shares, and power to divide such shares amongst their members according to their rights and interests, or take power in the articles to authorize the liquidators of the company to divide the assets of the company in specie amongst the contributories.

A sale for shares under the provisions of Sect. 287 demands protection for dissentients, and procedure under Sects. 206 and 208 involves the expense of an application to the Court, and the Court might stipulate that dissentients be protected. The company may desire to sell without providing for dissentients or applying to the Court. Can this be done? There is apparently nothing to prevent a company selling its undertaking for cash under a power contained in the memorandum, continuing in business, and re-investing the proceeds, or going into liquidation and dividing the proceeds of the sale amongst its members. But if the sale
was made for shares in the purchasing company, could the vendor company convert them into cash, go into liquidation and divide the proceeds amongst its members, or could it go into liquidation, and divide the shares amongst its members if the articles empowered the liquidators to distribute in specie amongst the contributories any part of the company’s assets? Such transactions were common at one time. In Doughty v. Lomagunda Reefs (1902), the memorandum empowered the company to sell its undertaking for shares in another company and to distribute in specie amongst its members any part of its property. The articles empowered the liquidators in a winding up of the company, with the sanction of an extraordinary resolution, to distribute in specie amongst the contributories any part of the assets. The company sold its assets for fully-paid shares in a purchasing company, and these shares were divided amongst its members. It was held that the sale was good, and was not vitiated by the fact of the company’s immediate liquidation, and that the transaction was not in disguise a sale under Sect. 161 of the Companies Act, 1862 (now Sect. 287 of the Companies Act, 1948).

Some doubt has, however, been thrown on the validity of transactions such as these by the decision in Bisgood v. Henderson’s Transvaal Estates (1908), in which case there was a proposal to sell the company’s assets for partly-paid shares to be allotted direct to the members of the vendor company which was to go into liquidation. It was held that such a proposal could not be effected except under Sect. 161 of the 1862 Act (now Sect. 287, 1948 Act), which protects dissentients. As that section was not invoked, members unwilling to accept the partly-paid shares in the purchasing company would not get anything, as they had no statutory right of objection.

Following this decision, the view is now generally
held that a sale of assets for shares cannot be effected (notwithstanding powers in the memorandum) except either under Sect. 287, or when confirmed by the Court, under Sects. 206 and 208. The crux of the matter seems to be that Sect. 287 permits a sale for shares only if certain conditions are complied with, i.e. special resolution authorizing the liquidator to sell for shares, and protection of dissentients. Therefore, if a company proposes to sell its assets for shares, and subsequently (a) sells those shares and goes into liquidation, or (b) goes into liquidation and divides the shares amongst its members, or leaves the realization and disposal of the shares to the liquidator, it is apparent that Sect. 287 would be evaded to some extent in that dissentients would not have the statutory rights which that section would give to them. Consequently, if, in contemplation of liquidation, a sale of a company's assets for shares is effected under a power in the memorandum, the transaction may be subsequently set aside as an evasion of Sect. 287. Of course, if all the members were in agreement, there would be no danger, and the sale could be effected without compliance with Section 287, but there is always the possibility that where there is a large number of shareholders, one or more might object, appeal to the Court, and even though fully-paid shares were being allotted to them, the Court might rule that Sect. 287 had been evaded and grant an injunction restraining the scheme.

Powers of a Company to Purchase Shares in Another Company, to Amalgamate, etc.

It is very desirable that a company should have wide powers in its memorandum enabling it to purchase shares in another company, to amalgamate with other companies or acquire controlling interests in them, to purchase businesses of a nature similar to its own, or to float and finance subsidiary companies, and
other such powers enabling it to enter into arrange-
ments with other companies, as such powers are very
convenient, and often necessary, in order to carry
out schemes for amalgamation, reconstruction, en-
largement of the company’s activities, etc. Unless
expressly mentioned in the memorandum, such powers
cannot generally be implied, and their absence might
necessitate the formation of a new company having
the necessary powers, or an application to the Court
for an extension of the objects clause, in order to enable
the scheme of amalgamation, reconstruction, etc.,
purchase of shares in other companies, to be carried
out.

Sect. 5 provides seven heads under which a company
may, by special resolution, alter the provisions of its
memorandum by extending its objects clause. The
sanction of the Court is not now required unless there
are dissentients. Sect. 5 (2) provides that an applica-
tion to the Court may be made (a) by the holders of
not less in the aggregate than fifteen per cent in nom-
inal value of the company’s issued share capital or any
class thereof; or (b) by the holders of not less than
fifteen per cent of the company’s debentures entitling
the holders to object to alteration of its objects. An
application must not be made by any person who has
consented to or voted in favour of the alteration.
Sect. 5 contains several other new provisions, including
a stipulation that application to the Court must be
made within twenty-one days of the passing of the
resolution, and the section should be consulted.

Relief from Stamp Duties on Reconstruction,
Amalgamation, etc.

With the object of facilitating reconstructions and
amalgamations, by reducing the heavy burden of
stamp duties so often incidental to such schemes,
Sect. 55 of the Finance Act, 1927, Sect. 31 of the
Finance Act, 1928, and Sect. 41 of the Finance Act, 1930, provide for some relief from capital duty (a) on the nominal capital of any new company registered in connection with the scheme, or (b) on the increase of the nominal capital of an existing company where the increase is effected in order to enable the scheme to be carried through, and relief is also granted from conveyance or transfer duty on instruments vesting in the transferee company the assets or shares of transferor companies.
CHAPTER XVII
Private Companies

A secretary should have full cognizance of the distinguishing characteristics of both public and private companies, as many of these matters will have an important bearing upon the work and duties to be performed by the secretary.

In the case of a private company, the work of the secretarial department will be necessarily of less magnitude than in the case of a large public company, particularly in respect to the work in connection with the issuing of shares and debentures, registration of transfers, preparation of annual return, payment of dividends and similar matters.

A private company is defined by Sect. 28 of the Companies Act, 1948, as—

A company which by its articles—
(a) restricts the right to transfer its shares; and
(b) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members of the company; and
(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

It is further provided by Sect. 30 that in the event of a private company altering its articles so as not to include the restrictive provisions as outlined in Sect. 28 (above), the company shall as from the date of alteration of articles cease to be a private company and shall, within a period of 14 days, deliver to the Registrar of Companies a prospectus (as provided in the Fourth Schedule to the Act) or a special statement in lieu of prospectus, in the form set out in the Third Schedule.

For failure to comply with the provisions above
outlined, the company and every officer of the company
are liable to a default fine of £50.

Where a private company fails to comply with the
restrictive provisions necessarily contained in its
articles so as to constitute it a private company, the
company ceases forthwith to be entitled to the privi-
leges and exemptions conferred by the Act on private
companies.

Where the Court is satisfied that failure to comply
with the conditions was accidental or due to inadver-
tence, or considers that it is just and equitable to grant
relief, relief may be granted.

By Sect. 128, private companies must send with their
annual return required by Sect. 124, a certificate by
a director and the secretary that the company has not
since the date of the last return (or incorporation if a
first return) made any invitation to the public to sub-
scribe for any shares or debentures of the company,
and that any members in excess of fifty are not to be
included in reckoning the number of fifty as prescribed
by Sect. 28.

Exempt Private Companies

Owing to the fact that many large public companies
formed private companies as their subsidiaries in order
to cloak their operations, the Companies Act, 1948,
removed the privilege extended to private companies
of not being required to file accounts with the annual
return. But where it can be proved that the private
company is a bona fide one (e.g. a family business of the
kind visualized when private companies were first
introduced in 1907) then by fulfilling certain conditions
and filing a certificate relating thereto with its annual
return the Registrar of Companies permits it to be
classed as an "exempt private company," which need
not file accounts. The main conditions are three, but
Sect. 129 and the Seventh Schedule should be referred
to. These conditions are: (1) That no body corporate is the holder of any of its shares or debentures, and no person other than the holder has any interest therein; and (2) that the number of debenture-holders is not more than fifty; and (3) that no body corporate is a director, and that there is no arrangement whereby the policy of the company is capable of being determined by persons other than the directors, members and debenture-holders or trustees for debenture-holders (Sect. 129 (2)).

**Privileges and Exemptions**

1. The statutory minimum of members is two and not seven.

2. Not required to include in the annual return a copy of the balance sheet to which the return relates, duly audited by the company’s auditors (Sect. 127 (1)) —but ONLY if it is an exempt private company.

3. Need not file or forward to members a statutory report or hold a statutory meeting (Sect. 130).

4. Directors may be appointed by the articles without signing a consent to act as director or contracting to take qualification shares, if any (Sect. 181 (1)).

5. Can commence business and exercise borrowing powers immediately on incorporation. No certificate entitling the company to commence business is required (Sect. 109).

6. Is relieved from the operation of Sect. 48, which requires a company having a share capital which does not issue a prospectus on or with reference to its formation, or having issued a prospectus, has not proceeded to allot any of the shares, to file a statement in lieu of prospectus with the Registrar at least three days before the first allotment of shares, etc.

7. No minimum subscription (Sect. 47).

8. Sect. 176 which requires every company to have
at least two directors, allows a private company to have
at least one director.

9. If the company is an exempt private company, a
director need not resign his office on attaining the age
of 70 (Sect. 185 (8)).

10. An exempt private company may appoint as
auditor a person not possessing the qualifications
required by Sect. 161.

It should be noted, however, that a private company
must now send balance sheets and profit and loss accounts
to its shareholders in the same way as public companies.

Conversion into Public Company and Vice Versa

A private company automatically becomes a public
company by altering its articles so that they no longer
include the restrictive provisions of Sect. 28 necessary
to constitute the company a private company. A special
resolution would be necessary for this purpose.

Sect. 30 requires that a prospectus or the special
statement in lieu thereof, in the form as set out in the
Third Schedule to the Act shall be filed within 14 days
of the company ceasing to be a private company. A
printed copy of the special resolution must also be filed
with the Registrar within 15 days.

There is nothing to prevent a public company altering
its articles by inserting the necessary provisions and
deleting inappropriate clauses and thereby claiming
the privileges of a private company, provided the
number of its members does not exceed fifty.

Specimen Resolution on Conversion into a Public
Company

"That (a) the company is desirous of becoming a public
company (this resolution is not strictly necessary—all that is
required is that the Articles shall be altered so as to exclude
the inappropriate provisions).

(b) That Articles numbered to and to are
hereby deleted from the Articles of the company."
If it is desired to add any further Article considered necessary because of the change

(c) That the following new Article, to be numbered 78(a), be inserted in the Articles of the company.

(Here follows the new Article)

Specimen Resolutions on Reconversion into a Private Company

"That the Company do now become a Private Company."
"That Articles numbered to and to are hereby deleted from the Articles of the Company."
"That the following new Articles, to be numbered . . . to . . ., be inserted and form part of the Articles of the Company."

(Here would be set out the restrictive Article Clauses required by Sect. 28)
CHAPTER XVIII

STATUTORY COMPANIES

The name "Statutory Companies" designates that large and important class of companies of a public nature which are formed for specific purposes under Special Acts of Parliament (termed governing Acts) which carefully define the nature, scope, and powers of the company.

This class embraces companies engaged in public utility services such as railways, gas, water, electricity, docks and harbours, and similar undertakings. Under nationalization most of these important companies are now in the ownership and control of the State, and the Acts do not now govern their proceedings.

Formation

The first steps in the formation of a statutory company are outlined below—

1. An advertisement relative to the proposed statutory company is inserted in the London Gazette and in a local newspaper.

2. A "Bill" is prepared and deposited in Parliament.

3. Opposition (if any) to the "Bill" has to be overcome, necessitating the appearance of counsel before the various committees of the Houses of Parliament.

4. "Special Acts," when passed, invariably incorporate the Land Clauses Act, the Companies Clauses Acts, and the appropriate general Acts particular to the proposed undertaking, for example, the Railway Clauses Acts, the Gasworks Clauses Acts.

The secretary of a statutory company should be fully conversant with the provisions of his company's Special Act as well as the incorporated Acts.

Under the Companies Clauses Consolidation Act,
1845, the keeping of the following books is obligatory on a statutory company—
1. Register of shareholders. (Sect. 9.)
2. Shareholders' address book. (Sect. 10.)
3. Register of transfers. (Sect. 15.)
4. Register of mortgages and bonds. (Sect. 45.)
5. Register of holders of consolidated stock (i.e. shares converted into stock). (Sect. 63.)
6. Minute books of proceedings of directors, and of all the other meetings of the company. (Sect. 98.)

Under Sect. 28 of the Companies Clauses Act, 1863, where debenture stock is issued, a "register of debenture stock" must be kept.

Main Differences between Statutory Companies and Registered Limited Companies from the Point of View of the Secretary

1. **Statutory companies** are constituted and governed by a Special Act of Parliament which usually incorporates by reference the whole or parts of several Companies Clauses Acts, for example, the Companies Clauses Consolidation Acts, of 1845, 1863, 1869, and 1888, the Gas Works Clauses Acts, the Land Clauses Act, etc. The Companies Clauses Acts, 1845 to 1888, are to a statutory company what articles of association are to a registered company, but whilst a registered company may freely alter its articles by special resolution, a statutory company can alter its internal regulations only by a special Act of Parliament.

2. **The word "Limited"** does not form part of the name of the company.

3. **The remuneration of the secretary** is fixed by a general meeting of the company (cf. Sect. 91 of Clauses Act, 1845), but the neglect of the meeting to fix the remuneration of the secretary cannot be pleaded in defence of an action by the secretary for the salary due to him (*Bill v. Darenth Valley Railway Co. (1856)*).
4. In addition to the usual requirement as to the keeping of a "register of shareholders" (to which there is no right of inspection), there must be kept a "shareholders' address book."

This latter book is open to the inspection of shareholders, without fee, and copies may be demanded by shareholders on payment of a fee not exceeding 6d. per 100 words copied.

Moreover, the "register of shareholders" must be authenticated by the common seal of the company being affixed thereto, at every ordinary meeting of the company. (Sect. 9, 1845 Act.)

5. **Regarding transfers**, shareholders are given an absolute right to transfer subject to all calls due on the shares being duly paid. Transfers must be by deed. The keeping of a transfer register is compulsory, and Sect. 15 of the 1845 Act lays down special secretarial duties in connection with a transfer as follows—

(a) The secretary must keep the transfer.

(b) He must enter a memorial thereof in the register of transfers.

(c) He must endorse the entry on the deed of transfer.

(d) He must deliver, if demanded, a new certificate.

(e) He may, for every such entry and endorsement and certificate, demand the prescribed fee, or if none be prescribed, 2s. 6d. may be charged as a maximum fee.

(f) He must, at the request of a purchaser, make an endorsement of the transfer on the old certificate which shall be deemed to be equivalent to, and instead of issuing, a new certificate.

6. **Transmission.** (Sects. 18 and 19 of 1845 Act.) Before a person to whom a shareholding has been transmitted can be recognized, the circumstances in which the transmission has taken place must be authenticated (1) by a declaration in writing made by a credible person before a justice of the peace or master of the High Court of Chancery, or (2) in such other manner as the
directors may require. A declaration is usually dispensed with, the directors usually accepting a written request by the person becoming entitled to the shares to register him as a holder thereof, provided the request sets forth the circumstances of the transmission. The appropriate evidence of transmission, such as probate of will, letters of administration, etc., must of course be produced in addition.

When the transmission has been so authenticated, the secretary must enter the name of the person entitled to the shares in the register of shareholders and enter the necessary particulars in the register of transfers, provided the prescribed fee (if none prescribed, 5s.), is paid. Until such authentication the person claiming under the transmission is not entitled to receive dividends, nor to vote. This is not always the case as regards transmissions of shares in registered companies. (See page 159.)

The person claiming the shares under the transmission must be registered as a member before he can deal with the shares in any way, whereas in the case of registered companies, persons claiming shares by transmission may transfer such shares without the necessity for becoming registered as members (see Sect. 76 Companies Act, 1948), and, moreover, whilst a registered company may take power in its articles to refuse to register a person entitled by transmission if it so desires, a statutory company has no such discretion and must register such person on his complying with all necessary requirements.

7. FORFEITURE. (Sects. 29–35 of 1845 Act.) Two months must elapse after a call is due before a forfeiture can be effected, and a further twenty-one days' notice before forfeiture must be given to the interested party.

In order to give the company power to sell forfeited shares, the forfeiture must be confirmed and a declaration to sell passed at a general meeting held not less
than two months after due notice of the intention to forfeit.

The company may not sell more of the shares of a defaulter than will be sufficient, approximately, to pay the arrears then due for calls, together with interest and expenses attending the sale and forfeiture. Any surplus shall, on demand, be returned to the defaulter. Any shareholder may redeem his shares after forfeiture, by paying the amount of calls then due, together with interest and expenses, if payment is made before a sale takes place.

8. Directors. (Sects. 81–91 of 1845 Act.) The number of directors shall be the number as prescribed by the Special Act. Provision is made for the rotation of directors.

Directors are given the following statutory powers—
(a) To manage and superintend the affairs of the company.
(b) To exercise all powers not required to be exercised in general meeting.
(c) To exercise all powers subject to the control of the Special Act and to any regulations imposed in general meeting.

The following must not be exercised by directors—
(a) Increase or decrease of the number of directors.
(b) Choice and removal of directors.
(c) Choice of auditors.
(d) Remuneration of secretary, treasurer, auditors, directors.
(e) The augmentation of the capital of the company.
(f) The declaration of dividends.
(g) The determination of the amount to be borrowed on mortgage.

The whole of the above matters shall only be exercised at a general meeting of the company.

9. Auditors. By Sect. 101 of the Act of 1845, the company shall at the first meeting after passing of the
Special Act, elect the prescribed number of auditors, and if no number is prescribed, then two must be elected.

Where no other qualification be prescribed in the Special Act, every auditor shall have at least one share in the company. An auditor must not hold any office in the company nor be interested except as a shareholder.

Provision is made for the rotation of auditors.

10. Access to the Special Act. (Sects. 161–2 of 1845 Act.) The company shall at all times after the expiration of six months after the passing of the Special Act, keep, at the principal office of the company, a copy of the Special Act to be open to the inspection of interested parties. The taking of copies or extracts shall be permitted.

The prescribed penalty for failing to keep the copy of the Special Act, as above, is £20 fine and £5 per day during default.

11. The Companies Clauses Act, 1845, makes special provisions as to meetings of the company and its directors, voting at meetings, etc. These matters are dealt with fully in the volume Meetings, issued by the publishers of this book.
CHAPTER XIX

MISCELLANEOUS MATTERS

The miscellaneous matters which are dealt with in this chapter, whilst being of no mean importance, are matters which do not justify elaborate treatment under separate chapter headings.

It is thought that the matters treated in this omnibus chapter of miscellaneous matters will be of general interest to readers and of particular interest to examinees.

Change of Company’s Name

1. Where, through inadvertence or otherwise, a company is registered by a name which is identical with or so nearly resembles the name of an existing company as to be calculated to deceive the public, the first company may change its name with the sanction of the Registrar.

2. Where the company decides by special resolution to change its name—

   (a) First write to the Board of Trade inquiring as to whether or not there is likely to be any objection raised by the Board to the proposed substitution of the name of the company. On receiving a favourable reply—

   (b) Summon an extraordinary general meeting to pass a special resolution sanctioning the change of name.

   (c) File with the Registrar of Companies a printed copy of the special resolution within fifteen days from the date of the resolution.

   (d) File a printed copy of the resolution with the Board of Trade accompanied by a letter stating the object of the change of name, and requesting the consent of the Board thereto.
(e) Upon receiving the written consent of the Board of Trade, have 5s. stamp duty impressed thereon and file the "consent" with the Registrar, who will alter the register and issue a new certificate of incorporation.

(f) Attend to the necessary alterations of the seal, stationery, name plates, banking accounts, copies of memorandum and articles.

(g) Call in all share certificates, etc., for alteration of the name—by rubber stamp for simplicity.

It should be observed that a new name which indicates or implies a change of objects is not allowed by the Board of Trade, unless consequent upon a change of objects.

Sects. 17, 18 and 19 of the Companies Act, 1948, should be referred to.

Seal and Seal Book

The "Seal" is the official signature of a company, and every company must have a seal upon which the name of the company must be engraved. (See page 319.)

The custody of the keys of the seal is a matter usually provided for by the directors. (See page 319.)

As regards the use of the seal, it is usual for articles of association to provide that the affixing of the seal shall only take place by the authority of a resolution of the Board and in the presence of at least one director and the secretary, who shall each sign every instrument to which the seal is affixed. (Cf. Clause 113 of Table A.)

A seal book should be kept in which to record particulars of all documents to which the seal of the company is affixed. A brief description of the document sealed, together with the date of the resolution authorizing the sealing, and the names of the persons who signed the document and witnessed the affixing of the seal, should be recorded in the seal book. A suitable ruling is shown on the following page.
MISCELLANEOUS MATTERS

When the Seal Must be Used. The affixing of the seal to documents renders them liable to be stamped with a deed stamp (ros.); accordingly, the seal should not be used unnecessarily, its use being generally restricted to important documents and contracts, a selection of which is given below—

1. In all cases where an ordinary individual is

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required to contract under seal—deeds, conveyances, etc.

2. Stock and share certificates (Sect. 81). (These are not, however, liable to stamp duty.)

3. Powers of attorney appointing an agent to execute deeds abroad. (Sect. 34.)

4. Share warrants to bearer. (The stamp duty on these is 6 per cent.)

5. Instrument in writing, appointing an agent abroad to use an official seal on behalf of the company. (Sect. 35 (3).)

6. Debenture bonds and stock certificates. (See Chapter XII as to stamp duties on debentures.)

Statutory and Other Books

The following statutory books must be kept by a limited company—

1. Register of members (Sect. 110) (including an index
to the register where there are more than fifty members (Sect. 111).

2. Register of charges specifically affecting property of the company and all floating charges. (Sect. 104.)

3. Register of directors and secretaries (Sect. 200).

4. Register of directors' shareholdings, etc. (Sect. 195).

5. Minute books. (Sect. 145.)

6. Proper books of account. (Sect. 147.)

As regards "the keeping of proper books of account," the meaning of this term is shown negatively by Sect. 331, compliance with which clearly involves the keeping of a general ledger, cash book, journal, bills receivable and payable books, stock book.

In addition to the statutory books, many other books are found to be desirable, and often indispensable, in practice. Amongst these may be included—

1. Register of documents sealed.

2. Register of probates, etc. (See Chapter VIII, page 160.)

3. Directors' attendance book. (See page 295.)

4. Register of share certificates.

5. Register of transfers. (See page 145.)

6. Register of balance tickets issued. (See page 142.)

7. Register of powers of attorney. (See page 179.)

8. Register of transfers certified. (See Chapter VIII, page 142.)

9. Register of transfer receipts. (See page 143.)

**Issue of Share Warrants**

A company limited by shares, if so authorized by its articles, may issue under its common seal a share warrant to bearer in respect of any fully-paid shares in the capital of the company. (Cf. Sect. 83.)

Anyone falsely and deceitfully personating the owner of any share, share warrant, or coupon, thereby obtaining such share or warrant or payment due thereunder,
shall be guilty of a felony and shall on conviction thereof be liable, at the discretion of the Court, to be detained in penal servitude for life, or for any term not less than three years (Sect. 84).

On the issue of a share warrant the company shall—

1. Strike out of the register of members the name of the member to whom the share warrant has been issued.

2. Enter in the register the fact of the issue of the warrant, a statement of the shares included in the warrant, distinguishing each share by its number (if any), and the date of issue of the warrant.

The bearer of the warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered in the register of members (see Sect. 112). A specimen appears on the next page.

Readers will not need reminding that share warrants to bearer can now only be issued with Treasury permission, and that any still in circulation must be deposited with what is called an Authorized Depositary.

How Holders of Share Warrants Attend and Vote at Meetings

Notice of meetings will be given to share warrant holders by advertisement in accordance with the articles. Articles will usually provide that the notice be advertised in a newspaper circulating in the neighbourhood of the registered office of the company, and that notice shall be deemed to be served on the day of, or at noon on the day of, the advertisement. The advertisement must, of course, appear in the Press the requisite number of days before the date fixed for the meeting. Provision will also be made as to the method by which share-warrant holders will identify themselves for the purpose of attending at the meeting, and the following clause (No. 38) of the 1908 Table A (not
SHARE WARRANT TO BEARER

NAME OF COMPANY .................................................................

No. (B) 1 up

CAPITAL £ .................................................................

Divided into .................................................. Shares of .................................. No. of ...................... to .......................

Distinctive Numbers:

From |

To |

(This side to be given in French)

Share Warrant to Bearer—

This is to certify that the Bearer of this Warrant is the proprietor of .......

shares of ............. No. as on face hereof in ................................subject to the

regulations contained in the Articles of Association of the Company.

No. of Shares

...(5)....

Given under the Common Seal, etc.

....................................................... Director.

....................................................... Secretary.

NAME OF COMPANY .................................................................

Talon for fresh supply of coupons for Share Warrants No. ...........

to Bearer representing ................. Shares.

The Bearer of the above Warrant will receive in exchange for this talon a fresh supply of coupons when those below have all fallen due.

Endorsement will give the Regulations in English and French.

NAME OF COMPANY .................................................................

(This side to be given in French)
included in Table A to the Companies Act, 1948) is typical of usual clauses found in article—

The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited, the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognized as depositor of the share warrant. The company shall on two days' written notice, return the deposited warrant to the depositor.

Notices to holders of share warrants usually contain a statement somewhat in the following terms—

Holders of share warrants who desire to attend are reminded that in accordance with the articles of association, they must first deposit their warrants, together with a statement in writing of their names and addresses, at the registered office of the company, two clear days before the date of the meeting. Each depositor will receive in exchange a certificate of deposit, and a ticket of admission to the meeting. Warrants must remain deposited until after the meeting shall have been held, and will be subsequently returned to depositors on their surrendering the certificates of deposit.

The secretary should keep a list of all warrants deposited, to regulate admission to the meeting, and also to facilitate polling if necessary.

On return of warrants the persons presenting the certificates of deposit should be requested to sign a receipt endorsed on the certificates of deposit.

For purposes of convenience, some companies, whose registered offices are not situate near the place of meeting, arrange for the warrants to be deposited with their bankers.

Annual Return

By Sect. 124 of the Companies Act, 1948, every company having a share capital shall once at least in every year make a return of members together with
fullest particulars of the individual shareholding of each member, and certain other information as required by the section. The return must be filed even if no general meeting is held in the calendar year (*Park v. Lawton* (1911)). Sect. 124 (1) (c) provides, however, that the full list of members need only be included every third year, provided the changes in membership are duly included each year. The return must now state where the register of members is kept, if not at the registered office, and also give particulars of the secretary.

The return must either be in alphabetical order, or be accompanied by an index, enabling the name of any person in the list to be readily found, and the return must be filed within forty-two days after the annual general meeting.

Readers should study carefully the whole of Sects. 124–129, noting the contents as laid down.

Subsec. 1 of Sect. 124 provides that the return shall be in accordance with the form set out in the Sixth Schedule to the Companies Act, 1948.

**Transfer of Shares from the Principal to a Dominion Register**

**SECTION 119.**

(1) A company having a share capital whose objects comprise the transaction of business in any part of His Majesty’s dominions outside Great Britain, the Channel Islands or the Isle of Man may cause to be kept in any such part of His Majesty’s dominions in which it transacts business a branch register of members resident in that part (in this Act called a “dominion register”).

(2) The company shall give to the registrar of companies notice of the situation of the office where any dominion register is kept and of any change in its situation, and if it is discontinued of its discontinuance, and any such notice shall be given within fourteen days of the opening of the office or of the change or discontinuance, as the case may be.

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

(4) References to a colonial register occurring in any articles registered before the first day of November, nineteen hundred
and twenty-nine, shall be construed as references to a dominion register.

Section 120.

(1) A dominion register shall be deemed to be part of the company's register of members (in this section called "the principal register").

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district where the dominion register is kept, and that any competent court in that part of His Majesty's dominions where the register is kept may exercise the same jurisdiction of rectifying the register as is under this Act exercisable by the court, and that the offences of refusing inspection or copies of a dominion register, and of authorizing or permitting the refusal may be prosecuted summarily before any tribunal having summary criminal jurisdiction in that part of His Majesty's dominions.

(3) The company shall (a) transmit to its registered office a copy of every entry in its dominion register as soon as may be after the entry is made; and (b) cause to be kept at the place where the company's principal register is kept a duplicate of its dominion register duly entered up from time to time.

Every such duplicate shall for all the purposes of this Act be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a dominion register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a dominion register shall, during the continuance of that registration, be registered in any other register.

(5) A company may discontinue to keep a dominion register, and thereupon all entries in that register shall be transferred to some other dominion register kept by the company in the same part of His Majesty's dominions or to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles, make such provisions as it may think fit respecting the keeping of dominion registers.

(7) If default is made in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a default fine; and where, by virtue of proviso (b) to subsection (2) of section one hundred and ten of this Act, the principal register is kept at the office of some person other than the company and by reason of any default of his the company fails to comply with paragraph (b) of subsection (3) of this section, he shall be liable to the same penalty as if he were an officer of the company who was in default.
Section 121.

An instrument of transfer of a share registered in a dominion register, other than such a register kept in Northern Ireland, shall be deemed to be a transfer of property situate out of the United Kingdom, and, unless executed in any part of the United Kingdom, shall be exempt from stamp duty chargeable in Great Britain.

Observe that there is no obligation on companies to keep a dominion register, and even if a dominion register is kept, every shareholder resident in the dominion need not necessarily be entered on that register, but if he is so entered, it will facilitate dealings with the shares in the dominion. To comply with Subsec. (4) of Sect. 120, distinctive share certificates are usually issued to distinguish shares registered in a dominion register from shares registered in the principal register, and to avoid confusion when dealing with transfers, etc.

Procedure for Removal of Shares from a Principal to a Dominion Register

The following is an outline of the procedure for removal of shares from the principal to a dominion register. (The same procedure will, mutatis mutandis, apply to transfers, (a) from the dominion to the principal register, (b) from one dominion register to another, where there are several dominion registers.)

1. The member desiring the removal is asked to sign a request for removal of his shares, to surrender his share certificate, and pay the prescribed fee. Some companies provide special forms of request for removal.

2. The surrendered certificate is endorsed to show that the shares are registered in the dominion register. A suitable form of endorsement is—

The shares comprised in this certificate have been transferred to the (Canadian) Register of the Company, which is kept at.......................... in the Dominion of (Canada) and are now transferable only in (Canada).

Dated .......................... 19...

.............................. Secretary.
The certificate is then returned to the applicant, who is informed that on lodging the certificate at the address stated in the endorsement, a definitive dominion certificate will be issued to him.

3. An entry is made in the applicant’s share account in the principal register, to show that the shares have been transferred to the particular dominion register, the date of transfer, and the folio of the applicant’s account in the duplicate dominion register kept at the registered office.

4. An entry is made in the duplicate dominion register which has to be kept at the registered office, showing the same details of the applicant, and his holding as would be necessary in the case of a member entered on the principal register.

5. An advice of the removal is sent to the dominion secretary. These advices should not be delayed, and if the number of removals is large, the advices should be sent frequently and regularly. When the applicant presents his endorsed share certificate at the dominion office of the company, a dominion share certificate will be issued to him (provided advice of the removal has reached the dominion secretary from the principal secretary), and the applicant is then enrolled on the dominion register. The dominion secretary will, in due course, return the surrendered share certificate to the principal office for cancellation.

Instead of endorsing certificates as before mentioned, some companies prefer to keep a stock of the various dominion share certificates at the registered office, and to issue these direct to applicants for removal. It is, however, considered more desirable that all certificates for shares registered in a dominion register be issued in the dominion, as confusion may arise where two offices are issuing certificates for the shares entered in one register.

At regular intervals, the dominion secretary must
furnish the principal secretary with full details of all transfers of shares within the dominion, transmissions, etc., and removals from the dominion to the principal register, so that the duplicate register kept at the registered office may be written up to date. See page 211 as to payment of dividends to members registered in a dominion register.

Register of Directors' Shareholdings

Reference must be made here to new legislation in Sect. 195, requiring a Register of Directors' Shareholdings, etc., to be kept. This must show the number, description and amount of shares or debentures of the company, or of any subsidiary or holding company, which are held by or in trust for any director, or of which he has the right to become the holder. Where any such shares or debentures are to be so held, or cease to be held, the register must show the date and price or other consideration for each transaction.

This register must be kept at the registered office of the company, and be open to inspection by any member or debenture holder during business hours for not less than two hours daily during the period beginning fourteen days before the date of the annual general meeting and ending three days after its conclusion; and it must also be available for inspection throughout the continuance of the meeting by any person present. The register must be open to inspection at any time by any person acting on behalf of the Board of Trade.

Insurance

The subject of "General Insurance" is one of which every secretary should have some knowledge. In particular, he should be acquainted with those classes of insurance which affect the particular company which he serves, and he should be in a position to advise his board of directors as to the adequacy or otherwise
of existing insurances effected, and as to the advisability or otherwise of extending the field of insurances carried, so as to ensure that complete protection is secured by insurance, against the many risks and perils which prudence demands should be placed on the underwriter.

Of the many classes of insurance which are available to the business community, mention is made only of those classes which are common to most industrial undertakings.

1. **Insurance Against Fire.** Here it is most important to see, especially during periods of enhanced prices, that the business premises, factories, and warehouses, outbuildings, domestic offices, etc., belonging to the company, are insured for their full value, also that the contents of the said premises are fully insured; e.g. fixtures and fittings, plant and machinery, movable utensils, office furniture and effects, stock-in-trade, goods held in trust or on commission, etc.

2. **Loss of Profits Following a Fire (Consequential Loss Insurance).** This insurance is a necessary complement to fire insurance, and whereas the fire policy provides indemnity against loss or damage by fire (loss of capital assets), the loss of profits policy indemnifies the insured against loss of income, including annual net profit and standing charges, such as rent, rates, taxes, insurance premiums, interest on mortgages and loans, salaries and wages to permanent assistants, etc., due to a fire which results in dislocation of the business and often entails increased working expenses during reconstruction of premises, etc.

3. **Workmen’s Compensation Insurance.** Despite the coming into force of the National Insurance (Industrial Injuries) Act, 1946, employers may still be faced with claims at common law. The new legislation in theory marks the end of liability to meet workmen’s compensation claims, but an insurance policy to protect the employer may still be advisable.
To begin with, the Law Reform (Personal Injuries) Act, 1948, removed the employer's immunity from accident claims resulting from common employment. Thus, if a van boy is injured through the negligence of the driver, the employer will be liable—a new concept in British law, making the employer now always liable for the negligent act of his servants committed in the course of the employment. Further, an employer is still liable if he fails to provide proper machinery and plant, to employ skilled managers, and to provide a proper system of working. Again, the employer is still liable to fence machinery, etc., under the Factories Act, 1937. There are also the Fatal Accident Acts, which render the employer liable for claims by the dependant of deceased persons, and also claims by persons who are injured in a factory through lack of due care although they are not employees.

4. Motor Vehicle Insurance. In this class, it is possible to obtain indemnity against liability to third parties only, or for third party, fire and theft, or for a full comprehensive cover.

The classes of insurance outlined are indispensable to most trading and manufacturing companies. In addition, some or all of the following insurances may be desirable if not indispensable: (1) Burglary, (2) Engineering and boiler, (3) Plate-glass, (4) Lift insurance, (5) Fidelity guarantee, (6) Marine, (7) Public liability indemnity, (8) Sinking fund and capital redemption policies.

The larger insurance companies are prepared to issue policies covering the whole of the company's employees (en bloc) against accidents, disease, and death (group insurance), as well as to grant superannuation and pension-scheme policies.