ANALYSIS

1980, No. 43

An Act to amend the Companies Act 1955

[*4 December 1980*

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Companies Amendment Act 1980, and shall be read together with and deemed part of the Companies Act 1955 (hereinafter referred to as the principal Act).

(2) Except as provided in section 46 (2) of this Act, this Act shall come into force on the 1st day of April 1981.

2. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by adding to the definition of the term "company" the words "; and in subsection (5) of this section includes an overseas company".

(2) Section 2 (1) of the principal Act is hereby further amended by inserting, after the definition of the term "Registrar" (as substituted by section 2 (2) of the Companies Amendment Act 1975), the following definitions:

" 'Related company' has the meaning assigned to it by subsection (5) of this section:

" 'Relative', in relation to any person, means—

"(a) Any parent, spouse, child, brother, or sister of that person; or

"(b) Any parent, child, brother, or sister of a spouse of that person; or

"(c) A nominee or trustee for any of those persons:".

(3) Section 2 of the principal Act is hereby further amended by adding the following subsection:

"(5) For the purposes of this Act, a company is related to another company if—

"(a) The other company is its holding company or subsidiary; or

"(b) More than half in nominal value of its equity share capital (as defined in section 158 (5) of this Act) is held by the other company and companies related to that other company (whether directly or indirectly, but other than in a fiduciary capacity); or

"(c) More than half in nominal value of the equity share capital (as defined in section 158 (5) of this Act) of each of them is held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or

"(d) The businesses of the companies have been so carried on that the separate business of each company, or a substantial part thereof, is not readily identifiable; or

"(e) There is another company to which both companies are related;—

and 'related company' has a corresponding meaning."

3. Power of company to hold land—Section 28 of the principal Act is hereby amended by repealing the proviso.

4. Return as to allotments and payments for shares—(1) The principal Act is hereby amended by repealing section 60, and substituting the following section:

"60. (1) Whenever a company having a share capital makes any allotment of its shares, the company shall within 30 days thereafter deliver to the Registrar for registration—

"(a) A return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount, if any, paid or due and payable on each share; and

"(b) In the case of an allotment of shares allotted as fully or partly paid up otherwise than in cash (other than an allotment to which paragraph (c) of this subsection applies),—

"(i) A contract in writing constituting the title of the allottee to the allotment, or a true copy or the prescribed particulars thereof, and evidence that the contract has (or, where the contract has not been reduced to writing, the particulars have) been duly stamped; and

"(ii) Any contract of sale or for services or other consideration in respect of which that allotment was made, or a true copy or the prescribed particulars thereof, and evidence that the contract has (or, where the contract has not been reduced to writing, the particulars have) been duly stamped; and

"(iii) A return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted; and

"(iv) A statutory declaration by a director of the company to the effect that the consideration provided is not less than the amount by which the shares have been paid up otherwise than in cash and describing the consideration for the allotment (or, where the effect of the allotment is to satisfy the whole or part of a liability of the company, for the liability) in sufficient detail to identify it and stating an estimate of its value and how that value was assessed; and

"(c) In the case of an allotment of fully paid bonus shares paid up from amounts available for distribution to members of the company, a copy of the resolution that authorised the allotment.

"(2) Whenever shares in the share capital of a company are fully or partly paid up otherwise than in cash, or by

means of a distribution of the kind described in paragraph (c) of this subsection, (other than on the allotment of the shares), the company shall within 30 days thereafter deliver to the Registrar for registration—

"(a) A return stating the number and nominal amount of the shares, the names, addresses, and descriptions of the holders of the shares, and the extent to which, and the consideration for which, they are to be treated as so paid up; and

"(b) Except in the case of a distribution to which paragraph (c) of this subsection applies—

"(i) Any contract of sale or for services or other consideration for which the shares are to be treated as so paid up, or a true copy or the prescribed particulars thereof, and evidence that the contract has (or, where the contract has not been reduced to writing, the particulars have) been duly stamped; and

"(ii) A statutory declaration stating the matters specified in subsection (1) (b) (iv) of this section; and

"(c) Where any amount available for distribution to members of a company is so distributed by paying up (either in whole or in part) shares in the share capital thereof, a copy of the resolution that authorised the distribution.

"(3) Where shares are paid up (whether in whole or in part) or allotted by a company as part of an arrangement involving the transfer of property or the provision of services to the company and the exchange of cash or cheques or other negotiable instruments (whether or not the paying up or allotment, transfer or provision, and exchange take place at the same time), the shares shall, for the purposes of this section and to the extent of the value of the property or services, be deemed to be paid up or allotted in consideration of the transfer of the property or the provision of the services to the company, and accordingly shall be deemed to be paid up, or allotted as paid up, (either fully or partly, as the case may be) otherwise than in cash.

"(4) If default is made in complying with this section, the company, and every officer of the company who is in default, shall each be liable to a fine not exceeding $100 for every day during which the default continues:

"Provided that, in case of default in delivering to the Registrar within the time specified in this section any document required to be delivered by this section, the company, or any officer liable for the default, may apply to the Registrar for relief, and the Registrar, if satisfied that the omission to deliver the document was accidental or due to inadvertance, or that it is just and equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the Registrar may think proper."

(2) The Companies Amendment Act 1975 is hereby consequentially amended by omitting so much of the First Schedule as relates to section 60 of the principal Act.

(3) Section 7 (k) of the Stamp and Cheque Duties Act 1971 is hereby consequentially amended by omitting the words ", required under subsection (2) of", and substituting the words "that has not been reduced to writing, that is required by".

5. Vesting shares or debentures of deceased holder without requiring probate or letters of administration—(1) Section 86 (1) of the principal Act (as amended by section 2 (1) of the Companies Amendment Act 1978) is hereby further amended by omitting the expression "$2,000" in both places where it occurs, and substituting in each case the expression "$4,000".

(2) Section 2 of the Companies Amendment Act 1978 is hereby consequentially repealed.

6. Payment of certain debts out of assets subject to floating charge in priority to claims under the charge—(1) Section 101 (2) of the principal Act is hereby amended by omitting the words "becoming payable on the termination of employment before or by the effect of" where they secondly occur, and substituting the words "payable at the date of".

(2) Section 101 of the principal Act is hereby further amended by adding the following subsection:

"(6) In this section, the expression 'floating charge' includes a charge that conferred a floating security at the time of its creation but has since become a fixed or specific charge."

7. Keeping of accounting records—(1) The principal Act is hereby amended by repealing section 151, and substituting the following section:

"151. (1) Every company shall cause to be kept accounting records that—

"(a) Correctly record and explain the transactions of the company; and

"(b) Will at any time enable the financial position of the company to be determined with reasonable accuracy; and

"(c) Will enable the directors to ensure that any balance sheet, profit and loss account, or income and expenditure account of the company complies with section 153 of this Act; and

"(d) Will enable the accounts of the company to be readily and properly audited.

"(2) Without limiting the generality of subsection (1) of this section, accounting records kept pursuant to that subsection shall contain—

"(a) Entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place; and

"(b) A record of the assets and liabilities of the company; and

"(c) Where the company's business involves dealing in goods,—

"(i) A record of all goods purchased, and of all goods sold (except those sold for cash by way of ordinary retail trade), showing the goods and the sellers and buyers in sufficient detail to enable the goods and the sellers and buyers to be identified; and all invoices relating thereto; and

"(ii) Statements of stock held by the company at the end of each financial year thereof, and all records of stocktakings from which any such statement of stock has been, or is to be, prepared; and

"(d) Where the company's business involves the provision of services, records of the services provided and all invoices relating thereto.

"(3) The accounting records shall be kept at the registered office of the company or at such other place as the directors think fit:

"Provided that if accounting records are kept at a place outside New Zealand there shall be sent to, and kept at a place in, New Zealand such accounts and returns with respect

to the business dealt with in the accounting records so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding 6 months and will enable to be prepared in accordance with this Act the company's balance sheet, its profit and loss account or income and expenditure account, and any document annexed to any of those documents giving information which is required by this Act and is thereby allowed to be so given.

"(4) Accounting records required by this section to be kept, and accounts and returns referred to in subsection (3) of this section, shall be kept either in written form in the English language or so as to enable the accounting records, accounts, or returns to be readily accessible and readily convertible into written form in the English language.

"(5) Every company shall make its accounting records, and any accounts and returns referred to in subsection (3) of this section, available in written form in the English language at all reasonable times for inspection without charge by the directors of the company and by other persons authorised or permitted by or under this Act to inspect the accounting records of the company.

"(6) Every company shall retain accounting records kept by it pursuant to this section for a period of at least 7 years after the completion of the transactions or period to which they relate:

"Provided that this subsection shall not require the retention of any accounting records in respect of which the Registrar has notified the company that retention is no longer required.

"(7) Any company that contravenes this section, and any officer of a company who fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or who has by his own wilful act been the cause of any default by the company thereunder, commits an offence and shall, in respect of each offence, be liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding $1,000:

"Provided that—

"(a) In any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that he had reasonable

grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty; and

"(b) A person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the Court dealing with the case, the offence was committed wilfully."

(2) Section 153 (4) (b) of the principal Act is hereby consequentially amended by omitting the words "subsection (2)", and substituting the words "subsection (3)".

(3) Section 166 (1) of the principal Act is hereby consequentially amended by repealing paragraph (b), and substituting the following paragraph:

"(b) Whether, in their opinion, proper accounting records have been kept by the company, so far as appears from their examination of those records:".

(4) Section 459 of the principal Act is hereby consequentially amended by omitting the words "book of account" in both places where they occur, and substituting in each case the words "accounting records".

8. Restrictions on certain persons managing companies—(1) The principal Act is hereby amended by repealing section 189, and substituting the following sections:

"188A. **Persons convicted of certain offences prohibited from managing companies**—(1) Where a person—

"(a) Has been convicted on indictment of any offence in connection with the promotion, formation, or management of a company; or

"(b) Has been convicted of an offence under any of sections 461 to 461D of this Act or of any crime involving dishonesty as defined in section 2 (1) of the Crimes Act 1961—

the person shall not during the period of 5 years after his conviction be a director or promoter of, or in any way whether directly or indirectly be concerned or take part in the management of, a company, unless he first obtains the leave of the Court which may be given on such terms and conditions as the Court thinks fit.

"(2) A person intending to apply for the leave of the Court under this section shall give to the Registrar not less than 10 days' notice of his intention to so apply.

"(3) The Registrar, and such other persons as the Court thinks fit, may attend and be heard at the hearing of any application under this section.

"(4) If any person acts in contravention of this section, or of any order made under this section, he shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years, or on summary conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding $5,000, or to both.

"(5) In this section, the term "company" includes an overseas company that has a place of business in New Zealand.

"189. **Power to restrain certain persons from managing companies**—(1) Where—

"(a) A person has been convicted on indictment of any offence in connection with the promotion, formation, or management of a company, or has been convicted of any crime involving dishonesty as defined in section 2 (1) of the Crimes Act 1961; or

"(b) It appears that a person has been guilty of any offence for which he is liable (whether he has been convicted or not) under any of sections 461 to 461D of this Act; or

"(c) It appears that a person has, while an officer of a company and whether he has been convicted or not,—

"(i) Persistently failed to comply with this Act or the Securities Act 1978 or, where the company has failed to so comply, persistently failed to take all reasonable steps to obtain such compliance; or

"(ii) Been guilty of any fraud in relation to the company or of any breach of his duty to the company; or

"(iii) Acted in a reckless or incompetent manner in the performance of his duties as an officer of the company—

the Court may make an order that the person shall not, without the leave of the Court, be a director or promoter of or in any way, whether directly or indirectly, be concerned or take part in the management of a company for such period as may be specified in the order.

"(2) A person intending to apply for an order under this section shall give not less than 10 days' notice of his intention to the person against whom the order is sought, and on the hearing of the application the last-mentioned person may appear and himself give evidence or call witnesses.

"(3) An application for an order under this section may be made by the Registrar, the Official Assignee, or by the liquidator of the company, or by any person who is or has been a member or creditor of the company; and on the hearing of any application for an order under this section by the Registrar or the Official Assignee or the liquidator, or of any application for leave under this section by a person against whom an order has been made on the application of the Registrar, the Official Assignee, or the liquidator, the Registrar, Official Assignee, or liquidator shall appear and call the attention of the Court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

"(4) An order may be made under this section notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made, and for the purposes of this section the expression 'officer' shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

"(5) If any person acts in contravention of an order made under this section, he shall, in respect of each offence, be liable on conviction on indictment to imprisonment for a term not exceeding 2 years, or on summary conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding $5,000, or to both.

"(6) In this section, the term 'company' includes an overseas company that has a place of business in New Zealand."

(2) Section 188A of the principal Act (as inserted by subsection (1) of this section) shall not apply in respect of any offence for which a person has been convicted before the commencement of this Act.

9. Interested directors may affix seal—The principal Act is hereby amended by inserting, after section 199, the following section:

"199A. (1) Notwithstanding any rule of law but subject to any express provision to the contrary in the articles of association of the company, a director of a company who

is interested in a contract or arrangement of or relating to the company may affix, or attest the affixing of, the common seal of the company to any document relating to the contract or arrangement to the same extent as if he were not so interested (whether or not he is entitled to vote in respect of that contract or arrangement at a meeting of directors of the company).

"(2) This section shall apply in respect of every affixing, or attestation of the affixing, of the common seal of a company to a document, whether performed before or after the commencement of this section."

10. Notification and appointment of directors and secretary—Section 200 (4) of the principal Act is hereby amended by adding the words "Where the return or notification notifies the appointment of the first directors or secretary, or of a new director or secretary, of the company (other than a director in respect of whom a consent has been delivered to the Registrar in accordance with section 184 (1) (a) of this Act), it shall have endorsed thereon, or be accompanied by, in respect of each such appointment, a written consent to act as a director or secretary (as the case may be) of the company signed by the person appointed or by his agent authorised in writing".

11. Remedy in cases of oppression—(1) Section 209 of the principal Act is hereby amended by repealing subsections (1) and (2), and substituting the following subsections:

"(1) Any member of a company who complains that the affairs of the company have been or are being or are likely to be conducted in a manner that is, or any act or acts of the company have been or are or are likely to be, oppressive, unfairly discriminatory, or unfairly prejudicial, to him (whether in his capacity as a member or in any other capacity) or, in a case falling within section 173 (3) of this Act, the Attorney-General, may make an application to the Court for an order under this section.

"(2) If on any such application the Court is of the opinion that it is just and equitable to do so, the Court may make such order as it thinks fit, whether for—

"(a) Regulating the conduct of the company's affairs in future; or

"(b) Restricting or forbidding the carrying out of any proposed act; or

"(c) The purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital; or

"(d) Directing the company to institute, prosecute, defend, or discontinue Court proceedings, or authorising a member or members of the company to institute, prosecute, defend, or discontinue Court proceedings in the name and on behalf of the company—

or otherwise."

(2) Section 209 of the principal Act is hereby further amended by adding the following subsection:

"(6) In this section the term 'member' includes the legal personal representative of a deceased member, and every person to whom shares of a member have been transferred by operation of law."

12. Abolition of winding up subject to supervision of Court—(1) Sections 210 (1) (c) and 301 to 305 of the principal Act are hereby repealed.

(2) Sections 278 (5) and 328 (1) (a) of the principal Act are hereby consequentially amended by omitting the words "or subject to the supervision of".

13. Circumstances in which company may be wound up by Court—(1) Section 217 of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

"(aa) The memorandum of association or articles of association of the company provide that the company is to be wound up on the occurrence of a certain event and that event occurs:".

(2) Section 217 of the principal Act is hereby further amended by inserting, after paragraph (d), the following paragraph:

"(da) Directors have acted in the affairs of the company in their own interests rather than in the interests of the members of the company as a whole, or in any other manner whatsoever that appears to the Court to be unfair or unjust to any member of the company:".

14. Definition of inability to pay debts—Section 218 (a) of the principal Act is hereby amended by inserting, after the words "his hand", the words "(or under the hand of his agent thereunto lawfully authorised)".

15. Provisions as to applications for winding up—Section 219 of the principal Act is hereby amended—

(a) By omitting from subsection (1) the words "or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories", and substituting the words "or by a majority of directors of the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories (including any legal personal representative of a deceased contributory and the Official Assignee of a bankrupt contributory)":

(b) By omitting from subsection (2) the words "or subject to supervision" and the words "or winding up subject to supervision":

(c) By repealing subsection (3), and substituting the following subsection:

"(3) Notwithstanding any other enactment or rule of law, a report arising out of an inspection made under section 9A of this Act (being a report of a person who made the inspection) shall be admissible in evidence at the hearing of a winding-up petition."

16. Powers of Court on hearing petition—(1) Section 220 (1) of the principal Act is hereby amended by omitting the words "On hearing", and substituting the words "Subject to the provisions of this section, on hearing".

(2) Section 220 (2) of the principal Act is hereby amended by omitting the words "the ground that it is just and equitable that the company should be wound up", and substituting the words "either of the grounds specified in paragraph (da) or paragraph (f) of section 217 of this Act".

(3) Section 220 of the principal Act is hereby further amended by inserting, after subsection (2), the following subsections:

"(2A) Notwithstanding any rule of law to the contrary, where the petition is presented by a contributory or contributories, the Court shall not refuse to make a winding up

order on the ground only that, if the order were made, no assets of the company would be available for distribution among the contributories.

"(2B) Where the petition is presented by a majority of directors, the Court shall not make a winding-up order unless it is satisfied that the company has, by special resolution passed since the presentation of the petition, resolved that the company be wound up by the Court:

"Provided that this subsection shall not apply where the Court substitutes another person as petitioner."

17. Avoidance of dispositions of property etc., after commencement of winding up—Section 222 of the principal Act is hereby amended by omitting the words ", unless the Court otherwise orders, be void", and substituting the words "be void unless the Court otherwise orders at any time (whether before or after the hearing of the winding-up petition or the making of the disposition, transfer, or alteration)".

18. Constitution and proceedings of committee of inspection—(1) Section 248 (2) of the principal Act is hereby amended by omitting the words "and, failing any such appointment, at least once a month,".

(2) Section 248 of the principal Act is hereby further amended by repealing subsection (7), and substituting the following subsection:

"(7) A vacancy in the committee may be filled by the appointment by the committee of the same or another creditor or contributory, as the case may be, (or of a person holding a general power of attorney from, or being a duly authorised officer of a company which is, a creditor or contributory, as the case may be)."

19. Powers of liquidator to examine persons—The principal Act is hereby amended by inserting, after section 262, the following section:

"262A. (1) Where the Official Assignee is acting for the purposes of section 232 of this Act or is the provisional liquidator or liquidator of a company, he may, except to the extent that the Court, on the application of any person, otherwise orders,—

"(a) Summon before him and examine any person who could be summoned before the Court pursuant to section 262 (1) of this Act; and

"(b) Examine the person on oath concerning any matter relating to the company, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them; and

"(c) Require the person to produce all accounting records, deeds, instruments, and other documents or papers relating to the company that are in his custody or power.

"(2) On the application of a provisional liquidator or a liquidator (other than the Official Assignee), the Court may order that the provisional liquidator or liquidator, as the case may be, may summon before him and examine any person or persons specified in the order (being persons who could be summoned before the Court pursuant to section 262 (1) of this Act). Any order under this subsection may be made on such terms and conditions as the Court thinks fit.

"(3) Where the Court makes an order under subsection (2) of this section, the provisional liquidator or liquidator, as the case may be, may—

"(a) After serving a copy of the Court's order on the person, summon before him any person specified in the order; and

"(b) Examine the person on oath concerning any matter relating to the company, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them; and

"(c) Require the person to produce all accounting records, deeds, instruments, and other documents or papers relating to the company that are in his custody or power.

"(4) If any person summoned pursuant to this section, after being tendered a reasonable sum for his expenses, refuses to come before the Official Assignee, provisional liquidator, or liquidator at the time appointed, not having a lawful impediment made known to the Official Assignee, provisional liquidator, or liquidator and allowed by him, the Court may, on the application of the Official Assignee, provisional liquidator, or liquidator, cause the person to be apprehended and brought before the Official Assignee, provisional liquidator, or liquidator for examination. The Court may order that all expenses occasioned by any such apprehension shall be paid by the person apprehended.

"(5) Subsections (5) to (8) of section 262 of this Act shall, with all necessary modifications, apply with respect to every summoning and examination of a person pursuant to an order made under this section as if—

"(a) Every reference to the Court in subsection (5) to (7) were a reference to the Official Assignee, provisional liquidator, or liquidator, as the case may be; and

"(b) The reference in subsection (6) to proceedings under section 262 of this Act were a reference to proceedings under this section; and

"(c) The reference in subsection (8) to an examination under section 262 of this Act were a reference to an examination under this section."

20. Power to order public examination of officers and other persons—(1) Section 263 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

"(1) Where the Official Assignee in any report made by him under section 232 of this Act, or the provisional liquidator or liquidator of a company in an application to the Court for an order under this section, has stated that in his opinion—

"(a) A person has or may have in his possession any property of, or may be indebted to, or is or may be capable of giving information concerning the promotion, formation, dealings, affairs, or property of, the company and that it is desirable that the person be publicly examined by the Court; or

"(b) An officer or former officer of the company has so conducted himself as to render himself liable in respect of the performance of his duties as an officer thereof and it is desirable that the person be publicly examined by the Court; or

"(c) It is desirable for some other reason that a person be publicly examined by the Court in respect of matters related to the company—

the Court may direct that the person shall attend before the Court on a day appointed by the Court for that purpose and be publicly examined as to any matter relating to the company."

(2) Section 263 of the principal Act is hereby further amended by repealing subsection (4), and substituting the following subsections:

"(4) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him. A person shall not be excused from answering any question on the ground that the answer may incriminate or tend to incriminate him.

"(4A) A statement made by a person in answer to a question put to him in an examination under this section shall not, in criminal proceedings, be admissible in evidence against him, except upon a charge of perjury against him in respect of his sworn testimony upon the examination."

(3) Section 263 (5) of the principal Act is hereby consequentially amended—

(a) By inserting, after the words "Official Assignee's report", the words "or the application of the provisional liquidator or liquidator, as the case may be":

(b) By inserting in the proviso, after the words "Official Assignee" where they first occur, the words ", provisional liquidator, or liquidator, as the case may be,":

(c) By inserting in the proviso, after the words "Official Assignee" where they secondly and thirdly occur, the words ", provisional liquidator, or liquidator".

(4) Section 232 of the principal Act is hereby consequentially amended by repealing subsections (2) and (3), and substituting the following subsection:

"(2) The Official Assignee may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion the Court should conduct a public examination pursuant to section 263 of this Act, and any other matters which in his opinion it is desirable to bring to the notice of the Court."

21. Alternative provisions in case of insolvency of company being wound up by members' voluntary winding up—The principal Act is hereby amended by repealing section 282, and substituting the following section:

"282. If a liquidator summons a meeting of creditors pursuant to section 279 of this Act—

"(a) The creditors may appoint a person to act as liquidator instead of, or jointly with, the first-mentioned liquidator:

"(b) Notwithstanding any other provision of this Act, sections 286 to 291 of this Act shall apply to the winding up as if it were a creditors' voluntary winding up and not a members' voluntary winding up:

"Provided that the liquidator shall not be required to summon a meeting of creditors under the said section 290 at the end of the first year from the commencement of the winding up, unless the meeting held under the said section 279 is held more than 3 months before the end of that year."

22. Meeting of creditors in creditors' voluntary winding up—(1) Section 284 (3) (b) of the principal Act is hereby amended by omitting the word "preside", and substituting the word "attend".

(2) Section 284 of the principal Act is hereby further amended by repealing subsection (4), and substituting the following subsections:

"(4) It shall be the duty of the director appointed to attend at the meeting of creditors to attend the meeting, and to disclose to that meeting the company's affairs and circumstances leading to the proposed winding up.

"(4A) At a meeting of creditors held pursuant to this section, the creditors shall appoint one of their number, or a director of the company, or any other person, to preside at the meeting."

23. Preferential payments—(1) Section 308 (1) of the principal Act is hereby amended by inserting, after paragraph (c), the following paragraph:

"(ca) All amounts deducted by the company from the wages or salary of any employee in order to satisfy obligations of the employee:".

(2) Section 308 (1) (d) of the principal Act is hereby amended by inserting, after the words "required by", the words "section 326A of this Act or".

(3) Section 308 of the principal Act is hereby further amended by repealing subsection (2), and substituting the following subsection:

"(2) Notwithstanding subsection (1) of this section, the total sum to which priority is to be given under any of paragraphs (a), (b), and (ca) of that subsection shall not, in the case of any one employee, exceed $2,000 or such greater amount as is from time to time prescribed by the Governor-General by Order in Council."

(4) Section 308 (7) of the principal Act is hereby amended by adding the following paragraph:

"(d) The expression 'floating charge' includes a charge that conferred a floating security at the time of its creation but has since become a fixed or specific charge."

(5) Section 308 of the principal Act is hereby further amended by repealing subsection (8), and substituting the following subsection:

"(8) Where a greater amount is prescribed by Order in Council for the purposes of subsection (2) of this section, the greater amount shall not apply—

"(a) In the case of a winding up, if the relevant date (as defined in subsection (7) (c) of this section) occurred before the commencement of the order; or

"(b) In the case of any matter to which section 101 of this Act applies, if the date referred to in subsection (3) of that section occurred before the commencement of the order."

(6) Section 308 of the principal Act is hereby further amended by omitting from subsections (1) and (3) the words "servant or worker" and the word "worker" wherever they occur, and substituting in each case the word "employee".

(7) Section 4 of the Companies Amendment Act 1978 is hereby consequentially repealed.

24. Voidable preference—(1) The principal Act is hereby amended by repealing section 309, and substituting the following section:

"309. (1) Every conveyance or transfer of property, every security or charge given over any property, every obligation incurred, every execution under any judicial proceeding suffered, and every payment made (including any payment made in pursuance of a judgment or order of a Court), by any company unable to pay its debts as they become due from its own money, shall be voidable as against the liquidator, if—

"(a) It is in favour of any creditor or any person in trust for any creditor with a view to giving that creditor or any surety or guarantor for the debt due to that creditor a preference over the other creditors; and

"(b) The making, suffering, paying, or incurring of the same occurs within 2 years before the commencement of the winding-up of the company.

"(2) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents."

(2) Section 310 of the principal Act is hereby amended—

(a) By omitting from subsection (1) the words "void under section 309 of this Act as a fraudulent preference", and substituting the words "set aside as a voidable preference under section 309 of this Act"; and

(b) By omitting from subsections (2) and (3) the word "fraudulent" wherever it occurs, and substituting in each case the word "voidable".

25. Voidable securities—The principal Act is hereby amended by repealing section 311, and substituting the following section:

"311. (1) Subject to subsections (2) and (3) of this section, every security or charge over any property or undertaking of a company that is being wound up shall, so far as any security on the property or undertaking is conferred thereby, be voidable as against the liquidator of the company if it was executed or given by the company within the period of 12 months immediately preceding the commencement of the winding up of the company.

"(2) Subsection (1) of this section shall not apply to a security or charge—

"(a) If it is proved that the company immediately after the creation of the security or charge was solvent; or

"(b) That was given in substitution for an existing security or charge executed or given before the commencement of the period specified in that subsection:

"Provided that, unless the existing security or charge is one to which subsection (3) of this section relates, the said subsection (1) shall affect any such substituted security or charge to the extent that the amount secured by the substituted security

or charge exceeds the amount secured by the existing security or charge, and to the extent that the value of the property subject to the substituted security or charge at the date of the substitution exceeds the value of the property subject to the existing security or charge at that date.

"(3) Subsection (1) of this section shall not affect any security or charge insofar as it relates to—

"(a) Money actually advanced or paid, or the actual price or value of property sold or supplied, or any other valuable consideration given in good faith, by the grantee of the security or charge to the company at the time of, or at any time after, the execution thereof; or

"(b) The securing by the company of any unpaid purchase money owing by it to the grantee of the security or charge, whether for that property or not, if the instrument for securing the same is executed not later than 30 days after the date of the sale of the property. For the purposes of this paragraph, the expression 'the date of sale' means, in respect of any estate or interest in land, the date of final settlement of the sale.

"(4) For the purposes of subsection (3) of this section, where any security or charge was given by the company within the period specified in subsection (1) of this section, all payments received by the grantee of the security or charge after it was given shall be deemed to have been appropriated so far as may be necessary towards repayment of money actually advanced or paid by the grantee to the company on or after the giving of the security or charge, or towards payment of the actual price or value of property sold by the grantee to the company on or after the giving of the security or charge, or towards payment of any other liability of the company to the grantee in respect of any other valuable consideration given in good faith on or after the giving of the security or charge.

26. Procedures relating to voidable preference and voidable securities—The principal Act is hereby amended by inserting, after section 311, the following section:

"311A. (1) Where, under section 309 or section 311 of this Act, a disposition is voidable against a liquidator and the liquidator wishes to set aside the disposition, he shall—

"(a) File in Court a notice stating that he wishes to set aside the disposition and the effect of subsections (2) and (3) of this section; and

"(b) Serve a copy of the notice on the person to whom the disposition was made and on every other person from whom the liquidator wishes to recover property to which the disposition relates, or the value thereof.

"(2) Any person—

"(a) Who would be affected by the setting aside of a disposition; and

"(b) Who considers that the disposition is not voidable against the liquidator under section 309 or section 311 of this Act—

may apply to the Court for an order that the disposition is not so voidable.

"(3) Where a liquidator wishes to set aside a disposition and complies with subsection (1) of this section—

"(a) Unless a person has applied to the Court under subsection (2) of this section, the disposition shall be set aside as against the liquidator from the 21st day after the day the liquidator so complied:

"(b) Where a person has applied to the Court under subsection (2) of this section then, unless the Court otherwise orders, the disposition shall be set aside as against the liquidator from the day the last such application to be determined is finally determined.

"(4) Subject to subsections (6) and (7) of this section, in any case where a disposition is set aside, the Court may—

"(a) Order that the person to whom the disposition was made, or his personal representative, or any person claiming through him (not being a person claiming in the disposition or any part of it or any interest in it, as the case may be, in good faith and for valuable consideration or who claims through such a person), shall transfer to the liquidator the property or any part of it or any interest in it retained by him:

"(b) Order that the person to whom the disposition was made, or his personal representative, or any person claiming through him (not being a person claiming through him who received the property comprised in the disposition or any part of it or any interest in it, as the case may be, in good faith and for

valuable consideration or who claims through such a person), shall pay to the liquidator such sum, not exceeding the value of the property when the disposition was set aside, as the Court thinks proper:

"(c) For the purpose of giving effect to any setting aside or to any order under paragraph (a) or paragraph (b) of this subsection, make such orders as it thinks fit.

"(5) Subject to subsections (6) and (7) of this section, the remedies given to the liquidator by subsection (4) of this section are in addition to all other rights and remedies (if any) available to the liquidator, and nothing in the said subsection (4) shall restrict any such other rights and remedies.

"(6) A disposition that has been made in favour of any person may be set aside pursuant to this section notwithstanding that the property or part of it or any interest in it has at the time of the setting aside been received by any other person in good faith and for valuable consideration, but the liquidator shall not have any right or remedy against that other person if that other person claims through a person to whom the disposition was originally made by or on behalf of the company.

"(7) Recovery by the liquidator of any property or the value thereof (whether under this section or under any other provision of this Act or under any other enactment or in equity or otherwise) may be denied wholly or in part if—

"(a) The person from whom recovery is sought received the property in good faith and has altered his position in the reasonably held belief that the transfer or payment of the property to him was validly made and would not be set aside; and

"(b) In the opinion of the Court it is inequitable to order recovery or recovery in full, as the case may be.

"(8) Nothing in the Land Transfer Act 1952 shall restrict the operation of this section.

"(9) In this section, the term 'disposition' means a conveyance or transfer of property, a security or charge over property, an obligation, an execution under any judicial proceedings, or a payment (including a payment made in pursuance of a judgment or order of a Court)."

27. Court may set aside certain securities and charges—The principal Act is hereby amended by inserting, after section 311A (as inserted by section 26 of this Act), the following section:

"311B. (1) Subject to subsection (2) of this section, where it appears that a company that is being wound up is unable to meet all its debts, the Court, on the application of the liquidator or any creditor of the company, may order that a security or charge, or part thereof, created by the company over any of its property or undertaking in favour of a person who, at the time when the security or charge was created,—

"(a) Was a director, or a nominee, trustee, or relative of a director, of the company; or

"(b) Had control of the company; or

"(c) Was a related company—

shall, so far as any security on the property or undertaking is conferred thereby, be set aside as against the liquidator of the company, if the Court considers that, having regard to the circumstances in which the security or charge was created, the conduct of the person in relation to the affairs of the company, and any other relevant circumstances, it is just and equitable to make the order.

"(2) Subsection (1) of this section shall not apply to a security or charge that has been transferred by the person in whose favour it was originally created and has been purchased by another person (whether or not from the first-mentioned person) if—

"(a) At the time of the purchase, the purchaser was not a person specified in any of paragraphs (a) to (c) of that subsection; and

"(b) The purchase was made in good faith and for valuable consideration.

"(3) Where the Court makes an order under this section it may make such orders as it thinks proper for the purpose of giving effect to the order.

"(4) Nothing in the Land Transfer Act 1952 shall restrict the operation of this section.

"(5) For the purposes of this section, a person has control of a company if—

"(a) The person is a member of the company and controls the composition of its board of directors; and section 158 (2) of this Act shall, so far as it is applicable and with all necessary modifications, apply for the purposes of this paragraph as if every reference therein to another company were a reference to the person; or

"(b) The person holds more than half in nominal value of the company's equity share capital (as defined in section 158 (5) of this Act)."

28. Transactions involving inadequate or excessive consideration—The principal Act is hereby amended by inserting, after section 311B (as inserted by section 27 of this Act), the following section:

"311C. (1) Where, within a period of 3 years before the commencement of the winding up thereof, a company has acquired any business or property from, or the services of,—

"(a) A person who was, at the time of the acquisition, a director, or a nominee, or relative of or a trustee for a director, of the company; or

"(b) A person, or a relative of a person, who, at the time of the acquisition, had control of the company; or

"(c) Another company that, at the time of the acquisition, was a related company,—

the liquidator may recover from the person, relative, or related company any amount by which the value of the consideration given for the acquisition of the business, property, or services exceeded the value thereof at the time of the acquisition thereof.

"(2) Where, within a period of 3 years before the commencement of the winding up thereof, a company has disposed of any business or property, or provided any services, or issued any shares in its share capital, to—

"(a) A person who was, at the time of the disposition, provision, or issue, a director, or a nominee, or relative of or a trustee for a director, of the company; or

"(b) A person, or a relative of a person, who, at the time of the disposition, provision, or issue, had control of the company; or

"(c) Another company that, at the time of the disposition, provision, or issue, was a related company,—

the liquidator may recover from the person, relative, or related company any amount by which the value of the business, property, or services, or the nominal value of the shares, as the case may be, at the time of the disposition, provision, or issue thereof exceeded the value of any consideration given for the acquisition, provision, or issue thereof.

"(3) For the purposes of this section,—

"(a) The value of a business or property includes the value of any goodwill attaching to the business or property:

"(b) A person has control of a company if—

"(i) The person is a member of the company and controls the composition of its board of directors; and section 158 (2) of this Act shall, so far as it is applicable and with all necessary modifications, apply for the purposes of this paragraph as if every reference therein to another company were a reference to the person; or

"(ii) The person holds more than half in nominal value of the company's equity share capital (as defined in section 158 (5) of this Act)."

29. Restriction of rights of creditor as to execution, distraint, or attachment—The principal Act is hereby amended by repealing section 314, and substituting the following section:

"314. (1) Where a creditor has issued execution against the goods or land of a company or has levied distress against the company's goods or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution, distress, or attachment against the liquidator in the winding up of the company unless he has completed the execution, distress, or attachment, as the case may be, before the commencement of the winding up:

"Provided that—

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

"(b) A person who purchases in good faith under a sale by the Sheriff any goods of the company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator;

"(c) A person who purchases in good faith any goods of the company on which distress has been levied shall in all cases acquire a good title to them against the liquidator; and

"(d) The rights conferred by this subsection on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court may think fit.

"(2) For the purposes of this section an execution or distraint against goods shall be deemed to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by sale and, in the case of an equitable interest, by the appointment of a receiver.

"(3) In this section the expression 'goods' includes all chattels personal, and the expression 'Sheriff' includes any officer charged with the execution of a writ or other process."

30. Liability of company for debts of related company and joint windings up—The principal Act is hereby amended by inserting, after section 315, the following heading and sections:

"Liability of Company for Debts of Related Company and Joint Windings up

"315A. **Company may be required to contribute to debts of related company**—On the application of the liquidator or any creditor or contributory of any company that is being wound up, the Court, if it is satisfied that it is just and equitable to do so, may order that any company that is or has been related to the company being wound up shall pay to the liquidator of that company the whole or part of any or all of the debts provable in the winding up thereof. Any order under this section may be made on such terms and conditions as the Court thinks fit.

"315B. **Pooling of assets of related companies**—(1) Where 2 or more related companies are being wound up and the Court, on the application of the liquidator of any of the companies, is satisfied that it is just and equitable to make an order under this section, the Court may order that, subject to such terms and conditions as the Court may impose and to the extent that the Court orders, the companies shall be wound up together as if they were one company, and, subject to the provisions of this section, the order shall have effect and all the provisions of this Act shall apply accordingly.

"(2) In deciding the terms and conditions of an order under this section, the Court shall have particular regard to the interests of those persons who are members of some, but not all, of the companies.

"(3) Where the Court makes an order under subsection (1) of this section,—

"(a) The Court may remove any liquidator of any of the companies, and appoint any person to act as liquidator of any one or more of the companies:

"(b) The Court may give such directions as it thinks fit for the purpose of giving effect to the order:

"(c) Nothing in this section or the order shall affect the rights of any secured creditor of any of the companies:

"(d) Debts of a company that are to be paid in priority to all other debts of the company pursuant to section 308 of this Act shall, to the extent that they are not paid out of the assets of that company, be subject to the claims of holders of debentures under any floating charge (as defined in that section) created by any of the other companies:

"(e) Unless the Court otherwise orders, the claims of all unsecured creditors of the companies shall rank equally among themselves.

"(4) An application may be made to the Court under this section at the same time as, or at any time subsequent to, the presentation of a winding up petition in respect of any of the companies to which the application relates.

"(5) Notice of an application to the Court for the purposes of this section shall be served on every company specified in the application, and on such other persons as the Court may direct, not later than the end of the 8th day before the day the application is heard.

"315c. Guidelines for orders to contribute or pool assets—(1) In deciding whether it is just and equitable to make an order under section 315A of this Act, the Court shall have regard to the following matters:

"(a) The extent to which the related company took part in the management of the company being wound up:

"(b) The conduct of the related company towards the creditors of the company being wound up:

"(c) The extent to which the circumstances that gave rise to the winding up of the company are attributable to the actions of the related company:

"(d) Such other matters as the Court thinks fit.

"(2) In deciding whether it is just and equitable to make an order under section 315B of this Act, the Court shall have regard to the following matters:

"(a) The extent to which any of the companies took part in the management of any of the other companies:

"(b) The conduct of any of the companies towards the creditors of any of the other companies:

"(c) The extent to which the circumstances that gave rise to the winding up of any of the companies are attributable to the actions of any of the other companies:

"(d) The extent to which the businesses of the companies have been intermingled:

"(e) Such other matters as the Court thinks fit.

"(3) Notwithstanding any other provision of this Act, it shall not be just and equitable to make an order under section 315A or section 315B of this Act if the only ground for making the order is that creditors of a company being wound up have relied on the fact that another company is or has been related to the first-mentioned company."

31. Liability where proper accounting records not kept—The principal Act is hereby amended by repealing section 319, and substituting the following section:

"319. (1) Subject to subsection (2) of this section, if—

"(a) A company that is being wound up and that is unable to pay all its debts has failed to comply with section 151 of this Act (which relates to the keeping of accounting records); and

"(b) The Court considers that—

"(i) The failure to so comply has contributed to the company's inability to pay all its debts or has resulted in substantial uncertainty as to the assets and liabilities of the company or has substantially impeded the orderly winding up thereof; or

"(ii) For any other reason it is proper to make a declaration under this section—

the Court, on the application of the Official Assignee or the liquidator or any creditor or contributory of the com-

pany may, if it thinks it proper to do so, declare that any one or more of the officers and former officers of the company shall be personally responsible, without any limitation of liability, for all or any part of the debts and other liabilities of the company as the Court may direct.

"(2) The Court shall not make a declaration under subsection (1) of this section in respect of a person if the Court considers that—

"(a) He took all reasonable steps to secure compliance by the company with section 151 of this Act; or

"(b) He had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that that section was complied with and was in a position to discharge that duty.

"(3) Subsections (2) and (4) of section 320 of this Act shall, with all necessary modifications, apply in respect of a declaration made under subsection (1) of this section as if every reference in those subsections to a declaration made under section 320 (1) of this Act were a reference to a declaration made under subsection (1) of this section."

32. Responsibility of persons concerned for reckless or fraudulent trading—(1) Section 320 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

"(1) If in the course of the winding up of a company it appears that—

"(a) Any person was, while an officer of the company, knowingly a party to the contracting of a debt by the company and did not, at the time the debt was contracted, honestly believe on reasonable grounds that the company would be able to pay the debt when it fell due for payment as well as all its other debts, (including future and contingent debts); or

"(b) Any person was, while an officer of the company, knowingly a party to the carrying on of any business of the company in a reckless manner; or

"(c) Any person was knowingly a party to the carrying on of any business of the company with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose,—

the Court, on the application of the Official Assignee or the

liquidator or any creditor or contributory of the company, may, if it thinks it proper to do so, declare that the person shall be personally responsible, without any limitation of liability, for all or any part of the debts and other liabilities of the company as the Court may direct. On the hearing of an application under this subsection the Official Assignee or the liquidator, as the case may be, may himself give evidence or call witnesses."

(2) Section 320 (3) of the principal Act is hereby repealed.

33. Power of Court to assess damages against delinquent directors, etc.—Section 321 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

"(1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, liquidator, or receiver, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any negligence, default, or breach of duty or trust in relation to the company, the Court may, on the application of the Official Assignee, the liquidator, or any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, receiver, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, negligence, default, or breach of duty or trust as the Court thinks just."

34. Prosecution of delinquent officers and members of company—(1) Section 322 (1) of the principal Act is hereby amended by omitting the words ", or subject to the supervision of,".

(2) Section 322 of the principal Act is hereby further amended by inserting, after subsection (3), the following subsection:

"(3A) Where the Court makes an order under subsection (3) of this section, the Official Assignee may submit to the Court a report in which he states that in his opinion a past or present officer, or any member, of the company may have

been guilty of an offence in relation to the company concerned for which he is criminally liable, and it is desirable that the person be publicly examined by the Court. Where the Official Assignee submits such a report to the Court, the Court may, after consideration of the report, direct that that officer or member shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to his conduct and dealings in relation to the company; and subsections (2) to (4) and (5) to (8) of section 263 of this Act shall, with all necessary modifications, apply in respect of such an examination as if it were an examination under that section."

35. No lien over company's books, records, etc.—(1) The principal Act is hereby amended by inserting, after section 326, the following section:

"326A. (1) Where the Court has appointed a provisional liquidator or a company is being wound up by the Court or by means of a creditors' voluntary winding up, no person shall be entitled as against the liquidator or provisional liquidator to withhold possession of any deed, instrument, or other document belonging to the company, or the accounting records, receipts, bills, invoices, or other papers of a like nature relating to the accounts or trade dealings or business of the company, or to claim any lien thereon:

"Provided that—

"(a) Where a mortgage or charge has been created by the deposit of any such document or paper (other than title deeds to land) with a person, the production of the document or paper to the liquidator or provisional liquidator by the person shall be without prejudice to the person's rights under the mortgage or charge (other than any right to possession of the document or paper):

"(b) Where by virtue of this subsection a liquidator or provisional liquidator has possession of any document or papers of a receiver or manager or that a receiver or manager is entitled to examine, the liquidator or provisional liquidator shall, unless the Court otherwise orders, make the document or papers available for inspection by the receiver or manager at all reasonable times.

"(2) If any debt is owed by a company to any person (other than an officer of the company) in respect of services

performed by the person after the commencement of the winding up of the company in connection with any accounting records, deed, instrument, or other document or paper, over which that person would, but for subsection (1) of this section, have a lien, the debt shall, to the extent of $500 (or such greater amount as is from time to time prescribed by the Governor-General by Order in Council) and for the purposes of section 308 (1) (d) of this Act, be included among the debts which are to be paid in priority to all other debts in the winding up of the company.

"(3) Where a greater amount is prescribed by Order in Council for the purposes of subsection (2) of this section, the greater amount shall not apply—

"(a) In the case of a winding up, if the relevant date (as defined in section 308 (7) (c) of this Act) occurred before the commencement of the order; or

"(b) In the case of any matter to which section 101 of the principal Act applies, if the date referred to in subsection (3) of that section occurred before the commencement of the order."

(2) Section 262 of the principal Act is hereby consequentially amended by repealing subsection (3), and substituting the following subsection:

"(3) The Court may require him to produce any accounting records, deed, instrument, or other document or paper relating to the company that is in his custody or power."

36. Power of Court to declare dissolution of company void—Section 335 of the principal Act is hereby amended—

(a) By omitting from subsection (1) the words ", upon such terms as the Court thinks fit,"; and

(b) By inserting, after subsection (1), the following subsection:

"(1A) An order under subsection (1) of this section may be made on such terms and conditions as the Court thinks fit, including (where the company was in breach of any provision of this Act at the time of its dissolution) a condition requiring the company to pay to the Registrar by way of penalty a sum not exceeding the maximum amount that the company could have been fined in respect of that breach."

37. Alternative procedure for dissolving solvent companies—The principal Act is hereby amended by inserting, after section 335, the following section:

"335A. (1) Where a company has ceased to operate and has discharged all its debts and liabilities, any officer or member of the company may, after giving notice in accordance with subsection (3) of this section, apply to the Registrar for a declaration of dissolution of the company.

"(2) An application for a declaration of dissolution shall be in writing and shall be accompanied by—

"(a) A statutory declaration made by an officer or member of the company stating—

"(i) That the company has ceased to operate and has discharged all its debts and liabilities (other than those owed to its members); and

"(ii) That the notice required by subsection (3) of this section has been given in accordance with that subsection and the date the last such notice was published or posted, as the case may be; and

"(b) A copy of the notice given under subsection (3) of this section; and

"(c) Written notice from the Commissioner of Inland Revenue stating that the Commissioner has no objection to the Registrar making a declaration of dissolution of the company.

"(3) Before making an application to the Registrar under this section, the applicant shall ensure that there has been—

"(a) Published in the *Gazette,* and in 2 issues of a newspaper circulating in the district where the principal place of business of the company is situate; and

"(b) Sent by registered post to each director and (except in the case of a company that has more than 25 members) to each member of the company at the last address of which the company has notice—

a notice to the effect that the applicant proposes to apply to the Registrar for a declaration of dissolution of the company and that, unless written objection is made to the Registrar within 30 days of the date the notice was posted, the Registrar may dissolve the company.

"(4) The Registrar shall not make a declaration of dissolution of a company earlier than 30 days after the date of publication or posting, as the case may be, of the last notice published or posted for the purposes of subsection (3) of this section.

"(5) On receipt of any written objection to the dissolution of the company, the Registrar shall forthwith notify the applicant for the declaration of dissolution of the receipt of the objection and of the identity of the objector. Where any director, member, or creditor of a company has objected to the dissolution of the company the Registrar shall not declare the dissolution thereof unless—

"(a) The director, member, or creditor, as the case may be, withdraws the objection; or

"(b) The Registrar decides that the objection is completely without justification, and the objector has not appealed against the Registrar's decision within the time specified in section 9B of this Act or the Court has upheld the Registrar's decision.

"(6) If the Registrar is not prohibited from declaring the dissolution of a company pursuant to this section and agrees to the dissolution, he shall notify the company that, subject to the company's memorandum of association and articles of association, it is entitled to distribute its surplus assets among its members according to their respective rights and, notwithstanding any other provision of this Act or any rule of law, the company may distribute its surplus assets accordingly.

"(7) On receipt of notification from a company that its surplus assets have been distributed in accordance with subsection (6) of this section, the Registrar may, by notice in the *Gazette,* declare that the company is dissolved and, on the publication in the *Gazette* of the notice, the company shall be disolved:

"Provided that—

"(a) The liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and

"(b) Notwithstanding that a company has been dissolved, or that its surplus assets have been distributed in accordance with this section, the Court may wind up the company as if it had not been dissolved, or its surplus assets had not been distributed, as the case may be.

"(8) Where a company has been dissolved pursuant to this section, the Court, on an application made by the Registrar or a member or creditor of the company before the expiration of 20 years from the publication in the *Gazette* of the notice of dissolution, may, if satisfied that at the time

of dissolution of the company it was in operation or had not discharged all its debts and liabilities or otherwise that it is just that the dissolution of the company be revoked, order that the dissolution of the company be revoked, and upon a sealed copy of the order being delivered to the Registrar for registration the company shall be deemed to have continued in existence as if it had not been dissolved; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the company had not been dissolved. An order under this subsection may be made on such terms and conditions as the Court thinks fit."

38. Registrar may strike defunct company off register—(1) Section 336 (7) of the principal Act is hereby amended by omitting the words "If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court, on an application made by the company or member or creditor", and substituting the words "Where a company has been struck off the register, the Court, on an application made by the Registrar or a member or creditor of the company".

(2) Section 336 of the principal Act is hereby further amended by inserting, after subsection (7), the following subsection:

"(7A) An order under subsection (7) of this section may be made on such terms and conditions as the Court thinks fit, including (where the company was in breach of any provision of this Act at the time it was struck off) a condition requiring the company to pay to the Registrar by way of penalty a sum not exceeding the maximum amount that the company could have been fined in respect of that breach."

39. New provisions relating to receivers and managers—The principal Act is hereby amended by inserting, after section 345, the following sections:

"345A. **Court may relieve receiver from liability due to defect in appointment or instrument**—(1) Where the Court is satisfied that a person who has acted as receiver or manager of the property of a company under the powers contained in any instrument has incurred liability solely by

reason of some defect in his appointment or in the instrument and that in all the circumstances the person ought fairly to be excused, the Court may relieve the person, either wholly or in part, from his liability on such terms and conditions as the Court thinks fit.

"(2) Where the Court grants relief from liability pursuant to subsection (1) of this section, then, subject to such terms and conditions as the Court thinks fit, the liability shall be that of the person who appointed the receiver or manager; and the Court may give such directions as it thinks proper for the purpose of giving effect to this subsection.

"345B. **Duty of receiver selling property to obtain best price reasonably obtainable**—(1) A receiver or manager of the property of a company who sells any of that property shall exercise all reasonable care to obtain the best price reasonably obtainable for the property as at the time of sale.

"(2) The duty of a receiver or manager under subsection (1) of this section shall be a duty owed to the company; and notwithstanding any other enactment or rule of law or the provisions of any instrument,—

"(a) It shall not be a defence to any action or proceeding brought by the company against a receiver or manager in respect of a breach of his duty under that subsection that the receiver or manager was acting as the agent of the company or under a power of attorney given by the company; and

"(b) A receiver or manager shall not be entitled to be compensated or indemnified by the company for any liability he may incur as a result of a breach of his duty under that subsection.

"345C. **Power of receivers to make calls on shares**—(1) Where the instrument under which a receiver or manager of the property of a company is appointed charges any uncalled capital of the company, the receiver or manager shall have the same powers as the directors of the company have (or, where the company is being wound up, as the directors would have if the company were not being wound up) to make calls on the members of the company in respect of the uncalled capital, and to charge interest on and enforce payment of the calls; and, where a receiver or manager makes a call or exercises any other power pursuant to this section, the call or power shall, as between the members of the com-

pany affected and the company, be deemed to be a proper call or power made or exercised by the directors of the company.

"345D. **Receiver's powers to affix common seal**—(1) Notwithstanding any other enactment or rule of law or any memorandum of association or articles of association of a company, where the instrument under which a receiver or manager of the property of a company is appointed empowers him to execute any documents and to use the company's common seal for that purpose, the receiver or manager may execute those documents in the name and on behalf of the company by affixing the company's common seal thereto and personally attesting that affixing, and any such document so executed shall be deemed to have been properly executed by the company.

"(2) Where—

"(a) The instrument under which a receiver or manager of the property of a company is appointed empowers him to execute any documents and to use the company's common seal for that purpose; and

"(b) The directors of the company have refused to surrender the common seal to the receiver or manager,—

the Court may order the directors to surrender the company's common seal to the receiver or manager. Any order under this subsection may be made on such terms and conditions as the Court thinks fit."

40. Notification that receiver or manager appointed or has ceased to act—(1) The principal Act is hereby amended by repealing section 346, and substituting the following section:

"346. (1) Any person who obtains an order for the appointment of a receiver or manager of the property of a company or of the New Zealand property of an overseas company, or who appoints such a receiver or manager under any powers contained in any instrument, shall ensure that written notice (signed by him or his solicitor) of the fact is—

"(a) Forthwith advertised in the *Gazette*, and in 2 issues of a local newspaper circulating in the district where the principal place of business of the company in New Zealand is situate; and

"(b) Given to the Registrar within 7 days from the date of the order or of the appointment under those powers, and the Registrar shall register the notice and enter the fact in the register of charges.

The notice shall state the full name of the receiver or manager and the situation of his office and shall include a brief description of the property in respect of which the receiver or manager has been appointed.

"(2) Where a receiver or manager of the property of a company or overseas company has been appointed, every deed, agreement, invoice, order for goods, business letter, or other document entered into or issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed:

"Provided that failure to comply with this subsection shall not affect the validity of any such document.

"(3) Where any person appointed receiver or manager of the property of a company, or of the New Zealand property of an overseas company, ceases to act as such, he shall ensure that written notice (signed by him or his solicitor) to that effect is given to the Registrar within 7 days of his so ceasing, and the Registrar shall register the notice and enter the fact in the register of charges.

"(4) If—

"(a) Any person makes default in complying with subsection (1) or subsection (3) of this section, he shall be liable to a fine not exceeding $50 for every day during which the default continues:

"(b) Default is made in complying with subsection (2) of this section, the company and every officer, liquidator, receiver, or manager of the company who knowingly and wilfully authorises or permits the default shall be liable to a fine not exceeding $500."

(2) The following enactments are hereby consequentially repealed:

(a) Section 109 of the principal Act:

(b) So much of the First Schedule to the Companies Amendment Act 1975 as relates to section 109 (2) of the principal Act.

41. Court may determine or limit receivership on application of liquidator—The principal Act is hereby amended by inserting, after section 346 (as substituted by section 40 of this Act), the following section:

"346A. (1) On the application of the liquidator of a company that is being wound up (other than by means of a members' voluntary winding up) and in respect of which a receiver or manager has been appointed (whether before or after the commencement of the winding up), the Court may—

"(a) Order that the receiver or manager shall cease to act as such from a date specified by the Court, and prohibit the appointment of any other receiver or manager; or

"(b) Order that the receiver or manager shall, from a date specified by the Court, act as such only in respect of certain assets specified by the Court.

An order under this subsection may be made on such terms and conditions as the Court thinks fit.

"(2) The Court may from time to time, on an application made either by the liquidator or by the receiver or manager, rescind or amend an order made under subsection (1) of this section.

"(3) A copy of an application made under this section shall be served on the receiver or manager not less than 8 days before the hearing of the application, and the receiver or manager may appear before and be heard by the Court in respect of the application.

"(4) Except as provided in subsection (1) of this section, no order made under this section shall affect any security or charge over the undertaking or property of the company."

42. Provisions as to information where receiver or manager appointed—(1) Section 348 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

"(1) Where a receiver or manager of the property of a company (hereinafter in this section and in section 349 of this Act referred to as the receiver) is appointed by or on behalf of the holders of any debentures of the company, then, subject to the provisions of this section and section 349 of this Act,—

"(a) The receiver shall forthwith give notice to the company of his appointment; and

"(b) There shall, within 14 days after receipt of the notice, be made out and submitted to the receiver a statement of—

"(i) The company's assets showing their nature, situation (in the case of physical assets), and to what extent they are subject to any charge or hire purchase agreement; and

"(ii) All long term leases of, or long term agreements to lease or purchase, property entered into by the company as lessee or purchaser (whether or not they are conditional leases or agreements); and

"(c) There shall, within 30 days after the receipt of the notice, or such longer period as may be allowed by the Registrar, be made out and submitted to the receiver in accordance with section 349 of this Act a statement in the prescribed form as to the affairs of the company; and

"(d) The receiver shall within 2 months after receipt of the statement specified in paragraph (c) of this subsection send—

"(i) To the Registrar and to the Court, a copy of the statement and of any comments he sees fit to make thereon, and in the case of the Registrar also a summary of the statement and of his comments (if any) thereon; and

"(ii) To the company, a copy of any such comments as aforesaid or, if he does not see fit to make any comments, a notice to that effect; and

"(iii) To any trustees for the debenture holders on whose behalf he was appointed and (so far as he is aware of their addresses) to all such debenture holders, a copy of the said summary."

(2) Section 348 (4) of the principal Act is hereby consequentially amended by omitting the words "paragraphs (b) and (c)", and substituting the words "paragraphs (b) to (d)".

(3) Section 348 (8) of the principal Act is hereby amended by adding the words "; but the said section 92 shall apply in respect of the exercise by the receiver or manager of any power to sell any land of the company".

(4) Section 349 (2) of the principal Act is hereby consequentially amended by omitting the words "The said statement", and substituting the words "A statement required by section 348 (1) of this Act".

(5) The following enactments are hereby repealed:
(a) Section 350 of the principal Act:
(b) So much of the First Schedule to the Companies Amendment Act 1975 as relates to section 350 (1) of the principal Act.

43. Construction of references to receivers and managers—Section 352 of the principal Act is hereby amended by adding the following paragraph:

"(c) Any reference in this Act to a receiver or manager of the property of a company, or to a receiver thereof, includes a reference to a person who is entitled under an instrument to appoint a receiver or manager of the property of a company but instead personally exercises any of the powers that a receiver or manager is entitled to exercise under that instrument (other than a power of sale of land under a mortgage thereof or a power under an instrument that, if executed by an individual, would require registration under the Chattels Transfer Act 1924); and, in respect of any such person, any reference in this Act to the appointment of a receiver or manager shall be construed as a reference to the first exercise by the person of any such power."

44. Passing of resolution for a creditors' voluntary winding up by entry in minute book—Section 362 of the principal Act is hereby amended—

(a) By omitting from subsection (8) the word "tenth", and substituting the expression "14th"; and
(b) By inserting in subsection (9), after the words "and thereupon the Official Assignee", the words "(or such other person appointed by the Official Assignee for this purpose)".

45. Annual return fee payable by primary produce and other companies—Section 449 (1) of the principal Act (as substituted by section 22 of the Companies Amendment Act 1975) is hereby amended by omitting the words "formed for any one or more of the following purposes exclusively", and substituting the words "that satisfies the Registrar that the business carried on by it during the 12 months immediately preceding the date on which the annual return fee is payable was confined to any one or more of the following businesses".

46. Restrictions on offering of shares or debentures for subscription or sale—(1) Section 457 (3) of the principal Act is hereby amended by omitting the words "Part XII of this Act", and substituting the words "the Securities Act 1978".

(2) Subsection (1) of this section shall come into force on the day on which section 71 of the Securities Act 1978 comes into force.

47. Offences—The principal Act is hereby amended by repealing section 461, and substituting the following sections:

"461. **Making false statements**—(1) Every person who, with respect to a document required by or for the purposes of this Act or the Companies Amendment Act 1963,—

"(a) Makes or authorises the making of a statement therein that is false or misleading in a material particular knowing it to be false or misleading; or

"(b) Omits or authorises the omission therefrom of any matter knowing that the omission renders the document false or misleading in a material particular—

commits an offence against this section.

"(2) Every officer of a company who makes or furnishes, or authorises or permits the making or furnishing of, a statement or report, that relates to the affairs of the company and that is false or misleading in a material particular, to—

"(a) A director, secretary, auditor, contributory, member, debenture holder, or trustee for debenture holders, of the company; or

"(b) A liquidator, committee of inspection, or receiver or manager of any property of the company; or

"(c) Where the company is a subsidiary, a director, secretary, or auditor of the holding company; or

"(d) A stock exchange or any officer of a stock exchange,—

knowing it to be false or misleading, commits an offence against this section.

"(3) Where a person at a meeting votes in favour of the making of a statement he shall, for the purposes of this section, be deemed to have authorised the making of the statement.

"461A. **Fraudulent application or destruction of property of company**—Every officer or member of a company who—

"(a) Fraudulently takes or applies property of the company for his own use or benefit, or for any use or purpose other than the use or purpose of the company; or

"(b) Fraudulently conceals or destroys any property of the company,—

commits an offence against this section.

"461B. **Offences by officers of companies in liquidation**—(1) If any past or present officer of a company—

"(a) Does not to the best of his knowledge and belief fully and truly discover to any liquidator of the company all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or

"(b) Does not deliver up to any liquidator of the company, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or

"(c) Does not deliver up to any liquidator of the company, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or

"(d) Within 12 months next before the commencement of the winding up of the company or at any time thereafter conceals any part of the property of the company to the value of $20 or upwards, or conceals any debt due to or from the company; or

"(e) Knowing or believing that a false debt has been proved or claimed by any person under a winding up of the company, fails for the period of a month to inform the liquidator thereof; or

"(f) After the commencement of the winding up of the company prevents the production of any book or paper affecting or relating to the property or affairs of the company; or

"(g) Within 12 months next before the commencement of the winding up of the company, or at any time thereafter, fraudulently parts with, alters, or makes

any omission in, or is privy to the fraudulent parting with, altering, or making any omission in, any document affecting or relating to the property or affairs of the company; or

"(h) After the commencement of the winding up of the company, or at any meeting of the creditors of the company within 12 months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses; or

"(i) Within 12 months next before the commencement of the winding up of the company, or at any time thereafter, pawns, pledges, or disposes of any property of the company which has been obtained on credit and has not been paid for, unless the pawning, pledging, or disposing is in the ordinary way of the business of the company; or

"(j) Is guilty of any false representation or fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up thereof—

he commits an offence against this section:

"Provided that it shall be a good defence to a charge under any of paragraphs (a) to (d) and (i) of this subsection if the accused proves that he had no intent to defraud, and to a charge under paragraph (f) of this subsection if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

"(2) Where any person pawns, pledges, or disposes of any property in circumstances which amount to an offence under subsection (1) (i) of this section, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid, commits an offence against this section.

"461c. **Falsification of records**—(1) Every officer, member, or contributory of a company who, with intent to defraud or deceive any person,—

"(a) Destroys, mutilates, alters, or falsifies, or is privy to the destruction, mutilation, alteration, or falsification of, any register, accounting records, book, paper, or other document belonging or relating to the company; or

"(b) Makes, or is privy to the making of, a false entry in any register, accounting records, book, paper, or other document belonging or relating to the company—

commits an offence against this section.

"(2) Where any mechanical, electronic, or other device is used in connection with the keeping or preparation of any register, accounting or other records, index, book, paper, or other document for the purposes of a company or this Act, every person who—

"(a) Records or stores in the device, or makes available to any person from the device, any matter that he knows to be false or misleading in a material particular; or

"(b) With intent to falsify or render misleading any such register, accounting or other records, index, book, paper, or other document, destroys, removes, or falsifies any matter recorded or stored in the device, or fails or omits to record or store in the device any matter—

commits an offence against this section.

"461D. **Fraudulently carrying on business, obtaining credit, or transferring property**—(1) Every person who is knowingly a party to the carrying on of any business of a company with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose commits an offence against this section.

"(2) Every officer of a company who—

"(a) By false pretences or by means of any other fraud induces any person to give credit to the company; or

"(b) With intent to defraud creditors of the company, makes or causes to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company—

commits an offence against this section.

"461E. **Penalties and other provisions relating to foregoing offences**—(1) Every person who commits an offence against any of sections 461 to 461D of this Act shall be liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding $1,000, or both.

"(2) For the purposes of sections 461 to 461D of this Act, the expression 'officer' shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

"(3) Nothing in sections 461 to 461D of this Act shall affect the liability of any person under any other Act, but no person shall by virtue of those sections or this section be punished twice for the same offence."

48. Repeals consequential upon section 47—The following enactments are hereby consequentially repealed:

(a) Sections 316 to 318 of, and the Thirteenth Schedule to, the principal Act:

(b) Section 13 (3) of the Companies Amendment Act 1963.

49. Provision with respect to default fines and meaning of "officer in default"—(1) Section 463 (1) of the principal Act (as amended by section 7 of the Decimal Currency Act 1964) is hereby further amended by omitting the expression "$10", and substituting the expression "$100".

(2) Section 463 of the principal Act is hereby further amended by repealing subsection (2), and substituting the following subsection:

"(2) For the purposes of any enactment in this Act which provides that an officer of the company who is in default shall be liable to a fine or penalty, the expression 'officer who is in default' means any officer of the company who—

"(a) Knowingly and wilfully authorises or permits the default, refusal, or contravention mentioned in the enactment; or

"(b) Knew or ought to have known of the default, refusal, or contravention and did not take all reasonable steps to secure compliance by the company with the requirements specified in or imposed under the enactment."

50. Amendments to standard articles of association (Tables A and C)—(1) Table A of the Third Schedule to the principal Act is hereby amended—

(a) By repealing subclause (1) of regulation 48, and substituting the following subclause:

"(1) The company shall in each calendar year hold a general meeting as its annual general meeting

in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and, subject to section 135 (1A) of the Act, not more than 15 months shall elapse between the date of one annual general meeting of the company and that of the next:

"Provided that so long as the company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the calendar year of its incorporation."; and

(b) By repealing regulations 123 and 124, and substituting the following regulations:

"123. The directors shall cause proper accounting records to be kept in accordance with section 151 of the Act.

"124. The accounting records shall be kept at the registered office of the company or, subject to section 151 (3) of the Act, at such other place or places as the directors think fit, and shall always be open to the inspection of any director."

(2) The Articles of Association set out in Table C of the Third Schedule to the principal Act are hereby amended—

(a) By repealing subclause (1) of article 4, and substituting the following subclause:

"(1) The company shall in each calendar year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and, subject to section 135 (1A) of the Act, not more than 15 months shall elapse between the date of one annual general meeting of the company and that of the next:

"Provided that so long as the company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the calendar year of its incorporation."; and

(b) By repealing articles 60 and 61, and substituting the following articles:

"60. The directors shall cause proper accounting records to be kept in accordance with section 151 of the Act.

"61. The accounting records shall be kept at the registered office of the company or, subject to section

151 (3) of the Act, at such other place or places as the directors think fit, and shall always be open to the inspection of any director."

51. Transitional provisions—(1) Subject to subsections (2) to (10) of this section, all the provisions of this Act (other than sections 47 and 48) that relate to company windings up, or receivers or managers of the property of a company, shall apply in respect of—

(a) Every winding up of a company, whether commenced before or after the commencement of this Act; and

(b) Every such receiver or manager, whether appointed before or after the commencement of this Act.

(2) Section 6 of this Act shall not apply in any case where the receiver is appointed, or possession is taken, before the commencement of this Act.

(3) Sections 22, 23, 29, and 35 of this Act shall not apply in respect of any winding up of a company that commenced before the commencement of this Act.

(4) Sections 23, 40, and 42 of this Act shall not apply in respect of any receiver or manager of the property of a company who is appointed before the commencement of this Act.

(5) Section 25 of this Act shall not apply in respect of any security or charge created before the commencement of this Act.

(6) Section 311B of the principal Act (as inserted by section 27 of this Act) shall not apply in respect of any security or charge created before the commencement of this Act.

(7) Section 311C of the principal Act (as inserted by section 28 of this Act) shall not apply in respect of any acquisition, disposition, provision, or issue, made before the commencement of this Act.

(8) The Court shall not make an order under section 315A or section 315B of the principal Act (as inserted by section 30 of this Act) if the reasons for making the order relate to acts or omissions that occurred before the commencement of this Act.

(9) Sections 31 and 32 of this Act shall not apply in respect of any act or omission that occurred before the commencement of this Act.

(10) Section 43 of this Act shall not apply in respect of any person who is entitled under an instrument to appoint a receiver or manager of the property of a company but instead personally exercises any of the powers that a receiver or manager is entitled to exercise under that instrument, if he has exercised any of those powers before the commencement of this Act.

This Act is administered in the Department of Justice.