

(2) Every prospectus shall—

(a) on the face of it—

(i) state that a copy has been delivered for registration as required by this section and, immediately after such statement shall state that the Registrar takes no responsibility as to the contents of the prospectus; and

(ii) specify, or refer to statements included in the prospectus which specify, any documents required by this section to be endorsed on or attached to the copy so delivered;

(b) be printed in the English version in type of a size not less than the type known as eight point Times and in the Chinese version in type the face of which is not less than 2.5 millimetres in depth unless the Registrar, before the issuing, advertising, circulating or distributing of the prospectus, certifies in writing that the type and size of letters are legible and satisfactory;

(c) contain no photographs or illustrations of a pictorial or graphic nature.

(3) The Registrar shall not register a prospectus unless it is dated and the copy thereof signed in manner required by this section and unless it has endorsed thereon or attached thereto the documents (if any) specified by subsection (1).

(4) The Registrar shall not register a prospectus which relates to an intended company.

(5) The Registrar may refuse to register a prospectus delivered to him for registration if it does not comply in all respects with this Ordinance or contains any information likely to mislead or misleading in the form and context in which it is included.

(6) If a prospectus is issued without a copy thereof having been registered under this section by the Registrar or without the copy delivered to the Registrar for registration having endorsed thereon or attached thereto the required documents, the company, and every person who is knowingly a party

to the issue of the prospectus, shall be liable to a fine of one hundred dollars for every day from the date of the issue of the prospectus until a copy thereof is so registered with the required documents endorsed thereon or attached thereto.

(7) Any person aggrieved by the refusal of the Registrar to register a prospectus may appeal to the court and the court may either dismiss the appeal or order the Registrar to register the prospectus.”.

7. Section 40 of the principal Ordinance is repealed and the following new section substituted therefor—

Repeal and replacement of section 40.

“Civil liability for misstatements in prospectus. 1948 c. 38, s. 43.

40. (1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement included therein, that is to say—

- (a) every person who is a director of the company at the time of the issue of the prospectus;
- (b) every person who has authorized himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
- (c) every person being a promoter of the company; and
- (d) every person who has authorized the issue of the prospectus:

Provided that where, under section 38C of this Ordinance, the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not by reason of his having given it be liable under this subsection as a person who has authorized the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.

(2) No person shall be liable under subsection (1) if he proves—

- (a) that, having consented to become a director of the company, he withdrew his consent

before the issue of the prospectus, and that it was issued without his authority or consent; or

- (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
- (c) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or
- (d) that—
 - (i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and
 - (ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by section 38C of this Ordinance to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder; and
 - (iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a

public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that this subsection shall not apply in the case of a person liable, by reason of his having given a consent required of him by the said section 38C, as a person who has authorized the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(3) A person who, apart from this subsection would under subsection (1) be liable, by reason of his having given a consent required of him by section 38C, as a person who has authorized the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert, shall not be so liable if he proves—

- (a) that, having given his consent under the said section 38C to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration; or
 - (b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal, and of the reason therefor; or
 - (c) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true.
- (4) Where—
- (a) the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof; or

- (b) the consent of a person is required under section 38C of this Ordinance to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof shall be liable to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof:

Provided that a person shall not be deemed for the purposes of this subsection to have authorized the issue of a prospectus by reason only of his having given the consent required by section 38C of this Ordinance to the inclusion therein of a statement purporting to be made by him as an expert.

(5) For the purposes of this section—

- (a) the expression “promoter” means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; and
- (b) the expression “expert” has the same meaning as in section 38C.”

8. The principal Ordinance is amended by adding after section 40 the following new section—

“Criminal liability for misstatements in prospectus. 1948 c. 38, s. 44.

40A. (1) Where a prospectus issued after the commencement of the Companies (Amendment) Ordinance 1972 includes any untrue statements, any person who authorized the issue of the prospectus shall be liable—

- (a) on conviction on indictment, to a fine of fifty thousand dollars and to imprisonment for two years; or
- (b) on summary conviction, to a fine of ten thousand dollars and to imprisonment for six months;

unless he proves either that the statement was immaterial or that he had reasonable grounds to believe and did up to the time of the issue of the prospectus believe that the statement was true.

(2) A person shall not be deemed for the purposes of this section to have authorized the issue of a prospectus by reason only of his having given the consent required by section 38C to the inclusion therein of a statement purporting to be made by him as an expert.”

9. Section 41 of the principal Ordinance is amended in subsection (3)—

(a) by deleting “37” and substituting the following—
“38D”; and

(b) by inserting after “allotted” in paragraph (b) the following—
“, or a copy thereof.”

10. The principal Ordinance is amended by adding after section 41 the following new section—

“Interpretation of provisions relating to prospectuses. 1948 c. 38, s. 46.

41A. For the purposes of the foregoing provisions of this Part—

- (a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
- (b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.”

11. Section 42 of the principal Ordinance is amended—
(a) in subsection (1), by deleting “paragraph 5” and substituting the following—

“paragraph 7”;

Amendment of section 41.

Addition of new section 41A.

Amendment of section 42.

Addition of new section 40A.

- (b) by deleting subsection (4) and substituting the following—

“(4) If the conditions aforesaid have not been complied with on the expiration of thirty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within thirty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of eight *per cent per annum* from the expiration of the thirty-eighth day:

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.”.

12. Section 43 of the principal Ordinance is repealed and replaced by the following new section—

“Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar.
1948 c. 38, s. 48.

Fourth Schedule.

43. (1) A company having a share capital which does not issue a prospectus on its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the Registrar for registration a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing, in the form and containing the particulars set out in Part I of the Fourth Schedule and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) Every statement in lieu of prospectus delivered under subsection (1) shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the said Fourth Schedule, have endorsed thereon or attached thereto a written state-

ment signed by those person setting out the adjustments and giving the reasons therefor.

(3) This section shall not apply to a private company.

(4) If a company acts in contravention of subsection (1) or (2), the company and every director of the company who knowingly and wilfully authorizes or permits the contravention shall be liable to a fine of two thousand dollars.

(5) Where a statement in lieu of prospectus delivered to the Registrar under subsection (1) includes any untrue statement, any person who authorized the delivery of the statement in lieu of prospectus for registration shall be liable—

- (a) on conviction on indictment, to a fine of fifty thousand dollars and to imprisonment for two years; or
- (b) on summary conviction, to a fine of ten thousand dollars and to imprisonment for six months;

unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

(6) For the purposes of this section—

- (a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
- (b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

(7) The Governor in Council may by regulation amend the Fourth Schedule.”.

13. The principal Ordinance is amended by adding after section 44 the following new sections—

Addition of new sections 44A and 44B.

"Applications for, and allotment of, shares and debentures. 1948 c. 38, s. 50.

44A. (1) No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus.

The beginning of the said third day or such later time as aforesaid is hereafter in this Ordinance referred to as "the time of the opening of the subscription lists".

(2) No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally later than thirty days after the day on which the prospectus is first so issued.

(3) In subsections (1) and (2), the references to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first so issued as a newspaper advertisement:

Provided that, if it is not so issued as a newspaper advertisement before the third day after that on which it is first so issued in any other manner, the said reference shall be construed as referring to the day on which it is first so issued in any manner.

(4) The validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section but, in the event of any such contravention, the company and every officer of the company who is in default shall be liable to a fine of ten thousand dollars.

(5) In the application of this section to a prospectus offering shares or debentures for sale, the foregoing subsections shall have effect with the substitution of references to sale for references to allotment, and with the substitution for the reference to the company and every officer of the company who is in default of a reference to any person by or through whom the offer is made and who knowingly and wilfully authorizes or permits the contravention.

(6) An application for shares in or debentures of a company which is made in pursuance of a prospectus

issued generally shall not be revocable until after the expiration of the fifth day after the time of the opening of the subscription lists, or the giving before the expiration of the said fifth day, by some person responsible under section 40 for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

(7) In reckoning for the purposes of this section and section 44B the third or fifth day after another day, any intervening day which is a Saturday or Sunday or which is a general holiday in the Colony shall be disregarded, and if the third or fifth day (as so reckoned) is itself a Saturday or Sunday or such a holiday there shall for the said purposes be substituted the first day thereafter which is none of them.

Allotment of shares and debentures to be dealt in on stock exchange. 1948 c. 38, s. 51.

44B. (1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the shares or debentures offered thereby to be dealt in on any stock exchange, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has not been applied for before the third day after the first issue of the prospectus or if the permission has been refused before the expiration of three weeks from the date of the closing of the subscription lists or such longer period not exceeding six weeks as may, within the said three weeks, be notified to the applicant for permission by or on behalf of the stock exchange.

(2) Where the permission has not been applied for as aforesaid, or has been refused as aforesaid, the company shall forthwith repay without interest all money received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of eight *per cent per annum* from the expiration of the eighth day:

Provided that a director shall not be liable if he proves that the default in the repayment of the

money was not due to any misconduct or negligence on his part.

(3) All money received as aforesaid shall be kept in a separate bank account so long as the company may become liable to repay it under subsection (2); and, if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine of ten thousand dollars.

(4) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section shall be void.

(5) For the purposes of this section, permission shall not be deemed to be refused if it is intimated that the application for it, though not at present granted, will be given further consideration.

(6) This section shall have effect—

(a) in relation to any shares or debentures agreed to be taken by a person underwriting an offer thereof by a prospectus as if he had applied therefor in pursuance of the prospectus; and

(b) in relation to a prospectus offering shares for sale with the following modifications, that is to say—

(i) references to sale shall be substituted for references to allotment;

(ii) the persons by whom the offer is made, and not the company, shall be liable under subsection (2) to repay money received from applicants, and references to the company's liability under that subsection shall be construed accordingly; and

(iii) for the reference in subsection (3) to the company and every officer of the company who is in default there shall be substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorizes or permits the default.”.

14. The principal Ordinance is amended by adding after section 48 the following new heading and new section—

“Construction of References to offering Shares or Debentures to the Public

Construction of references to offering shares or debentures to the public.
1948 c. 38,
s. 55.

48A. (1) Any reference in this Ordinance to offering shares or debentures to the public shall, subject to any provision to the contrary contained therein, be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner, and references in this Ordinance or in a company's articles to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be similarly construed.

(2) Subsection (1) shall not be taken as requiring any offer or invitation to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it, and in particular—

(a) a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded as aforesaid; and

(b) the provisions of this Ordinance relating to private companies shall be construed accordingly.”.

15. Section 94 of the principal Ordinance and the heading *“Restrictions on Commencement of Business”* are repealed.

16. Section 143 of the principal Ordinance is amended in sub-paragraph (i) of paragraph (c) by inserting, after “business of the company”, the following—

“has been or”.

Addition of new heading and section 48A.

Repeal of section 94.

Amendment of section 143.

Repeal and replacement of section 277.

17. Section 277 of the principal Ordinance is repealed and replaced by the following—

"Prosecution of delinquent officers and members of company, 1948 c. 38, s. 334.

277. (1) If it appears to the court in the course of a winding up by, or subject to the supervision of, the court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator to refer the matter to the Attorney General.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Attorney General, and shall furnish to the Attorney General such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as he may require.

(3) If it appears to the court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Attorney General under subsection (2), the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2).

(4) If, where any matter is reported or referred to the Attorney General under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connexion with the prosecution which he is reasonably able to give.

For the purposes of this subsection, the expression "agent" in relation to a company shall be deemed to include any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(5) If any person fails or neglects to give assistance in manner required by subsection (4), the court may, on the application of the Attorney General, direct that person to comply with the requirements of the said subsection, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally."

18. Sections 342 and 343 of the principal Ordinance are repealed and replaced by the following new sections—

"Dating of prospectus and particulars to be contained therein, 1948 c. 38, s. 417.

342. (1) It shall not be lawful for any person to issue, circulate or distribute in the Colony any prospectus offering for subscription shares in or debentures of a company incorporated outside the Colony, whether the company has or has not established a place of business in the Colony unless the prospectus is dated and—

(a) contains particulars with respect to the following matters—

(i) the instrument constituting or defining the constitution of the company;

(ii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

(iii) an address in the Colony where the said instrument, enactments or provisions, or copies thereof, and if the same are in a language other than English a translation thereof certified in the prescribed manner, can be inspected;

(iv) the date on which and the country in which the company was incorporated;

Repeal of sections 342 and 343 and substitution of new sections 342, 342A, 342B, 342C, 342D, 342E and 343.

(v) whether the company has established a place of business in the Colony, and, if so, the address of its principal office in the Colony;

- (b) subject to the provisions of this section, is in the English language and contains a Chinese translation and states the matters specified in Part I of the Third Schedule and sets out the reports specified in Part II of that Schedule, subject always to the provisions contained in Part III of that Schedule:

Third Schedule.

Provided that the provisions of sub-paragraphs (i), (ii) and (iii) of paragraph (a) shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business, and, in the application of Part I of the Third Schedule for the purposes of this subsection, paragraph 5 thereof shall have effect with the substitution, for the reference to the articles, of a reference to the constitution of the company.

(2) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by virtue of paragraph (a) or (b) of subsection (1), or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful for any person to issue to any person in the Colony a form of application for shares in or debentures of such a company as is mentioned in subsection (1) unless the form is issued with a prospectus which complies with this Part and the issue whereof in the Colony does not contravene the provisions of section 342B:

Provided that this subsection shall not apply if it is shown that the form of application was issued either—

- (a) in connexion with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or
- (b) in relation to shares or debentures which were not offered to the public.

(4) In the event of non-compliance with or contravention of any of the requirements imposed by paragraphs (a) and (b) of subsection (1), a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

- (a) as regards any matter not disclosed, he proves that he was not cognisant thereof; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 19 of the Third Schedule, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section shall not apply—

- (a) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; or
- (b) to the issue of a prospectus or a form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognized stock exchange in the Colony;

but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Ordinance apart from this section.

Exclusion of section 342 and relaxation of Third Schedule in case of certain prospectuses. 1948 c. 38, s. 418.

Third Schedule.

342A. (1) Where it is proposed to offer to the public by a prospectus issued generally any shares in or debentures of a company incorporated outside the Colony, whether the company has or has not established a place of business in the Colony, there may, on the request of the applicant, be given by the Registrar a certificate of exemption, that is to say, a certificate that, having regard to the proposals (as stated in the request) as to the size and other circumstances of the issue of shares or debentures and as to any limitations on the number and class of persons to whom the offer is to be made, compliance with the requirements of the Third Schedule would be either irrelevant or unduly burdensome.

(2) A certificate of exemption given under subsection (1) shall be expressed to have effect with regard to all the requirements of the Third Schedule or to such of them as are specified in the certificate.

(3) If a certificate of exemption is given, and if the proposals referred to in subsection (1) are adhered to and every form of application issued is accompanied by a document containing the particulars and information required to be published as a condition of the granting of a certificate of exemptions, then—

- (a) a prospectus giving the particulars and information aforesaid in the form in which they are so required to be published shall be deemed to comply with the requirements of the Third Schedule; and
- (b) except in so far as it requires a prospectus to be dated, section 342 shall not apply to any issue of a prospectus or form of application relating to the shares or debentures.

Provisions as to expert's consent, and allotment. 1948 c. 38, s. 419.

342B. (1) It shall not be lawful for any person to issue, circulate or distribute in the Colony any prospectus offering for subscription shares in or debentures of a company incorporated outside the

Colony, whether the company has or has not established a place of business in the Colony—

- (a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or
- (b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions (other than penal provisions) of sections 44A and 44B so far as applicable.

(2) In this section the expression "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him, and for the purposes of this section a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Registration of prospectus. cf. 1948 c. 38, s. 420.

342C. (1) It shall not be lawful for any person to issue, circulate or distribute in the Colony any prospectus offering for subscription shares in or debentures of a company incorporated outside the Colony, whether the company has or has not established a place of business in the Colony, unless before the issue, circulation or distribution of the prospectus in the Colony, a copy thereof certified by two members of the governing body of the company as having been approved by resolution of the governing body has been registered by the Registrar, and the prospectus states on the face of it that a copy has been so registered and, immediately after such statement, states that the Registrar takes no responsibility as to the contents of the prospectus; and there is endorsed on or attached to the copy—

- (a) any consent to the issue of the prospectus required by section 342B;

Third Schedule.

(b) a copy of any contract required by paragraph 17 of the Third Schedule to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus deemed by virtue of a certificate granted under section 342A to comply with the requirements of that Schedule, a contract or a copy thereof or a memorandum of a contract is required to be available for inspection in connexion with the application under that section, a copy or, as the case may be, a memorandum of that contract; and

(c) where the persons making any report required by Part II of that Schedule have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 41 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) The references in paragraph (b) of subsection (1) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a language other than English, be taken as references to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts not in English, as the case may be, being a translation certified in the prescribed manner to be a correct translation and the reference to a copy of a contract required to be available for inspection shall include a reference to a copy of a translation thereof or a copy embodying a translation of parts thereof.

(3) The Registrar shall refuse to register a prospectus which relates to an intended company.

(4) The Registrar may refuse to register a prospectus delivered to him for registration if it does not comply in all respects with this Ordinance or contains any information likely to mislead or misleading in the form and context in which it is included.

(5) Any person aggrieved by the refusal of the Registrar to register a prospectus may appeal to the court and the court may either dismiss the appeal or order the Registrar to register the prospectus.

Penalty for contravention of sections 342 to 342C.
1948 c. 38,
s. 421.

342D. Any person who is knowingly responsible for the issue, circulation or distribution of a prospectus, or for the issue of a form of application for shares or debentures, in contravention of any of the provisions of sections 342 to 342C shall be liable to a fine of ten thousand dollars.

Civil liability for misstatements in prospectus.
1948 c. 38,
s. 422.

342E. Section 40 shall extend to every prospectus offering for subscription shares in or debentures of a company incorporated outside the Colony, whether the company has or has not established a place of business in the Colony, with the substitution, for references to section 38C, of references to section 342B.

Interpretation of provisions as to prospectuses.
1948 c. 38,
s. 423.

343. (1) Where any document by which any shares in or debentures of a company incorporated outside the Colony are offered for sale to the public would, if the company concerned had been a company within the meaning of this Ordinance, have been deemed by virtue of section 41 to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this Part of this Ordinance, a prospectus issued by the company.

(2) An offer of shares or debentures for subscription or sale to any person whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this Part of this Ordinance.

(3) In this Part the expressions "prospectus", "shares" and "debentures" have the same meanings as when used in relation to a company incorporated under this Ordinance."

19. The principal Ordinance is amended by adding, after section 350, the following new section—

"Obligation to give notice of paid-up capital.

350A. If any company includes or permits to be included a statement of the authorized or issued capital of the company in any notice, circular, advertisement or other official publication of the

Addition of new section 350A.

company which is issued, circulated or distributed in the Colony, the company and an officer who is in default shall, unless a statement of the paid-up capital of the company is also stated not less prominently, be liable to a fine of two thousand dollars.”.

Addition of new section 351A.

20. The principal Ordinance is amended by adding, after section 351, the following new section—

“Limitation on commencement of proceedings.
(Cap. 227.)

351A. (1) Notwithstanding section 26 of the Magistrates Ordinance, an information or complaint relating to an offence under this Ordinance may be tried if it is laid or made, as the case may be, at any time within three years after the commission of the offence and within twelve months after the date on which evidence sufficient in the opinion of the Attorney General to justify the proceedings comes to his knowledge.

(2) For the purposes of this section, a certificate of the Attorney General as to the date on which evidence sufficient to justify proceedings came to his knowledge shall be conclusive evidence.

(3) This section shall not apply in relation to an offence committed before the coming into operation of the Companies (Amendment) Ordinance 1972.”.

Repeal and replacement of Second, Third and Fourth Schedules.

21. The Second, Third and Fourth Schedules to the principal Ordinance are repealed and replaced by the following new Schedules—

“SECOND SCHEDULE [s. 30.]

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A PRIVATE COMPANY ON BECOMING A PUBLIC COMPANY AND REPORTS TO BE SET OUT THEREIN

PART I

FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN

THE COMPANIES ORDINANCE

Statement in lieu of Prospectus delivered for registration by [Insert the name of the company]

Pursuant to section 30 of the Companies Ordinance

Delivery for registration duly authorized by (Insert the name of every director who has authorized and signed this Statement).

The nominal share capital of the company.

Divided into

\$
Shares of \$ each.
" " "
" " "
Shares of \$ each.

Amount (if any) of the above capital which consists of redeemable preference shares.

The earliest date on which the company has power to redeem these shares.

Names, descriptions and addresses of directors or proposed directors.

Amount of shares issued

Shares

Amount of commissions paid in connexion therewith.

Amount of discount, if any, allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement.

Unless more than one year has elapsed since the date on which the company began to carry on business—

Amount of preliminary expenses
By whom those expenses have been paid or are payable.
Amount paid to any promoter

\$
Name of promoter—
Amount \$
Consideration—

Consideration for the payment
Any other benefit given to any promoter.

Name of promoter—
Nature and value of benefit—
Consideration—

Consideration for giving of benefit

If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

Number and amount of shares and debentures issues within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.

1. shares of \$ fully paid.
2. shares upon which \$ per share credited as paid.
3. debenture \$

Consideration for the issue of those shares or debentures.

Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

Period during which option is exercisable.

Price to be paid for shares or debentures subscribed for or acquired under option.

Consideration for option or right to option.

Persons to whom option or right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.

Names and addresses of vendors of property (1) purchased or acquired by the company within the two years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the company, except where the contract for its purchase or acquisition was entered into in the ordinary course of business and there is no connexion between the contract and the company ceasing to be a private company or where the amount of the purchase money is not material.

Amount (in cash, shares or debentures) paid or payable to each separate vendor.

Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill.

Short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest direct or indirect.

Dates of, parties to, and general nature of every material contract (other than contracts entered into in the ordinary course of business or entered into more than two years before the delivery of this statement).

4. Consideration—

1. shares of \$
and debentures
of \$

2. Until

3.

4. Consideration

5. Names and
addresses—

Total purchase price

\$
Cash \$
Shares \$
Debentures \$ _____
Goodwill .. \$ _____

Time and place at which the contracts or copies thereof may be inspected or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a foreign language, a copy of a translation thereof in English or embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation.

Names and addresses of the auditors of the company.

Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the company within the two years preceding the date of this statement or proposed to be purchased or acquired by the company, or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or to qualify him as, a director, or otherwise for services rendered or to be rendered to the company by him or by the firm.

Rates of the dividends (if any) paid by the company in respect of each class of shares in the company in each of the five financial years immediately preceding the date of this statement or since the incorporation of the company whichever period is the shorter.

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

(Signatures of the persons above-named as directors or proposed directors or of their agents authorized in writing.)

.....
.....
.....

Date:

PART II

REPORTS TO BE SET OUT

1. If unissued shares or debentures of the company are to be applied in the purchase of a business, a report made by accountants (who shall be named in the statement) upon—

- (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2. (1) If unissued shares or debentures of the company are to be applied directly or indirectly in any manner resulting in the acquisition of shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connexion therewith will become a subsidiary of the company, a report made by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-paragraph (2) or (3), as the case requires, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other body corporate has no subsidiaries, the report referred to in sub-paragraph (1) shall—

- (a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar; and
- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate at the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate has subsidiaries, the report referred to in sub-paragraph (1) shall—

- (a) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by sub-paragraph (2), and in addition deal either—
 - (i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate; or

(ii) individually with the profits or losses of each subsidiary, so far as they concern members of the other body corporate;

or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of

the other body corporate and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries; and

- (b) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by sub-paragraph (2) and, in addition, deal either—

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities; or

(ii) individually with the assets and liabilities of each subsidiary;

and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

PART III

PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE

3. In this Schedule the expression "vendor" includes a vendor as defined in Part III of the Third Schedule and the expression "financial year" has the meaning assigned to it in that Part of that Schedule.

4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five years, the accounts of the business or body corporate have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

5. Any report required by Part II of this Schedule shall either indicate by way of note any adjustment as respects the figures of any profits or losses or assets and liabilities dealt with by report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

6. Any report by accountants required by Part II shall be made by accountants authorized under this Ordinance for appointment as auditors of a company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company, or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

7. For the purposes of Part I, the description of a person, that is to say, his profession, trade or other occupation shall be stated with particularity and precision; and the description "Company Director" shall be inadequate unless supplementary information is provided stating the nature of the relevant company's business.

8. For the purposes of Part I, "address" in the case of a natural person means the place of his usual residence.

THIRD SCHEDULE [ss. 38 & 342.]

MATTERS TO BE SPECIFIED IN PROSPECTUS AND
REPORTS TO BE SET OUT THEREIN

PART I

MATTERS TO BE SPECIFIED

1. The general nature of the business of the company, and if the company carries on two or more activities which are material having regard to profits or losses, assets employed or any other factor, information as to the relative importance of each such activity.
2. The authorized share capital and the description and nominal value of the shares into which it is divided, the amount of share capital issued or agreed to be issued, and the amount paid up on the shares which have been issued.
3. Sufficient particulars and information to enable a reasonable person to form as a result thereof a valid and justifiable opinion of the shares or debentures and the financial condition and profitability of the company at the time of the issue of the prospectus.
4. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.
5. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.
6. The names, descriptions and addresses of the directors or proposed directors.
7. Where shares are offered to the public for subscription, particulars as to—
 - (a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters—
 - (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
 - (ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;
 - (iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;
 - (iv) working capital;

but, so long as the general purpose of the issue is clearly stated and the issue is fully underwritten, this sub-paragraph need not be complied with; and

- (b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.
8. The date and time of the opening of the subscription lists.
 9. The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.
 10. The number, description and amount of any shares in or debentures of the company which any person has, or is entitled to be given, an option to subscribe for, together with the following particulars of the option, that is to say—
 - (a) the period during which it is exercisable;
 - (b) the price to be paid for shares or debentures subscribed for under it;
 - (c) the consideration (if any) given or to be given for it or for the right to it;
 - (d) the names and addresses of the persons to whom it or the right to it was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.
 11. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.
 12. (1) As respects any property to which this paragraph applies—
 - (a) the names and addresses of the vendors;
 - (b) the amount payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor;
 - (c) short particulars of any transaction relating to the property completed within the two preceding years in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company had any interest direct or indirect.
 - (2) The property to which this paragraph applies is property purchased or acquired by the company or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of the issue of the prospectus, other than property—
 - (a) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract

not being made in contemplation of the issue nor the issue in consequence of the contract; or

- (b) as respects which the amount of the purchase money is not material.

13. The amount, if any, paid or payable as purchase money in cash, shares or debentures for any property to which paragraph 12 applies, specifying the amount, if any, payable for goodwill.

14. The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the company, or the rate of any such commission.

15. The amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

16. Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter, and the consideration for the payment or the giving of the benefit.

17. The dates of, parties to and general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus; and a statement that a copy of every such material contract has been delivered to the Registrar for registration.

18. The names and addresses of the auditors, if any, of the company, and, if the prospectus invites the public to subscribe for debentures which are stated in the prospectus to be guaranteed, the names and addresses of the auditors, if any, of the guarantor corporation.

19. Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connexion with the promotion or formation of the company.

20. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

21. In the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

22. The contents or a sufficient summary of the contents of the articles of the company with regard to any borrowing powers exercisable by the directors and the manner of variation of such powers.

23. Particulars of any bank overdrafts or other similar indebtedness of the company and its subsidiaries, if any, as at the latest practicable date or, if there are no bank overdrafts or other similar indebtedness, a statement to that effect.

24. Particulars of any hire purchase commitments, guarantees or other material contingent liabilities of the company and its subsidiaries, if any, or, if there are none such, a statement to that effect.

25. Particulars of the authorized debentures of the company and its subsidiaries, if any, the amount issued and outstanding or agreed to be issued, or if no debentures are outstanding a statement to that effect.

26. If the prospectus invites the public to subscribe for debentures of the company—

- (a) the rights conferred upon the holders thereof, including rights in respect of interest and redemption, and particulars of the security, if any, therefor;
- (b) the designation of such debentures, which in the case of debentures not secured by a charge on assets of the company shall incorporate the word "unsecured" and shall only incorporate the word "mortgage" if they are secured to a substantial extent by a specific mortgage or charge;
- (c) particulars of any guarantee subsisting in respect of the debentures, including the name and address of the guarantor, and the designation or any description of the debentures shall only incorporate the word "guaranteed" if they are guaranteed to a substantial extent by a legally enforceable guarantee.

27. A statement as to the gross trading income or sales turnover (as may be appropriate) of the company during the five preceding years including an explanation of the method used for the computation of such income or turnover, and a reasonable break-down between the more important trading activities; but a bank, discount house or other company whose business is in the opinion of the directors of a character that such a statement is either not practicable or not of value may instead include an explanation of the absence of such a statement.

28. If the prospectus offers shares in the company for sale to the public—

- (a) the names, addresses and descriptions of the vendor or vendors of the shares, or, if there are more than ten vendors, the like particulars of the ten principal vendors and a statement of the number of other vendors;
- (b) particulars of any beneficial interest possessed by any director of the company in any shares so offered for sale.

29. The name, date and country of incorporation, whether public or private (if applicable), the general nature of the business, the issued capital and the proportion thereof held or intended to be held, of every company the whole of the capital at which or a substantial proportion thereof is held or intended to be held, or whose profits or assets make or will make a material contribution to the figures, in the auditors' report or to the next accounts of the company.

30. A statement of the persons holding or beneficially interested in any substantial part of the share capital of the company and the amounts of the holdings in question.

PART II

REPORTS TO BE SET OUT

31. (1) A report by the auditors of the company and of any guarantor corporation referred to in the prospectus with respect to—

- (a) profits and losses and assets and liabilities of the company and of any guarantor corporation referred to in the prospectus in accordance with sub-paragraph (2) or (3), as the case required; and
- (b) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the five financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years;

and, if no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

(2) If the company or the guarantor corporations have no subsidiaries, the report shall—

- (a) so far as regards profits and losses, deal with the profits or losses of the company and of the guarantor corporations referred to in the prospectus in respect of each of the five financial years immediately preceding the issue of the prospectus; and
- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the company and of the guarantor corporations referred to in the prospectus at the last date to which the accounts of the company and of the guarantor corporations were made up.

(3) If the company or the guarantor corporations have subsidiaries, the report shall—

- (a) so far as regards profits and losses, deal separately with the company's and the guarantor corporations' (other than subsidiaries) profits or losses as provided by sub-paragraph (2) and, in addition, deal either—
 - (i) as a whole with the combined profits or losses of their subsidiaries;
 - (ii) individually with the profits or losses of each subsidiary;
 or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company and of the guarantor corporations and with the combined profits or losses of their subsidiaries; and
- (b) so far as regards assets and liabilities, deal separately with the company's and the guarantor corporations' (other than subsidiaries) assets and liabilities as provided by sub-paragraph (2) and, in addition, deal either—
 - (i) as a whole with the combined assets and liabilities of its or their subsidiaries, with or without the company's assets and liabilities; or

(ii) individually with the assets and liabilities of each subsidiary; and shall indicate as respects the profits or losses and assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

32. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants (who shall be named in the prospectus) upon—

- (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the issue of the prospectus; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

33. (1) If—

- (a) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate; and
- (b) by reason of that acquisition or anything to be done in consequence thereof or in connexion therewith that body corporate will become a subsidiary of the company,

a report made by accountants (who shall be named in the prospectus) upon—

- (i) the profits or losses of the other body corporate in respect of each of the five financial years immediately preceding the issue of the prospectus; and
- (ii) the assets and liabilities of the other body corporate at the last date to which the accounts of the body corporate were made up.

(2) The said report shall—

- (a) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired; and
- (b) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by sub-paragraph (3) of paragraph 31 in relation to the company and its subsidiaries.

34. (1) This paragraph shall apply in the case of every company whose accounts at the last date to which the accounts have been made up disclose that either a value exceeding ten *per cent* of the value of the assets of the company or a value of not less than three million dollars, is placed on the company's interests in land or buildings.

(2) A valuation report with respect to all the company's interests in land or buildings which shall include the following particulars of each property—

- (a) the address;
- (b) a brief description;
- (c) the use at the date of the report;

- (d) the nature of the tenure;
 - (e) a summary of the terms of any sub-leases or tenancies, including repair obligations, granted by the company;
 - (f) the approximate age of buildings;
 - (g) the present capital value;
 - (h) the estimated current net rental, being the estimated average net annual income from the property accruing to the company over a long period of years (not being less than three years) before taking into account tax and any interest or mortgage expenses but after taking into account management and maintenance expenses.
- (3) A report for the purposes of sub-paragraph (2) shall state—
- (a) whether the valuation—
 - (i) is the current value in the open market, stating whether—
 - (A) on an investment basis, or
 - (B) on a development basis, or
 - (C) on a future capital realization basis;
 - (ii) is the current value as an asset of a going concern;
 - (iii) is the value after development has been completed; or
 - (iv) has any other basis (which should be stated);
 - (b) where the valuation is based on value after development has been completed—
 - (i) the date when the development is expected to be completed;
 - (ii) the estimated cost of carrying out the development or (where part of the development has already been carried out) the estimated cost of completing the development; and
 - (iii) the estimated value of the property in the open market in its present condition.
- (4) If the company has obtained more than one valuation report regarding any of the company's interests in land or buildings within six months before the issue of the prospectus then all other such reports shall be included.

PART III

PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE

35. Paragraphs 15 (so far as it relates to preliminary expenses) and 19 shall not apply in the case of a prospectus issued more than two years after the date at which the company began to carry on business.

36. Every person shall for the purposes of this Schedule, be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

- (a) the purchase money is not fully paid at the date of the issue of the prospectus;
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;

- (c) the contract depends for its validity or fulfilment on the result of that issue.

37. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "subpurchaser" included a sub-lessee.

38. References in paragraph 10 to subscribing for shares or debentures shall include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

39. For the purposes of paragraph 12 where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

40. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years or one year, Part II shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

41. The expression "financial year" in Part II means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purposes of that Part be deemed to be a financial year.

42. Any report required by Part II shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

43. Any report by accountants required by Part II shall be made by accountants authorized under this Ordinance for appointment as auditors of a company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

44. For the purposes of paragraph 6, the description of a person, that is to say, his profession, trade or other occupation shall be stated with particularity and precision; and the description "Company Director" shall be inadequate unless supplementary information is provided stating the nature of the relevant company's business.

45. For the purposes of this Schedule, "address" in the case of a natural person means the place of his usual residence.

46. Any valuation report required by Part II—

- (a) shall not state or imply that any land or building has been professionally valued unless the valuation is made by a profes-

sionally qualified valuation surveyor who is subject to the discipline of a professional body;

(b) shall not be made by a person who is an officer or servant or proposed director of the company or the company's subsidiary or holding company or of a subsidiary of the company's holding company; and

(c) shall not be made by a company which—

(i) is the company's subsidiary or holding company or a subsidiary of the company's holding company; or

(ii) has either a paid up capital of less than one million dollars or the assets of which do not exceed liabilities by one million dollars or more as shown in the company's last balance sheet.

47. For the purposes of Part II, "guarantor corporation" in relation to a company, means a corporation that has guaranteed or has agreed to guarantee the repayment of any money received or to be received by the company in response to an invitation to the public to subscribe for or purchase debentures of the company.

FOURTH SCHEDULE

[s. 43.]

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A COMPANY WHICH DOES NOT ISSUE A PROSPECTUS OR WHICH DOES NOT GO TO ALLOTMENT ON A PROSPECTUS ISSUED, AND REPORTS TO BE SET OUT THEREIN

PART I

FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN

THE COMPANIES ORDINANCE

Statement in lieu of Prospectus delivered for registration by
[Insert the name of the company]

Pursuant to section 43 of the
Companies Ordinance

Delivery for registration duly authorized by
(Insert the name of every director who
has authorized and signed this Statement.)

The nominal share capital of the company.
Divided into

Amount (if any) of above capital which
consists of redeemable preference shares.

The earliest date on which the company
has power to redeem these shares.

\$		
Shares of \$		each.
" "		"
" "		"
Shares of \$		each.

Names, descriptions and address of directors
or proposed directors.

If the share capital of the company is
divided into different classes of shares, the
right of voting at meetings of the com-
pany conferred by, and the rights in
respect of capital and dividends attached
to, the several classes of shares
respectively.

Numbers and amount of shares and debentures
agreed to be issued as fully or
partly paid up otherwise than in cash.

1. shares of \$
fully paid.
2. shares upon
which \$ per
share credited as
paid.
3. debentures \$
4. Consideration—

The consideration for the intended issue of
those shares and debentures.

Number, description and amount of any
shares or debentures which any person
has or is entitled to be given an option
to subscribe for, or to acquire from a
person to whom they have been allotted
or agreed to be allotted with a view to
his offering them for sale.

1. shares of \$
and debentures
of \$

Period during which option is exercisable.

Price to be paid for shares or debentures
subscribed for or acquired under option.

Consideration for option or right to option.

Persons to whom option or right to option
was given or, if given to existing share-
holders or debenture holders as such, the
relevant shares or debentures.

2. Until
- 3.
4. Consideration—
5. Names and
addresses—

Names and addresses of vendors of prop-
erty purchased or acquired, or proposed
to be purchased or acquired by the com-
pany except where the contract for its
purchase or acquisition was entered into
in the ordinary course of the business
intended to be carried on by the company
or the amount of the purchase money is
not material.

Amount (in cash, shares or debentures)
payable to each separate vendor.

Amount (if any) paid or payable (in cash
or shares or debentures) for any such
property, specifying amount (if any) paid
or payable for goodwill.

Total purchase price
\$
Cash \$
Shares \$
Debentures \$ _____
Goodwill .. \$ _____

Short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest direct or indirect.

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or

Rate of the commission

The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.

Estimated amount of preliminary expenses.

By whom those expenses have been paid or are payable.

Amount paid or intended to be paid to any promoter.

Consideration for the payment

Any other benefit given or intended to be given to any promoter.

Consideration for giving of benefit.

Dates of, parties to and general nature of every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the delivery of this statement).

Time and place at which the contracts or copies thereof may be inspected or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a foreign language, a copy of a translation thereof in English or embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation.

Names and addresses of the auditors of the company (if any).

Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or where

Amount paid.
Amount payable.

Rate per cent.

\$

Name of promoter.
Amount \$
Consideration—
Name of promoter—
Nature and value of benefit—
Consideration—

the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connexion with the promotion or formation of the company.

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorized in writing.)

Date:

PART II
REPORTS TO BE SET OUT

1. Where it is proposed to acquire a business, a report made by accountants (who shall be named in the statement) upon—

- (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2. (1) Where it is proposed to acquire shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connexion therewith will become a subsidiary of the company, a report made by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-paragraph (2) or (3), as the case requires, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other body corporate has no subsidiaries, the report referred to in sub-paragraph (1) shall—

- (a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar; and
- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate at the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate has subsidiaries, the report referred to in sub-paragraph (1) shall—

(a) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by sub-paragraph (2), and in addition deal either—

(i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate; or

(ii) individually with the profits or losses of each subsidiary, so far as they concern members of the other body corporate; or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries; and

(b) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by the last foregoing sub-paragraph and, in addition, deal either—

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities; or

(ii) individually with the assets and liabilities of each subsidiary;

and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

PART III

PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE

3. In this Schedule the expression "vendor" includes a vendor as defined in Part III of the Third Schedule, and the expression "financial year" has the meaning assigned to it in that Part of that Schedule.

4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five years, the accounts of the business or body corporate have only been made up in respect of four years, three years, two years or one year, Part II shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

5. Any report required by Part II shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

6. Any report by accountants required by Part II shall be made by accountants authorized under this Ordinance for appointment as auditors of a company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer

or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

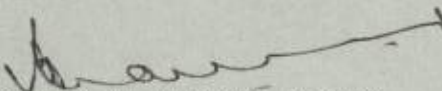
7. For the purposes of Part I, the description of a person, that is to say, his profession, trade or other occupation shall be stated with particularity and precision; and the description "Company Director" shall be inadequate unless supplementary information is provided stating the nature of the relevant company's business.

8. For the purposes of Part I, "address" in the case of a natural person means the place of his usual residence."

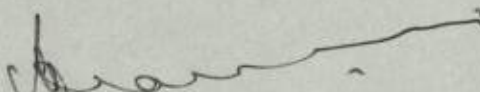
22. The Ninth Schedule to the principal Ordinance is amended by deleting "38", "43" and "94" in the column headed "Section" and the entries opposite thereto in the second column.

Amendment of
Ninth Schedule.

Passed by the Hong Kong Legislative Council this 13th day of December, 1972.


Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.


Clerk to the Legislative Council.

PUBLIC RECORDS OFFICE
OF HONG KONG

H.K.R.S. No. 28

D. & S. No. 16/20