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PRACTICAL SECRETARIAL WORK

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A GUIDE TO SECRETARIAL PRACTICE FOR THE EXAMINEE AND COMPANY SECRETARY

BY

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AND

WILLIAM N. BARR

THIRD EDITION

BY

PERCY J. W. DANIELL

A.C.I.S., F.C.C.S., F.R. ECON. S.

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PREFACE

THIS treatise is designed primarily to meet the needs of examinees and potential secretaries who are preparing for the examinations of the recognized secretarial bodies.

The book covers the syllabuses in secretarial practice for both the intermediate and the final examinations of these bodies.

The manner in which some of our text is presented may appear unorthodox. We offer no apology for this, as we adopted this method with the intention of conveying the maximum amount of information in the minimum space, and with the object of presenting our subject clearly and concisely, so that the reader is materially assisted in acquiring a logical grasp of all matters dealt with.

All unessential details of company law have been excluded, as this is a treatise on secretarial routine, and not on the law relating to companies, but whenever an explanation of the law has been necessary it has received adequate treatment.

We believe that our method of presentation will at once commend itself to the reader who is seeking guidance on the more practical aspect of secretarial work.

Secretarial practice is a vast and ever-growing subject, and we have endeavoured to cover thoroughly the entire scope of secretarial routine to ensure that readers will have in their possession an informative and reliable manual.

We trust that the book will be of practical use both to students and to company secretaries, as well as to others interested in the secretarial profession.

H. I. L.
W. N. B.

NOTE TO THIRD EDITION

In this Third Edition, whilst the main features of the original work have been preserved, the whole of the text has been thoroughly revised and brought up to date to cover the many changes in secretarial practice and procedure introduced by the Companies Act, 1948.

P. J. W. D.

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Rights and Liabilities of a Company Secretary

The position of a secretary is now defined by statute. The Companies Act, 1948, Sect. 177, states that every company must have a secretary, and Sect. 200 that his particulars must be notified to the Registrar of Companies and be included in the Register of Directors and Secretaries. The Registrar must also be kept informed of any changes made in this register. Particulars of the secretary must be included in a company's Annual Return. If there is a sole director, as is frequently the case in private companies, such director cannot also be secretary. Thus, where a secretary is also a director he will not be able to act in both capacities where a document has to be signed by both a director and the secretary. Further, no company may have as secretary a corporation the sole director of which is a sole director of the company. Nor may it have as sole director a corporation the sole director of which is secretary to the company. Where the office of secretary is vacant, any assistant or deputy secretary may act, and failing such provisions an officer of the company may be authorized to act.

The above is important recent law. The position of the secretary has, however, been reviewed by the Courts in a number of cases, and, notwithstanding his greatly improved status, he still remains "a mere servant" of the directors. In *Newlands* v. *Employers Accident Association* (1885), the plaintiff sought to rescind a contract to take shares in the defendant company induced by the misrepresentations of the secretary, and in the course of the judgment it was said: "A secretary is a mere servant, his position is to do what he is told, and no person can assume that

he has any authority to represent anything at all, nor can anyone assume that statements made by him are necessarily to be accepted as trustworthy without further inquiry, any more than in the case of a merchant it can be assumed that one who is only a clerk has authority to make representations to induce persons to enter into contracts."

The secretary is, then, the servant of his board of directors, and has no original authority; he derives his authority either expressly or by implication from the directors, but he plays an important part in the management of the company and the carrying on of its business. The duties of the secretary will necessarily differ according to the nature and size of the company he serves. The secretary of a small private company may, in addition to purely secretarial duties, be expected single-handed to keep the accounts, and conduct all the correspondence and other clerical work. On the other hand, the secretary of a large company may have a large number of assistants, including a registrar who controls all the share, stock, and debenture transfer work and prepares the statutory returns, the secretary occupying the position of organizer of the company's secretarial and clerical work, and having responsibilities second in importance only to those of the directors. There are frequently joint secretaries, one perhaps an administrative secretary and the other a routine secretary, a position visualized by the framers of the Companies Act, 1948, when a Register of Directors and Secretar*ies* was provided for. Again, other companies employ part-time secretaries, who specialize in offering part-time service to companies whose secretarial requirements would not justify the employment of a whole-time secretary. Just as there are practising solicitors and accountants, so there are now practising secretaries, one secretary or firm of secretaries attending to the secretarial requirements of a number of

companies. There are in fact registered companies whose main object is the rendering of secretarial services, the managers and employees of such companies being qualified secretaries.

The duties of a secretary may be briefly generalized as follows—

(*a*) *At the Time of the Incorporation of the Company*

1. Convene and attend the preliminary meetings of those promoting the company and keep a record of the proceedings thereat.

2. Complete and file with the Registrar of Companies all the necessary documents requisite for the registration of the company, although this work is often left in the hands of the promoters' legal adviser.

3. On receipt of the certificate of incorporation—make preparations for holding of first board meeting. At this meeting the secretary should see that his own appointment is put in order and duly minuted. He must write in the Register of Directors and Secretaries his Christian name and surname (also any former Christian name and surname) and his usual residential address, and also see that his appointment is filed with the Registrar within fourteen days of his appointment.

4. Attention should be given to the making of by-laws and standing orders, and the organization of the secretary's office, etc.

5. Attend to the obtaining of the certificate entitling the company to commence business.

(*b*) *After Incorporation*

1. Peruse and become acquainted with the provisions of the company's memorandum and articles of association.

2. Convene meetings, draft notices and agenda.

3. Attend at meetings and afterwards record proceedings thereat.

4. Organize and supervise the secretarial and general clerical work, correspondence, etc.

5. Prepare the statutory, annual, committee, and other reports, and Annual Return.

6. Register transfers of stocks, shares, and debentures, powers of attorney, probates, etc. (In large companies an independent person, styled a " Registrar," may take charge of this work, as already noted).

7. Comply with the obligations imposed on him and on the company by the Companies Act, Stamp Act, Income Tax Act, etc.

8. Particular duties in relation to the company's own business; for example, the secretary of a company coming within the provisions of the Friendly Societies Act must comply with the requirements of such Act, the secretary of a statutory company must have an intimate knowledge of the company's special Act and the Companies Clauses Acts.

A secretary taking up an appointment with an established company should study the company's memorandum and articles and minute books, and inquire into the methods of conducting the secretarial work prior to his engagement, and become acquainted with the facts of all matters in progress.

The Qualifications of a Secretary

Much could be written upon the qualifications and attributes which the ideal secretary should possess. He should have a sound general education and command of language, wide general knowledge, and be well versed in company and mercantile law and the principles of law in general, law and procedure relating to meetings, office organization and business methods, accountancy practice, economics, banking and finance, and he should have a working knowledge of any laws affecting the company's business; for example, Workmen's Compensation, National Health, Pensions, and Unemployment Insurance, Fire and Accident Insurance, Income Tax (including P.A.Y.E.), Factories Acts, etc. The first four of these heads are now, in general, covered by the National Insurance Act, 1946, but it must be remembered that as regards industrial injuries employers still remain liable for damages sustained by their employees under common law (especially as the doctrine of common employment, which operated in their favour, has now been rescinded—see page 392), and need to take out an insurance policy against such risks. Personally, he should be conscientious, cautious, tactful, and prudent, as his position will call for the exercise of discretion and judgment.

Appointment and Remuneration

The appointment of the secretary is made by the directors. It is desirable that a written service agreement should be entered into, stating clearly the whole of the terms of the contract of service—duties, remuneration, length of appointment and manner in which it shall be terminated, details of any restrictive covenants, etc. In the absence of agreement as to the length of notice necessary for terminating the appointment of a secretary, the notice must be reasonable in the circumstances of each case. One month's notice may be sufficient in some cases, three months' or longer may be necessary in others, according to the position occupied by the secretary and the nature and extent of his duties. As this question may affect the secretary not only on the occasion of his dismissal but also if he himself were desirous of terminating his appointment, it is most desirable that there should be a written agreement dealing with the point. It should be remembered that a secretary may be dismissed without notice if he is guilty of breach of his contract or of misconduct, or suffers permanent disablement, or even if he innocently commits a serious error if the consequences operate to the material detriment of the company.

The remuneration of the secretary will, of course, depend on the circumstances, and in every case remuneration is the subject of agreement, and in amount may range from the low fixed fee paid to a part-time secretary of a small company, to an amount running into four figures or even more in the case of the secretary of a leading commercial or industrial concern. The remuneration of the secretary of a statutory company is, however, fixed by general meeting (Sect. 91 of Companies Clauses Act, 1845).

The Secretary's Responsibilities and Liabilities

1. He is responsible to his directors for the proper

carrying out of the duties of his office, and must obey all orders properly given to him, and otherwise fulfil the obligations of his contract of service.

2. He is liable under (*a*) the Companies Act, 1948, if he fails to comply with certain requirements of that statute. There are numerous sections imposing liabilities to fines for default in complying therewith, for example, keeping of statutory books, making of annual return, issuing debentures without a copy of the certificate of registration endorsed.

(*b*) Stamp Act, 1891. Sect. 17 of this Act provides—

> If any person whose office it is to enrol, register, or enter upon any rolls, books, or records any instruments chargeable with duty, enrols, registers, or enters any such instrument not being duly stamped, he shall incur a fine of £10.

Obviously a secretary falls within the scope of the section, as he will often be called upon to handle documents attracting stamp duties, and the section imposes some obligation on him to ascertain that such documents are correctly stamped.

But to make a secretary liable under either the Companies Act or the Stamp Act, it seems necessary that he should be guilty of " wilful " neglect or default, and in fact some of the penalty clauses of the Companies Act expressly provide that the penalty is incurred only if the act, default, neglect, or non-compliance was done wilfully.

(*c*) Income Tax Act, 1918, which makes the secretary liable " as if he were the employer " for duly completing and filing the returns of wages and salaries of the company's employees. In 1944 the "Pay as you earn" (P.A.Y.E.) system was introduced, providing employers with Tables from which to calculate tax deductions, and this is another responsibility of the secretary.

(*d*) Larceny Act, 1916, which makes any person criminally liable if he is a party to any fraud or deceit—

misuse of accounts, keeping false accounts, wrongfully destroying books, publishing fraudulent prospectuses and statements.

(*e*) Prevention of Corruption Act, 1906, which makes criminally liable anyone making secret profits or commissions, or taking bribes in the course of his employment.

3. As an agent. A secretary derives his authority either expressly or impliedly from the board of directors, and he has power to bind the company by acts or contracts coming within the scope of his apparent authority. If he acts outside such authority, the company will not be responsible, and he may be personally liable to the third party with whom he deals. When drawing, accepting, or endorsing bills of exchange on behalf of the company, he must take care to show clearly that he is signing "for and on behalf of the company," otherwise he may be personally liable.

If whilst acting within the course of his employment, he commits a fraud or wrong, the company would be liable, even if the act was for the personal benefit of the secretary alone (*Lloyd* v. *Grace Smith* (1912)), but the secretary is also liable personally, and the third party may, if he thinks fit, choose to sue him instead of the company. If the wrong was committed *innocently*, within the scope of his authority, the secretary would also be personally liable, but he would be entitled to an indemnity from the company if he can prove that he was not aware of, and could not by the exercise of reasonable diligence have discovered, the wrongful nature of the act. He must not, therefore, do what he knows to be wrong, even if he is expressly bidden to do the act.

Position of Secretary on Liquidation or Appointment of Receiver for Debenture Holders

Compulsory liquidation terminates without notice the

secretary's contract of service, and therefore constitutes a wrongful dismissal (*Chapman's Case* (1866)). Whether a voluntary liquidation has the same effect is not definitely certain ; much depends on the circumstances of each case, and the Courts have given somewhat conflicting decisions, but following *Reigate* v. *Union Manufacturing Co.* (1918), which to some extent overruled *Midland Counties District Bank* v. *Attwood* (1905), it would appear that if the consequence of the liquidation is that the company is going out of business altogether, then the liquidation operates as a termination of the secretary's appointment. The voluntary liquidation may, of course, only be a step in reconstruction, in which case the reconstructed company would continue to carry on its business, and employ the former servants, and if so, it seems certain that the liquidation would not terminate the secretary's engagement.

The appointment by the Court of a receiver for the debenture holders, or the appointment by the debenture holders themselves of a receiver who is to be their agent and not agent of the company, would also operate to terminate immediately service agreements of the company's employees, because control and management of the business would be taken out of the hands of the company which engaged the servants, and which cannot therefore fulfil its obligations under such service agreements (*Reid* v. *Explosives Co.* (1887)). The appointment by the debenture holders of a receiver who is to be agent of the company would not operate to terminate service agreements, because of the fact that as the receiver is agent of the company, in effect the company therefore continues to be the employer.

In any case, where the appointment of the secretary is terminated wrongfully without notice, the secretary can at once sue the company for damages, i.e. for the amount of salary he would have been entitled to during the currency of the proper length of notice of dismissal

that should have been given. If the wrongful dismissal was occasioned by compulsory liquidation, the secretary would not be able to bring action against the company without leave of Court (Sect. 231). Court proceedings involve expense which may fall on the secretary, and the amount, if any, which may be recovered against the company may not be paid in full if the company is insolvent, so that the remedy of the secretary is not so real as might at first sight appear.

If the secretary's appointment is terminated wrongfully, and the liquidator or receiver retains the services of the secretary at the same rate of salary for a period equal to, or longer than, the length of notice of dismissal to which he is properly entitled, it appears that he could not bring any action against the company for damages, as he would not have suffered any.

A secretary who gives his whole time in acting as such to one company (but not so a part-time secretary) is a preferential creditor, under Sect. 319, to the extent of four months' salary not exceeding £200 accrued due before the " relevant date," i.e. in the case of compulsory liquidation, the date of the appointment (or first appointment) of a provisional liquidator; or, if no such appointment was made, the date of the winding up order, unless in either case the company had commenced to be wound up voluntarily before that date. In any case, where the above does not apply, the "relevant date" means the date of the passing of the resolution for the winding up of the company.

CHAPTER II

INCORPORATION AND FORMATION OF COMPANIES

PRIOR to the registration of a joint stock company there will, of course, be numerous matters to be attended to, such as the various meetings of the promoters, and the making of the preliminary arrangements generally.

Many of these preliminary matters will fall to the person acting as secretary *pro tem.*, whose duty it is to arrange and attend all meetings of promoters, and to take notes of the proceedings thereat, as well as to advise the promoters on those matters incidental to the registration of the intended company.

In addition, there may be the formalities to be observed in connection with the preparation of the preliminary contracts, underwriting contracts, and the framing of the prospectus, for it must be remembered that a prospectus may be issued in relation to an intended company. A public company not filing a prospectus must file a *statement in lieu of prospectus* containing similar information to that necessary in a prospectus.

The preparation of the documents incidental to incorporation is usually in the hands of the promoters' legal advisers.

Documents to be Filed on Incorporation

The following documents must be delivered to the Registrar in the country where the registered office of the company is to be situated—

1. THE DULY SIGNED MEMORANDUM AND ARTICLES OF ASSOCIATION. A *public* company need not register special articles of its own—it may adopt Table A, in which case the memorandum should be endorsed to that effect. A *private* company *must* register articles

to comply with Sect. 28 of the Companies Act, 1948 (see page 368).

2. THE STATEMENT OF THE NOMINAL CAPITAL OF THE COMPANY. This is a requirement of the Finance Act, for the purpose of correctly assessing the amount of capital duty payable.

3. A STATUTORY DECLARATION OF COMPLIANCE with the requirements of the Companies Act, 1948, made by a solicitor engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company.

4. A LIST OF PERSONS WHO HAVE CONSENTED TO BE DIRECTORS OF THE COMPANY. If this list contains the name of any person who has not so consented, the applicant for registration of the company is liable to a fine not exceeding £50.

It is provided by Section 181 (5) that the above requirement as to the list of directors, etc., shall not apply to a private company, to a company not having a share capital, and to a company which was a private company before becoming a public company.

Where a person is appointed a director by the articles, or named as a director or proposed director in any prospectus issued by or on behalf of a company, or named as a proposed director of an intended company in a prospectus issued in relation to an intended company, or in a statement in lieu of prospectus delivered to the Registrar by or on behalf of a company, then before the registration or issue of the documents named, the proposed director (or his duly authorized agent in writing) must (1) sign and deliver to the Registrar a consent in writing to act as such director, and (2)

(*a*) sign the memorandum for shares not less than the required qualification, if any; or

(*b*) take from the company and pay or agree to pay for the qualification shares, if any; or

(*c*) sign and deliver to the Registrar an undertaking in writing to take from the company, and pay for his qualification shares, if any; or

(*d*) make and deliver to the Registrar for registration, a statutory declaration that shares not less than the required qualification, if any, are registered in his name.

By Sect. 107 (1) a company shall, as from the day on which it begins to carry on business, or as from the fourteenth day after the date of incorporation, whichever is the earlier, have a registered office to which all communications and notices may be addressed. Notice of the situation of the registered office, and of any change therein, shall be given within fourteen days after the date of the incorporation of the company, or of the change, to the Registrar of Companies, who shall record the same (Sect. 107 (2)).

Stamp Duties Payable on Incorporation

The following is a list of the stamp duties, fee stamps, etc., payable on incorporation—

1. *Memorandum of Association.* Deed stamp, 10s.; fee stamp according to the following scale—

On the first £2,000 of nominal capital .	£2	–	–
Each additional £1,000 or part thereof, up to £5,000	1	–	–
Over £5,000, each additional £1,000 or part thereof, up to £100,000 . . .		5	–
Over £100,000, each additional £1,000 or part thereof		1	–

The minimum duty is £2, the maximum duty (on registration or afterwards) is £50. All companies with a nominal capital of £525,000 or over pay the maximum duty of £50, as at this figure the graduated scale ceases to operate.

2. *Articles of Association.* Deed stamp, 10s.; fee stamp, 5s.

3. *Statement of Nominal Capital.* 10s. per cent *ad valorem* duty on the capital of the company—commonly referred to as "Capital Duty." There is no fee stamp on this form of statement of nominal capital.

4. All other documents of whatever description required to be filed with the Registrar must bear an impressed fee stamp of 5s. each.

An exception is made in the case of the Memorandum or Abstract required to be delivered to the Registrar by a receiver or manager, or the Statement required to be sent to the Registrar by the liquidator in a winding up in England—these are all exempt from stamp or fee duty.

Contracts in writing by directors, or persons named as directors, to take and pay for their qualification shares, in addition to the 5s. fee stamp required, must bear a sixpenny stamp (impressed or adhesive).

Certificate of Incorporation and Commencement of Business

If all the documents are in order, and all stamp duties and fees paid, the Registrar will issue a certificate of incorporation, which is conclusive evidence that the company is duly incorporated, and that all legal requirements precedent thereto have been complied with. The issue of this certificate does not entitle the company to commence business, unless the company is a private company. Public companies must obtain a further certificate entitling the company to commence business. (See Sect. 109 of the Companies Act, 1948.)

CHAPTER III

CORRESPONDENCE, FILING AND INDEXING

THE subject of correspondence is of more than ordinary importance to the potential secretary, as he will be required to have exact knowledge as to, first, originating correspondence; secondly, the care of and methods of dealing with correspondence, both inwards and outwards; thirdly, the disposal of correspondence generally, involving knowledge of indexing and filing systems.

The Composition of Business Letters

It is generally agreed that an unattractive business letter, apart from being extremely dull reading, seldom claims from the addressee that respect and attention which a well-written and attractive letter engenders.

Accordingly, the time and trouble taken in producing a letter which is likely to appeal to the reader and thus attain the desired object, are fully repaid.

The following points should be borne in mind when drafting correspondence, and adequate practice on the approved lines will make for clearness of expression, and conciseness of style, both of which are eminently desirable in correspondence generally.

Size of Notepaper

The usual size of notepaper used for business letters is the *quarto* sheet (8 in. × 10 in.), whilst for communications of less importance and of an informal nature, *octavo* paper (8 in. × 5 in.) may be used.

It is advisable to use one side of the paper only, to facilitate copying, and for lengthy correspondence continuation sheets should be used.

At the outset, reference should be made to the

previous correspondence on a particular matter, if any, and to the subject matter of that letter.

Any reference number(s) quoted in previous correspondence to which the present letter is in reply, should invariably give such reference at the head of the letter, for example—

Your ref. Q. $\frac{9}{1929}$ or Secretary's Office H.L./MAG.

This referencing enables the recipient of the letter at once to refer to previous correspondence on the subject, and facilitates an early reply.

The Heading

This should show where and when the letter is written, for example—

99, Lune Street, London, E.C.1,
15th April, 19...

The address portion of this heading, together with the full name of the firm, is usually printed at the top of the letter paper together with other items such as telephone numbers, telegraphic address, and cables and codes used.

Inside Address

Immediately preceding the salutation are placed the full name, title, and address of the person or firm addressed.

Complimentary titles should not be overlooked in addressing correspondence, e.g.—

Doctor, Sir, Professor.

The Salutation

The following forms of address are used—

Sir(s), Dear Sir(s), My Dear Sir(s), Gentlemen.

In addressing a lady—

Madam, Dear Madam, My Dear Madam.

"Mesdames" is used in addressing more than one lady.

The Beginning

The beginning of the letter is somewhat formal in character, e.g.—

"In reply to your letter of the ——."
"We acknowledge the receipt of your communication of the ——."
"With reference to your letter of the ——."
"In response to your letter of the ——."
"We thank you for your letter of the ——."
"Replying to your letter of the ——."

The Body of the Letter

Here it is of great importance that the words used should convey to the reader the exact meaning intended, and should be clear and fully informative. Study the correspondent, and then endeavour to interest him.

If there are any enclosures to a letter, such as invoices, bills of exchange, promissory notes, commercial documents, samples, etc., these should be mentioned at the foot of the letter; for example, "ENCLOS—3."

Some firms adopt the practice of affixing to the letter in the bottom left-hand corner, a gummed slip with "ENCLOSURES" printed thereon, and it is recommended that the enclosure be specifically indicated (for example, B/E, M.I.P., etc.), to facilitate the work of the postage clerk. Other firms, again, place a series of typed dots in the left-hand margin when enclosures are referred to. These matters are dealt with further in Chapter IV.

Correct Ending

This immediately precedes the signature. The complimentary ending chosen will be that which is appropriate to the circumstances of each particular case, and generally in accordance with the formal salutation.

The following are examples—

Yours faithfully, Yours respectfully, Yours obediently, Yours truly, Yours very truly.

These are sometimes preceded by the words—

I am, *or* I remain; We are, *or* We remain, *or* similar words.

The Signature

This consists of the name of the writer or the firm which he represents, e.g.—

Exemplary Co., Ltd.,
G. SMART.

Allen & Allen,
H. WILLING.

Where authority is given to a person who signs on behalf of the principal, the signature would appear—

per pro. Exemplary Co., Ltd.,
G. SMART, *Secretary.*

or

per pro. Allen & Allen,
H. WILLING, *Manager.*

Specimen Letters

The following specimen letters are given as indicative of the type of correspondence usually encountered at examinations, the letters being based on questions appearing in the correspondence, etc., papers of the various secretarial bodies.

Letter to a Shareholder who Complains that he did not Receive Proper Notice of the Company's Annual General Meeting

EXEMPLARY COMPANY, LIMITED

99 Lune Street,
London, E.C.1.
31*st July*, 19..

A. SHAREHOLDER, ESQ.,
" Rock View,"
Rockwall Road,
Redhill.

Sir,

In reply to your letter of 29th July, in which you stated that you did not receive notice of the Annual General Meeting of

this Company which was held on Wednesday last, I would inform you that adequate notices in accordance with the Articles of Association of this Company were prepared and dispatched to the registered addresses of those persons entitled to receive notices as shown by the books of the Company.

On referring to our books, I find that notice of the Meeting in question was dispatched and addressed to yourself at "Browncarter House," Browncarter Road, Blackhurst—this being your address which is registered in our books.

After an extensive search of our records, I am unable to trace the receipt by the Company of any notification of change of this address, until your letter of the 29th inst.

Whilst regretting the fact that notices duly sent to your registered address failed to reach you at Redhill, I can assure you that we are in no way responsible for this miscarriage, and having amended our records to show your new address as now notified by you, I express the hope that future correspondence will reach you safely.

I am,
Yours faithfully,
For Exemplary Co., Ltd.
H. WILLING,
Assistant Secretary

Letter to a Shareholder who has written to the Company asking you to appoint a time when he may call to inspect the Register of Members and Minute Books of the Company

EXEMPLARY COMPANY, LIMITED

99 Lune Street,
London, E.C.1.
31*st July*, 19...

V. GREEN, ESQ.,
"Rose Mount,"
Ruby Lane,
Mudcaster.

Sir,

I am in receipt of your letter dated 27th July, and would inform you that in accordance with Sections 113 and 146 of the Companies Act, 1948, the Register of Members and General Meeting Minute Book are open to the inspection of Shareholders without fee during business hours, and in the case of this Company from

10 a.m. to 4 p.m. daily.
10 a.m. to noon Saturdays.

The Minute Books relating to meetings of the Board of Directors and Committee Meetings are not available for inspection by shareholders.

Yours faithfully,
For and on behalf of Exemplary Co., Ltd.
G. SMART, *Secretary.*

N.B. Sect. 110 of the 1948 Act provides that the Register of Members may now also be kept at any office of the company where it is made up, or at the office of some other person who performs this work. But when the Register of Members is kept elsewhere than at the registered office, the Registrar of Companies must be informed, so that any inquirer (whether a member or not—but non-members may be charged one shilling) may be able to inspect the Register of Members without delay. This information must also be included in the Annual Return.

QUESTION. *A Shareholder has written to you stating that he has lost his Share Certificate and asking what he should do in the matter.*

REPLY.

EXEMPLARY COMPANY, LIMITED

99 Lune Street,
London, E.C.1.
18th August, 19..

A. SHAREHOLDER, ESQ.,
9 Grosvenor Road,
Easthill.

Sir,

AO
Re Lost Share Certificate, No. $\frac{\text{AO}}{11}$, 559367

I am in receipt of your letter of yesterday's date, notifying the loss of Share Certificate bearing the above number. If you will forward the following documents (specimens of which are enclosed) duly completed and free of expense to this Company, I will bring the matter before the Directors with a view to a Duplicate Share Certificate being issued—

1. A Statutory Declaration made before a Commissioner for Oaths as to the loss of the Share Certificate.

2. A Letter indemnifying the Company against all liability which it may incur by reason of issuing a duplicate certificate.

3. A Letter of Guarantee by a Banker or person of good financial standing.

A fee of Two Shillings and Sixpence must be sent to cover the cost of the duplicate certificate.

I am,
Yours faithfully,
For Exemplary Co., Ltd.,
G. SMART, *Secretary.*

QUESTION. *Write to your Company's Solicitors instructing them to draw up an Agreement.*

99 Lune Street,
London, E.C.1.
19th August, 19..

MESSRS. DEEDS & TAPE,
55 Lune Street,
London, E.C.1.

Dear Sirs,

Attached is a copy of the resolution of the Board of Directors passed this day, appointing Messrs. Jones & Smith, of Lozelles, Birmingham, as the Company's Sole Representatives in Birmingham.

Will you kindly take the necessary steps to carry into effect the terms of the annexed resolution and be good enough to forward to me the Draft Agreement (in triplicate) for approval?

Yours faithfully,
For Exemplary Co., Ltd.
G. SMART, *Secretary.*

ENCLO.—1.

ENCLOSURE *in letter to Messrs. Deeds & Tape, Solicitors, 55 Lune Street, E.C.1*

EXTRACT FROM MINUTES OF BOARD MEETING, HELD ON 19TH AUGUST, 19..

32. *Representation in Birmingham.*

Mr. J. Brown reported that his negotiations with Messrs. Jones & Smith, of Birmingham, respecting their appointment as the Company's Sole Representatives in Birmingham, had been successful, and *it was resolved*—

" That Messrs. Jones & Smith, of Lozelles, Birmingham, be

and are hereby appointed as the Company's Sole Representatives in Birmingham subject to the satisfactory completion of a formal agreement as stipulated for by Mr. J. Brown, to be prepared by the Company's Solicitors, incorporating the following terms—

1. The Appointment to be for a period of five years.

2. An Annual Agency expense allowance of £250 (two hundred and fifty pounds) to be paid.

3. Commission to be paid on the value of all orders introduced by Messrs. Jones & Smith, according to the following scale of rates, calculated on the turnover for the year ended 31st March, 19.., and each succeeding year during the continuance of the agency—

ON the first £5,000, at the rate of 2½ per cent.

ON the next £10,000, at the rate of 5 per cent.

ON all orders in excess of £15,000 at the rate of 15 per cent.

4. The Company may determine the agency at the end of two years if it is considered by the Company to be desirable to do so."

Letter to a Customer whose Cheque has been returned by your Bankers marked " Words and Figures Differ "

EXEMPLARY COMPANY, LIMITED

99 Lune Street,
London, E.C.1.
11th August, 19..

GS/MAG.
A. CUSTOMER, ESQ.,
19 Buyall Road,
Birmingham.

Dear Sir,

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Re Cheque No. 5 *OA* 355774 *for* £217 7s. 5d., dated *31st July*, 19..

A cheque drawn by yourself and bearing the above particulars is returned herewith for cancellation, having been returned to us by our Bankers, the West Bank, Ltd., marked " Words and figures differ."

Will you be kind enough to send to us a corrected cheque in exchange?

Yours faithfully,
For Exemplary Co., Ltd.,
G. SMART, *Secretary*.

ENCLO.—1.

Letter to an Insurance Company, with whom your business premises are Insured, giving notice of a fire at your establishment

EXEMPLARY COMPANY, LIMITED

99 Lune Street,
London, E.C.1.

G.S./S.A. .....19..

THE BLANK INSURANCE CO., LTD.,
High Holborn,
London, W.C.1

Dear Sirs,

Re F. 9773859 renewable Christmas—Agency, V. Goodiman, Donchester

We regret to inform you that a serious fire occurred at our City Factory, 19 Cavesgate, London, at 3 p.m. yesterday, the greater part of the " MIXING " Building being destroyed.

These premises are included in the above-named policy. We shall be obliged if you will forward to us the necessary Claim Form for completion.

We have given instructions for the preparation of the necessary Architect's Certificate and Builder's Estimate which will be sent to you in due course.

Yours faithfully,
For Exemplary Co., Ltd.,
G. SMART, *Secretary*.

Letter to the Bankers of your Employers asking for a Temporary Overdraft

EXEMPLARY COMPANY, LIMITED

99 Lune Street,
London, E.C.1.

THE MANAGER, ...19..
West Bank, Ltd.,
Oldbury,
London, E.C.4.

Dear Sir,

I am directed to ask you to grant to this Company a temporary advance of one thousand two hundred pounds (£1,200) for a period not exceeding three months, to be repayable, in whole or in part, at any time prior thereto. Interest to be charged at the rate of five per centum per annum.

A copy of the Resolution of the Board authorizing the loan

is enclosed. The following documents will be deposited with you as security for the overdraft—

1. £1,000—2½ per cent Funding Loan, 1956–61.
2. £250—3½ per cent War Loan, 1952.
3. £250—British Transport 3 per cent Guaranteed 1978–88.

Please let me have an acknowledgment in due course.

I am, dear Sir,
Yours faithfully,
For Exemplary Co., Ltd.
G. SMART, *Secretary*.

Drafting of Circulars

The drafting of circulars addressed to shareholders (e.g. under the important new legislation in Sect. 207), to business houses, and to customers, both actual and prospective, calls for both skill and tact, and is a matter which in normal circumstances may devolve upon the secretary.

Circulars may be issued in cases of which the following are typical—

1. On taking over a new business.
2. On changing a business address.
3. On amalgamation of businesses.
4. On the issue of bonus shares to shareholders *pro rata* to existing shareholdings. (A specimen appears at the end of Chapter V.)
5. Regarding a new issue of debentures.
6. To shareholders reporting general progress of special work undertaken.
7. To shareholders, offering them shares in a new issue of capital *pro rata* to present shareholdings. (A specimen appears at the end of Chapter V.)
8. To agree the form of and circulate motions to be proposed at an Annual General Meeting or of statements not exceeding 1000 words in length bearing on any business to be transacted at any general meeting of a company, in accordance with new law contained in Sect. 140.

On Taking Over a Business

BLANK STAMP COMPANY, LIMITED

RUBBER STAMPS, SEALS, STENCILS, BRASS PLATES, ETC.

Telephone: Central 5555.

Stamp Corner,
Paddington,
Manchester.
16*th December*, 19..

Dear Sirs,

Re Blank Stamp Co.

We have pleasure in informing you that we have to-day taken over the entire plant, stock, etc., of the Blank Stamp Co., of this City, and beg to solicit the favour of your patronage.

By the thorough knowledge and trade experience which we have gained during the fifteen years spent in this line of business, we claim to be fully acquainted with the specific requirements of customers to whom this letter is addressed.

We can assure you that your inquiries will receive our best and prompt attention at all times. We are confident that we can offer you excellent quality and service in all branches of the Rubber Stamp trade, stencils, dies, engraving, etc., at competitive prices and terms.

We are at your service at all times.

Yours faithfully,
For and on behalf of
Blank Stamp Co., Ltd.
A. J. STAMP, *Manager*.

Circular to Customers on Changing a Business Address

Stamp Corner,
Paddington,
Manchester.
18*th July*, 19..

MESSRS. R. U. CUSTOMER & SONS,
Birmingham.

Dear Sirs,

As the volume of our trade is constantly increasing, we are pleased to advise you that we have to-day opened a new Branch in your City under the Management of Mr. K. K. Stamp.

By establishing this new Branch, it will be possible to offer to our customers in Birmingham and district a speedy service,

and to guarantee to them the same high standard and quality of goods as heretofore supplied from our principal warehouse in Manchester.

Hoping to be favoured with your continued support,

We remain,
Yours faithfully,
For Blank Stamp Co., Ltd.,
A. J. STAMP, *Manager.*

Filing Correspondence

A reliable and well-organized system of preserving correspondence, documents, etc., for future reference, is an absolute necessity in a modern office.

In order that the valuable time of business chiefs may not be wasted, and so that subordinates need not waste time tracking down correspondence, which time could profitably be spent in other ways, all manner of up-to-date time saving devices, filing systems, etc., are available to the enterprising business house.

One person should, where possible, have control of the filing system. He will probably not file all the papers, documents, etc., but it will be his duty to see that the files are kept in proper order. Some large businesses employ one or more filing clerks who devote their whole time to the filing of letters, etc.; in businesses where the employment of a full-time filing clerk would not be warranted, it should be a definite part of the duty of one clerk to take charge of the filing arrangements; someone must be responsible—someone who can be charged with inefficiency if the filing system is not effective. No system of filing will work automatically; someone must supervise.

Needless to say the filing arrangements must be adapted to the circumstances. Where the volume of correspondence is only small, the letters (with copies of replies annexed) can be kept in a concertina file, which consists of a number of pockets each allotted to one or more letters of the alphabet—if there are several letters relating to one person or matter, they can be fastened

together in date order by means of a clip. When the file is full, the letters are transferred to a filing case. These filing cases are very cheap, and are obtainable from all firms selling filing equipment. They consist of a piece of stout cardboard fitted with metal spikes and a dust-proof cover. The letters are perforated, placed on the spikes in alphabetical order and encased in the cover, which is marked on the outside to indicate the period covered by the contents.

Similar methods can be employed where the volume of correspondence is large, but where there is not a continuous correspondence with regular correspondents, or customers; for example, a mail order business. Where there is a continuous correspondence with a large number of regular correspondents or customers, some more efficient system must be introduced, and the most popular is known as the Vertical Filing System.

The Vertical Filing System

The fundamental idea is to bring together into one folder all letters, etc., relating to one correspondent, or referring to any given subject-matter. Folders consist of sheets of pliable cardboard folded once so that one side overlaps the other by half an inch, and are made in two sizes—quarto and foolscap. The name of the correspondent or subject-matter, or number of the folder, is written on this overlapping edge, which is intended to facilitate visibility of these details. Some makes of folder are fitted with devices for gripping the contents together to prevent them getting astray. The folders are placed vertically in a cabinet of drawers so that any folder can be taken out and replaced without disturbing the others, and papers can be added or extracted without removing the folders from the drawers. Additional cabinets are brought into use if expansion of the filing equipment is necessitated by growth of the volume of correspondence.

Where there is a large filing system it is generally required that when any person removes a file of papers he must leave in the vacant place a large card bearing his name and office. He is thus fixed with responsibility for its safe return. Further, if any other person requires the missing file he can seek it out and obtain it from the person who inserted the card.

Methods of Indexing the Folders

(*a*) ALPHABETICALLY. The names of the correspondents or subject-matters are written on the projecting edges of the folders, which are then placed in alphabetical order in the drawers, which are labelled to indicate the contents, e.g. A—F, G—L, etc. To facilitate reference to the folders, " Guide Cards " having a projecting tab, bearing in bold type one of the letters of the alphabet, are inserted. As a further means of ensuring quick reference, the folders may be arranged in strict dictionary order, or they may be filed on the vowel system, using subsidiary guide cards to indicate the vowels.

The alphabetical system is easy to put into operation, and the file is self-indexing, but it has certain drawbacks—the growth of the correspondence beyond the space allotted to each letter of the alphabet necessitates a displacement of all the other folders; confusion may arise where, as very often happens, there are alternatives under which correspondence may be filed, e.g. " A. Buck, c/o Worthington Pump Co.," may be filed under either B or W; a letter from the company's solicitors concerning a customer may be filed under the name of the solicitors, when it should be filed with the customer's papers. These difficulties are to some extent minimized if the numerical system of indexing is adopted.

(*b*) NUMERICALLY. Each correspondent or subject-matter is allotted a number, which is marked on the

folder and on all letters relating thereto. Filing is thus direct by means of numbers. The folders are placed vertically in the drawers in numerical order, guide cards being used to mark off every 50 or 100 folders, each drawer being labelled to indicate the numbers of the folders contained therein, e.g. 51 to 100. The folders are indexed by means of an alphabetically arranged card index. A card is made out for each correspondent or subject-matter, showing the number of the relevant folder or folders. The cards are of uniform size, and are stored in a box or tray. In some makes of card index a metal rod passes through a hole at the bottom of each card, thus securely holding the cards together and acting as a precaution against wrongly extracting cards. Here, also, full use is made of alphabetical guide cards to assist in readily locating the desired card. To find a folder, the card index is referred to. Once made out, the card indexes the folders for all time, and a folder indexed by means of a number can be found more quickly than one indexed alphabetically. It is true that reference must first be made to the card index, and this may cause some delay, but there are compensating advantages. The correspondent's number can be quoted on all letters, etc., and correspondents usually quote the reference number on their replies, so that most incoming and all outgoing letters will bear the folder number. Reference to the card index will not then be necessary, except where it is necessary to locate a letter at times other than when letters are being filed, and even then the numbers of regular correspondents become well known and reference to the card index is unnecessary. Moreover, the card index affords considerable facilities for cross referencing where there are alternative headings under which papers may be filed, e.g. " A. Buck, c/o Worthington Pump Co."—two cards would be made out, one for " A. Buck," the other " Worthington Pump Co.,"

and both would show the one folder number. Further, when expansion of the filing equipment is necessary, there is no need to displace any folders—a new cabinet is added, and the new folders being in numerical order will be placed therein.

SUBJECT INDEXING. This is possible with both the alphabetical and numerical systems of indexing folders. The subject may be of greater importance than the correspondent, or there may be correspondence with several persons concerning one subject-matter, e.g. concerning a contract, or a legal dispute, technical information, etc. In such cases a folder is allotted to the subject, and if the alphabetical indexing system is used, the folder is placed in its ordinary place alphabetically. If the numerical indexing system is in vogue, the subject is allotted a number, a card being made out therefor stating the number, and to prevent misfiling, cross references will be made to relevant correspondents or subjects indicated on the card.

GEOGRAPHICAL INDEXING. Some firms consider it advisable to file together the correspondence from all correspondents and customers in a certain part of the country or locality—towns, counties, travellers' districts, etc. Separate filing cabinets may be used, or the folders may be separated by guide cards, but the folders relating to each geographical division are filed on the usual alphabetical or numerical indexing systems. If the numerical indexing system is adopted, a number of cards bearing prefix letters should be in use to distinguish the different districts, e.g. Leicester would be denoted by LE/121, London by L/121, Liverpool by LIV/121, and so on.

Dealing with Small or Occasional Correspondents

All firms receive a number of letters from persons with whom there will be little if any further correspondence. Obviously, it would be wasteful to deal

with *every* correspondent as though he were a regular correspondent—the cabinets would become burdened with folders containing only one or very few letters, and there would be undue pressure on filing space and equipment, not to mention the attendant expense. One method of dealing with occasional correspondence is for the filing clerk to determine which letters from new correspondents are likely to result in a regular correspondence; these are allotted folders; the others are filed in a concertina file, and when this is full the contents are transferred to a filing case as outlined on page 26. Should the correspondence with any particular person necessitate it, these letters can be transferred to a folder. Other methods are—

(*a*) *Where the alphabetical indexing system is used*—a "sundries" folder is placed at the beginning of each alphabetical batch of folders, and the occasional correspondence placed therein. If the correspondence with a particular person necessitates it, he can be allotted a folder, and a note made on the sundries folder.

(*b*) *Where the numerical indexing system is in use*—every correspondent or subject is allotted a number, but one folder is used to accommodate several numbers. If any of the papers filed in this omnibus sundries folder are transferred to a separate folder, they will still be filed under their original number, and a note made on the sundries folder.

Filing of the Contents of the Folders When Out of Date

Some efficient method must be in force for filing the contents of folders when they become too full or out of date. The following are in use—

(*a*) The contents of the folders may be temporarily transferred into duplicate folders stored in cheap cabinets of light construction. When it is considered that the correspondence is not likely to be required

again, save on exceptional occasions, each folder is taped, and placed in the store-room, the folders being stored in alphabetical or numerical order, whichever system is in use.

(*b*) The contents of each folder can be transferred to a filing case (as described on page 26). These, when full, are placed in the store-room in alphabetical or numerical order. Alternatively, docketed envelopes may be used, as being less expensive than filing cases. "Dead" folders can be placed together in one or more filing cases, or separately in docketed envelopes.

Whenever the contents of folders are transferred, a note of the fact should be endorsed on the folders. If the numerical system of indexing is adopted, these notes of transfers can be made on the card index.

Suspended Files

Under the latest system of vertical filing, the folders are suspended from a metal frame which is placed in the existing file drawer. One such system employs a folder of similar form to the usual once-folded stiff sheet, but along the top edges are fitted metal strips projecting slightly at both sides. These projections allow the folder to "hang" instead of resting on the bottom edge, thus doing away with such troubles as sagging. Another system employs almost closed "envelopes" with a flat top "edge" on which are recorded names, etc. It employs the "suspension" feature and an ingenious coloured "charting code" on the flat strip of the folder makes misfiling almost impossible.

Horizontal Filing

Whilst the vertical filing system is the most popular and efficient, horizontal filing has its advantages and

adherents. The principal use of horizontal filing is for the preserving of large documents which have to be kept flat. As applied to the filing of correspondence, the letters are perforated and filed alphabetically (each correspondent's letter being in date order and having copies of replies annexed) on the metal spikes of a filing case, which is equipped with a device for facilitating insertion and extraction of letters. When the file is full, the contents are wholly transferred to a binding or transfer case which is marked on the outside to indicate the period covered by the contents. If the amount of correspondence is large, several files are used, each file being allotted to one or more letters of the alphabet, and the files arranged in a cabinet, each file constituting as it were a drawer, the bottom portion of the cabinet being used to store the immediate transfer or binding cases, which are removed to the store-room as they get out of date. If the expense of a cabinet is considered too great, cardboard files can be purchased, having interlocking devices for securing a number of files together without the necessity for a cabinet.

Separate files are usually used for filing receipts, invoices, orders, etc.

Whenever the contents of a file are transferred to a binding case, a note of the fact is made in the file. Transfer cases are usually numbered consecutively to facilitate reference.

Compared with the vertical system, it may be said that the insertion and extraction of letters are not so easy with the horizontal system, that reference is not so quick, and that the correspondence relating to each correspondent or subject-matter will be scattered over a number of transfer cases, whereas it would be kept together in the vertical system. On the other hand, in the horizontal system, letters are fastened together by the metal spikes of the files and cannot readily be

upset or displaced, the files open like a book and enable the whole contents of a letter to be read without extracting it, and the method of transferring the contents for storing them away is very easy and simple; moreover, special arrangements need not be made for dealing with occasional correspondents. The numerical system of indexing is, however, not a very practical possibility when the flat or horizontal filing system is adopted.

Some makes of files for use on the horizontal system are not fitted with spikes for holding the contents. Instead, the letters are placed in the file in alphabetical order, and held down by means of a spring clip. When the file is full, the contents are transferred just as they are from the file and placed in cheap transfer cases, or docketed envelopes. This variation of equipment does not necessitate perforation of the letters, and the files are somewhat cheaper, but its disadvantages are patent.

Card Indexes

Card indexes are used for many purposes, e.g. the card index for use in the numerical system of indexing folders will constitute an address or mailing list of customers and correspondents. Other useful information may be written on the cards, such as: Telephone No., telegraphic address, cables and codes used, names of bankers, particulars of references given, remarks as to the character and financial position of customers, details of the lines of goods each is interested in, records of transfer of correspondence from the folders when they become full or out of date, etc. Various signal devices are used in conjunction with card indexes for co-ordinating purposes, e.g. the cards of all customers interested in a particular line of goods can be fitted at the top with a small removable metal indicator called a " signal," which is placed in the same position

on every card, signals being placed in different positions to indicate the different lines of goods others are interested in. Thus, when the cards are in the drawer, the signals will be in even rows, and the names of the customers interested in different lines of goods can be at once ascertained. The same system can be adopted for many other purposes, e.g. indicating the various customers coming within the scope of different travellers' districts, etc. The system is also used for following up inquiries—a signal is placed on the card of each person making an inquiry, and if no order results the inquiry can be followed up, either by letter or by a traveller calling on the inquirer.

Very large concerns may have cards that are punched in various ways; and these cards are separated and extracted by a machine at the rate of several thousands an hour. By this means might be found all the retail chemists in Eire and all kinds of similar large-scale information. For example, another special series of perforations could supply the names and addresses of all the schoolmasters in Yorkshire or (if used by, say, a Government statistical department) the number of persons in a certain age group.

Filing of Catalogues

Catalogues may be kept in a separate drawer, or on a shelf, filed alphabetically under the names of the persons issuing them.

Price lists, prices current, circulars, etc., can be stored in the correspondent's folder, or attached to any catalogue which they supplement.

Filing Estimates, Contracts, and Agreements

Estimates should be attached to the copy order accepting the estimate, or where the estimate results in a formal contract for the supplying of goods or executing work, the estimates can for purpose of

reference be attached thereto. Estimates received, which are not accepted, can be filed on a separate file or with the correspondence. Copies of all estimates given should be kept, and where an order results, a copy of the estimate should be annexed to the order or referred to on the order form.

Contracts, agreements, deeds, and similar important documents should be carefully preserved, preferably in a safe or strong-room. A convenient method of filing such documents is to place all documents relating to one matter in a separate docketed envelope. These envelopes should be uniform in size. Both the documents and the envelope should be numbered to correspond, and these numbers quoted in a register of deeds and documents which should be kept to record particulars of the documents, at the same time serving as an index. The envelopes are then filed in numerical order, in the safe or strong-room. As regards contracts and agreements, it is a good plan carefully to separate (*a*) contracts being executed by the company; (*b*) contracts whereby others are conducting work on its behalf, unless they are sub-contracts, when they can be kept with the principal contract; (*c*) other contracts and agreements, such as tenancy and service agreements.

Filing Newspaper Cuttings

Paste the news cutting down the middle of a quarto sheet—one news column only to each sheet. The name and date of the paper from which the cutting is taken should appear at the head of each sheet. The quarto sheets are then filed in folders under subject headings, and the folders may be indexed either alphabetically or numerically. If the latter system is adopted, there will be considerable scope for cross-referencing by means of the card index, and each quarto sheet should be numbered to correspond with its folder to facilitate filing.

Visible Indexes

The effective use of records is often a source of profit, where every record is kept constantly up to the minute in its data, and is always instantly accessible.

With the main object of eliminating waste of valuable time in searching records for desired information, modern equipment is now available whereby, to use the words of one firm of specialists in modern visible records and indexes, " the visibility of facts, plus accessibility, compactness, and flexibility means a saving of clerical labour and eliminates waste of valuable time resulting in a reduction in the cost of record keeping."

Whilst it is not possible, in a work of this size, to give an exhaustive selection and account of these " indexes," a few examples of the use and principles are given, and the reader is advised to inspect these modern devices in use, or if this is not possible, to obtain explanatory literature from some firm specializing in this equipment.

In communications from students and others asking for explanatory leaflets, etc., care should be taken to state that the literature is required for educational purposes, and courtesy demands that adequate postage be enclosed for the reply.

Acme Open Frame Equipment

Frames, of varying size and capacity, hold cards on both sides, permitting ready accessibility and visibility and suspension of the cards.

Metal " signals " in a wide range of colours may be attached to the visible edges of the cards, so that matters requiring attention are brought to instant notice.

Tray Cabinet Units

These units ensure instant visibility of recorded particulars, and it is almost impossible for a misplacement or misfiling of cards to occur.

They consist of a metal tray or shallow drawer holding a large number of cards. The bottom edge of each card protrudes a little below the next upper one, leaving a space sufficient to record the appropriate reference to each card, such as name, address, number, etc. The tray or drawer has a device which hinges each card so that if it is desired to examine the particulars written on each card, or to make a further entry on the card, all the upper ones are raised, and fall back, leaving the required card exposed. This method ensures instant visibility of the particulars essential to locate any required card; there is no need to turn over any cards as would be necessary with the ordinary vertical card index—as the names, numbers, etc., on the edge of every card in the tray or drawer are at once visible. The cards need not be removed if it is necessary to write any details on them, and the tray or drawer acts as a writing support. The arrangement is a very compact one.

One Line Records

These are suitable for such purposes as cross indexes, credit sanction, accounts which need watching, or are subject to credit limit, marking lists, and are useful in many other cases where the required particulars occupy only one or two lines. The records are typed on perforated strips of paper, and each individual record is contained in a flat transparent tube which is placed in a frame.

Stands for holding frames are available.

Loose Leaf Books

These consist of loose leaves which are fixed in binders having a device for holding the leaves firmly. The binders are sometimes fitted with a lock, and can be opened only with the authority of the person who has charge of the key.

The loose leaves will, of course, be ruled according to the particular purpose for which they are intended to be used.

The leaves may be arranged in the order deemed most suitable, e.g. strictly alphabetical, or alphabetical divisions for each separate letter of the alphabet with sub-divisions (if desired) by the use of vowel index cards, or numerically.

ADVANTAGES OF LOOSE LEAF BOOKS. 1. New leaves can be inserted as required, reducing the risk of error in transferring matter from old to new books—the leaves being continuous.

2. Only " live " matter is retained in books in use, " dead " matter may be extracted.

DISADVANTAGES. 1. The initial cost is greater than for bound books, but over a number of years tends to become equal.

2. There is the risk of possible loss or accidental misplacement of leaves.

3. Unless a responsible person is placed in charge of the loose leaves, which should be issued only on the requisition of a trusted employee in a responsible position, the use of loose leaves provides greater opportunities for fraud. The Courts have hitherto frowned upon loose leaf books, especially minute books, when submitted as evidence. Sect. 436 now sanctions the system for "any register, index, minute book or book of account," but there must exist adequate precautions for guarding against falsification and facilitating its discovery.

The respective merits of card indexes and loose leaf books are considered in Chapter VI under the heading of " Indexing the Share Registers."

Central Filing.

The question of centralizing filing depends upon the particular circumstances of each office, the size of the

concern, the amount of correspondence dealt with, etc., and before deciding upon a centralized filing department, all the circumstances should be carefully considered.

Briefly the advantages of central filing may be said to be—

1. Adequate supervision is possible and responsibility for the filing can be placed definitely on the filing staff.

2. Economy—saving of equipment, and space and wages. Departmental filing equipment may not be fully used. A number of whole-time filing clerks can do the work more efficiently and economically than part-time filing clerks in each department.

3. All records will be kept in one place—there will be no travelling between departments in order to trace where a particular document is filed, and thus the time taken in locating correspondence, etc., is reduced to a minimum.

The disadvantages of central filing may be summed up thus—

1. Departments must have recourse to the central filing department to trace their records, and this may prove inconvenient.

2. Departmental clerks may be able to deal more efficiently with their own filing requirements than the central filing department. Different departments may find different methods more suitable, whereas the central filing department would require a standard method applicable to all departments.

3. Privacy may be destroyed.

4. Unless prompt return of documents obtained from the central department is insisted upon and practised, delay and inconvenience may be caused to other departments. As before remarked, when a person extracts a folder, he should be required to leave in its place a special large card containing his name and office.

CHAPTER IV

Office Organization and Business Methods

Every secretary and secretarial student who strives to be efficient should acquire a practical knowledge of the problems of office organization and the methods of solving them. The secretary may often be called upon to frame the whole or part of the organization for conducting his company's business affairs, and the smooth working or otherwise of the business machine reflects the organizing capacity of the person in charge of it; and the student will be called upon to reveal his practical and theoretical knowledge in this respect by the test questions on this subject, which are a regular feature of the examination papers of the professional secretarial bodies.

Experience is without a doubt the best school, but every secretarial student has not the advantage of practical experience in every branch or aspect of office organization. It is a consequence of the division of labour that the experience of many of those actually engaged and participating in a scheme of organization is necessarily restricted, by reason of the specialization of occupations and the magnitude of the operations. Therefore, it is incumbent on such students to seek knowledge of office organization and business methods from textbooks and other sources. Mere theoretical knowledge is not to be despised—it is almost as indispensable as practical knowledge; the needs of one business will rarely be the same as those of another, so that even the widest practical experience needs the correction and adjustment of theory in its application to the peculiar needs of each individual set of circumstances calling for the exercise of organizing ability. One factor working against the organizer is that he has no " laboratory "

in which to test his suggestions and schemes; they can be tested only by their being actually put into practice, and if they prove deficient, unworkable, or no better than some method formerly in use, they must be abandoned, and the attendant expense, inconvenience, and difficulties, will serve no purpose other than the negative one of proving the worthlessness of the scheme. Therefore, before any scheme or suggestion concerning organization is put into practice, it must be most thoroughly tested in the light of theory and experience, and no effort spared to ensure that it is workable and suitable to the particular circumstances for which it is designed.

If the reader was called upon to frame the organization for conducting a large business undertaking, which we will suppose for the purpose of argument was entirely without organization, he would be appalled by the multiplicity of matters requiring to be correlated and co-ordinated in order to ensure efficient and economic running of the business machine, and might be tempted to dismiss the task as almost impossible. Viewed in this light, the subject of business organization and management would appear a most difficult and intricate one, but it must be remembered that as "Rome was not built in a day," so the systems and methods in use for the conducting of huge undertakings, which at first sight appear bewildering in their magnitude and ramifications, are the result of many years of growth and expansion, and the theoretical knowledge which is now available for our benefit is based primarily on the practical organizing experience, gained in the past, of methods for effectively coping with the needs of business of all kinds and sizes.

The Business Office and Its Equipment

The site chosen should be the most suitable for the purpose for which the office is required. A head office

should be situated in a business thoroughfare in the town or city which constitutes the most convenient centre for conducting the business operations, even though the factories or distributing warehouses, etc., are in distant parts of the country. A works office should be situated where it is most suitable for fulfilling its functions—attending to travellers, callers, buyers, etc., checking attendances of employees and paying wages, recording goods inwards and outwards, and so on.

The site chosen should be easily accessible and, if possible, in a quiet neighbourhood. Accommodation in a modern building is desirable for many obvious reasons. The size of the office will, of course, depend on the magnitude of the business to be housed. Attention should be given to the arrangements and disposal of the rooms. Large rooms will be necessary for the general staff, and separate rooms for directors, departmental managers, the secretary, and other principals, the whole so laid out that inter-communication may take place quickly and without constantly disturbing others at work. All rooms should admit the maximum of daylight, and be well ventilated. Due regard must be given to artificial lighting, heating, equipment, cloak and dressing accommodation, waiting rooms, sanitary conveniences, cleaning arrangements, and the disposition of strong rooms and safes, telephone booths, branch and house telephones.

The office furniture and equipment should be chosen with forethought. Long sloping desks are more suitable for book-keepers and ledger clerks, flat desks for typists or clerks engaged in handling a large number of documents. Separate desks will be needed for seniors and principals, the whole being so arranged as to secure the maximum light, comfort, and convenience; stocks of stationery and office sundries should be kept in cupboards or drawers placed in convenient positions.

The question of the expense of building, purchasing, or hiring and equipping an office should be borne in mind constantly, and the outlay and upkeep should be kept within the limits which the business can afford to pay, otherwise the " overheads " on office account will be a drain upon the financial resources, and will tend to reduce the competitive power of the business, but at the same time it would be a mistake to sacrifice efficiency to economy.

Departments—Division of Responsibility

" Division of responsibility " means such a division of the duties to be performed in the office that each and every individual engaged is definitely responsible for some particular duty, the juniors being responsible to the seniors who are responsible to the departmental heads or managers, who in turn are responsible to the directors or proprietors who control the policy and trend of the business activities. If the duty of every individual is defined, specialization is possible, thereby promoting skill and ability, overlapping is, or should be, eliminated, the one responsible for any error or fault can be traced, and this has a psychological reaction stimulating greater conscientiousness and efficiency in work.

Allocation of duties must be carried out fairly and equitably if the goodwill and co-operation of the staff is to be ensured, and each employee should be taught to understudy another or others with the object of preventing dislocation at holiday times, or during absence or sickness of employees, and also with a view to promotion.

Even in the smallest offices, division of responsibility can be practised, and its institution is, as it were, a stepping-stone to the formation of departments as and when necessary for greater efficiency, or as a consequence of business expansion. In a trading concern the

usual arrangement of departments is (*a*) Buying Department, (*b*) Selling Department, (*c*) Accounts and Cash Department, (*d*) General Administration—correspondence, filing, etc., and, in the case of a limited company, (*e*) Secretarial Department, with a special sub-department called the " Transfer Department " if the company's shares, stocks and debentures enjoy an active market. The general functions of these departments are too well known to need amplification here. It need only be added that the larger the business, the greater will be the number of departments, for example, Home Sales, Foreign Sales (or a number of departments dealing with orders from different parts of the world), Legal Department, Staff Welfare, Statistics, Costing, etc., but any tendency unduly to multiply departments and overlapping of functions should be avoided. That "all departments should work in harmony" is a precept which is more often preached than found realized in practice. A healthy rivalry between departments vying with each other to be the most efficient is desirable, but it must be stopped at the point where it leads to waste or disagreement or lack of some degree, at least, of harmony; and a method sometimes adopted of giving bonuses to departmental managers for economy, whilst tending to reduce expenses, is not always productive of that degree of efficiency which should be aimed at. The system should be flexible so that in case of temporary pressure of work upon one department, members of the staff of other departments can be transferred to ease the situation.

Appointment of Staff

The number and qualifications of the staff needed in the first instance should be given careful consideration, and then suitably drafted advertisements may be published in the leading newspapers, or trade journals, or inquiries may be made of employment agencies.

The information thus gathered of prospective employees and their credentials and testimonials, will have to be sifted and the most promising selected for interview, or for a preliminary test or examination of their ability. For the purpose of interviewing applicants, some firms employ persons specialized in the reading of character and judging of capacities and abilities, who report the result of their interviews and recommend who should be appointed. The question as to who should make the appointment will depend on the nature of the vacancies to be filled—the appointment of a manager, secretary, or department head will usually be made by the proprietors or directors, the appointment of juniors will usually be delegated to managers, and other seniors, and so on. A question which frequently arises on filling a vacancy is whether to promote a member of the staff or to bring in a newcomer. This question must be decided by those responsible for the appointment, but it should be borne in mind that the most promising employees will be bent on obtaining promotion either with their employers or otherwise, and to pass over a suitable candidate for promotion may mean that he will become dissatisfied and seek promotion elsewhere, the firm thereby losing valuable talent.

In these post-war years some special considerations arise. The recruitment of youths for the staff has to be carried out with Service obligations in mind. In large concerns there are special training facilities, or "schools," for staffs appointed after service with the forces, or returning therefrom. In businesses with more than twenty employees it is compulsory, under the Disabled Persons (Employment) Act, 1944, to employ a percentage of persons who through some injury, disease or congenital deformity are handicapped. The quota is varied from time to time, but it is generally three or four per cent.

Whether or not a written agreement is desirable

depends on the circumstances. Written agreements are usually entered into with persons filling responsible positions; and, especially where they will be likely to acquire knowledge of secret and valuable information of the business, it is desirable to have a written agreement containing a clause restraining the employee from engaging in similar trades or business after leaving the service of the firm, or divulging the knowledge he has acquired of the firm's activities. If a written agreement is decided upon, it should contain *all* the terms of the engagement, hours, wages, duties, length of notice to be given, terms of any restrictive covenant, etc., and any subsequent alterations should be made in writing, as mere oral alterations may not be binding. Written agreements should also be properly stamped, if liable for stamp duty. It is usual for two copies to be prepared—one to be retained by the employers, the other to be handed to the employee. Even in the case of appointments of juniors, it is as well to confirm the appointment by letter, setting forth the terms of the engagement so as to obviate any possible dispute or disagreement.

Fidelity Guarantee

It is usual, especially where access is had to cash books, ledgers, and cash, to take out a fidelity guarantee policy to protect the company against fraud on the part of its staff. The whole of the staff is occasionally required to be included. An annual premium is paid, sometimes by the employees themselves. The insurance company inquires into the past history of each employee before issuing a policy, and as the inquiries are generally thorough and require a guarantor, the company can as a rule rely on the integrity of its staff without question.

Staff Management and Records

The management of the staff is usually in the hands

of a staff superintendent, whose duty it is to interview all applicants, make recommendations for appointments, investigate and remedy complaints, attend to the staff welfare, make reports on the conduct and progress of the staff and keep the staff records, etc. A card index is invariably used for keeping staff records, a separate card being used to record the particulars concerning each employee—for example, name, address, staff number and department, date of birth, date of appointment, position and salary, and dates of any changes therein, details of special qualifications, remarks as to special abilities displayed or causes for complaint given, etc.

A properly kept staff record will be of assistance in recommending changes or promotions, granting increases of salary, etc. In many concerns a sliding scale of salaries operates up to a certain age, and thereafter increases are made only on promotion, which takes place according to ability.

Business Methods

The following pages of the present chapter are devoted to outlining methods of handling orders, filing invoices, statements, paying wages and like matters, for the benefit of candidates for the professional secretarial examinations. It is not suggested that the methods outlined are in their entirety immediately applicable to any and every business. The organization must in all cases be framed to meet the requirements of the business and not the business made to fit the organization. For example, to take a minor point—in some businesses because the charging of goods to customers involves much calculation, to save time and trouble the sales day book is written up first and the invoices typed therefrom—in other businesses, the sales day book is written up from the invoices, or copies of the invoices themselves constitute the sales day book.

An attempt has been made in the following pages to indicate briefly the general principles underlying all systems for dealing with the matters treated, as models on which examinees may base answers to questions. Many examinees have their own experiences to rely on or to amplify information given here, but in answering questions on a subject in which they have practical experience, examinees should guard against the temptation to write at great length or to delve too deeply in the matter to show that they have a thorough grasp of the subject, as they should remember that their experiences are particular and not general, and it is often the case that the time thus spent may be more valuably used in attempting other questions. Again, other candidates fall into the error of giving a correct but incomplete account of a certain system of which they have complete experience, and they think that their answer is first class, but forget to realize that it is a most difficult task logically and clearly to outline on paper a system so that a person not having any practical knowledge of it may be able to understand and appreciate its effectiveness, merits, and advantages.

In a textbook of this nature, an exhaustive treatment of the subject is not possible, and readers desiring a more comprehensive textbook on office organization and business methods might with benefit consult such works as *Office Organization and Management, Modern Office Management,* or *Office Organization and Method,* all published by the publishers of this book.

Handling Mails

INCOMING MAIL. This will be opened in the general office under supervision. As opened, each communication should be stamped with a rubber stamp to show (*a*) date received, (*b*) date answered, (*c*) by whom answered. The communications will then be sorted into "trays" to be delivered to the departments or

persons whom they concern. Where a letter affects more than one department, the person supervising the mails will decide the order in which it is to travel. A rubber stamp impressed on the letter may be used for this purpose, for example—

RECEIVED	
FILED	
Accounts 1. Cashier Sales 2. Legal Orders 3. Managing Director	

The numbers indicate the order in which the letter will be passed to those concerned, it being the duty of the first recipient to pass the letter on to the next one indicated, and when finally dealt with, the letter to be passed for filing. If each department files its own correspondence, it may for its own use make a copy of the material portions of the letter.

Some firms use an inwards letter register, in which brief details of all letters received are recorded, but if the mail is large, such a practice would be wasteful and expensive. Some system should, however, be in operation to prevent letters going astray. One method is to list the names of the senders of each batch of letters handed to each department, the recipient to sign the list as a receipt. Another method where central filing is in vogue is to number the letters and prepare a schedule showing the departments handling each letter. The schedule is then passed to the filing clerk, who marks off the letters as received from the departments for filing, thus indicating communications which have not been filed, and which must be sought, after a reasonable interval, from the

department concerned. A suggested ruling for such a schedule is as follows—

From	A/cs.	Cashier	Sales	Legal	Orders	Man. Dir.	Recd. for Filing
Date 12/3/19—							
A. Ball, Wigan		899		899			13/3/19—. *H. L.*
P. Jacks, Wigtown	900						
W. Wills, Wiltown			901				13/4/19—. *H. L.*

The Outgoing Mail. Letters and replies may be dictated or drafted by clerks or assistants, but it should be a rule that only departmental managers or principals should sign all letters, to prevent inexperienced clerks from writing letters which may contain wrong statements, errors, or be offensive to customers. Departmental references and file numbers should be inserted on all letters, and initials of dictator and typist shown. In some offices typing is "pooled," there being a stenographers' department.

Particular care must be taken with regard to enclosures to ensure that the right enclosure accompanies its respective letter.

The following are the usual methods of dealing with enclosures—

(*a*) The enclosures are handed to the typist or postal clerk, or instructions given as to where the enclosures may be obtained as in cases where they are in preparation for the night mail, and as soon as received, it is the duty of the clerk to address the envelope and place the enclosures therein. When the letter is being signed, the signatory draws a short line in the left-hand margin against the mention of each enclosure, and the clerk checks the number and correctness of the enclosures before sealing the envelope. In addition the number of enclosures may be typed at the head or foot of the letter.

(*b*) Each letter accompanying enclosures is stamped with a distinctive stamp bearing the word "enclos." or adhesive seals can be used for the purpose, the object being to draw the attention to the fact that there are enclosures and that the number of proper enclosures must be placed in the envelope before sealing.

(*c*) Gummed tabs bearing numbers in duplicate separated by a perforation are used, one half of the tab being attached

to the letter, the other half to the enclosures, thus identifying them with the accompanying letters. Alternatively, each enclosure may be marked in pencil " Enclosure to J. Brown," or if marking of documents in this manner is objected to, gummed slips printed " Enclosure to....." may be used, the name of the addressee being inserted, and the slip lightly attached to the enclosures.

Copies of all outgoing correspondence should be preserved, and be attached to the letters to which they relate or filed in letter-book form. Carbon copies are most generally used, and it is a good practice for the person signing letters to initial the carbon copy also, thus, as it were, certifying it as a genuine copy, otherwise there are no means of verifying that the carbon copy is genuine. Press copies are now rarely made use of, and if an exact facsimile of each letter showing the signature and any alterations is desired, copying machines such as the Roneo letter copier are used, and give better results, in addition to being cleaner and speedier, than using the copying press.

Each department may attend to its own correspondence, or a kind of internal post office may be instituted for dealing with the whole outgoing mail. Sometimes a written record of the posting of each letter signed by the clerk posting the letters is kept, but if the mail is large, the writing up of the postage book may be considered a waste of time, and only a record of the number of letters and amount of postage is made, the fact that a copy of each letter is retained being regarded as sufficient evidence that it has been dispatched. Franking machines may be used with advantage where a large number of letters is regularly dispatched.

Outwards Orders

It should be a cardinal rule that all orders must be sanctioned by those individuals on the staff who are authorized to buy, i.e. buyers, departmental managers,

stationery clerks, etc., and the amount each buyer may expend may be limited. Those who have no authority to buy, if they wish to obtain supplies of anything, must send a requisition to the buyer, otherwise indiscriminate ordering is bound to result in waste and overstocking. All orders should be made out on special forms, numbered consecutively, and all the terms of the purchase clearly stated to avoid disputes, and each order signed by someone authorized to buy. Three copies of each order should be prepared, (1) original to be sent to seller, (2) copy for receiving warehouse, indicating any special directions for dealing with the goods when received, (3) copy for office purposes and filing. The seller should be asked to acknowledge in writing the receipt of the order as a record of his acceptance of the offer to buy, and this acknowledgment should be annexed to the office copy order, as also should any quotation or estimate leading to the order.

The receiving warehouse will check the goods when received and enter them in a " Goods Received Book," the reference number thereto being quoted on the copy order. If the goods are damaged, the fact should be noted on the delivery receipt and in the goods received book, and on the copy order, so that claims for allowances, or rejections, may be made. If the goods were apparently in order and were not examined, that fact should be recorded. If the goods are delivered by instalments, the deliveries made should be noted on the copy order, and the order department advised from time to time.

When delivery is completed, the copy order, duly marked, is returned to the order or accounts department. As the invoices are received, they will be checked with the order given and deliveries made, by a responsible clerk, any discrepancies as to deliveries, wrong calculations and castings being duly notified and rectified. Each invoice should be initialed by the clerk

who checks it. It avoids confusion if it is a rule that all allowances and adjustments should be dealt with by the seller sending debit or credit notes as the case may require, instead of the buyers issuing such notes.

The invoices being checked, the bought day book and ledger can be written up. The order numbers should be noted on the invoices and vice versa, and both numbers quoted in the bought day book and/or ledger. Completed orders can then be filed away in numerical order, and thus those not filed constitute a record of uncompleted orders.

Methods of Filing Invoices and Receipts

1. Each invoice is numbered consecutively and filed numerically on spike files. Debit or credit notes may be attached to the relevant invoices or filed separately. Reference to any invoice can thus be ascertained direct from the bought day book and/or ledger, as the numbers will be shown therein, and only the merest details need be recorded in the books of account. This method is not very satisfactory, because as the invoices are filed away, the firm's commitments are to some extent lost sight of unless creditors send statements punctually, and not all creditors do so. Moreover, it means separation of the receipts from the invoices, unless the trouble of attaching them to the invoices is undertaken. From the point of view of the auditor who would wish to verify each payment by reference to the actual invoice, a better method is as follows—

2. Invoices are filed in a concertina file pending payment. Statements, debit and credit notes can be attached to the relevant invoices, as also may any receipts for payments on account. This constitutes the "Accounts Outstanding File," and at the end of the trading period should correspond with the creditors' accounts.

When cheques are being forwarded, the invoices

should be numbered to correspond with a consecutive number entered on the credit side of the cash book against the entry in respect of each cheque, and this number quoted when posting to the creditors' accounts. Invoices or statements, when returned duly receipted, will be filed in numerical order. Reference is thus direct from the creditor's account to the receipted invoice or statement, and moreover, invoices are filed in the same order as the credit entries appear in the cash book, thus at the same time greatly facilitating auditing. Care should be taken to ensure that all creditors forward receipts. If the company has adopted the system of cheque receipts, or combined endorsements and receipts, the cheques can be numbered (or the cheque numbers used if they run *seriatim*), and when they are returned from the bank they will be filed in numerical order with the relevant invoices, statements, etc., annexed.

Paying Accounts

Accounts should be paid at regular intervals—month or quarter end, or earlier if necessary—to obtain cash discounts. Before drawing cheques, all accounts should be verified with the creditors' ledger account, and the discounts checked, and if the number of accounts is large, care should be taken to prevent any duplication of invoices and statements. On payment being authorized, the cheques are then drawn and dispatched.

Handling Sales Orders

Orders for cash can be dealt with at once, but credit orders must first be passed by the person responsible for granting of credits. If the order is from a party with whom there have been no previous dealings, a *pro forma* invoice may be sent, references sought, or inquiries made as to his financial stability. This must be done tactfully, because if the purchaser is of sound

standing, he may consider a refusal to grant him credit as a rebuke and valuable future orders may thereby be lost.

On the other hand, indiscriminate granting of credit would soon swell the amount of bad debts, and watch must be kept on the amount of credit granted even to regular customers.

Orders passed should be typed on forms of uniform size in triplicate: (1) Works or warehouse copy, (2) office copy, (3) dispatch copy, and each set numbered consecutively. The original order and any quotation or estimate leading to it should be attached to or referred to in the office copy order.

From his copy, the works manager lays out the work to be performed, or the warehouse manager appropriates from stock the goods ordered. The dispatch copy acts as an advice to the packing, dispatch, or delivery department that the goods may be expected from the factory or warehouse, so that the necessary arrangements for packing and delivery may be made—train, motor, carrier, etc.

The dispatch department, on receipt of the goods from the factory or warehouse, checks them with its own copy order, returns that copy to the office marked that the goods are being delivered, and posts "Advice of Dispatch" to the customer. In some businesses, as the goods are appropriated to the order, or packed, charging slips or packing slips are made out and annexed to the copy order before returning it to the office. When the goods are dispatched they are entered in a "Goods Delivered Book," and a receipt for them is obtained when they are handed to the carrier.

In the offices the invoices are then made out from the copy order, and checked. Two copies of every invoice are made, (1) for the customer, (2) for filing or to form a loose leaf sales day book. The order number should be quoted in the invoice, and vice versa, and

both numbers quoted in the sales day book and/or ledger to facilitate reference. The customer's invoices will then be forwarded by post, and the book-keepers will write up the accounts from the copy invoice. If the invoices are properly filed in numerical order, only the merest details need be entered in the books of account, as the invoices can be quickly looked up if occasion should arise.

As orders are completed, the office copy, with the dispatch copy annexed, can be filed in numerical order, leaving unfiled those copies relating to uncompleted orders which must receive attention if there appears to be delay in executing them.

Recording Payments by Customers

Remittances by post will be collected together when sorting the incoming mail, and handed to the cashier. It should be a rule that all cheques and money orders, if not already crossed, should be immediately crossed specially to the firm's bankers and marked "Not Negotiable—Account Payee only." A rubber stamp can be used for this purpose. The amount of every remittance should be checked with the customers' accounts, and the correctness of any discounts deducted should be verified. Cheques should then be scrutinized (*a*) that the words and figures agree with the amount to be remitted, (*b*) that the cheque is not post-dated, and (*c*) that any alterations are initialed by the drawer, (*d*) that the cheque is signed—this may seem needless advice, but the writers know of more than one case in which an unsigned cheque has been passed and discovered only when paid to the bank. Cheques will then be endorsed, and receipts issued. Some firms adopt the practice of writing the form of receipt on the invoice or statement, but this method does not preserve any record of the fact that a receipt has been issued, and, moreover, it is open to anyone so to endorse a receipt,

and it is more desirable to issue separate numbered receipts which are gummed to the invoices or statements, and of which a counterfoil or carbon duplicate is retained. These receipts are often made up in book form containing a large number of perforated receipts to each opening, the totals of the counterfoils or duplicates being cast at the bottom of each opening and carried forward to the next, the receipts and discounts for the day being entered in the cash book in total, the credits being posted to the customers' accounts direct from the receipt book, the receipt number being quoted (or a subsidiary cash book may be used to record daily receipts and discounts, totals only being transferred to the general cash book). Some firms adopt the practice of sending cheques with receipts annexed, or send their own form of receipt to be signed by the recipient. In such cases a receipt in the firm's own receipt book should nevertheless be made out so as not to disturb the system for recording and dealing with receipts, and those receipts which are not issued should not be destroyed, but should be marked to indicate the reason they were not issued, for example, " Cheque receipt given," and retained in the receipt book, being folded inwards or gummed at the back of the counterfoil or duplicate.

Paying of Wages

Each worker is allotted a number. Time clocks or other devices should be in use for recording the times of arrival and departure of day workers. Piece workers will be handed " Job cards " to be made up daily and initialed by the foreman. At the end of the working week, particulars of the time worked or details of the work executed will be recorded on the wages sheet by one clerk, rates of pay inserted by another, calculations of wages due made and independently checked and proper deductions under the National Insurance Act,

1946, and other stoppages duly made. There will, of course, be the usual deductions under P.A.Y.E. The cashier is then handed a cheque for the total wages payable, which is cashed at the bank, care being taken to obtain sufficient proportions of "silver" and "copper" for making up of odd amounts. Slips showing how the amount of wages is calculated are usually made out for each worker and placed with the cash in small envelopes, or other receptacles. When actually paying over the wages, some method of identifying the recipients is necessary. One method is for the foremen to attend when wages are being paid to identify their respective workmen. Another method is to distribute tallies bearing the workmen's numbers a short time before the wages are paid, the workmen to surrender these tallies on receiving their wages, the numbers identifying the workers and facilitating the finding of the envelope or receptacle containing their respective wages. Machines may be obtained which issue coins of a given value on pressing an appropriate key, and these may be used with advantage for the purpose of paying wages, saving the time and trouble of making up each worker's wages into separate units, or counting cash by hand.

Internal Check

"Internal check" means that the duties to be performed in an office are so organized that so far as is possible the work of one member of the staff or group of members is independently checked by the others, and this is effected by putting into practice various rules and devices of which the following are typical examples—

(*a*) The duties of each member of the staff are changed from time to time, thus minimizing scope for fraud or collusion, because of the possibility of any discrepancies being brought to light by the clerks taking over his previous duties.

(*b*) Every member of the staff is obliged to take an annual

holiday, whether he so wishes or not. Any frauds to which he is a party may thus be discovered during his absence. Some firms adopt the practice of closing down altogether for a week or longer during holiday periods, and rely on other methods of internal check to reveal any frauds.

(*c*) The cashier not to have any control over the ledgers; no ledger clerks to enter up subsidiary books.

(*d*) " Surprise " audits by the firm's own audit clerks or by professional auditors at irregular intervals.

(*e*) Self-balancing ledgers, " check figure " systems, automatic cash registers.

An efficient system of internal check does not make fraud altogether impossible, but it minimizes the openings for fraud, and the temptations to commit fraud are more easily resisted when those tempted are aware that its perpetration is made difficult, and probably will be soon detected. Moreover, efficient internal check reduces the possibility of errors and mistakes remaining undetected.

Office Aids, Machinery, and Appliances

The scope and advantages of labour-saving devices and aids to efficiency are not generally appreciated because of their familiarity. An exhaustive consideration of office appliances in general is not possible in this textbook, but as an indicator of the variety of equipment, both old and new, at the disposal of the present-day office organizer, the following list is given:

Filing cabinets of all kinds and sizes—" build-up " units and transfer sections—made of steel, lasting and fire-proof.

Thief-proof safes—time and combination locks. " Night-safes " for banking cash after bank hours.

Card indexes with modern indexing devices.

Loose leaf books, and perforating machines for punching holes in the leaves.

Visible indexes revealing at a glance many names (see Chapter III).

Typewriters for many purposes—with special keyboards for different trades, different languages, etc.

Rubber stamps of all kinds—numerators, daters, etc.

Signal bells and internal telephones.

Letter-copying machines.

Duplicators, hand or automatic, using water or oil inks, capable of producing up to 1,000 copies per hour.

Office printing machines and print trimmers.

Photostat, for making facsimiles of plans and drawings and documents.

Time-recording clocks and devices.

Cheque writers and cheque protectors.

Letter-opening, envelope-sealing, and franking machines.

Cash registers—models which print receipts, total and analyse the takings.

Coin-issuing machines for giving change.

Adding and calculating machines.

Addressing machines.

Tabulating machines for costing, statistical purposes, sorting, etc.

Book-keeping machines.

Dictating machines.

Memory ticklers.

Stapling and binding machines.

Perforating machines.

Automatic cash and document tube conveyors, worked by compressed air.

CHAPTER V

PRÉCIS WRITING, DRAFTING REPORTS, CIRCULARS, ETC.

PRÉCIS writing is now recognized as a subject definitely taking its place in the commercial curriculum.

The importance attached to the ability to prepare a précis may be gauged from the fact that " Précis Writing " forms a subject at the intermediate stage of the professional secretarial examinations, as well as being an examination subject at important examinations such as those conducted by the Civil Service, the Royal Society of Arts, etc.

Definition

Précis writing may be defined as " The art of condensing or summarizing matters, such as a series of letters, reports of a meeting, market and other reports, and the like, in order to convey to the reader in narrative form the circumstances and events to which the subject matter relates, so as to put him readily in possession of all *essential facts* whilst omitting those which are unessential."

Preparing a Précis

The art of preparing a good précis is only to be acquired by constant practice, proceeding along the recognized lines.

An effort should be made to cultivate a good style and clear expression, remembering that every sentence must be grammatically complete.

The following points should be borne in mind—

1. Read through, from beginning to end, the matter of which a précis is required, e.g. series of letters,

reports, etc., underlining in pencil those points which seem to be essential to the narrative.

2. Read through the passage again, making sure that all essential points have been noted, the words underlined constituting an " outline précis."

3. From this " outline précis," prepare the " final précis," taking care to omit points at this stage which do not seem essential to convey the salient facts.

4. Write in the past tense and use the third person.

5. In examination work, count the number of words in the précis to ensure that the stated number of words (if any) has not been exceeded.

Length of Précis

The length of the précis must necessarily depend upon the subject matter given, but in general should not exceed one-third of the number of words in the original.

Regarding a précis of a series of letters, it is not necessary to devote a separate sentence to each letter, nor is it necessary to include the date of each letter; in fact, if a letter is not material, it can be wholly ignored.

The précis writer should not import his own opinions into the précis, but should give in his own words an accurate account of the subject-matter.

Reports

Amongst the multifarious duties of a company secretary, the preparation of reports stands out as a matter which, from the very nature of his duties, must be performed regularly by a secretary.

The nature, style, and length of a report must necessarily depend upon the particular circumstances of each case, and the purpose which is to be served by the report. In general, reports may be required for

submission to shareholders, directors, committees and sub-committees, and others, for example, to employees. The principles governing the preparation of reports are dealt with in this chapter.

It is apparent to the intelligent reader that in so wide a subject as " Report Writing," it is impossible to give a set, precise, or exact rule to which all reports must conform. It must be understood that a subject which deals with so many varied matters, and depending as it does upon the individual temperament of each particular writer, does not lend itself to dogmatism. The following general principles governing the preparation of reports are offered for the guidance of the reader—

1. A suitable heading and introduction explaining the nature of the report should be given.

2. An attempt should be made to visualize the position and purpose of the report; some imagination on the part of the writer is often of great value.

3. The phraseology should be clear and unequivocal. Short sentences should be used. Special attention must be paid to the arrangement or " lay-out," careful paragraphing, tabulation. The facts presented should be full and informative and should summarize the position as drawn from the data collected.

4. Where the report is of some considerable length, and containing detail matter, a number of headings can be usefully employed, each point being dealt with in a separate paragraph under a suitable heading.

5. Throughout the report, those to whom it is to be submitted should be borne in mind. Technical terms should be avoided if they are not likely to be understood, and the matter should be so presented that its purport is clear to those for whom the report is intended.

6. Information given should always be confirmed, and where possible, an independent opinion obtained on the draft report before it is finally submitted.

SPECIMEN STATUTORY REPORT

THE EXEMPLARY COMPANY, LIMITED

STATUTORY REPORT OF THE DIRECTORS

No. of Cert.

PURSUANT to Section 130 of the Companies Act, 1948, your Directors beg to report as follows—

(*a*) The total number of shares allotted is 50,000, of which 15,000 are allotted as fully paid-up in part consideration of the goodwill and assets of the business, and upon each of the remaining shares the sum of 10s. has been paid in cash.

(*b*) The total amount of cash received in respect of the shares issued wholly for cash is £17,500.

(*c*) The Receipts and Payments of the Company to the date of this Report are as follows—

Particulars of Receipts	£	Particulars of Payments	£
Amount received on 35,000 shares issued for cash . .	17,500	Payment to Vendors in part payment of purchase price of business	10,000
		Preliminary expenses .	1,888
		Balance at Bank . .	5,612
	£17,500		£17,500

The Preliminary Expenses of the Company are estimated at £2,000.

(*d*) The following are the names, addresses, and descriptions of the Directors, Auditors, Manager, and Secretary of the Company—

Directors

Bernard Black, 11 Southampton Gardens, Hampstead, London. Gentleman.

Charles Black, "The Hollies," Hawthorn Road, Sutton, Surrey. Chemist.

Arthur Green, St. Catherine Hill, Norwich. Consulting Engineer.

William Rothwell, 3 Grosvenor Road, Bacup. Solicitor.

Walter White, 7 Laurel Road, Kensington, Liverpool. Tailor.

Auditor

Frederick Figures, 16 Common Court, Holborn, E.C.2. Chartered Accountant.

Manager

Charles Black, "The Hollies," Hawthorn Road, Sutton, Surrey. Chemist.

Secretary

George Smart, Cambridge Mansions, Battersea Park, London. Chartered Secretary.

(*e*) Particulars of Contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification—

"THAT the Company shall surrender to the Vendors a strip of land containing 5,000 square yards, and having a frontage of 100 yards to Swan Lane, Bathtown, in exchange for a plot of land containing 10,000 square yards adjoining the railway sidings leading into the factory."

WE HEREBY CERTIFY that this Report is correct.

BERNARD BLACK }
CHARLES BLACK } *Directors.*

AUDITOR'S REPORT

I HEREBY CERTIFY that so much of this Report as relates to the shares allotted by the Company, and to the cash received in respect of such shares, and to the receipts and payments of the Company on Capital Account, is correct.

F. FIGURES, Chartered Accountant,
Auditor.

DATED this 18th June, 19—.

SPECIMEN ANNUAL REPORT OF DIRECTORS

Pursuant to Sect. 157 (1) of Companies Act, 1948

THE EXEMPLARY COMPANY, LIMITED

(Incorporated under the Companies Act, 1948)

REPORT of the DIRECTORS for the year ended 31st March, 19—, to be submitted to the Shareholders at the Second Annual General Meeting of the Company to be held at the Registered Office of the Company, 99 Lune Street, London, E.C.1, on Monday, 25th June, 19—, at 11 o'clock in the forenoon.

REPORT AND ACCOUNTS

The Directors beg to submit herewith their Report and Accounts for the year ended 31st March, 19—. The annexed Accounts show that the profit earned during the past year was £6,805 10s. 10d., before providing for—

	£	£	s.	d.
Audit Fee	105			
Directors' Fees	500			
Depreciation of Leases and Other Property	1,700			
		2,305	–	–
Leaving an available balance of . . .		4,500	10	10

From this balance, the Directors recommend a Transfer to General Reserve of £1,000, and a final Dividend of 20 per cent *less* Income Tax (making 25 per cent for the year). These appropriations will require £2,500, leaving a balance of £1,000 10s. 10d. to be carried forward to next year.

The Directors have pleasure in stating that the trading results of the past year have been highly satisfactory in every way. The year has been a difficult one by reason of the general fall in prices, and prolonged labour disturbances, and notwithstanding these factors, the sales have been well maintained.

New Branches have been opened in Liverpool, Manchester, and Birmingham, and arrangements are now being made for representation in Eire and in Northern Ireland.

The general outlook is promising, and your Directors have every confidence in forecasting a record turnover for the ensuing year.

RETIRING DIRECTORS

It is with deep regret that we record the loss of our late Chairman, Mr. B. Black, who died suddenly after a brief illness. Mr. Arthur Green has been nominated by the Directors to fill the vacancy caused by the death of Mr. Black, and this nomination will be submitted to the Annual General Meeting for confirmation.

The retiring Directors are Mr. W. White, and Mr. W. Rothwell, who are both eligible, and offer themselves for re-election.

AUDITOR

The Auditor of the Company, Mr. F. Figures, Chartered Accountant, having notified that he is willing to continue in office as Auditor, a motion will be proposed at the meeting that his fee be fixed at £...

BY ORDER OF THE BOARD,

A. GREEN, *Chairman.*
G. SMART, *Secretary.*

99 LUNE STREET, E.C.1
1st June, 19—.

Reports to Directors

Questions are frequently set at the professional secretarial examinations asking candidates to draft a "Report to Directors" upon a given subject-matter. More often than not the questions are set to test the literary ability of the candidate, and at the same time to plumb his general knowledge, as examiners seem to have an unlimited field for finding what, to the candidate, must appear most trying subjects about which

to write a report, and usually calling for a fair degree of imagination, if a successful answer is to be attempted. To illustrate the general manner of answering questions of this nature, we will give some specimen reports based upon actual examination questions.

SPECIMEN REPORT BY SECRETARY TO BOARD AS TO ADVANTAGES OF A GOOD SYSTEM OF COSTING

To the Directors,
THE EXEMPLARY CO., LTD.

Gentlemen,

In accordance with your wishes, I beg to submit my Report on " The Advantages of Inaugurating a Costing System."

" Costing " is the ascertainment of the actual expense of producing any given article, or of carrying out any particular job, process, or contract, by means of a minute analysis of the expenditure on each particular " unit " concerned.

When a good system of costing is in operation, the advantages and benefits flowing therefrom are manifold, and may be generalized—

1. The actual cost price being known, the selling price may be fixed and regulated accordingly. Cost Accounts serve as a reliable guide in future estimating and in quoting prices.

2. The costs of different methods of manufacture or the utilization of different kinds of material or different classes of labour, may be compared, and the effects of any increase or decrease of wages or hours of labour, may be ascertained.

3. Cost Accounts act as a safeguard against waste, and are a means for controlling expenses with a view to reducing prices and increasing or stimulating the effective demand for the Company's products.

4. The necessary machinery that is in operation to obtain and record the required data or information, serves to indicate and locate any weak points in the factory system, and assists in the elimination of theft of materials, waste, inefficient workmanship, etc.

5. Reliable values can be fixed for stock-taking purposes, with beneficial results.

I trust, gentlemen, that this brief outline of the many advantages accruing from " Cost Accounting " will meet your requirements, and serve to show that an efficient system of ascertaining costs is really a necessity in any modern factory.

Your obedient servant,
G. SMART, *Secretary*.

11th June, 19—.

REPORT BY THE SECRETARY AS TO GRAVE DISSATISFACTION OF WORKMEN

To the Directors,
THE EXEMPLARY CO., LTD.

Gentlemen,

As requested, I beg to submit my Report, based upon a thorough inquiry into the reported dissatisfaction amongst the Company's workmen.

1. It would appear that the cause of the dissatisfaction arises from (*a*) an imperfect understanding of the new system of piece rates recently inaugurated; (*b*) a seeming inequality of piece rates between the different grades of workers which is operating adversely for the majority of the workmen.

2. The replies of the management to the deputation that waited upon the Board last week have not been received favourably by the workmen, who complain that under the revised wage rates, it is necessary to work seven hours per week longer than heretofore in order to obtain the same wage as formerly.

3. As a strong feeling exists among all grades of workers, I would recommend that a further deputation be asked to wait upon the Board next week, and that the whole matter may then be thoroughly discussed with a view to an amicable adjustment of both general wage rates and piece rates.

Your obedient servant,

G. SMART, *Secretary*.

11th July, 19—.

GENERAL REPORT TO EMPLOYEES

"THE NEED FOR ECONOMY"

The Management desire to draw the attention of employees of all grades to the urgent need for economy and the elimination of all waste of time and material in the carrying out of the works processes.

The Accounts for the past quarter indicate that expenses have been steadily increasing, despite the fact that the sales for the period were 10 per cent less than during the previous quarter.

The keen competition for orders consequent on the continued trade depression makes it imperative that our working costs be reduced to a minimum, and an urgent appeal is made to all employees to assist the Management in this respect by avoiding any waste of time or material.

With a view to effecting a saving in working costs, it has been found necessary to effect some alteration in the general works organization, and as the Management has preferred to

adopt this measure in the first instance rather than reduce the present rates of wages, the co-operation of workers of all grades is necessary in the interests of economy—and each employee is expected to give of his or her best.

Suggestions for improving the present organization are invited, and should be sent to the Works Manager, and anyone putting forward a suggestion which is adopted will be suitably rewarded.

BY ORDER OF THE BOARD,

G. SMART, *Secretary.*

11th July, 19—.

COMMITTEE REPORTS

THE EXEMPLARY COMPANY, LIMITED

REPORT OF THE FINANCE COMMITTEE FOR THE MONTH ENDED 30TH JUNE, 19—

The Committee report—

1. That during the month, four meetings were held, and that the following cheques were drawn—

	£	s.	d.
A. Box & Co. (Goods supplied) . .	131	7	7
J. Cox & Co. (,, ,,) . .	59	11	7
J. James, Ltd., Bradford (Plant) .	1,000	–	–
Daily Mail (Advertising Campaign) .	2,000	–	–
	£3,190	19	2

2. That the ever-increasing business of the Company necessitates additional working capital, and it is recommended that £50,000 be raised by the issue of Debentures.

3. That following an inquiry into debts due to the Company and outstanding for more than six months, the committee recommend that the following be placed in the hands of the Company's Solicitor for collection—

	£	s.	d.
R. Role & Co. (due 30/9/19—) . .	375	–	–
P. Peach & Co. (due 3/10/19—). .	216	10	–
O. Olive, Ltd. (due 4/12/19—) . .	400	–	–

DATED this 2nd July, 19—.

A. ABEL, *Chairman.*

Incorporation of Reports into Minutes

Reports of committees are usually incorporated into the general minutes of the board either in full or by reference. If approved, a minute is made to the effect

that the report was received, considered, and adopted. For example—

Minute No. 332. REPORT OF FINANCE COMMITTEE.

The (following) Report of the Finance Committee for the month ended 30th June, 19—, was received—

(Here may be set out the Report in full, if thought advisable)

On the motion of Mr. W. Rothwell, seconded by Mr. J. Green, *it was Resolved*—

"THAT the Report and recommendations of the Finance Committee for the month ended 30th June, 19—, be, and are hereby, approved and adopted."

"THAT the Finance Committee be, and is hereby, instructed to inquire as to the terms upon which the proposed issue of Debentures should be made, and to make the preliminary arrangements for the issue, with power to engage any legal or other assistance as shall be necessary."

CIRCULAR TO SHAREHOLDERS CONCERNING OFFER OF NEW SHARES TO MEMBERS *pro rata* TO THEIR HOLDINGS

THE EXEMPLARY COMPANY, LIMITED

99 Lune Street,
London, E.C.1
1st May, 19..

Dear Sir (Madam),

The Directors have decided to make an issue of 100,000 new Ordinary Shares of £1 each, and in accordance with the Company's Articles, such new Shares are being offered in the first instance at par to those Shareholders on the Register of Members on the 16th April, 19.., in the proportion of one new Ordinary Share for every five Ordinary Shares held (fractions being ignored).

The enclosed provisional Allotment Letter indicates the number of new Ordinary Shares which you are entitled to have allotted to you, provided that the form of Acceptance (marked 1) attached thereto is completed and signed by you and lodged together with the entire Allotment Letter and a remittance for the amount due as shown thereon with the Company's Bankers, the West Bank, Ltd., 41 Oldbury, London, E.C.3, on or before the 1st July, 19...

Further instalments are payable on the following dates—

5s. on 1st August, 19..
5s. on 1st September, 19..
Balance of 5s. on 1st October, 19..

and must be paid to the Company's Bankers, and the entire Allotment Letters handed to them to be receipted. Failure

to accept the shares provisionally allotted to you on or before the said 1st July, 19.., renders the allotment void, and failure to pay instalments on the dates specified, renders the shares and all amounts paid thereon liable to forfeiture.

The new Ordinary Shares will rank for dividend as from 1st October, 19.., but will not entitle the holders thereof to participate in dividends payable in respect of the year ended 30th September, 19.., but otherwise they rank *pari passu* with the existing Ordinary Shares.

You may renounce this Provisional Allotment provided you complete and sign the Form of Renunciation (marked 2), and provided the person(s) in whose favour the Renunciation is made, complete(s) and sign(s) the form of Acceptance (marked 1) annexed to the Allotment Letter, and lodges the forms together with the entire Allotment Letter and a remittance for the amount due as shown thereon with the Company's Bankers on or before the 1st July, 19...

If you wish to accept and/or renounce a portion only of the shares offered, Split Provisional Allotment Letters will be issued if the Allotment Letter and forms annexed thereto are returned on or before 11th June, 19.., to the Company's office for cancellation with a note of number of new shares to be included in each Split Allotment Letter and a remittance of 1s. in respect of each Split Allotment Letter required. Such Split Allotment Letters cannot be further subdivided, and after the said 11th June, 19.., it will only be possible to transfer the new Ordinary Shares by Transfer in the ordinary form.

Application will be made to the London Stock Exchange for an official quotation for the new Ordinary Shares.

In compliance with Sect. 53 of the Companies Act, 1948, it is stated that this issue has been underwritten for a commission of 2 per cent.

Shareholders will be informed later as to when the Certificates for the New Ordinary Shares will be ready, in exchange for the Allotment Letters, and in the meantime the Allotment Letter and Bankers' Receipts annexed thereto should be carefully preserved.

Yours faithfully,
For the Exemplary Co., Ltd.,
G. SMART, *Secretary*.

CIRCULAR TO SHAREHOLDERS CONCERNING BONUS DISTRIBUTION

99 Lune Street,
London, E.C.1
1st March, 19..

Dear Sir (Madam),

With reference to the Resolution to issue Bonus Shares passed at the Annual General Meeting held on the 12th day

of January, 19.., I beg to inform you that the Bonus Shares have now been allotted, and the shares representing fractions were sold on the 1st day of February, 19.., at 26s., the price ruling at the time, and, after deducting brokerage and incidental expenses, the amount available for distribution is 25s. per share.

In accordance with the terms of the Resolution, you, as holder of 1008 Ordinary Shares, are entitled to 201 Bonus Shares and three-fifths of a share.

Herewith is enclosed Certificate for the shares to which you are entitled and a cheque for the amount (if any) payable to you in respect of fractions.

Please sign and return the annexed form of receipt.

Yours faithfully,
For the Exemplary Co., Ltd.,
G. SMART, *Secretary.*

Perforated

THE EXEMPLARY COMPANY, LIMITED

RECEIVED the day of 19.., Certificate No. for 201 Bonus Shares allotted to me/us and cheque for 15s., being amount due to me/us in respect of fractions in connection with the issue of Bonus Shares sanctioned at the Annual General Meeting held on 12th January, 19...

Signature.

CHAPTER VI

Application and Allotment Procedure

In this chapter, it is intended to outline the secretary's duties in dealing with issues of shares—to the public in response to a prospectus, to members *pro rata* to their holdings, and to members by way of bonus —and also to deal with incidental matters such as the writing up of the register of members, balancing thereof, and the like.

Issues to the Public

In these days of specialization, when a company makes an invitation to the public for capital, it is usual for the matter to be placed in the hands of an issuing house, i.e. a concern specializing in new issues of shares, making all the necessary arrangements for publishing the prospectus, underwriting the issue, and dealing with the applications in response thereto. Such assistance is, indeed, very desirable in view of the many new obligations and restrictions imposed by the Companies Act, 1948. It is obvious that many companies making new issues would not have the requisite staff and equipment for coping with a large number of applications, and although it is possible to engage temporary assistance, the existence of a large number of companies which undertake new issue work, indicates the extent to which their services are welcomed by the capital market (seekers of new capital). Nevertheless, the secretary of a company making an issue of shares to the public will necessarily take a prominent part in the conduct of the proceedings, and must have some knowledge of the procedure involved and the numerous matters to which attention must be given at such a time. Prior to the publication of the

prospectus, the organization for dealing with applications must be carefully planned, and attention given to the following—

1. Arrangements should be made with the bankers to receive the application forms and moneys, and the terms upon which the bankers will conduct this work agreed and confirmed in writing. A special "Application and Allotment Account" is usually opened to which application and allotment moneys will be credited. It is customary to instruct the bank to number all applications as received, and to enter such number (or both name and number) in the special account pass book, to facilitate checking subsequently, and also to prevent confusion where there are several applicants of the same name. Arrangements are usually made whereby the bank will total the applications progressively as they are received, so that the subscription lists can be closed when the issue has been fully subscribed, provision being made for applications through the post to receive consideration. It is purposeless to permit large over-subscription, as this will occasion needless expense—commission on collecting cheques for application moneys, cost of cheques returning application moneys to unsuccessful applicants, additional clerical work, etc. On the other hand, it is not always advisable to close the lists promptly when the issue has been subscribed, for it is well known that many applicants adopt the practice of applying for more shares than they require, in the hope that if a percentage allotment is made, they will be assured of the allotment they actually wish for, and which is probably the limit of their financial resources, and if many such applicants receive in full the amount they apply for, the company may find difficulty in obtaining payment of calls.

2. Adequate staff and equipment should be available for coping with the applications, writing up the

application and allotment sheets, preparing allotment letters, etc. It should be noted that no allotment can be made to new shareholders until the third day after the day of the first issue of the prospectus, or on such later day as may be specified therein. This is known as the date of the opening of the subscription lists.

3. When drafting the form of application for shares care must be taken that the requirements of the Exchange Control Act are complied with. The following note should appear in the middle of the form—

> IMPORTANT. To comply with the provisions of the Exchange Control Act, 1947, the applicant(s) must make the declaration contained in the following paragraph, or if unable to do so must delete such paragraph and consult his/their bankers in order to have the appropriate declaration and certificate completed. No application will be considered unless this condition is fulfilled.
>
> I/WE HEREBY DECLARE that I am not/no one of us is resident outside the Scheduled Territories, nor shall I/we be acquiring the shares as the nominee(s) of any person(s) resident outside those Territories.

4. The application and allotment sheets should be drafted to suit the circumstances, and a sufficient number of copies thereof printed. A specimen ruling of an application and allotment sheet is shown on page 108. It is recommended that separate application and allotment sheets be used for each class of share or debenture offered, although if two classes of shares are being issued with a condition that applicants must take a certain number of each class, a combined ruling can be used with advantage; for example, if ordinary or deferred shares are being issued, it is usually a condition that applicants for deferred shares must take an equal number of ordinary shares, but not vice versa. Apart from such circumstances, if it is attempted to accommodate applications for different classes of shares on a single form to meet the case of applicants applying for several classes of shares, the result is an unwieldy applications sheet, and is likely

to lead to confusion if allottees dispose of part of their allotments before the register of members is written up. The better method is to use separate sheets for each class of share, and to have a system of cross references to co-ordinate applicants applying for two or more classes of shares.

If shares are being offered at a premium, it is usual to rule a separate column for recording the premiums.

The procedure to be adopted when the application sheets are being written up should be previously agreed upon so that the work may proceed smoothly.

5. A form of allotment letter and letter of regret should be drafted and a sufficient number of copies printed. The form of allotment letter should cover all the circumstances in which it will be used, i.e. besides being applicable for an allotment in full, it should be applicable where a partial allotment is made, and show the balance returned where the amount paid is sufficient to cover both application and allotment moneys, or the balance due on allotment where part of the amount paid on application is credited towards the amount due on allotment. If it is found inconvenient to adopt one form to meet all cases, separate forms can be printed. Where the calls are being made within a short time after the allotment, it is usual to adapt the allotment letter to provide for bankers' receipts for calls paid, and perforated slips are attached for this purpose. A specimen allotment letter is shown on page 118. Allotment letters should be so framed as to be suitable for use with window envelopes, as this effects a great saving of time and labour. A specimen letter of regret is shown on page 109.

6. The form of the register of members and share ledger should also be drafted, so that the register may be ready when the time arrives for writing it up. This will necessitate a pre-arranged scheme for keeping the register up to date, and indexed in compliance

with the Companies Act, and this matter is treated more fully at page 84.

Procedure on Allotment

When the subscription list has been closed, the application forms will be sorted alphabetically in strict dictionary order to facilitate reference, and the application and allotment sheets written up. A separate sheet should be used for each initial letter, and if the number of applications is large, the work can thus be conveniently divided. Care must be exercised in copying from the application forms the correct particulars of each application, and the entries should be checked by some responsible person, who should initial each sheet as checked. If any application form lacks necessary information such as Christian name, or description of applicant, the applicant should be communicated with, if and when allotment is made to him. The application forms are then re-arranged numerically for easy reference. It is sometimes recommended that the application and allotment sheets be written up in numerical order to correspond with the numbers of the application forms, but if this practice is adopted, it would entail considerable trouble to locate the name of an applicant, or to trace his application form, whereas if the sheets are written in alphabetical order as suggested, it is quite easy to refer to the entry for any particular application and to find the application form by means of the number. When all applications have been recorded, the total of the " Cash Received " column should be checked with the bank pass book. If, as is sometimes the case, certain applications are given preferential consideration (for example, applications by existing shareholders or debenture holders, by customers, or those specially recommended by directors), a note should be made thereof in the remarks column against the particular entry, or, alternatively,

special application and allotment sheets may be used to record such applications. In some cases, specially coloured application forms are issued to applicants accorded preferential treatment.

If, as is usual, brokerage is paid to banks and other firms introducing applicants or placing shares, provided their official stamp is placed on the application form, it will be necessary to analyse such application forms to ascertain the amount due to each bank or firm, or to check their accounts for brokerage payable to them. For this purpose, after the application and allotment sheets have been written up, the application forms can be passed to one clerk with instructions to note all applications in respect of which brokerage is payable, and to prepare an analysed list showing the total due to each bank or firm.

When the application and allotment sheets are ready, the directors will meet for the purpose of making the allotments, or a special allotment committee may have been appointed to consider the applications and report to the board recommending the allotments to be made. When the directors have finally agreed the allotments to be made, the number of shares allotted to each applicant is marked in the appropriate column, and the application and allotment sheets signed by the chairman for identification, and a resolution of allotment passed and minuted. The application and allotment sheets should be carefully preserved, as they are embodied in the minutes by reference, thus constituting an essential part of the minutes, and they also serve as a temporary register of members pending the writing up of that book. It is the usual practice to bind the sheets in book form.

Issuing Allotment Letters

When the allotment is made, a letter of allotment must be forwarded to each allottee, informing him of

the number of shares that have been allotted to him and stating the amount (if any) payable on allotment. Where the number of shares allotted is below the number applied for, the amount overpaid on application is usually credited to the applicant on account of allotment moneys, and is not returned to him.

No allotment must be made of any shares or debentures offered generally by a prospectus (that is to persons who are not already members or debenture holders) until the beginning of the third day after that on which the prospectus is first issued or such later time (if any) as may be specified in the prospectus (Sect. 50 (1)). Further, by Sect. 50 (5) applications for shares in or debentures of a company are not revocable until after the expiration of the third day after the three-day interval mentioned above.

Where no prospectus is issued, it must be seen that the statement in lieu of prospectus has been filed before letters of allotment are issued, otherwise the allotment is voidable. (Sects. 48 and 49 of Companies Act, 1948.)

Partial Allotments

It must be remembered that a partial allotment does not constitute a binding acceptance of the applicant's offer to take shares; it is, in fact, a counter offer, and there is no contract unless he agrees in the application for shares to accept " such less amount as the directors decide to allot." This clause is invariably inserted in application forms. Where the amount applied for is allotted in full, the contract is complete as soon as the allotment letter is posted, even though it should never reach the applicant (*Household Fire Insurance Co.* v. *Grant* (1878)), and in view of this the secretary should be careful to preserve evidence of the posting of the allotment letters.

Letters of Regret

Where no allotment is made to an applicant, a letter of regret should be sent, informing the applicant that the directors are unable to allot any shares in response to his application, and returning the amount paid on application. If an application is withdrawn (applications may be withdrawn at any time before the letter of allotment is posted, provided notice of revocation or withdrawal reaches the company prior to that time; see *in re London and Northern Bank, ex parte Jones* (1900)), the entry in the application and allotment sheets should be ruled through and a note made at the side indicating the date and manner of revocation.

All allotments should be numbered consecutively (commencing with the first allotment on the first page of the application and allotment sheets to facilitate subsequent reference), and this number should be quoted on the allotment letters. Letters of regret can be numbered with the application number for purpose of reference, and to avoid duplication of numbers.

Recording Allotment Moneys

Soon after the allotment letters have been issued, the allotment moneys will be coming to hand and will be paid to the company's bankers, who will acknowledge payment by signing the form of receipt at the foot of the allotment letter, and detach the perforated counterfoil showing allottee's name and the number of the allotment letter (or this number alone) and the date and amount received by the bankers. The bank will credit the application and allotment account with the amount so received (entering the allotment letter number in the pass book), and will forward the detached slips to the company.

From these slips the date of receipt of the allotment moneys will be posted to the application and allotment sheets (a date stamp can be used for this purpose). On the last day appointed for payment of allotment moneys, the amounts received will be vouched with the bank pass book and the totals checked therewith.

Reminders should be sent to allottees in default.

A record should also be kept of the presenting of cheques issued with letters of regret returning application moneys.

Filing Return of Allotments

In compliance with Sect. 52 of the Companies Act, 1948, a return of allotments must be filed with the registrar within one month after allotment under penalty of a fine of £50 per diem on every officer of the company knowingly a party to the default, although under subsec. (3), extension of time may be granted if the omission to file the return was due to inadvertence or accident, or was reasonably necessary, for example, in the case of large issues.

The return must be made on the official printed form, and must bear an impressed fee stamp of 5s. The preparation of the return can be put in hand immediately after allotment, the necessary particulars (names, addresses, and descriptions of allottees, number and nominal amount of shares allotted and amount paid or due and payable on each share) being copied from the application and allotment sheets. Where shares have been allotted for consideration other than cash, the contract in writing (duly stamped) constituting the title of the allottees must be filed along with the return. If there is no such contract, then a statement of the prescribed particulars on the official form (stamped with the same stamp duty as would have been payable had the contract been in writing) must

be filed. A registration fee stamp of 5s. is also payable on these documents.

The Register of Members and Share Register

By Sect. 110 of the Companies Act, 1948, every company is bound to keep a register of its members showing names and addresses of the members, number and distinctive numbers of shares held by each (so long as the share has a number), and amount paid or agreed to be considered as paid thereon, together with the dates of entry and also cessation of membership when that occurs. If shares have been converted into stock, the amount of stock held must be shown.

Sect. 110 further provides that the register of members is to be kept at the registered office, but (*a*) if it is made up at another office of the company it may be kept at that office, and (*b*) if it is arranged by the company that it be made up by another person it may be kept at the office of that person. In such cases the Registrar of Companies must be notified and the same information be included in the Annual Return.

In the case of new issues, and in cases where shares are only partly paid, most companies find it necessary in their own interests to keep also a " Share Ledger " containing an account for each shareholder, showing the number of shares held by him and the amount due and paid up in respect thereof, thus showing in detail the total issued and paid-up capital as appearing in the financial books, the share ledger being in fact a subsidiary ledger to the general impersonal or private ledger.

To obviate duplication of records, the register of members and share ledger can be conveniently combined (the 1948 legislation permitting it to be kept in loose leaf form), and in practice are usually so combined, the one record at the same time complying with the statute and serving also as a subsidiary ledger. A specimen register of members and share ledger combined is

shown on page 110. Of course, if the shares become fully paid, the cash account portion of the ruling can be dispensed with.

It is usual to keep a separate register for each class of share, as there is less likelihood of error and confusion, when recording payment of calls, transfers, etc., although if the shares are fully paid-up, a register with analysis columns to record different holdings is not impracticable, and is, in fact, very convenient if it is attended to carefully. In favour of separate registers it may be said that they are more convenient when paying dividends on one class of shares only, or convening meetings or circularizing a particular class of shareholder. On the other hand, if a large number of members have holdings of different classes of shares, it is more economical to send one warrant to each, covering the whole of the dividends due on the various classes of shares held by each. If separate registers are kept, a method of co-ordinating the different holdings is to use one index for all the registers, and thus, if one person has several different holdings, the details thereof will appear together in the index. Indexing of the share registers is dealt with later.

In the case of new issues, it is very desirable that the share register be written up as soon as possible after allotment, because if there is a good market for the shares, transfers will be presented for registration very quickly after allotment, and if the share register is not ready, considerable confusion is not unlikely by having to record transfers on the application and allotment sheets, and the subsequent task of writing up the register and keeping records of instalment payments is made more difficult. As previously mentioned, the method of keeping the share register should have been decided upon before publication of the prospectus, and suitable registers should have been drafted and printed.

Indexing the Share Registers

Sect. 111 of the Companies Act provides—

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

(2) The index shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(3) The index shall be at all times kept at the same place as the register of members.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine (£5 per day).

A register kept on the loose leaf principle (with adequate safeguards as required by Sect. 436) each sheet being devoted to one account, and arranged alphabetically, is quite suitable for a small company, but it is likely to prove inconvenient if there is a large number of shareholders and/or an active market for the shares, owing to the constant opening of the binders to insert new and extract old accounts. A better method is to adopt the loose leaf principle, but to number the accounts *seriatim* (allotting a definite number of accounts, say 250, to each division of the ledger if the number of accounts necessitates subdivision) and to index the accounts by means of an alphabetical index. Such an index is in addition very useful in the following ways: (1) It can co-ordinate the holdings where members have holdings of more than one class of share and debentures; (2) it is a convenient address list for the purpose of sending notices of meetings or circulars to shareholders; (3) it may be adapted to show also a specimen signature of each member for purpose of verifying transfers; (4) it is, in practice, essential for the preparation of the alphabetical list of members which every third year has to be

included in the Annual Return (see Sect. 124 (1) (*c*) and the Sixth Schedule to the 1948 Act). There are various methods by which this index may be kept—

(*a*) The ordinary card index—simple in use, effective, and economical.

(*b*) Loose leaf books of small dimensions—have all the advantages of card indexes with these additional merits: (1) A card must be extracted in order to be written upon; not so a page in a book. Moreover, the back of the page can be written upon without disturbing its position, a feat not possible with a card index; (2) less possibility of upsetting the pages; (3) leaves occupy less space and cheaper equipment than cards; (4) small books are more easily carried about than card indexes.

(*c*) Visible card indexes—an arrangement whereby the cards lie flat on a shallow tray, the edge of each card being visible and showing the various names at a glance. This method has much to recommend it, and further information concerning such indexes will be found on page 36.

(*d*) An alphabetically indexed book—sub-indexed if necessary. This method is inferior to the others outlined.

If it is desired that the index should show the state of each member's account at all times, it will, of course, be necessary to make alterations in the index every time a transfer takes place. This will entail much additional work if transfers are numerous, but the expediency or necessity of so changing the index depends on the circumstances and requirements of each company. (Sect. 111 requires that all alterations in the index be made within 14 days of alterations in the register, but this, of course, refers only to *names* of shareholders and not to details of their holdings.) A suggested ruling for a share register index is given on page 111.

In order to provide some degree of protection against forged transfers most companies keep specimen

signatures of all their members for purposes of comparing signatures on transfers. A common method is to ask all members to give an authenticated specimen signature on a card provided for the purpose, and to file such cards in alphabetical order in drawers, the cards also serving as an index to the register of members. Alternatively, the specimen signature may be made on a special slip of paper which is subsequently pasted on to the index sheet or card.

Writing Up of Share Register

Before the register can be written up, the shares allotted are generally numbered. It is, however, not now essential that shares should have a distinguishing number. This provision was introduced by Sect. 74, it having been felt that many companies would welcome the opportunity to avoid the labour of keeping a record of numbers every time a transfer is made. The shares must, however, be fully paid up (i.e. akin to stock, which never bears distinguishing numbers) and rank *pari passu* for all purposes. The numbers (if any) assigned to the shares should be written in the appropriate columns of the application and allotment sheets, commencing with number one for the first allotment entered on the first page of the sheets, and the accuracy of the numbering should be carefully checked at regular intervals, say, at the end of each page, otherwise an error made is repeated throughout the whole of the subsequent numerations.

The writing up of the register can then be begun, particular care being exercised to ensure that the correct details are registered. Where the register is to be on the loose leaf principle, the work can be easily divided amongst a number of clerks if necessary.

If the register is to be divided into a number of books, a note must be kept of the total number of shares entered in each separate part, if it is desired to put into

practice a system of making the share registers self-balancing in order to locate errors when the register is balanced at dividend times.

Balancing of the Share Registers

The object of balancing the share register is to ensure that the shares registered agree in total with the issued capital. In the case of a small company, balancing is not difficult—a list of shareholders is drawn up from the register showing the number of shares held by each, and the total should agree with the total issued capital. Where the register is divided into several parts, any error would necessitate a search through all the registers. The registers should therefore be kept upon the sectional or self-balancing principle. To effect this it is necessary to know (*a*) the total number of shares in each register at the time they were first written up, or at the date of the last balancing, (*b*) the total number of shares posted to transferees' accounts in each ledger, (*c*) the total number of shares transferred out of accounts in each register. The totals of the shares entered in each register will in the first place be ascertained when the registers were written up, and subsequently when the registers are balanced, a note of these totals being regularly preserved. To ascertain the numbers of shares transferred to and by members it will be necessary to analyse transfers, transmissions, changes of name, etc. If a register of transfers is kept, additional columns can be ruled to effect the analysis, or a separate analysis book kept. If a register of transfers is not kept, it will be necessary to keep an analysis book.

A specimen ruling is shown on page 109, and it should be observed that the totals of the " Transferees " and " Transferors " columns should agree, and should equal the total number of shares transferred. The ruling shown will accommodate extraordinary changes brought

about by (*a*) registration of personal representatives as members, (*b*) forfeiture and surrender, (*c*) change of name of shareholder, (*d*) transfers to and from dominion registers, etc., although a separate analysis book can be kept to record such changes, if considered more convenient.

When the books are closed for balancing in order to pay dividends, or for other purposes, e.g. issues of bonus shares, *pro rata* allotments, etc., an adjustment account will be prepared, as shown below.

The total of each of the lists compiled from each part of the register should agree with the total shown by the adjustment account to be the number of shares entered in that register at the date of balancing. Errors will be localized to a particular register or registers, unless, of course, it is impossible to agree any register.

	No. 1 Register		No. 2 Register		No. 3 Register		Totals
	Dr.	*Cr.*	*Dr.*	*Cr.*	*Dr.*	*Cr.*	
Opening balances .	1,000	—	2,000	—	3,000	—	6,000
Postings to Transferees' A/cs. .	50	—	100	—	75	—	225
							6,225
Postings from Transferors' A/cs.	—	—	—	75	—	150	225
	1,050	—	2,100	75	3,075	150	—
	—	—	75	—	150	—	—
	1,050	—	2,025	—	2,925	—	6,000

Issuing of Share Certificates

Sect. 80 requires that share certificates shall be delivered within two months after allotment, unless the conditions of issue prescribe otherwise. If the shares are to be paid up in full by a number of calls or instalments payable on specified dates, it would be inconvenient to issue share certificates before payment in full had been made, and in such cases it is usually a condition that the share certificates shall be issued as

soon as possible after payment of the final call, and that in the meantime the allotment letter and bankers' receipts for calls shall constitute evidence of title. Alternatively, (*a*) certificates may be issued showing the shares to be partly paid, and when calls are paid the certificates can be endorsed accordingly, (*b*) scrip certificates may be issued. These are provisional certificates evidencing the title of the holders to receive share certificates as and when ready for delivery, in exchange for the scrip certificate.

Particular care should be exercised in drawing a form of share certificate, and if the shares are to be quoted, the Stock Exchange requirements should be observed.

Procedure on Issuing Share Certificates

1. The share certificates should be written up from the register of members, and each certificate carefully checked and initialed. Mistakes may have quite unexpected consequences, as it must be remembered that a company is estopped from denying its certificate.

2. The share certificate must be sealed and signed in accordance with the articles, and in pursuance of a valid resolution passed at a board meeting.

3. Draft and forward to members a circular advising them when the certificate will be ready in exchange for the allotment letters and bankers' receipts for calls (or scrip certificates if these have been issued). For the convenience of those members who are unable to attend personally to take up their certificates, form letters should be annexed to the circular authorizing the company to send the certificate by post or to hand it to the member's nominee. A specimen circular is given on page 112.

4. Issue certificates on surrender of necessary documents, being careful to obtain a receipt for every certificate issued. The usual practice is to have a printed form of receipt annexed to each share certificate

which is detached and signed by the recipient and returned to the company. An excellent plan for filing these receipts is to attach them to their respective counterfoils in the share certificate book, and if the certificate is forwarded by post or handed to a nominee, the letter authorizing the company to do so should also be annexed to the appropriate counterfoil.

The precautions outlined should be strictly observed as the company must be able to produce clear evidence as to how the certificates have been disposed of, because if through the company's negligence a certificate gets into the hands of a party not entitled to it, and the shares are afterwards dealt with by him, the company may be liable in damages to a third party acting in good faith and relying on the company's certificate, and the shareholder actually entitled to the certificate may take proceedings against the company for not delivering the certificate within the prescribed time after being called upon to do so.

Issues of Bonus Shares

Bonus shares are shares issued by a company to its members either fully or partly paid-up out of accumulated profits in lieu of a dividend or bonus in cash—or, in other words, instead of profits being paid away in cash, they are capitalized, retained in the business, the members benefiting by an allotment of shares instead of a payment of cash. Such issues are subject to the consent of the Capital Issues Committee, and permission must be obtained, as explained hereafter. From the point of view of accountancy, the issue of bonus shares means that the share capital of the company is brought more in accord with its actual capital possessions, and the revenue available for dividends is effectively earmarked for retention in the business as capital. From the standpoint of economics, it appears that the object of issuing bonus shares is to

discourage attention being called to the huge profits made by many companies, which would or might otherwise be a pointer for initiating agitation for a reduction in the prices of the companies' products, especially where the company concerned enjoys a virtual monopoly. When bonus shares have been issued, subsequent years' profits, whilst being perhaps of larger amounts, would be declared as a lesser percentage on a larger "watered capital." It is worthy of note that bonus distributions almost always fall to the members holding the "equity" shares, i.e. the shares entitled to the balance of profits remaining after the claims of those shareholders ranking in priority have been satisfied. (Sect. 154 (5) defines equity share capital, for the first time, as "issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.") In the case of most companies, the ordinary shares (but in some cases, deferred, founders', or management shares) constitute the equity holding. The ultimate position of the equity shareholders is not affected in any way by bonus distributions if they have the right in the event of liquidation to receive the assets remaining after repaying capital paid-up on other classes of shares, but their immediate position is benefited by the fact that they can, if they wish, dispose of the bonus shares in the market, although the advisability of doing so must be viewed in the light of the future level of dividends, for if the dividends are not maintained at the former percentage, the income from the original holding will, of course, be depleted, and those holders who rely on their shares as a source of regular income may thus suffer by selling their bonus allotment.

Bonus shares are not " shares issued for nothing "—this is forbidden by law; they are, in effect, dividends

payable in shares instead of in cash. The Government's tax of ten per cent, imposed in 1947, and aimed at limiting the dividends of companies, has now been withdrawn.

Methods of Issuing Bonus Shares

One method of effecting an issue of bonus shares is to declare a dividend or bonus free of income-tax, and to make a new issue of capital at the same time, making a provision that the bonus or dividend shall be satisfied by allotment of shares, or alternatively inviting members to use the dividend or bonus to subscribe for the new shares, thus giving them an option to take cash or shares. This method necessitates a provision in the articles authorizing satisfaction of dividends otherwise than in cash. Another and more common method is to appropriate a portion of the reserves or accumulated profits and to apply the same in payment of shares to be issued *pro rata* to the members, without mention of declaration of bonuses or dividends (see specimen resolution on page 330). Most companies have specially framed articles dealing with the question of bonus issues and outlining the method of effecting them, but it is submitted that the making of a bonus issue without express authority in the articles would not be restrained by the courts, as a company which does irregularly that which might be done regularly has not in the eye of the court committed any offence (*Foss* v. *Harbottle* (1843)).

Points on Procedure

The amount of and rate of distribution of the bonus issue having been agreed, application for consent to the issue must be made on Form Q.3 to the Capital Issues Committee, Treasury Chambers, Whitehall, S.W.1, if the nominal value of the issue exceeds £50,000. As allotment letters bearing a form of

renunciation will probably be necessary, permission for their use must be obtained from the same quarter. If, however, the nominal value of the issue is less than that stated above, then permission to use such allotment letters has to be obtained from the Exchange Control Office of the Bank of England, as it will not be necessary to apply to the Capital Issues Committee at all. The stamp duty on forms of renunciation and also on allotment letters was abolished by the Finance Act, 1949.

It must be decided on what date the register of members shall be closed to ascertain those members who are to participate, and this date should be stated in the resolution. Bonus shares are usually allotted at par, although they may be allotted as partly paid-up or at a premium, but the only effect of issuing at a premium is to diminish the rate of allotment and to create a premium on shares account. If they are to be allotted at a premium or as partly paid, the resolution should state so. A return of allotments must of course be made within one month after allotment. Where shareholders are given the option of accepting cash or shares, if they elect to take shares, they in effect pay for them in cash, but where they do not have such an option, then the shares are paid otherwise than in cash, and accordingly to comply with Sect. 52 (1) (*b*) there must be a contract in writing constituting the title of the allottees or, alternatively, the prescribed particulars of the contract (Form No. 52) must be completed and filed with the return of allotments. As it would be inconvenient to enter into a contract with every allottee, the resolution allotting bonus shares should appoint some member or director as agent of the shareholders to enter into the necessary contract on their behalf, or delegate the duty of making such an appointment to the board. The more simple procedure is to dispense with a formal contract, and to take advantage of Sect. 52 (2) and utilize the official form of particulars above

FRACTIONAL CERTIFICATE

EXEMPLARY COMPANY LIMITED

(Incorporated under the Companies Act, 1948)

99 LUNE STREET, LONDON, E.C.1

NOMINAL CAPITAL £ .
DIVIDED INTO SHARES OF £ EACH.
ISSUE OF SHARES OF £ EACH.

This is to certify that the Bearer of this Fractional Certificate, representing one .. ... . th/rd of one Fully paid ... . Share of £ . .. , upon presenting it with such other Fractional Certificates as shall make up one Fully paid . . . Share of £ .... shall be entitled to an Allotment of one Fully paid .... Share of £ .... in the Capital of this Company, with this proviso: That on or before the . . . day of..... .. . . .. next this Fractional Certificate, together with the other Fractional Certificates making up one Fully paid Share shall be lodged at the Office of the Company

Dated this.....day of.....19.....

By order of the Board.

Entd..... *Secretary.*

NOTE.—This Fractional Certificate cannot be Registered, nor can it participate in any Dividend declared, until it has been exchanged with other Fractional Certificates for one Fully paid Share.

Please sign the Form on the back of this Certificate, and return it, with the necessary other Certificates, to the Company's Office.

referred to. The stamp duty on the contract or on the official form No. 52 would probably be a nominal stamp duty of 10s. In addition there would be the 5s. registration fee.

Where the bonus issue involves fractions owing to the fact that the rate of allotment is not evenly divisible into some members' holdings, some method of dealing with such fractions should be decided upon. Two methods are available—

1. To issue fractional certificates. These are not equivalent to share certificates because a share cannot

be split—they are merely statements acknowledging that the person named therein has become entitled to a stated fraction of one share, and bear a memorandum that on the certificate holder presenting the certificate, together with another or other certificates to make up one share, he shall be entitled to be registered as holder thereof. The certificates may be made out to bearer, which is the more usual practice. The intention of issuing fractional certificates is that some member shall purchase fractional certificates from other members desirous of selling their fractions, and thus make up his fraction into a whole number. A specimen is shown on the previous page.

2. Instead of issuing fractional certificates, the shares representing the fractions are allotted to the secretary, or to some other person, to be sold, and after paying the expense of sale, etc., cash is remitted to members according to the fractions they are entitled to. Postal orders can be used for the purpose of remitting fractions, as they save the considerable trouble of writing out cheques and are not so expensive. This method of dealing with fractions is more common than that of issuing fractional certificates, and it relieves the secretarial department of considerable work in writing out and issuing fractional certificates and saves the expense of printing and stamping the certificates—moreover, the return of allotments and completion of the entries in the register of members is not delayed until the fractions have been disposed of (and some members may be lax in dealing with their fractions), as would be the case if certificates had been issued.

The allotment of bonus shares may necessitate an increase of capital if the whole of the registered capital has been issued, or if the unissued capital is less than the amount of the bonus allotment. If such an increase of capital is necessary, the requisite steps for that purpose must be taken (see Chapter XI).

If the capital of the company is held as stock and not as shares, and it is desired to make a bonus issue, as stock cannot be issued, it will be necessary to declare a bonus in shares in the first place, the resolution providing that the holding of a stated amount of stock shall entitle the holder to an allotment of one or more bonus shares. Subsequently, a further resolution can be passed converting the shares into stock if so desired.

Procedure on Allotment of Bonus Shares

If the register of members is to be closed and transfers suspended for the purpose of balancing the register to ascertain those entitled to bonus allotments, the requisite notice should be advertised.

A list of members registered on the appropriate date should be prepared (a copy of the dividend list would suffice if a dividend was being paid at the same time). The list should state the full name, address, and description of each member, his holding, and should be provided with columns to show the number of new shares and fractions to which each member is entitled. The total of these two columns should equal the total number of new shares being allotted. The allotment is then made at a board meeting, the necessary new certificates prepared and dispatched to shareholders, with a form of receipt therefor to be returned duly signed, and the appropriate entries made in the share registers. Within one month after allotment a return thereof must be made in compliance with Sect. 52 (see page 81). In the case of deceased members, bonus allotments must be made to their personal representatives in their personal capacity, whether they have been registered as members or not, as shares cannot be allotted to a deceased person, neither can they be allotted to representatives *as* representatives.

Instead of issuing share certificates direct, as outlined above, an alternative method is to issue allotment

letters, with a letter of renunciation and form of acceptance annexed, for the use of those members who wish to dispose of their shares and/or nominate another person to receive the allotment. In this case a date should be fixed, after the passing of which letters of renunciation and acceptances will be barred, so that the work of issuing share certificates may proceed. The only advantage of this latter method is that it saves transfer duty for those persons acquiring the new shares from the members entitled to them, and as it greatly increases the work of the transfer department and involves the expense of printing the letters of allotment, this method is not advisable, although it is attractive to those whose business it is to market shares, and on this ground companies which have an active market for their shares sometimes adopt it. In this case it should be noted that the list of members entitled to bonus allotments will have to be ruled with additional columns to record renunciations and splitting of letters of allotments, and the list will have to be balanced after the last day appointed for acceptance of renunciations or splitting allotment letters.

Where the resolution making the bonus issue gives members the option of accepting the bonus in cash or in shares, letters of application or acceptance (or alternatively, provisional allotment letters) will have to be issued. A date will be fixed before which acceptances must be acknowledged, and those members failing so to acknowledge acceptance will be presumed to desire cash. As the acceptances come to hand, the list will be marked off accordingly, so that on the appointed day it is ascertained which members desire shares, and which desire cash. The allotment is made accordingly, and share certificates or cheques are forwarded to members. Observe that where applications are invited for the shares to be allotted in payment of the dividend or bonus, if a member replies applying

for shares or accepting allotment in lieu of cash, the contract to take shares is complete, and does not require acceptance by the company, as is the case when applications are invited in response to a prospectus, and therefore allotment letters need not be issued, although allotment letters may be issued with the object of facilitating dealings with the shares, and, as pointed out previously, provisional allotment letters may be issued in the first instance with a view to easing the work of the secretarial department, those members accepting the allotment returning their allotment letters to the company for a memorandum of acceptance to be endorsed.

Whatever method is to be adopted, the secretary should draw up a programme of the procedure which will be necessary according to the circumstances as outlined in the foregoing pages, and he should also draft and have printed all necessary documents, forms, and circulars, and should give attention to the organization for dealing with the allotment. A specimen circular accompanying bonus share certificates will be found on page 71, and a resolution allotting bonus shares is given in Chapter XV.

Income Tax and Bonus Shares

It was decided in *Commissioners of Inland Revenue* v. *Blott* (1919) that a recipient of bonus shares is not liable to account for them in computation of his liability for income tax or sur-tax in the year they are issued. This decision is based on that of *Brouche* v. *Sproule* (1887), where it was held that in the circumstances of that case, bonus shares must be regarded as capital as between tenant-for-life and remainderman. But if a shareholder has the option, and elects to take cash instead of shares, the amount of the bonus must be included in his return for income tax at the grossed amount, i.e. as the dividend or bonus is free of income

tax, it is regarded as being the net amount after deduction of tax at the standard rate. (Note that bonus allotments are bonuses free of income tax, as tax would have been paid or payable by the company at the standard rate on the reserves or profits out of which the bonus is given.)

As already stated, duty at ten per cent on approved bonus distributions under authority of the Finance Act, 1947, is not now payable.

Other Methods of Giving Shareholders a Bonus

1. Issuing new capital to shareholders at a price less than the market value of similar existing shares. This is dealt with in the next paragraph.

2. Issuing new shares publicly but giving shareholders a right of pre-emption as to allotment.

3. Declaring a dividend applicable to satisfying unpaid liabilities on shares. Articles should authorize payment of a dividend otherwise than in cash, and a resolution making the call should be passed at the same time as the resolution declaring the dividend.

4. Scrip bonuses. Finance and holding companies sometimes receive allotments of shares from other companies in which they are interested, and instead of retaining these shares, they may elect to distribute them amongst their members. If such a distribution was effected by means of transfers to the various members, such transfers would have to be stamped with a nominal stamp duty of 10s. The better method is to decide in the first place whether the company entitled to allotment wishes to retain the shares or wishes to distribute them amongst its members, and in the latter case, the company will nominate the members to receive allotment in equitable proportions direct from the company making the allotment, provision being made for dealing with fractions. If the shares have already been allotted to the company entitled thereto,

this latter method is of course out of the question, and the distribution must be effected by means of transfers.

Issues of Shares to Members Pro Rata to Their Holdings

Many companies, when making new issues of capital, invite their members to take up the shares in the first instance, instead of offering to the public, and such offers usually entitle members to participate in the new capital proportionately to their existing holdings. Some companies have specially-framed articles to that effect. The first step in making a new issue is, of course, the resolution authorizing the issue. Articles may vest such power in the directors, otherwise a resolution in general meeting will be necessary. The resolution should state the amount of the issue, the class of share to be issued (and defining the rights thereof if a new class of shares is being issued), the date on which the offer is to be made, thus determining those members entitled to participate, the date the offer lapses, the terms upon which the shares are to be offered, i.e. at par or at a premium, and the rate at which they are to be offered to the members, for example, one share for every five shares held, or sometimes the offer is simply made *pro rata* to existing holdings in which case the rate is, of course, determined by the ratio of the new to the old capital. Sometimes a portion only of the new issue is offered to members, the balance being reserved for allotment to the staff, customers, and others. The resolution should also deal with the question as to how any balance of shares not taken up by members is to be dealt with—the resolution may provide that such balance be at the disposal of the directors on such terms as they shall think fit, or a price may be fixed, or the balance may be offered to members desiring to take up more shares, or the articles

may provide as to how the balance is to be dealt with. Fractions are usually ignored in these cases for the sake of simplicity and convenience. A specimen resolution will be found on page 329. Another point to be settled, although not part of the resolution, is whether provisional allotment letters shall be issued to members, allotting them the number of shares to which they are entitled conditionally on their accepting the allotment within a specified time, or whether applications to subscribe for the shares shall be invited from members, the allotment being made subsequently when the period fixed for making applications has expired. In the case of prosperous companies, when it is certain that almost the whole of the new capital will be taken up by members or their nominees, the former method is commonly adopted, and recommended, as it saves much routine work—it is only necessary to communicate with the members once, i.e. when the provisional allotment letters are issued, whereas if applications are invited, allotment letters must be issued subsequently to those members subscribing for shares, and the procedure outlined hereafter indicates other economies.

Procedure on Making Pro Rata Offers of Shares

1. The necessary resolution must be passed. If a general meeting is necessary this must be convened, and if an extraordinary or special resolution is required by the articles, a printed copy thereof must be filed with the Registrar within 15 days.

2. If the register of members is to be closed, due notice thereof must be advertised in compliance with Sect. 115. It is not strictly necessary to close the register of members—the offer may be to those members registered on a past date or on a future date, and in either case a list of members must be drawn up, and in the case of an offer to members registered on a future date registration of transfers can be temporarily

suspended in order to balance the register without the necessity of closing the register to inspection, or giving notice closing the transfer books, unless, of course, articles demand such a notice. For the convenience of the stock markets it is customary to close the transfer books in the proper manner (see Chapter IX).

3. All necessary documents must be drafted and printed. If subscriptions are to be invited, letters of application must be drafted, and these are usually accompanied by an explanatory circular to shareholders (specimen letter of application will be found on page 114). If provisional allotment letters are to be issued, these must be drafted and printed and in this case the provisional allotment letter may itself be framed to constitute a circular to shareholders, or it may be thought more desirable to issue a separate circular (specimen on page 70). Provisional allotment letters may be drawn in two ways: (*a*) with a form of acceptance annexed for signature by the shareholder (or his nominees where, as is usual, right of renunciation is given), and this acceptance is handed to the bankers along with the allotment letter and remittance for the allotment moneys. The form of acceptance is retained by the bankers and forwarded to the company—the allotment letter is receipted and returned to the shareholder (or his nominee). A specimen of such an allotment letter is given on page 115. (*b*) No form of acceptance is required to be signed—payment of the allotment moneys on or before the specified date being all that is necessary—the bank detaching a perforated slip showing the number of the allotment letter, amount, and date of payment, and forwarding it to the company. Share certificates must also be printed if the stock is exhausted or if a new class of shares is being issued.

4. A list of members must be prepared, showing names, addresses, descriptions, present holdings,

number of new shares to which each is entitled, and with columns to record renunciations, splitting of allotment letters, etc.

5. The company's bankers should be instructed to open a new account to which will be credited the moneys received in respect of the new shares. The number of the allotment letter should be shown in the pass book to facilitate subsequent checking.

6. If shareholders are to be permitted to renounce their rights in favour of others, a copy of the circular to the shareholders (or a copy of the allotment letter where this also constitutes the circular) must be filed with the Registrar before its issue to the shareholders, as the inclusion of the letter of renunciation makes the offer an indirect offer to the public, and therefore constitutes a prospectus and must be filed, although the provisions of Sect. 38 as to the contents of a prospectus would not apply (see Sect. 38 (5)).

7. Issue the forms to the shareholders registered on the date when the offer is to be made.

8. If the new shares are to be quoted on the Stock Exchange, the Stock Exchange requirements must be complied with.

9. Where the procedure of inviting applications is adopted—

(*a*) Collect the letters of application from the bankers and write up the application and allotment sheets.

(*b*) When the period specified for making applications has expired, convene a board meeting to make the allotment.

(*c*) Prepare letters of allotment, showing amounts payable on allotment, and call (if any) and forward them to members, preserving a record of the posting thereof.

Where provisional allotment letters have been issued a note should be made on the list of members of those who take up their allotments by signing the

form of acceptance and paying the allotment moneys, or by paying the allotment moneys only, according to whichever method is adopted as pointed out under head (3) above, and when the time limit fixed for acceptances has expired, the list should be balanced to ascertain the total number of shares applied for.

10. Within one month after allotment, make a return thereof in compliance with Sect. 52.

11. Make the necessary entries in the register of members and share ledger, and financial books.

12. If the whole amount due on the shares is payable on allotment, the preparation of the necessary new share certificates can be put in hand at once. If the amount due is payable by instalments, the recording of these must be attended to, and share certificates prepared and issued when all instalments are paid.

Splitting Allotment Letters, Dealing with Renunciations, etc.

If allottees are accorded the privilege of having their allotment letters split or divided, the procedure would be as follows. The allottee surrenders his allotment letter and states how he wishes it to be divided. The necessary split allotment letters are then prepared and issued to the allottee on payment of the prescribed fee (usually 1s. for each split letter issued). The allotment list should be amended to show the change, the original entry being ruled out and a note made that split letters have been issued, quoting the numbers thereof, and the new letters should be entered on the allotment list in the proper numerical sequence with a note indicating that they represent " splits from No. ——." The split letters should also be marked " split from No. ——."

The purpose of desiring " splits " is to enable the allottees to deal more effectively with their shares where members are allowed to renounce their allotments in

favour of others, in which case each letter of allotment has a letter of renunciation and acceptance annexed, and if a member has sold part of his allotment or wishes to have part registered in the name of his nominee, he applies for split letters to be issued in the requisite proportions. The allottee then signs the letter of renunciation annexed to the split letter representing the shares to be parted with, and hands the entire document to the purchaser or nominee who completes and signs the form of acceptance thereto annexed, and lodges the whole with the company (or its bankers), the letter of allotment being returned to him duly receipted and endorsed to indicate that the shares are vested in him, the letter of renunciation and acceptance being retained by the company. An allottee may in this manner dispose of his shares to several others, or dispose of some of them and retain the remainder himself. Where shares are renounced, the name of the original allottee in the allotment list should be struck out, and the name of the new allottee inserted and a reference to the allotment letter noted. The above procedure applies equally in the case of an offer inviting applications and giving members the right to subscribe for a certain number of shares where the offeree is given permission and wishes to divide his right to subscribe, the term "letter of application" being substituted for that of "allotment letter."

Underwriting

When a public company is being formed it is usual to arrange with some financial house to guarantee or underwrite the issue, that is to say, in consideration of either a fixed sum or a commission of so much per cent (maximum 10 per cent of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less—Sect. 53) the financial house or a body of underwriters guarantees or

underwrites the issue of shares. The financial house usually sub-underwrites either the whole or a portion of the issue at, of course, a somewhat lower rate of commission. In addition to these payments to secure the necessary capital of a company, there is usually a further small commission, known as "over-riding commission," which is paid to brokers and others as a consideration for finding persons to underwrite.

If a private company desires to pay underwriting commission it must deliver to the Registrar a statement in the prescribed form (Sect. 53 (1) (*c*) (ii)).

There is no standard form of underwriting letter, and the conditions of this document vary considerably, each issuing house having its own form.

When the whole of a share issue is taken up by the public, the underwriters are, of course, relieved wholly of their liability, and merely take their commission. It may so happen that the underwriters wish to have an allotment of the shares in any case, and underwriting agreements usually contain a clause for so much stock or so many shares to be taken "firm." It will thus be seen that the apportioning of underwriters' liability may sometimes be rather complicated.

Let us take a rather simple example to show apportionment: assume an issue of 50,000 shares, underwritten thus—A, 500; B, 2,000; C, 5,000; D, 17,500; E, 25,000. Of these, B wants 500 of his 2,000 "firm," and C 4,500 "firm" out of his 5,000. Public subscriptions amount to 25,000 shares. Each underwriter would get relief to the extent of 50 per cent and we may set the position out thus—

Shares underwritten . .		50,000
Applications from public . .	25,000	
Underwriters' firm applications .	5,000	30,000
Number of shares to be apportioned		20,000

We proceed to apportion as follows—

	Amount Underwritten	Taken Firm	Liability	Proportion	
A	500	—	500	5/450 = $\frac{1}{90}$	= 222
B	2,000	500	1,500	15/450 = $\frac{1}{30}$	= 667
C	5,000	4,500	500	5/450	= 222
D	17,500	—	17,500	175/450 = $\frac{7}{18}$	= 7,778
E	25,000	—	25,000	25/45 = $\frac{5}{9}$	= 11,111
	50,000	5,000	45,000		= 20,000

It will be noticed that, in the case of C, the amount that he takes "firm" in excess of what he would have otherwise been called upon to take, goes to swell the relief given to the other underwriters.

If it becomes necessary to allot shares to underwriters, such shares must be paid for in exactly the same way as are those taken by members of the public.

The legal requirements are set out in Section 53 of the Act. The payment of the commission must be authorized by the Articles, it must not exceed 10 per cent or the amount mentioned in the Articles, whichever is the less, it must be disclosed in the prospectus or statement in lieu, and there must also be disclosure in the balance sheet and annual return.

APPLICATION AND ALLOTMENTS SHEET

Issue of 50,000 Ordinary Shares of £1 each

LEFT-HAND RULING—

Application No	Allotment No.	Name. Surname.	Name. Christian.	Address.	Occupation	Shares Applied for.	Paid on Application @ 2/6. £	s.	d.	C.B. Fol.	Shares Allotted.	Total due on Application 2/6 & Allotment 5/- @ 7/6. £	s.	d
1	1	Dawes	Arthur	51 High St., Bathton	Chemist	100	12	10	–	1	100	37	10	–
2	2	Jones	David	25 Elm Rd., Exeton	Draper	200	25	–	–	1	200	75	–	–
3	3	Smith	Albert	60 Chase Rd., Winston	Merchant	750	93	15	–	1	500	187	10	–

RIGHT-HAND RULING—

Balance Due on Allotment. £	s.	d.	Date of Payment.	C.B. Fol.	Balance Refunded. £	s.	d.	Distinctive Numbers of Shares (if any). From	To	Reg. Mem. Fol.	Share Cert. No.	Remarks.
			19..									
25	–	–	Jan. 10	12	..	..	..	1	100	1	1	
50	–	–	„ 11	13	..	..	..	101	300	1	2	
93	15	–	„ 11	13	..	..	..	301	800	2	3	

Specimen Letter of Regret

EXEMPLARY COMPANY, LIMITED

No.....

99 Lune Street,
London, E.C.1
.....19.....

Name.....

Address.....

Dear Sir (Madam),

I am directed to inform you that the Directors regret that they are unable to allot you any shares in this company in response to your application dated.....day of..... 19..... Therefore I beg to hand you the attached cheque on the Company's bankers for £.....being amount paid by you on application.

Please sign the form of combined endorsement and receipt on the back of the cheque. No further acknowledgment of receipt is necessary.

Yours faithfully,
For and on behalf of Exemplary Co., Ltd.,
....*Secretary.*

Form of Endorsement and Receipt on Back of Cheque

RECEIVED of the Exemplary Co., Ltd., the sum specified on the face hereof, viz., £.....being amount paid by me on my application for.....shares in the said company.

Signature..... ... | *2d. Stamp if £2 or over* | ....

Date ..... | .....

Ruling of Transfer Postings Journal

Transfer No.	No. of Shares	TRANSFEREES			TRANSFERORS		
		Reg. No. 1	Reg. No. 2	Reg. No. 3	Reg. No. 1	Reg. No. 2	Reg. No. 3
1	100	—	100	—	—	—	100
2	75	—	—	75	—	75	—
3	50	50	—	—	—	—	50
	225	50	100	75	—	75	150

REGISTER OF MEMBERS AND SHARE LEDGER

Name ..... *Dawes, Arthur* ..... Date of Entry as a member ..... *7th Jan.*, 19.. .....

Address ..... *51 High Street Bathton* ..... Date of Ceasing to be member .....

Dr. **CASH ACCOUNT** *Cr.*

Date.	Particulars.	No.	Amount. £	s.	d.	Date.	Particulars.	C.B. Fol.	Amount. £	s.	d.
19.. *Jan. 7*	Application and Allotment .	*1*	*37*	*10*	–	19.. *Jan. 5*	Application . . .	*1*	*12*	*10*	–
						„ 10	Allotment . . .	*12*	*25*	–	–

SHARES DISPOSED OF

Date.	Transfer No.	Number of Shares.	Distinctive Numbers (if any).	Nominal Value.

SHARES ACQUIRED

Date.	Allot. or Transfer No.	No. of Shares.	Distinctive Numbers (if any). From	To	Nominal Value. £	s.	d.
19.. *Jan. 7*	*A1*	*100*	*1*	*100*	*100*	–	–

Ruling for Card Index for Share Register

NAME.....*Smith, James*.....

ADDRESS.....1 *Elm Street, Livertown*.....

REMARKS
Dividends to West Bank, Ltd., Markets Branch, Livertown.

ORDINARY SHARES					DEBENTURE STOCK				
Folio	Date	Bought	Sold	Balance	Folio	Date	Bought	Sold	Balance
4/102	1/6/19..	100	—	100	188	2/3/19..	£200	—	£200
	1/8/19..	—	50	50		3/7/19..	£200	—	£400
	2/9/19..	50	—	100					

Circular to Shareholders that Share Certificates are Ready for Delivery

THE EXEMPLARY COMPANY, LIMITED

99 Lune Street,
London, E.C.1

.....19.....

Dear Sir (Madam),

I beg to inform you that the share certificates for the recent issue of 200,000 Ordinary Shares will be ready for delivery in exchange for the Allotment Letters with bankers' receipts for calls annexed thereto, on and after 25th inst., between the hours of 10 and 2 (Saturdays, 10 to 12), at the above address.

If you so desire, the share certificate will be sent to you by post, provided you complete and sign form A annexed hereto, and return it to me accompanied by the Allotment Letter, etc., or if you wish the certificate to be handed to some other person on your behalf, form B should be completed and signed, and handed together with the Allotment Letter and bankers' receipts, to your nominee, who on lodging them with the Company, will receive the Share Certificate.

Yours faithfully,
For and on behalf of Exemplary Co., Ltd.,
H. WILLING, *Assistant Secretary*

..... Perforated .....

FORM " A "

To the Secretary, Exemplary Co., Ltd.

Dear Sir,

Please forward the share certificate for the.....Ordinary Shares registered in my/our name(s) to me/us by post, at my/our risk. I/we enclose the Letter of Allotment with Bankers' Receipts attached.

Signature .....
Address .....

Date.....

..... Perforated .....

FORM " B "

To the Secretary, Exemplary Co., Ltd.

Dear Sir,

Please deliver the Share Certificate for the.....Ordinary Shares registered in my/our name(s) to.....
of.....who will hand you the Letter of Allotment and Bankers' Receipts in exchange, and whose receipt for the share certificate shall be your sufficient discharge therefor.

Signature .....
Address.....

Date.....

Offer of new shares, to accompany circular of the Company.
Size 13 in. by 8¼in., the receipt being exactly a quarter of the whole form.

IMPERIAL TRUST, LIMITED.

AUTHORISED CAPITAL £ , DIVIDED INTO SHARES OF £ EACH, OF WHICH SHARES HAVE BEEN ISSUED AND ARE FULLY PAID UP.

FURTHER ISSUE OF SHARES OF £ EACH

At Par.
At a Premium of per Share.

983, CORNHILL,
LONDON, E.C.3.,

.....19..

To the SHAREHOLDER whose name and address are written in the bordered space on the Reverse of this Letter.

SIR (or MADAM),

With reference to our Circular of this date, your present holding and the extent of your right to participate in the above-mentioned issue are specified on the Reverse of this Letter, opposite your name and address.

If you intend to take up the Shares to which you are entitled, will you please fill up and sign the Form of Acceptance and forward the **entire** sheet with the necessary remittance, to the Company's Bankers, the **Bank of London, Limited, 83, Lombard Street, London, E.C.,** to be received by them **not later than**

If you desire to transfer your rights, you must sign the " Form of Renunciation and Nomination," as set out on the Reverse of this Letter, and your Nominee(s), who must be of full age, must (instead of you) then fill up and sign the Acceptance Form and forward the **entire** sheet with the necessary remittance **as directed in the preceding paragraph.**

Should you elect to divide your rights, the **entire** Form must be deposited at the Company's Office to be cancelled and exchanged for Split Forms.

If the Conditions as to Acceptance and Payment are not duly observed, your right to participate in the above-mentioned Issue will be absolutely forfeited (and the Directors will deal with the Shares for the benefit of the Company at their discretion).

Yours faithfully,

Secretary.

.....

A Share Certificate in the name of the Acceptor will be ready on ; it will be exchanged on or after that date at the Company's Office, 983, Cornhill, in exchange for this Receipt.

IMPERIAL TRUST, LIMITED.

SEE OVER.

Space for Name and Address of Shareholder, to be filled in by the Company.

No.....

Present holding .....Shares

Entitled to a *pro rata* allotment of....Shares.

Joint Shareholders (if any) Names only. .....

.....

FORM OF RENUNCIATION AND NOMINATION, to be signed by the Shareholder only if the Rights are renounced.

To the Directors of the IMPERIAL TRUST, LIMITED.

I/we hereby renounce my/our right to the above-mentioned new Shares and nominate

Name (in full), Address and Description of Nominee. (If lady, state whether spinster, wife or widow.)

.....

.....

.....

to have all the benefits of the offer contained in your Circular dated

(*Signature of Shareholder*)* .....

Date.....19..

* Instructions as to Signatures of Joint Holders.

FORM OF ACCEPTANCE to be signed by the Shareholder or Nominee.

To the Directors of the IMPERIAL TRUST, LIMITED.

Having paid to your Bankers the sum of £.....being the First Instalment at the rate of.....per Share in respect of.....Shares referred to in the within letter, I/we the above-mentioned Shareholder(s)/Nominee(s) hereby accept your offer of the said Shares pursuant to the Memorandum and Articles of Association of the Company, and subject to the terms and conditions of your Circular of.....and I/we authorize you to place my/our name(s) on the Register of Members in respect of the said Shares.

(*Signature of Acceptor*)*.....

.....

.....

Date.....19..

Cheques should be made payable to BEARER and crossed NOT NEGOTIABLE.

* Instructions as to Signatures of Joint Acceptors.

If altered from "Order" to "Bearer" the alteration should be signed by the Drawer.

The Acceptor is particularly requested to write clearly, within the bordered space below, his or her name, and the full address to which the receipt should be sent. For Joint Accounts the first name should be written within, and the other or others below, the bordered space.

IMPERIAL TRUST, LIMITED.

Further Issue of Shares of £ each at No.....

Name of First or of Sole Acceptor. .....

Address .....

.....

Joint Acceptors (if any) Names only. .....

.....

Received for account of the Imperial Trust, Limited, from the person(s) whose name(s) is/are written in the margin, the undermentioned amount being the First Instalment at the rate of per share, payable on Acceptance of Shares of above-mentioned issue.

For **BANK OF LONDON, LIMITED.**

....

Cashier.

£ .....19..

For instructions as to exchange of this Receipt for Certificate see reverse.

Specimen Provisional (or Conditional) Allotment Letter

THE EXEMPLARY COMPANY, LIMITED

Issue of.....shares of £.....each at.....per share (at par)

ALLOTMENT LETTER

Name
Address

Dear Sir (Madam),

In accordance with the terms of the Company's circular dated.....day of.....19....., you, as the registered holder on the.....day of.....19....., of..... Ordinary Shares in this Company, are entitled to have allotted to you.....new Ordinary Shares at the price of..... per share, payable as follows—

.....s. per share on.....day of..... .....19.....
.....s. per share on.....day of.....19.....
Balance of .....s. per share on.....day of.....19.....

The form of Acceptance marked " 1 " annexed hereto must be completed and signed by you, and lodged, together with this Allotment Letter and a remittance for £....., with the Company's bankers, West Bank, Ltd., 41 Bradd Street, Livertown, or any branch of the bank, on or before the said .....day of..... .,19....., otherwise your right to this allotment will lapse. The subsequent instalments, the amounts whereof are shown below, must also be paid to the said Bank, on or before their respective due dates, and this letter presented at the time of payment. After each payment is made the Allotment Letter will be returned to you duly receipted.

As stated in the circular, you may renounce this Allotment in favour of any other person, provided you complete and sign the form of Renunciation marked " 2 " annexed hereto, and the person in whose favour you renounce completes and signs the form of Acceptance, and lodges the forms, together with this Allotment Letter and a remittance for the amount stated above, with the Company's bankers on or before the said .....day of.....19..... If you wish to renounce a portion of the shares offered, divided Allotment Letters will be issued, provided application therefor is made on or before the.....day of.....19....., and this Allotment Letter returned. This Allotment Letter will only be divided once. The charge for each divided Allotment Letter issued is 1s.

Cheques should be drawn payable to " West Bank, Ltd. or Bearer," and crossed " Not Negotiable." Any alteration from " Order " to " Bearer " must be initialed by the drawer of the cheque.

BY ORDER OF THE BOARD,
.....*Secretary*.

RECEIPT FOR ALLOTMENT MONEYS

RECEIVED £.....being the amount payable on acceptance of this allotment.

For West Bank, Ltd.....*Cashier.*

Date.....

(2) EXEMPLARY CO., LTD. (2) Received £.....being amount of instalment due on..... For West Bank, Ltd. Date.....	(2) EXEMPLARY CO., LTD. (2) No.....Ledger Fo..... £.....Instalment due on..... For West Bank, Ltd..... Date.....
(1) EXEMPLARY CO., LTD. (1) Received £.....being amount of instalment due on..... For West Bank, Ltd..... Date.....	(1) EXEMPLARY CO., LTD. (1) No.....Ledger Fo..... £.....Instalment due on..... For West Bank, Ltd. Date.....

THE EXEMPLARY COMPANY, LIMITED

Name No.....

Address

1. FORM OF ACCEPTANCE (to be signed by the shareholder(s) or person(s) in whose favour renunciation is made).

To the Directors, Exemplary Co., Ltd.

Having paid to your bankers the sum of £....., being the first instalment at the rate of .....s. per share on the..... shares to which I/we are entitled in accordance with the terms of the Company's circular letter dated.....day of..... 19....., I/we, the above-mentioned shareholder(s) nominee(s) hereby accept the allotment of the said shares, pursuant to the Memorandum and Articles of Association of the Company and subject to the terms and conditions of the said circular, and authorize you to place my/our name(s) on the Register of Members in respect of the said shares. Dated this..... day of.....19.....

Name(s) in full of shareholder(s) or nominee(s)			
Signatures			
Addresses			
Descriptions			

(A lady should state whether Married, Widow, or Spinster.)

2. FORM OF RENUNCIATION (to be signed by shareholder(s) only if right to allotment is renounced).

To the Directors, Exemplary Co., Ltd.

I/we hereby renounce my/our right to the above-mentioned allotment of shares and nominate the above-mentioned person(s)

to have all the benefits of the offer contained in your circular letter dated.....day of.....19.....

Name(s) in full . . .	.....	.....	.....
Addresses	.....	.....	.....
	.....	.....	.....

Signature(s) of Shareholder(s) ....

....

....

Date ....

NOTE. The names, addresses, and descriptions of the person or persons in whose favour renunciation is made must also be written in the spaces provided on the back of the Allotment Letter.

Allotment Letter with receipts for amount due on allotment and for payment in full. Size 13 in. by 8½ in., the dockets being exactly a fourth of the total length.

ALLOTMENT LETTER.

Space for Name and Address of Allottee, to be filled in by the Company.

No.....

IMPERIAL TRUST, LIMITED,
923, CORNHILL,
LONDON, E.C.,

....., 19..

ISSUE OF SHARES OF

SIR OR MADAM,

In response to your application, you have been allotted ____ Shares of £ ____ each £ Stock *or Bonds* of the IMPERIAL TRUST, LIMITED.

The amount payable on Application and Allotment (viz., ____ per Share / ____ per cent.) is £

You have already paid . . . . . £

Making amount **due from** you on Allotment . . . . . £

or

Making amount **due to** you, for which a cheque is enclosed . . . £

Payment of the amount due from you should be made on or before the as directed below.

(Further particulars as to Payment in Full, Instalments and other matters can be inserted here as required.)

By Order of the Board,

Secretary.

This Form, with remittance, must be forwarded **entire** to the Company's Bankers, the **Bank of London, Limited, 83, Lombard Street, London, E.C.,** who will return it duly receipted. It should then be carefully preserved to be exchanged for the relative Certificate (*or Scrip*) in due course. Notice of such exchange will be given by the Company (by advertisement).

Cheques should be made payable to BEARER and crossed NOT NEGOTIABLE.

If altered from "Order" to "Bearer" the alteration should be signed by the Drawer.

Received *for account of the* IMPERIAL TRUST, LIMITED, *payment in full on the above-mentioned Shares.*

Stock.

For **BANK OF LONDON, LIMITED**

.....
Cashier.

Date.....19..

PAYMENT IN FULL. *No* .....

IMPERIAL TRUST, LIMITED.

.....

£.. .....

Date.....19..

Received *for account of the* IMPERIAL TRUST, LIMITED, *the amount due on allotment.*

For **BANK OF LONDON, LIMITED,**

.....
Cashier.

Date.....19 .

ALLOTMENT. *No*.....

IMPERIAL TRUST, LIMITED

.. ..

.. ..

Date.. . .. .19 .

CHAPTER VII

CALLS AND FORFEITURE

ARTICLES usually empower the directors to make calls of such an amount and at such times as they think advisable, although there are sometimes restrictions, for example, that no call shall exceed one-fourth of the nominal value of the shares, or be payable less than one month from the last call, and that members shall have fourteen days' notice (Table A, Clause 15). Calls must be made strictly in accordance with the provisions of the articles, otherwise the call may be invalid. The resolution making the call must be passed at a properly constituted board meeting (although if the meeting was not properly constituted, the resolution could be confirmed at a subsequent meeting properly constituted), and the call resolution *must* state the date of payment of the call, otherwise it is invalid (*Cawley & Co.* (1889), *Johnson* v. *Lyttle's Iron Agency* (1877)). A specimen resolution making a call is given on page 328. Articles sometimes provide that the call shall be deemed to be due and owing from the making of the resolution, although it is payable only on a future date, but in the absence of such a provision it seems that the call is due only when the members are notified of the resolution (*Shaw* v. *Rowley* (1847)).

Procedure on Making a Call

The secretary should draft, and have printed, sufficient call letters (specimen on page 123) for issuing on the call resolution being passed. The requirements of the articles as to length of notice of call, etc., should be complied with in drafting the call letter. Arrangements should be made with the company's bankers to receive the call moneys, and to

credit them to a special call account instead of to the general account. Some companies adopt the practice of collecting the call moneys direct themselves, but as this would involve considerable work in the transfer department, and the expense of sending receipts by post to those members who do not attend personally to pay the call, and also because it is not so convenient for shareholders, it is not recommended.

When the resolution is passed, the call letters should be issued immediately to all registered members, and for this purpose all transfers in hand prior to the passing of the resolution should be registered, and, if for any reason registration must be delayed, the transferees should be notified that the call has been made. It was held in *Cawley & Co.* (1889), that where directors had power to refuse registration " if the member (transferor) was indebted to the company," the time for ascertaining whether such state of indebtedness exists was " when the transfer was properly presented for registration," and therefore if a call was made *after* a transfer had been presented, the transfer could not be refused. It is usual to refuse to register a transfer of partly paid shares after a call has been made, unless the call is first paid, and most probably the articles would empower the directors to refuse to register transfers of partly paid shares. It may be thought desirable to close the transfer books until after the last day appointed for payment of the call, and such a course would greatly facilitate the collection of the call.

A list of members should be prepared on the lines of the specimen shown later. Each member should be allotted a consecutive number which should appear on the call letter and the annexed receipt. The call letters should be made out from the share register, and the call list could be written up at the same time —one clerk calling out the details from the share

register and debiting each member with the amount due from him, another clerk writing out the call letters, and a third clerk writing up the call list. The amounts due from members, as shown by the call list, should then be totalled, and checked with the total due in respect of the call, to ensure that there are no

Specimen Call List

Second Call of 5/– per share on Ordinary Shares due on..... day of.....19...

No.	Name	Address	No. of Shares	Sh. R. Folio	Amount Due	Date Paid	Amount Paid	Remarks

errors. The call letters are then issued in accordance with the regulations of the articles for the giving of notices to members, and a record of the posting preserved.

As the calls are paid to the bankers, the bankers receipt the call letter in the space provided, and detach from the foot of the call letter the perforated slip showing the details of the payment, and credit the call-account pass book accordingly. The slips are then forwarded to the company, and the secretary will mark off the call list, and post the payments to the share register, and check the call-account pass book. On the last day appointed for payment of calls, those members in arrear will be served with reminders (and informed that their shares are liable to forfeiture if the articles so provide).

Subsequently, the share certificates will be called in for endorsement to show that the call has been paid,

or alternatively, new certificates may be issued. A suitable form of endorsement is—

THE EXEMPLARY COMPANY, LIMITED

THIS IS TO CERTIFY that the.....Call of.....per share, due on the..... day of.....making the shares fully paid (paid up to the extent of.....per share) has been duly paid.

For and on behalf of The Exemplary Co., Ltd.,
....*Secretary*.

Date.....19..

The endorsed certificates or new certificates will be issued to members only on their surrendering their call receipts, which when surrendered are cancelled and filed in numerical order.

Instalments Payable in Accordance with Prospectus

Unless the articles or prospectus so provide, instalments stated in the prospectus to become due and payable on fixed dates are not deemed to be calls so as to entitle the company to exercise any rights conferred by the articles against members in arrear with calls (*Crosskey* v. *Bank of Wales* (1863), and see Table A, clauses 19 and 39). It is not necessary to send notices to allottees reminding them of the due dates of the instalments, because they are bound by contract to pay the instalments on the dates specified, but reminders are usually sent. Sometimes the allotment letters are printed with forms of receipt annexed for collection of the instalments; alternatively, separate notices, each having a form of receipt annexed, are issued just prior to the due dates of each instalment, and this course is more convenient if there is a considerable volume of dealings with the shares immediately after allotment. There will be no necessity to prepare a list of members, and the instalment notices can be prepared direct from the share register, each account being at the same time debited with the amount due

in respect of the instalment. Transfers should not be passed after the due date of the instalment unless this has been paid. When share certificates are issued subsequently, the allotment letters and instalment receipts must be surrendered in exchange for the certificates.

The form of an " instalment reminder " will follow the same lines as the following specimen call letter, except that the first paragraph of the reminder will be worded—

In accordance with the terms of a Prospectus dated..... day of..... .. ..19.., the..... .....instalment of..... ..... shillings per share on the Ordinary Shares of this Company becomes due for payment on the... ....day of..... .. ..19.. next, making the shares paid-up to the extent of . .. ...per share (fully paid).

Specimen Call Letter

THE EXEMPLARY COMPANY, LIMITED

99 Lune Street,
London, E.C.1.

....19 .....

Name

Address

Dear Sir (Madam),

I have to inform you that the directors by a resolution of the Board dated.....day of.....19.., have made a call of.....per share on the .....Shares of the Company, making these shares (fully paid) (paid up to the extent of .....per share).

The amount due from you in respect of the.....shares registered in your name is £....., which amount must be sent on or before.....next, together with this entire notice, to the Company's bankers, West Bank, Ltd., 41 Oldbury, E.C.3, or to any branch of the Bank, which will return the notice duly receipted.

This Call Letter, when duly receipted, should be carefully preserved, as it will have to be surrendered subsequently when the share certificates are issued, and a further communication in this connection will be sent to you in due course.

By Order of the Board,
G. SMART, *Secretary*.

No.....

RECEIVED for the account of the Exemplary Company, Limited, the amount of the above-mentioned call as stated.

For West Bank, Ltd.

(2d. stamp if £2 or over)

.....*Cashier.*

Date.....

PERFORATED

THE EXEMPLARY COMPANY, LIMITED

No.....

.....Call of .....per share on Ordinary Shares, due.....19.....

£..... s..... d. Date paid.....

For West Bank, Ltd.

Forfeiture of Shares

Shares can only be forfeited for non-payment of calls (*Hopkinson* v. *Mortimer Harley & Co.* (1917)), and the articles must authorize forfeiture, otherwise sanction of the Court is necessary (*Clark* v. *Hart* (1858)), or the articles must be altered to permit forfeiture. The requirements of the articles as to forfeiture must be strictly complied with, otherwise the forfeiture will be invalid (*Johnson* v. *Lyttle's Iron Agency* (1877)). If it is sought to forfeit shares for non-payment of an amount becoming payable on a fixed date in accordance with the terms of the prospectus, the articles must provide that the regulations as to forfeiture shall apply (*Cross-key* v. *Bank of Wales* (1863)).

The procedure on forfeiture depends on the articles, and the following is an outline of the procedure based on Table A, Clauses 33 *et seq*—

1. The Board pass a resolution that a notice be given to the shareholder in default, requiring payment of the call with interest on or before a certain date (being not less than 14 days from the date of service of the notice) and informing him that otherwise the shares will be forfeited. This notice should be served by registered letter post, and a duplicate of the notice retained endorsed with a memorandum of posting by the clerk who posts the letter, and the registration receipt should be annexed.

2. If the shareholder fails to comply with the notice, the shares may be forfeited, and if that course is decided on, the

directors pass a resolution forfeiting the shares. A specimen resolution is given in Chapter XV. The resolution must be validly passed at a properly constituted meeting. A copy of the resolution may be sent to the member, but Table A does not so require.

3. The Share Account of the defaulting member is then closed by a transfer of his holding to a " Forfeited Shares Account," and the appropriate entries made in the financial books (and transfer Posting Journal if the Share Registers are kept on the self-balancing principle).

A member whose shares are forfeited is liable to be put upon the " B " list of members if liquidation ensues within 12 months after forfeiture, but the company has no claim upon him for the calls in respect of which the forfeiture was made unless the articles so provide (*Stocken's Case* (1868)). If the articles do so provide, he may be sued as an ordinary debtor at any time, unless right of action becomes statute barred (*Ladies' Dress Association* v. *Pullbrook* (1900)). Articles frequently provide that members in arrear with calls shall be precluded from attending and voting at meetings, and when notices are being issued or proxies scrutinized, this fact should be borne in mind. (See Table A, Clause 65.)

Reissue of Forfeited Shares

On forfeiture, shares become the property of the company, and can be sold for whatever they will fetch, provided that the company receives altogether from the ex-shareholder and the purchaser the same amount as is paid up in respect of other shares of the same class ; for example, if a £1 share, 15s. paid up, is forfeited for non-payment of the final call of 5s. per share, the share may be issued to a purchaser on his paying at least the final call of 5s. per share, or whatever greater amount the company can obtain. In other words, forfeited shares may be sold at a discount not exceeding the amount paid up at the time of the sale (*Morrison* v. *Trustees Corporation* (1898)). If the amount received

from the ex-shareholder and the purchaser does not make the shares paid up to the same extent as other shares of the same class, the purchaser can be called upon to pay the unpaid balance even though the company purported to sell the shares as fully paid up (*New Balkis* v. *Randt Gold Mining Co.* (1904)), but if any calls are subsequently recovered from the ex-shareholder, the purchaser is entitled to be credited therewith (*Randt Gold Mining Co.* (1904)).

Forfeiture may be annulled, with the consent of the ex-shareholder, if the articles so permit.

The procedure on reissue of forfeited shares will, of course, depend on the articles. In the unlikely event of the articles omitting to prescribe procedure on reissue of forfeited shares, it is submitted that the procedure laid down by Table A (of which the following is an outline) could be safely followed without the necessity of adding appropriate clauses to the articles.

1. A director or the secretary makes a statutory declaration setting forth details of the shares, and the date on which they were forfeited, and declaring that the shares were duly forfeited on that date.

2. In order to vest the shares in the purchaser, the company may execute a transfer to him, which is duly registered, and a share certificate issued to the purchaser. An appropriate form of resolution on sale of forfeited shares is as follows—

> " THAT the 100 Ordinary Shares of £1 each, 15s. per share paid up, numbered 1515 to 1614 (inclusive) having been duly forfeited by resolution of the Board dated 15th March, 19.., be reissued as fully paid to Mr. K. Keen, of Sutton, Surrey, at 10s. per share, representing the unpaid Final Call of 5s. per share and 5s. per share premium, AND THAT the Seal be affixed to the transfer of the said shares to the said K. Keen, AND THAT the said transfer be and is hereby passed for registration.
>
> " AND THAT a certificate for the shares in the name of K. Keen be duly sealed and signed."

3. The shares are then transferred from the " Forfeited Shares Account " and registered in the name of the purchaser, and a share certificate issued to him. The appropriate entries should also be made in the financial books.

CHAPTER VIII

TRANSFER AND TRANSMISSION

THE procedure on transfer and transmission of shares is intricate, and demands considerable care and skill on its execution—mistakes and inaccuracies may result in considerable loss to the company, its shareholders, and others concerned. All students, company secretaries, and registrars, should, therefore, give the closest attention to this subject.

Many companies find that the magnitude of the transfer work justifies the formation of a " Transfer Department," under the control of an officer styled the " Registrar," who is responsible as regards all matters concerning dealings with shares, stock, debentures, etc., issued by the company.

The legal principles involved, and the procedure and organization necessary, in connection with all the modes by which shares and other interests in registered companies may change hands, as also many incidental matters which fall within the sphere of the Transfer Department, are dealt with in detail in this and the succeeding chapter.

The Legal Effect of a Transfer

A transfer passes to the transferee all rights and liabilities regarding the shares, etc., transferred as from the date of the sale, but in the absence of agreement to the contrary, does not entitle him to the benefit of dividends, bonus allotments, pre-emption rights, etc., accruing before the sale. nor does it make him liable to pay calls owing.

Black v. *Homersham* (1879). Shares were sold on 1st August, completion of the sale was to take place on 29th August. The

company declared a dividend on 24th August. HELD the dividend belonged to the transferee.

Stewart v. *Lupton* (1874). A company made an offer of shares to existing shareholders. A shareholder had sold his holding, and the transfer had been lodged but not registered, with the consequence that the offer of new shares was made to the transferor, whereupon the transferee claimed that he was entitled to the right to subscribe for the new shares because the transfer took place before the date when the new shares were offered by the company, and the Court agreed with him.

These examples show the legal effect of a transfer as between the parties to it. The position is not the same from the point of view of the company. All transfers must be passed by the board of directors (or its agents in that behalf, for example, the transfers committee) before a transferee can be registered as a member, and the date when the transfer is so passed, and not the date of the transfer, should be entered in the register of members as the date on which the transferee became entitled to the shares. The share certificate should also bear this date. If a secretary or other officer of the company without authority enters a transferee as member, the entry is of no effect (*Chida Mines* v. *Anderson* (1905)), and if directors pass a transfer in error and thereupon entries are made in the register of members, the entries so made are of no effect, and can be struck out (*Bank of Hindustan, etc., Anderson's case* (1869)). A director cannot, by wilfully refusing to attend board meetings, prevent the registration of a transfer. The Court will compel registration (*Copal Varnish Co.* (1917)). Therefore, until the transferee has been registered as a member, the registered holder is the only person who must be recognized by the company as being the owner of the shares. The fact that the company or its officers may know that the shares have been transferred is immaterial. Until the transferee is registered, dividends must be paid to the transferor (even though the shares were sold " cum

div."), rights to allotments of bonus shares or to subscribe for new issues vest in the transferor (even though the shares were sold " cum rights "), liability to pay calls rests upon the transferor—because in all these cases it is he and not the transferee who is the member of the company and who enjoys the rights and incurs the liabilities of membership. According to the terms of his contract with the transferor, the transferee may or may not be entitled to the dividends, etc., or be liable to pay any calls, but this is not the concern of the company—the company can only deal with its member, and must leave the parties to settle their respective rights and obligations between themselves.

It must, however, be remembered that the register of members is only prima facie evidence of membership, and, of course, if the transferee *should* have been registered as a member, but owing to some neglect or omission on the part of the company *was not* so registered, the position would be different, and he could call upon the company to recognize his rights.

Directors are by custom allowed a reasonable time within which to make inquiries before passing and registering transfers; therefore they must not unduly delay to register, or, where they have power, refuse to register a transfer, otherwise there may be a ground for an action for damages (*Ottos Kopje Diamond Mines* (1893)).

The Companies Act, 1948, provides—

Sect. 73. The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.

Sect. 74. Each share in a company having a share capital shall be distinguished by its appropriate number: Provided that, if at any time all the issued shares in a company, or all the issued shares therein of a particular class, are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains

fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

Sect. 75. Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company:

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

Sect. 76. A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

Sect. 77. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

Sect. 78. (1) If a company refuses to register a transfer of any shares or debentures, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

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

Sect. 80. (1) Every company shall, within two months after the allotment of any of its shares, debentures or debenture stock and within two months after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

The expression " transfer " for the purpose of this subsection means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

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

(3) If any company on whom a notice has been served requiring the company to make good any default in complying

with the provisions of subsection (1) of this section fails to make good the default within ten days after the service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

Sect 81. A certificate, under the common seal of the company, specifying any share sheld by any member, shall be prima facie evidence of the title of the member to the shares.

Transfers cannot be registered after commencement of liquidation except in the case of (*a*) voluntary liquidation, when they are transfers to or with the sanction of the liquidator (Sect. 282), (*b*) compulsory or supervised liquidation, unless the Court orders otherwise (Sect. 227).

Liability to be placed on the " B " list of members in the event of liquidation ceases twelve months after the date of passing of the transfer, and not after the date of the transfer.

The Form of Transfer

The articles provide all regulations concerning transfers. Sect. 73 of the Companies Act, 1948, provides that shares shall be transferable in the manner authorized by the articles.

A specimen of the common form of transfer is given on the next page. (For Forms D.1 and D.2 see pages 200, 203.)

Transfers need not be by deed unless articles so prescribe. If articles provide that transfers shall be in the " usual or common form," then transfers must be by deed, as the common form of transfer is one under seal. Table A, clause 23, permits an instrument under hand, but the Stock Exchange Quotation Regulations require the common form of transfer to be used.

COMMON FORM OF TRANSFER

I . . . . . .

. . ..

... .

in consideration of the sum of. .... [See Note at foot]

. . ..

paid by. .. ..

....

. ...

hereinafter called the said Transferee

Do hereby bargain, sell, assign, and transfer to the said Transferee—

....

. ...

. . .. of and in the undertaking called the

. . ..

To Hold unto the said Transferee . .....Executors, Administrators, and Assigns subject to the several conditions on which . ..... held the same immediately before the execution hereof; and . .. ..the said Transferee do hereby agree to accept and take the said ..... subject to the conditions aforesaid.

As Witness our Hands and Seals, this . . . . . day of . . .. in the year of Our Lord, One Thousand Nine Hundred and

Signed Sealed and Delivered by the above-named . ... in the presence of

Wit-ness's { Signature* .... Address .... Occupation .. ..

.... SEAL

Signed Sealed and Delivered by the above-named .... in the presence of

Wit-ness's { Signature* . .. . . Address .... Occupation . . . . .

.... SEAL

Signed Sealed and Delivered by the above-named .... in the presence of

Wit-ness's { Signature* .... Address .... Occupation ....

. . .. . . SEAL

NOTE.—The consideration money set forth in a transfer may differ from that which the first Seller will receive, owing to sub-sales by the original Buyer; the Stamp Act requires that in such cases the Consideration money paid by the sub-Purchaser shall be the one inserted in the Deed, as regulating the *ad valorem* Duty; the following is the Clause in question—

"Where a Person, having contracted for the purchase of any property, but not having obtained a Conveyance thereof, contracts to sell the same to any other Person, and the property is, in consequence, conveyed immediately to the sub-Purchaser, the Conveyance is to be charged with *ad valorem* Duty in respect of the Consideration moving from the sub-Purchaser."—[54 & 55 Vict., cap 39 (1891), Section 58, sub-Section 4.]

* When a Transfer is executed out of Great Britain, it is recommended that the Signatures be attested by H.M. Consul or Vice-Consul, a Clergyman, Magistrate, Notary Public, or by some other Person holding a public position—as most Companies refuse to recognize Signatures not so attested. When a Witness is a Female she must state whether she is a Spinster, Wife, or Widow; and if a Wife she must give her husband's Name, Address and Quality, Profession or Occupation. The Date must be inserted in Words, and not in Figures.

A Husband must not witness the signature of his Wife, or vice-versa.

Restrictions on Transfer

Unless the articles restrict the right of transfer, the right is an absolute right. Private companies are by law bound to restrict the free transfer of their shares, and their articles usually require that shares proposed to be transferred must be first offered to existing members at a certain price, or at a price to be ascertained in manner prescribed, for example, by the auditors.

Where a quotation on the Stock Exchange is sought, it is a condition precedent to the granting of a quotation that there shall be no restriction on the transfer of fully paid shares.

Where directors have the right to decline transfers, the right must be exercised *bona fide*, and by a valid resolution of the board. The fact that the directors between themselves cannot agree to pass the transfer is not sufficient grounds for refusing to register it (*re Hackney Pavilion* (1923)). The grounds of refusal need not be disclosed unless the articles so require.

If directors refuse to pass a transfer, the secretary should write to the transferee, informing him of the directors' refusal (and if authorized by the board, stating the grounds of refusal), and returning the transfer and share certificate. If the certificate had, as is usual, been cancelled on presentation of the transfer, a new certificate in the name of the *transferor* would be required.

Stamp Duties on Transfers

Secretaries and others concerned with the registering of transfers may incur penalties under the Stamp Act, 1891, if they register transfers which are not correctly stamped (see Chapter I). A sound knowledge of the stamp duties payable on transfers is therefore indispensable. The stamp duty on a transfer on sale, or operating as a voluntary disposition *inter vivos*, is as follows.

Where the value of the securities transferred—

1. Does not exceed £25—for every £5 or part thereof, 2s.
2. Exceeds £25 but does not exceed £300—for every £25 or part thereof, 10s.
3. Exceeds £300—for every £50 or part thereof, £1.

Observe that the stamp duty is not upon the consideration stated in the transfer, but upon the market value of the securities transferred. In most cases, however, the consideration stated is the true value of the securities, but it may happen that a low fictitious consideration may be stated with the object of avoiding stamp duty. The officials at the Inland Revenue stamp offices assess the duty according to the consideration stated in the transfer, as it is obviously impossible for them to have at hand information as to the market value of all securities that are transferred; but a secretary should know the current value of the company's shares, and should reject a transfer on sale the consideration for which is less than the real value of the shares transferred.

In the following cases the transfer is liable only to a nominal stamp duty of 10s., *provided that the transfer bears a certificate signed by both parties, stating within which case the transfer falls.* In these cases it is customary to insert a small fictitious consideration, 5s. or 10s., and accordingly the transfer is said to be for a nominal consideration.

(*a*) Transfers vesting the property in trustees on the appointment of a new trustee of a pre-existing trust, or on the retirement of a trustee.

(*b*) Transfers, where no beneficial interest in the property passes, (i) to a mere nominee of the transferor, (ii) from a mere nominee of the transferee, (iii) from one nominee to another nominee of the same beneficial owner.

(*c*) Transfers by way of security for a loan or re-transfer to the original transferor on repayment of a loan.

(*d*) Transfers to a residuary legatee of stock, etc., forming part of the residue divisible under a will.

(*e*) Transfers to a beneficiary under a will of a specific legacy of stock, etc. (*Note.*—Transfers by executors in discharge, or

partial discharge, of a pecuniary legacy are chargeable with *ad valorem* duty on the amount of the legacy so discharged.)

(*f*) Transfers of stock, etc., forming part of an intestate's estate to the person entitled to it.

(*g*) Transfers to a beneficiary under a settlement on distribution of the trust funds of stock, etc., forming the share or part of the share of those funds to which the beneficiary is entitled in accordance with the terms of the settlement.

(*h*) Transfers on the occasion of a marriage to trustees of stocks, etc., to be held on the terms of a settlement made in consideration of marriage.

(*i*) Transfers by the liquidator of a company of stocks, etc., forming part of the assets of the company to the persons who were shareholders, in satisfaction of their rights on a winding-up.

(As regards cases (*b*) and (*c*) in addition to the certificate referred to, the facts of the transaction must be stated.)

It must be remembered that a sale or transfer of shares valued at more than £20, but not more than £25, would only require an *ad valorem* stamp duty of 10s., and therefore it does not follow that all transfers stamped 10s. are transfers for a nominal consideration. Furthermore, in the case of a transfer for a nominal consideration, if the *ad valorem* duty on the value of the shares, etc., is less than 10s., then the *ad valorem* duty would be impressed, and in such circumstances it is probable that the transfer would not be drawn for a nominal consideration, the full value of the shares being stated, and thus dispensing with the necessity for a certificate as to the nature of the transaction.

The following points should also be known—

1. Under Sect. 42 of the Finance Act, 1920, where any marketable security is transferred *to* a stock-jobber or his nominee in the ordinary course of his business, the maximum duty shall be 10s., provided that the transfer bears in addition an impressed supplementary stamp denoting that it has been stamped under the provisions of the section. If any part of the securities transferred remains unsold after the expiration

of two months from the date of the transfer, the stock-jobber must pay to the Commissioners of Inland Revenue, on the value thereof, the difference between the *ad valorem* duty and the nominal duty. It may be added that it is not the concern of the secretary to see that this duty is accounted for.

2. In the case of transfers for a nominal consideration to or from a bank, the facts of the transaction need not be disclosed for the purpose of ascertaining the correctness of the stamp duty, but the secretary should require a certificate by an accredited representative of the bank concerned, stating that the transfer is exempted from *ad valorem* duty, and that it is correctly stamped.

3. Transfers by a holder of shares, to himself and another jointly, e.g. by a husband to himself and his wife, are chargeable with *ad valorem* duty on one half the value of the shares.

It may be remarked here that it is the *buyer* of securities who pays the stamp duties and fees (Rules of London Stock Exchange).

Government stocks do not attract stamp duty. Hence would-be stockholders in the nationalized undertakings such as transport and electricity can acquire holdings in these and the other Government stocks without paying stamp duty of £2 per cent on the consideration. The yield on "gilt-edged" is small, but the absence of stamp duty is a relief to some persons who have hitherto invested mainly in industrial stocks and shares.

Incorrectly or Insufficiently Stamped Transfers

If any transfer does not appear to be correctly stamped, for example, if the market value of the securities exceeds the consideration stated in the transfer, or if only the nominal stamp duty is impressed when apparently *ad valorem* duty should have been

paid, the transfer should not be registered but should be returned to the transferee—

(*a*) to be adjudicated, i.e. to be submitted to the Inland Revenue for their opinion as to the amount of stamp duty payable. When an instrument is so adjudicated, it is impressed with an additional stamp bearing the words "Adjudged duly stamped." Transfers so stamped can be accepted without question.

Alternatively—

(*b*) for a marking officer's certificate to be obtained, and returned with the transfer. This is a less formal procedure than adjudication. The parties report the facts of the case on an official form (No. 19) supplied for the purpose, and request the marking officer at one of the Inland Revenue stamping offices to certify on the form his opinion as to the stamp duty payable, based on the facts disclosed in the report. This marking officer's certificate should be retained by the secretary as it is the authority for passing the transfer as correctly stamped, and if it subsequently transpired that the stamp duty was not correct, he would not be liable under the Stamp Act. "It should be understood that this certification by a marking officer is not equivalent to adjudication, and that it is possible that cases may arise in which the registering officer (of a company), in consequence of special information in his possession or for some other good reason, may feel it incumbent upon him to require that the transfer be formally presented for adjudication in accordance with the provisions of Sect. 12 of the Stamp Act, 1891" (extract from circular to company secretaries by the Inland Revenue, February, 1911).

It need hardly be added that where the consideration stated in a transfer is in excess of the market value of the securities, the transfer can be safely passed, as the revenue has obtained all, and more than, the duty to which it is entitled.

Certification of Transfers

When a shareholder sells his *entire* holding, his share certificate, together with the signed transfer, is handed to the transferee (or his broker) on payment of the consideration; the transfer and share certificate are then forwarded to the company, and when the transfer is passed by the board the secretary issues a new share certificate in the name of the transferee.

Where a shareholder sells part only of his holding, since he cannot on completion hand over his entire share certificate, the seller's broker forwards the share certificate and transfer to the company, and requests the secretary to endorse a certificate on the transfer that the appropriate share certificate has been lodged.

Having done this, the secretary retains the share certificate, and returns the " certified transfer " to the seller's broker. It is the recognized practice for certified transfers to be accepted as a " good delivery " of the shares transferred, and on forwarding the certified transfer to the company for registration, the transferee will in due course obtain a share certificate for the shares transferred, and subsequently the secretary will forward to the transferor a share certificate for the unsold balance of his holding, unless, of course, these shares have been disposed of in the meantime.

The same position arises when a shareholder sells the whole of his holding to more than one transferee. In such a case two or more transfers are received and certified and returned to the seller's broker.

Again, the position arises where a holder might wish to dispose of part of his holding to two or more persons and still retain a balance. Thus, for example, a seller holding 1000 shares wishes to dispose of 500 shares so that two transferees could receive 250 shares each. Here there will be two certified transfers and an ultimate balance certificate to the transferor for 500 shares. In brief, in all cases where the transferee

cannot receive the certificate representing his purchase the transfer has to be certified. In practice, a series of transfers may often be received for certification from a solicitor who has the task of dividing shares or stock or debentures between beneficiaries under a will.

The Effect of Certification

Whilst there is no statutory obligation to " certify " transfers, it has long been the accepted practice; it is recognized by the Stock Exchange, and has received judicial notice (*Bishop* v. *Balkis Consolidated Co.* (1890)); and now Sect. 79 of the 1948 Act states for the first time the responsibilities of a company in the matter. Usually no fees are charged for certifying transfers.

Certification is not evidence that the title of the transferor is valid, or that the share certificate lodged is a valid certificate; it is merely evidence that a document apparently in order, relating to the shares comprised in the transfer, has been deposited at the company's office. The leading case, *George Whitechurch, Ltd.* v. *Cavanagh* (1902), where a secretary fraudulently certified that the certificates were in the company's office, the company being held to be NOT liable, has been set aside. Sect. 79 (2) provides that where any person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.

But if the company enables a transferor to act fraudulently by negligently parting with the original certificate then if the transferee is damaged the company may be liable, but it is not liable to anyone else. In *Longman* v. *Bath Electric Tramways* (1905), the secretary after certifying a transfer, erroneously handed the share certificate back to the transferor instead of cancelling it, and the transferor pledged the shares. It was held that the company was not liable to the pledgee.

Transfers may be certified although unstamped, undated, or unsigned by the transferee, obviously, because the transaction has not been completed, but it is not wise to certify a transfer which does not state the transferee's name, as there is the possibility that it may be lost or stolen, and get into the hands of an unscrupulous person who could fill in his or another name as that of the transferee, sign, stamp, and lodge the transfer, and thus obtain a share certificate for the shares comprised therein. Such an event would not affect the position of the company where the transfer was only under hand, but if it was under seal the completing of the blank would be inoperative to vest any rights in the transferee inasmuch as there had never been any delivery to him by the transferor, and the transferee would not obtain any title, but he might obtain a share certificate before the fraud was discovered, and if he sold the shares to a person who *bona fide* relied on the share certificate, such third party could claim shares or damages against the company (see Forged Transfers, page 182).

In the case of a transfer of shares upon which there are calls in arrear, there is nothing to prevent the transfer being certified, but it is recommended that a note be endorsed on the transfer to the effect that calls are in arrear and must be paid before the transfer is registered.

The consideration, number, and distinctive numbers (if any) and class of shares (or amount of stock) must, however, be stated.

As to certification against balance tickets, transfer receipts, etc., see pages 156 and 157.

Transfers are frequently certified by the secretaries of the London and provincial Stock Exchanges. The London Stock Exchange will, however, only certify transfers of stock and of *fully paid* shares. The secretary of the Stock Exchange endorses details of his certifications on the share certificate (or stock certificate), and forwards

it to the company for cancellation, giving instructions as to the issuing of the balance ticket in respect of any unsold balance of the holding. This saves time for stockbrokers and relieves company secretaries of some of the labour involved in certifying transfers.

Duties Attending Certification of Transfers

1. Observe that the certificate lodged refers to the shares being transferred, that the transferor has signed, transferee's name inserted, consideration, number and distinctive numbers (if any) and class of share (or amount and class of stock) are stated.

2. Certify the transfer. A suitable form of certificate is as follows—

EXEMPLARY COMPANY, LIMITED

Certificate No. for shares has been lodged with the company this day of 19 .

..... Secretary (or Registrar).

3. Cancel the share certificate, and endorse on the back, for purpose of record, the date, name of transferee(s), number and distinctive numbers (if any) of shares transferred, broker by whom lodged. Many companies have their share certificates ruled with a schedule to record these particulars and other details which are inserted when the transfer is subsequently registered. A specimen of such a ruling will be found on page 174. A rubber stamp bearing the word "CANCELLED" in large letters can be used for cancelling share certificates, indelible endorsing ink being used, or alternatively the certificates can be very effectively cancelled by a perforator, it being possible to cancel several certificates at once by this method. It is, in particular, the signatures that must be cancelled, this being done by making large holes in them. This obviously renders the certificates inoperative.

4. Return certified transfer to seller or his broker.

5. Issue balance ticket to the transferor, or to his

broker. If several transfers, accounting for the whole of the shares comprised in one certificate, are presented together for certification, there will be no necessity for a balance ticket. A specimen balance ticket is given on page 173. A book of balance tickets with counterfoils, numbered *seriatim*, is recommended, the counterfoils serving as a register of balance tickets issued. When a balance ticket is subsequently surrendered, on the sale of the shares or the issue of a share certificate therefor to the transferor, the surrendered balance ticket should be attached to the appropriate counterfoil, the remaining counterfoils thus providing a record of balance tickets outstanding. Alternatively a carbon duplicate may be used instead of a counterfoil, and this method has the merit that an exact copy of the balance ticket is retained.

When balance tickets are surrendered, it is advisable to note thereon whether they were surrendered against transfers, or for the issue of a share certificate to the transferor.

6. It is usual nowadays to send an advice of lodgment to the transferor (although the balance ticket, if any, frequently serves the same purpose), in the same way as when a transfer is presented for registration, to guard against forgery. The balance ticket is, of course, frequently sent to a lodging agent (the person, firm or bank, etc., presenting the transfer), and for this reason a special advice of lodgment to the transferor may be necessary.

7. The cancelled share certificates should be kept in alphabetical or numerical order pending the lodging of the transfers for registration, when they should be attached to the transfer or transfers to which they relate.

Register of Certified Transfers

Opinion is divided as to whether it is desirable to keep a register of transfers certified. In view of the

fact that a record of the certification is endorsed on the back of the surrendered share certificate, and in view of the additional work involved in writing up a register of transfers certified, it is submitted that it is unnecessary to keep such a register.

Procedure on Registration of Transfers

1. When the transfer is lodged, issue a receipt therefor (commonly called a "transfer receipt"). Before issuing this, the transfer should be inspected to see that it is apparently in order, and if defective, then if the transfer was lodged by hand, it can be handed back at once for the matter to be put right, thereby saving the time and trouble of communicating with the transferee or his broker later. The transfer fee should also be paid before issuing the transfer receipt. A specimen transfer receipt is given on page 175. A book of, say, 100 or 200 transfer receipts with counterfoils, numbered *seriatim*, is recommended. Alternatively, a carbon duplicate may be used instead of a counterfoil, and this method has the merit that an exact copy of the transfer receipt issued is retained, besides saving the time and trouble of writing the details on the counterfoil. The name of the person or firm lodging the transfer should be indicated on the transfer and the transfer receipt. Some large companies have a mechanized system. When a transfer is passed, a carbon "fanfold" set is typed, comprising (i) acknowledgment of the transfer to the lodging agent, (ii) notice to the transferor, a separate notice to each if more than one, (iii) debit slip, (iv) credit slip, (v) slip for permanent filing to record the dispatch of the certificate. If desired there may be (vi) a form of receipt for the certificate, to be returned to the company.

2. Number the transfer. All transfer deeds should be numbered consecutively. Automatic numerators are used for this purpose. When there are two or more

classes of shares, transfers for each class should be numbered separately and distinguished by a prefix letter, such as O for Ordinary shares, P for Preference shares, D for Deferred shares, etc. Occasionally it may

EXEMPLARY COMPANY, LIMITED	
Receipt No. . .	
Transfer No. . .	
Lodged . . .	
Advised . . .	
Passed . . .	
Transferor's Fol. . .	
,, Cert. No. .	
Transferee's Fol. . .	
,, Cert. No. .	
Cert. Dispatched . .	
Remarks . . .	

happen that a transfer is presented which relates to more than one class of share—such a transfer cannot be refused unless the articles require separate transfers. The procedure here is to create a dummy transfer in the office, taking care to refer to the original transfer by number. It is also possible to obtain a photostat copy, altering the name of the class of share. A copy of some sort has to be made in order that the filed transfers, which are usually bound in volumes, are complete.

3. For the purpose of recording the various stages and operations in course of registration, and details

for reference purposes, the practice is to endorse on the transfer, by means of a rubber stamp, a form of schedule somewhat like the specimen shown on the previous page.

Alternatively, a register of transfers can be used for recording these particulars, but some secretaries and registrars consider that a register of transfers has its own advantages, and use such a register either alone or in addition to the schedule stamped on the transfer. Whether to adopt either or both of these methods rests with each individual secretary or registrar, as he must frame his organization and methods to meet his own requirements and ideas. A specimen ruling of a transfer register is shown on page 172. Separate registers should be used for each class of share, although where the number of transfers registered is not very large, one register can be used, distinguishing between different classes of shares by coloured inks.

4. Record the receipt of the transfer fee. This is dealt with in detail on page 177.

5. Scrutinize the transfer to observe—

(*a*) That it is in the form prescribed by the Articles.

(*b*) That the correct stamp duty is impressed—particularly scrutinize any transfers stamped with a nominal stamp duty.

(*c*) That the relative share certificate(s) or balance ticket is surrendered. In the case of a certified transfer, ascertain that the share certificate or balance ticket is in hand.

(*d*) That the company's name, and the number, distinctive numbers (if any), and class of shares (or amount and class of stock) are correctly stated.

(*e*) That the name, address, and description and (if possible) the signature of the transferor agree with the company's records. Many companies keep a card index containing specimen signatures of members, and their attorneys, a card being sent to each new member whose specimen signature is required, which when returned is placed in the card index (see page 84). If no such record is available, the signature could be compared with that on the share application form, or on the transfer to the transferor, or on the dividend request if one exists. In the case of a transfer executed by an attorney, an authenticated specimen of the attorney's signature should be called for, unless it is already in the possession of the company.

(*f*) That the full name, address, and description of the transferee is stated. This information is necessary for correctly writing up the register of members and making the annual return. (The occupation is not now necessary.)

(*g*) That the transfer is properly executed, and attested by an independent disinterested witness, and dated. Attestation is not necessary unless required by the articles, but if the common form of transfer is used, attestation is necessary, as the form requires it. It is quite legal for a husband to witness the signature of his wife, and vice versa, although most companies require otherwise. If the name of the transferee has been erased and another name inserted, a written undertaking should be demanded that there has been no sub-sale, as otherwise the revenue authorities would lose the duty on the original sale, and the secretary might make himself liable under the Stamp Act; and further, if the transfer is by deed, an undertaking from the transferor that the deed has been properly delivered to the transferee should be obtained, as it may happen that the original transfer may have been lost and the finder conceived the idea of inserting a name other than that of the true transferee, with the consequence that the transfer would be inoperative. (See Forged Transfers, page 182.)

A transfer presented a long time after its date is quite valid, but it certainly gives ground for inquiry, and the secretary may feel it incumbent on him to inquire as to the reason for the delay.

If the transfer is executed under a power of attorney, unless the power of attorney has been previously registered, the secretary should request its production, and whether produced or not, he should require evidence that the power is still in force and unrevoked. (See page 181.)

Where the transfer is wanting in any of the above matters, or if reference to the transferor's account in the register of members shows that the shares are subject to any lien, unpaid calls, distringas notice, or if the shares are being dealt with by executors, trustees, or other personal representatives and the requisite formalities on transmission have not been complied with, or if the transfer is deficient in any other respect, it requires special attention. These points are dealt with hereafter.

6. Cancel the surrendered share certificate or balance ticket (this may have already been done in the case of certified transfers).

7. Send to the transferor(s) at his registered address (not that stated in the transfer) an advice that the transfer has been lodged. The object of this is to prevent shares being transferred fraudulently, and to give the true owner an opportunity to intervene if fraud is taking place. There is no obligation on the company to send such an advice to the transferor, nor is it incumbent on the transferor to reply, and even if fraud is taking place and he neglects to reply he is not thereby estopped from denying the validity of the transfer (*Barton* v. *London & North Western Railway Co.* (1890)). Such advice of transfer should be sent in a plain envelope without any indication of the name of the company, as a precaution against interception of the advice if there is any collusion afoot. Frequently such advice letters are sent to the transferor on certification. A specimen of such an advice letter is given below.

THE EXEMPLARY COMPANY, LIMITED

99 Lune Street,
London, E.C.1

.....19.....

To.....

.....

Dear Sir (Madam),

I have to inform you that a transfer purporting to be signed by you in respect of shares in favour of has been lodged for registration.

Unless I hear from you to the contrary *by return of post*, I shall assume that the transfer is correct and in order, and it will be duly registered.

Yours faithfully,
For and on behalf of Exemplary Co., Ltd.

.....

8. Write out the new certificate.

9. After the lapse of a sufficient time to enable the transferor to raise objections if the transfer is not in

order (say three days), bring the transfers before the board (or transfer committee) to be passed, and have new share certificates sealed and attested as required by the articles.

10. Post to the register of members details of the transferee's name and shareholding, and rectify the transferor's account to show the shares he has disposed of. These details should be posted direct from the transfer itself—if the posting is done from the register of transfers, there is the possibility that errors made in entering up the register of transfers will be repeated in the register of members.

11. Dispatch new certificate and request a receipt. This receipt usually consists of a perforated slip to be detached from the share certificate. By Sect. 80, share certificates must be ready within two months after presentation of the transfer for registration, unless conditions of issue of shares provide otherwise.

12. File the transfers in numerical order with all relevant documents, such as cancelled share certificate, surrendered transfer receipt or receipt for new share certificate, and any correspondence incidental to the transfer. Reference to any transfer can then be immediately ascertained by means of the transfer number, which will be shown in the register of members in both transferor's and transferee's accounts. It is sometimes suggested that cancelled share certificates should be attached to the counterfoils in the share certificate books, but this would necessitate the constant handling of all counterfoil share certificate books, and would waste time and space. Another method is to keep the cancelled certificates in alphabetical or numerical order, but the inconvenience of keeping a large number of cancelled certificates in hand and constantly adding cancelled certificates, and the possibility of placing a certificate in wrong order, indicates that this method is not very practicable. The method advised of keeping

the transfer and all relevant documents filed away together in numerical order has much to recommend it. Transfer deeds should be preserved in perpetuity, as they constitute the titles of the various members and are the authority for making the necessary changes in the register of members.

In the remaining part of this chapter, many matters incidental to the registration of transfers, and amplifying the foregoing outline of transfer procedure, are considered in detail.

Bringing Transfers Before the Board or Transfer Committee

All transfers must be in order before they are brought before the board or transfer committee, and a sufficient time, say three days, should have elapsed to enable the transferor to communicate with the company if he has any objection to the transfer being passed. The cancelled share certificates, and the necessary new certificates, should be attached to each transfer. At the meeting, the transfers will be read over, and the new and cancelled share certificates checked therewith, these duties being severally undertaken by those present. If all is found correct, a resolution, passing the transfers and authorizing the affixing of the seal to the new certificates, is passed. Each transfer is then initialed by the chairman in the appropriate space on the form stamped on the transfer, or if a register of transfers is used, this can be initialed by the chairman. Sometimes a list of transfers is prepared, this being signed by the chairman when the transfers are passed. The new certificates are then sealed and attested as required by the articles, the necessary entry being made in the seal book.

If directors have power to reject transfers, and wish to exercise their right, a resolution to that effect must be passed (*re Hackney Pavilion* (1923)).

By Sects. 78 and 80, transfers must be passed and registered (or rejected, as the case may be) within two months after lodgment, unless conditions of issue of shares provide otherwise.

When entering the transfers in the register of members, the date of the entry should be the date when the transfers are passed and not the date of the transfer.

Transfer to a Company

The transferee company should be called upon to produce its memorandum and articles to ensure that the company has power to invest its funds in shares of other companies. A power to "subscribe" for shares is not the equivalent of a power to "buy" shares. The articles will also show the manner in which the seal of the company is to be affixed to the transfer, and a copy of the resolution authorizing the sealing of the transfer should be demanded. If the transfer is executed by an agent for the transferee company, evidence of his appointment should be demanded, for example, a power of attorney; or if the transfer is not required to be under seal, and is executed by an agent, a copy of the resolution appointing the agent, duly certified by the secretary of the transferee company, should be required. An authenticated specimen of the agent's signature should also be obtained.

Transfer by a Company

The seal should be affixed in manner required by the transferor company's articles, if the transfer is under seal, and a copy of the resolution of the board authorizing the sealing of the transfer should be obtained. If the transfer is executed by an agent, evidence of his appointment, and an authenticated specimen of his signature, should be required, as outlined in the preceding paragraph.

Transfer to an Infant

A company can and should refuse a transfer of *partly* paid shares to an infant, because of the fact that an infant can, either prior to, or within a reasonable time of, attaining his majority, repudiate his contract, unless he has acquiesced in membership after attaining full age, and the company may thereby suffer. It is doubtful whether a transfer of *fully* paid shares could be so refused. If in ignorance of his infancy a company has registered a transfer of *partly* paid shares to an infant, the company may on discovering the fact obtain an Order of Court for rectification of the register of members by substituting the name of the transferor for that of the infant (*Symon's case* (1872)), unless the company has acquiesced in the infant membership (*re National Bank of Wales, Massey & Griffin's case* (1907)), for example, by calling the infant to meetings, paying him dividends, etc.

Transfer by an Infant

A transfer of shares held by an infant cannot be effectually made, save under an Order of Court, and this authority should be demanded before the registration of any transfer by a shareholder known to be an infant. Unless made by an Order of Court, a transfer of shares by an infant is voidable, and such a repudiation by an infant would probably have troublesome and unpleasant results.

Transfer to a Partnership Firm

The partners should be registered as joint holders, and not as a " firm," because in England and Wales (but not in Scotland) a firm is not a " person " at law. It is true that under the rules of the Supreme Court, a partnership can be proceeded against under the firm name, but it is very desirable that a company should at once be in a position to ascertain the names of all

its members, and this would not be possible if the firm had been registered and there have been changes in the constitution of the firm.

Transfers to the Public Trustee

It occasionally happens that the Public Trustee is appointed to act in some matter necessitating the transfer of shares to the Public Trustee. The shares will be registered in the official title " Public Trustee," and if it is necessary to distinguish different holdings this can be done by means of numbers, for example, " Public Trustee, Account No. 1." Doubts have been expressed as to whether the indication of the name of the persons for whom the Public Trustee acts is not really a contravention of the rule that no notice of a trust must be entered on the register of members (see page 189), and for this reason it is better to use numbers as suggested. It is specially provided by the Public Trustee Act, 1906, that the entry of the Public Trustee by that name in the books of a company shall not constitute notice of a trust. The same remarks will apply to the registration of any other trust company which is registered, for example, Midland Bank Executor and Trustee Company, Limited.

Transfer to or by an Illiterate

It must be observed that the attestation clause in the transfer asserts that the transfer was first read over and explained to the illiterate, and that he or she appeared perfectly to understand it, and made his or her " mark " in the presence of the attesting witness(es). Two responsible witnesses are desirable in these cases.

Transfers Executed Out of the United Kingdom

These should be attested by a Notary Public, H.M. Consul, clergyman, Justice of the Peace, Attorney-at-Law, or the signatures should be guaranteed by a person, firm, or banking company of good standing.

Transfers by or to Joint Holders

All should sign unless one has authority to sign on behalf of the other or others, in which case the authority should be produced and dealt with as a power of attorney (see page 178). The advice of lodgment of transfer should be sent to *all* joint holders in order to ensure that there is no fraudulent dealing by one or some of them. In the case of a transfer to joint holders, it should be signed by or on behalf of all of them. The subject of joint holders is discussed further at page 162.

Transfers Executed Under a Power of Attorney

The power of attorney should be produced and an authenticated specimen of the attorney's signature obtained, and evidence that the power is still in force and unrevoked should be called for. (See page 178.)

Transfers Where Calls are in Arrear

Although the transferee would be liable to pay calls (a transfer being subject to the equities), it is customary to refuse to register the transfer unless the calls are paid. If the transferee is registered without the calls being paid, he will be subject to any disqualifications consequent upon non-payment of the calls, e.g. restriction on right to attend or vote at meetings, etc.

Transfers Where a Notice in Lieu of Distringas has been Lodged

A short explanation of the purpose of a notice in lieu of Distringas (sometimes called a "Stop Notice" or "Stop Order") may first be advisable. As previously stated, a company cannot recognize any person other than the registered holder as being entitled to the shares registered in his name. If a person claims an interest in those shares, it is not sufficient for him to notify the company, as the company cannot accept

such a notice by virtue of Sect. 117. The only effective way for such person to protect his interests, is to apply by affidavit to the Court stating his claim, and if the Court is satisfied it will issue a notice in lieu of distringas, which accompanied by a copy of the affidavit is served on the company by the interested party. The company is bound to accept such a notice, and particulars thereof should be recorded in the shareholder's account and also in the register of deeds and documents. The effect of the notice is that the company must not register any transfer of the shares, or pay any dividends thereon, without giving the interested party eight days within which to take steps further to protect his interests. In order to place an absolute restraint on a proposed transfer or dividend payment, the interested party must, within those eight days, obtain either an injunction or a charging order. If he does not do so, then the company is relieved of any further obligation to him, and can safely register the transfer or pay the dividend as the case may be. Therefore, if a transfer is presented relating to shares in respect of which a notice in lieu of distringas has been lodged, notice (by registered post) should be sent immediately to the person in whose favour the distringas was lodged, informing him that the transfer will be registered, unless within eight days from the date of the notice he takes further steps to protect his interests.

Transfers Where the Company has a Lien

If the articles give the company a lien on shares, for moneys owing to the company by a member, then if a member is indebted to the company, the secretary should see that a note thereof is recorded in the shareholder's account, and when a transfer is presented for registration it may be withheld pending payment of the debt. Transfers are subject to the equities, i.e.

a transferee would take the shares subject to the lien, if he becomes registered. If, however, a member sells part only of his holding, the transferee can call upon the company first to appropriate the remaining shares vested in the transferor (*Gray* v. *Stone and Funnell* (1893)). The Stock Exchange rules provide that there must be no liens on fully paid shares. Articles should empower companies to enforce their lien by sale. A company cannot enforce its lien by forfeiture, as this would amount to foreclosure without an Order of Court. If the company has a lien without a power of sale, the company must obtain an Order of Court authorizing the sale. The reader is referred to regulations number 11–14 of the 1948 Table A for a model set of rules concerning liens and their enforcement. A company's lien is subject to the equitable interests of third parties if they have notified the company before the member became indebted to the company (*Bradford Banking Co.* v. *Briggs* (1886)). Any pledgee of shares is bound to know the contents of a company's articles, and accordingly the pledgee is subject to the company's lien if the debt owing to the company became due before the pledgee gave the company notice of his interest. The position as regards liens must not be confused with that regarding trusts. A company cannot be affected with a notice of trust concerning its shares (except by a notice in lieu of distringas), but the company can, in its capacity as a chargee of the shares, be affected with a notice that some other person also has a charge on those shares. The company can enforce its lien against the registered holder, even though he is merely a trustee (*New London and Brazilian Bank* v. *Brocklebank* (1882)), but not if the company knew that the holder was not a beneficial owner (*Mackareth* v. *Wigan Coal and Iron Co.* (1916)). As the effect of a transfer is to constitute the transferor a trustee for the transferee, it would appear, from the last mentioned

case, that after a transfer has been lodged for registration, no lien can attach to the shares for debts incurred by the transferor after that date, even though the company refuses to register the transfer. If the articles so provide, a lien may be enforced where the member is indebted jointly with non-members, and articles may even extend the lien to shares held jointly, for the purpose of securing debts due from the joint holders individually. If shares are in the names of trustees, the company cannot, however, claim a lien in respect of a debt due from the beneficiary, as the latter is not the registered holder (*ex parte Mexican Santa Barbara Co.* (1890)).

The death of a shareholder does not affect the company's lien. In *Allen* v. *Gold Reefs of West Africa* (1900), it was held that a lien is effective even though it is only instituted after the death of a shareholder.

Transfers Against a Balance Ticket

If a shareholder having sold part of his holding wishes to sell the remainder, he executes the transfer and hands to the transferee the balance ticket issued when the original share certificate was surrendered for the purpose of certifying the transfers in respect of the shares previously sold. A balance ticket is sometimes accepted as a good delivery of shares. For this reason, if a balance ticket has been issued, no further certifications of unsold balances of shares should be given, unless the appropriate balance ticket is surrendered along with the request for certification, and if after the further certifications there still remains any unsold balance belonging to the transferor, a new balance ticket for that balance should be issued. All surrendered balance tickets should be immediately cancelled.

Transfers Against a Transfer Receipt

A transferee may wish to dispose of the whole or

part of the shares transferred to him before that transfer is registered and the share certificate is issued to him. The only evidence of title in his possession is the transfer receipt, issued when he lodged the transfer for registration. If he disposes of shares, as he cannot hand over any document of title, he sends the new transfer and the transfer receipt to the company, requesting that the transfer be certified to show that he is entitled to a certificate in respect of the shares, but which certificate has not been issued by the company. If the first transfer has been passed then the subsequent transfer may be certified, but if the first transfer has not been passed, a note should be endorsed as part of the certification to the effect that the transfer was certified conditionally on the original transfer being registered. In either case, if the original transferor has not had time to communicate with the company, if necessary, in reply to the advice of transfer, the certification of the second transfer should be withheld until the expiration of a reasonable time. When returning the certified transfer to the transferor, if it is a transfer of part only of his recently acquired holding, a letter should be sent acknowledging surrender of the transfer receipt and stating the numbers of the shares re-sold. The number of the original transfer should be endorsed on the second transfer, and the former held back until the latter is presented for registration. This will prevent complications arising, as it must be remembered that the original transfer is in whole or in part superseded, and it would be purposeless making a new share certificate in the original transferee's name for the whole of the shares, and then having to cancel it and make out another certificate for the second transferee, or issuing two new certificates where only part of the shares were re-sold. Further, the opening and closing of unnecessary accounts in the register of members will be obviated, and as the two

transfers bear the same number, they will be kept together with all correspondence, etc., incidental thereto, thus enabling the actual transactions that took place to be easily ascertained in future.

Transfers Where the Shares are Registered in a Dominion Register

Shares registered in a Dominion register of members cannot be dealt with by the secretary in the United Kingdom (and vice versa). The shares must be first removed from the Dominion to the principal register, and unless this is done no transfers of the shares can be certified or registered in the United Kingdom. The procedure on removal of shares from one register to another is dealt with in Chapter XIX.

Transmission of Shares

By " Transmission " is meant the passing of the title and right to deal with shares from one person to another by some event such as death, or by operation of law, as in bankruptcy and lunacy, i.e. there comes about a change of ownership otherwise than by an ordinary transfer of ownership. Thus in the event of the death of a member, his executors or administrators would deal with his shares; in the event of bankruptcy, the Trustee in Bankruptcy would act, or, in the case of lunacy, a committee, receiver or Curator Bonis would be appointed to manage his affairs. The person or persons to whom the right to deal with the shares passes, are hereafter referred to collectively as the " legal personal representative " or the " representative " for the purpose of convenience, although the term " legal personal representative " is more correctly applicable to an executor or administrator.

On satisfactory evidence of title being produced, a company is bound to register a transfer by a legal personal representative (subject, of course, to any

articles authorizing restriction of transfers). (See Sect. 76.)

If the representative so desired, instead of making a transfer he could demand to be registered as a member in the place of the member he represents, but if the shares are only partly paid this might operate to the detriment of the company, since the representative (who would become personally liable in respect of the shares) may be only " a man of straw," in which case the company may prefer the holding to remain as before, thus retaining a right against the estate of the deceased or lunatic member for calls, etc. An article empowering directors to refuse to register an ordinary transfer may not enable them to refuse to register an undesirable representative as a member, and accordingly it is customary to find clauses in articles defining the attitude of the company in cases of transmission, and the following is a summary of the nature and effect of the different kinds of transmission clauses found in practice—

1. The representative has a right either to be registered as a member or to make a transfer, but in each case the directors have the right to decline registration co-extensive with right to decline ordinary transfers (Clause 30, Table A). If the person elects to be registered himself he must notify the company, but if he elects to have another person registered he must execute a transfer to that person (Clause 31). Even though not registered as a member, the representative has the right to dividends, etc., as though he was registered, but cannot exercise any rights conferred by membership in relation to meetings, i.e. he has no right to attend or vote at meetings (Clause 32).

2. The directors may at any time give notice requiring such person either to be registered himself or to transfer the shares, and if the notice is not complied with within ninety days the directors may withhold payment of all dividends, bonuses or other moneys payable until the requirements of the notice have been complied with (Clause 32).

The above is a brief analysis of Clauses 30–32 of Table A, but reference should be made to the full text.

As no notice of a trust can be entered on the register,

a representative *cannot be registered as a representative*, but only in his own individual capacity. If he does register as a member, he is personally liable in respect of the shares, although he would have a right of indemnity against the estate, but if the representative does not register as a member, the estate of the original member remains liable.

Formalities on Transmission

Where a transmission occurs, evidence should be produced certifying the title of the representative, and the evidence that should be forthcoming is indicated in the following paragraphs. For the purpose of recording this evidence, a book called the "Register of Probates, etc.," is usually kept. This is ruled to show the date, member's name, etc., how the transmission occurred, i.e. by death, bankruptcy, etc., and the date thereof, names and addresses of the representatives, and their status (executor, administrator, trustee, etc.), nature and date of documents produced (probate, letters of administration, etc.), names and addresses of persons lodging the documents, for example, the solicitor acting in the matter, reference number of member's account in register of members, and a remarks column. The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant (Sect. 82). The following is a summary of the procedure in dealing with a transmission of shares—

1. Record necessary details in the register of probates, etc.
2. Enter particulars of the transmission in the member's account in the register of members. But the name of the representative must not be entered as though he had become a member, unless he had so requested (see page 165), although

it is quite permissible to note his name in the register for purpose of reference.

3. Endorse the document lodged to show that it has been produced to the company. This is usually done by means of a rubber stamp somewhat as follows—

THE EXEMPLARY CO., LTD., REGISTERED
Date..... .....Secy.
No.....

4. Endorse the share certificate to show that a transmission of interest has taken place, for example, in case of death—

John Brown died on ..... 19 .
Probate (or Letters of Administration)
granted on ..... 19 to .....
..... of.....
For The EXEMPLARY Co., LTD.
Date..... .....Secy.

Death of a Sole Member

If a member dies testate, i.e. leaving a valid will, his executor or executors will produce the "probate of will," which is a sealed copy of the will issued by the Probate Division of the High Court after certain formalities have been complied with and estate duties paid, and which is the authority of the executors to administer the estate. If the deceased member left a will but did not name any executor, or where the executors named refused to act or have predeceased the testator, the Court on application will appoint an administrator to administer the estate and grant "letters of administration *cum testamento annexo*" (with the will annexed). If a member dies intestate, i.e. without leaving a valid will, the Court on application and after payment of the estate duties, appoints one or more administrators, and grants to them "letters of administration," i.e. a sealed authority empowering them to administer the estate of the deceased intestate according to law. Grants of letters of administration may take various

forms, according to the nature of each case. The following are examples—

1. Letters of administration unqualified in any manner—the most common form.
2. Letters of administration *cum testamento annexo* (with the will annexed)—issued where a testator fails to appoint executors or where the executors appointed refuse to act or have predeceased the testator.
3. Letters of administration *de bonis non administratis*—sometimes written shortly: letters of administration *de bonis non*—meaning "of the goods not administered"—issued in certain cases where an executor or administrator dies without completing the administration. This matter is treated more fully on page 168.
4. Letters of administration *durante minore aetate* (during a minority)—issued during the minority of an infant who is sole executor of a will. Sect. 20 of the Administration of Estates Act, 1925, provides that an infant cannot act as executor.
5. Letters of administration *durante absentia*—issued during the absence abroad of a person entitled to administer an estate.
6. Letters of administration *pendente lite*—issued to a person to take control of the estate whilst any action is pending concerning the validity of a will or the appointment of an executor or administrator.
7. Letters of administration *ad litem* (for the purpose of an action)—issued so that the estate may be represented where there is an action concerning the estate in which the proper representative will not take part.

Where there is any difficulty in identifying the person named in a grant of probate or letters of administration, with the person named in the register of members, e.g. a person may be registered as "Nancy Barlow" and probate may refer to "Anne Barlow," a certificate of identity, or statutory declaration, may be thought desirable.

Death of a Joint Holder

Where a joint shareholder dies, the shares vest absolutely in the surviving holder(s), and the company cannot and must not recognize any other person (for example, the personal representatives of the deceased joint holder) as having any right to the shares.

On the death of a joint holder—

1. Survivor(s) should produce death certificate. If this does not clearly identify the deceased member, a certificate of identity may be required, as previously outlined.
2. Record the death in the register of members striking out the name of the deceased member.
3. Enter details in the register of probates, etc.
4. Endorse the share certificate to show that evidence of death has been produced, for example—

John Brown died on .....
Death certificate produced on .....
For THE EXEMPLARY CO., LTD.
.....Secy.

Death of a Holder Domiciled Elsewhere than in England or Wales

Grants of representation issued in Scotland or Northern Ireland must be first re-sealed by the Principal Probate Registry at London, before the secretary can safely recognize them as entitling the representative to deal with the shares.

As regards grants issued in British Possessions overseas, the Colonial Probates Act, 1892, provides that grants made in British Possessions *to which the Act has been extended by Order in Council*, may be re-sealed in England. Orders in Council have been made extending the Act to many parts of the Empire, but no Orders in Council appear to have been made as regards Quebec Province and a few other parts of the Empire. Therefore, grants issued in British Possessions to which the Act has *not* been extended cannot be re-sealed, and the secretary can only recognize a fresh grant taken out in England. Grants issued in foreign countries cannot be accepted at all—the Principal Probate Registry will not re-seal them, and the procedure in case of death of a member of foreign domicile is for the foreign member's personal representative or his attorney to apply for a grant of representation in England, and this grant is the only one which can be recognized by the secretary.

If shares belonging to a colonial or foreign member

are transferred without observing the above requirements, the company renders itself liable to a penalty, and to pay any estate duty payable in England in respect of the shares (*Attorney-General* v. *New York Breweries* (1899)).

Companies and Corporations as Executors

It is becoming a common practice for persons to appoint corporate bodies as executors, for example, Banks, Trustee companies, Insurance companies, the Public Trustee, etc. Prior to the passing of the Administration of Justice Act, 1920, probate would not be granted to a corporate body, and the procedure was for the corporate executor to nominate a person (known as a " syndic ") to act in its behalf and take out probate. By the joint effect of Sect. 17 of the Administration of Justice Act, 1920, and Sect. 161 of the Supreme Court of Judicature Act, 1925, grants of probate can now be made to corporate executors (styled Trust Corporations), and grants to "syndics" are prohibited. But the corporate executor must come within the scope of the meaning of " Trust Corporation " as defined by law. Sect. 55 of the Administration of Estates Act, 1925, defines a Trust Corporation as—" The Public Trustee, or a corporation either appointed by the Court in any particular case to be a trustee, or entitled by rules made under sub-sect. 3 of Sect. 4 of the Public Trustee Act, 1906, to act as custodian trustee." Rules have been made under that authority, and by the Public Trustee (Custodian Trustee) Rules, 1926, any corporation constituted under the law of the United Kingdom or any part thereof and having a place of business there, and empowered by its constitution to undertake trust business, may act as a trustee provided that it is—

(*a*) A company incorporated by Special Act or Royal Charter, or

(*b*) A company registered (whether with or without limited liability) under the Companies Act, having a capital (in stock or shares) for the time being issued of not less than £250,000, of which not less than £100,000 shall have been paid up in cash, or

(*c*) A company registered without limited liability under the Companies Act whereof one of the members is a company within any of the classes hereinbefore defined.

Small Estates

If the net value of a deceased member's estate does not exceed £2,000 no death duties are payable. Where the estate is very small, it is possible that, on the ground of expense, no grant of probate or letters of administration will be applied for. If the estate, including the value of the deceased's shares, does not exceed £100, the secretary might, in view of the small amount involved, agree to dispense with production of a grant of representation. In such cases it is usual for the person entitled to the estate according to the will or according to law to deal with the estate, and if such person applied to the company to be registered as holder of the deceased's shares, the death certificate should be produced and a statutory declaration should be obtained to the effect that the applicant is entitled to administration of the estate, and that the gross value of the estate including the shares, etc., does not exceed £100. This statutory declaration should be retained by the company, as authority for registering the transmission. If there is any doubt regarding the title of the person applying to be registered in place of the deceased member, the company should insist on production of a grant of probate or letters of administration.

Executors or Administrators Becoming Registered as Members

Transmission clauses dealing with the subject of representatives becoming registered as members either outline the manner in which the registration is to be effected or leave it to the discretion of the directors

(see Table A, clause 30). Some articles provide that a letter of request—i.e. a letter signed by the representatives requesting that they be registered as members—is sufficient; other articles require that the representatives shall execute a transfer of the shares from themselves as representatives to themselves as members. Such a transfer, if it is made for a nominal consideration and bears a certificate signed by the parties outlining the reason for the transfer, would only require a stamp duty of 10s. (see page 134).

A "letter of request" usually takes the following form—

To THE EXEMPLARY CO., LTD.

I/WE the undersigned, being the executor(s)/administrator(s) of ..... deceased, hereby request you to register me/us as member(s) in respect of the shares standing in the name of the said deceased, subject to the conditions on which the said deceased held the same.

(And I/WE hereby agree to hold the said shares subject to the same terms and conditions upon which they were held by the said deceased).

DATED day of 19...

Witness. (Signatures of Representative(s)).

A letter of request in the above form requires to be stamped as follows: if under hand, 6d. (impressed or adhesive), if under seal, 10s. (impressed). The document is *not* liable to stamp duty if the clause in brackets is omitted.

A letter of request should be treated as though it was an ordinary transfer, being brought before the board for approval, and a new certificate made out in the name(s) of the representative(s).

Transfers by Executors or Administrators

The names of the executors or administrators should be stated in full, followed by a statement that they are "Executors (or Administrators) of .....

deceased." The signature of one executor is sufficient to bind the others (*Attenborough* v. *Solomon* (1913)), and presumably this applies also to one of two or more administrators, but it does not apply to trustees *all* of whom must concur in any transfer. To obviate any such points arising, it is usual for articles to provide that transfers shall be signed by *all* parties thereto. The secretary must observe that the names of the representatives agree with the particulars registered when the probate or letters of administration were produced, and if they have not been produced their production should be demanded before certifying or registering any transfer. If a balance ticket is to be issued, it should be made out in the name of the deceased member, unless his representatives have become registered as members.

Death of Executors or Administrators

(1) Where a member has by his will appointed joint executors, or where joint administrators have been appointed, and one dies, the survivor(s) are the only person(s) whom the company can recognize as being entitled to deal with the shares of the original member. The personal representatives of the deceased executor or administrator have no claim whatever, because his surviving partner or partners in office continue to represent the estate. (2) If a *sole* or last surviving executor or administrator had become registered *as a member*, then on his death *his* executor or administrator would lodge probate or letters of administration and deal with the shares. (3) If a *sole* or last surviving executor or administrator had *not* become registered *as a member*, then on his death the procedure is different according to the nature of his office, and whether he died testate or intestate. Therefore—

(*a*) If a *sole* or last surviving executor who has *not* become registered as a member dies *testate*—the entire representation

to the estate of the original testator will pass to the executor's executor. Should the deceased executor have neglected to appoint an executor, or if the executor he appointed refuses to act or is dead, then one of the next-of-kin of the original testator must take out letters of administration *de bonis non cum testamento annexo*, and the company must not deal with the shares without the production of this grant.

(*b*) If a *sole* or last surviving executor who has *not* become registered as a member dies *intestate*—his administrator has no right of representation to the estate of the original testator. One of the next-of-kin of the original testator must take out letters of administration *de bonis non cum testamento annexo* before the shares can be dealt with.

(*c*) If a *sole* or last surviving administrator who has *not* become registered as a member dies—no right of representation to the estate of the original member will pass to the personal representative of the deceased administrator whether he died testate or intestate. One of the next-of-kin of the original member must take out letters of administration *de bonisnon*, as before mentioned, before the shares can be dealt with.

(4) This passing from one person to another of the right to represent an estate is commonly known as the "chain of representation," and must be very thoroughly understood, otherwise a company may find itself dealing with a person who has no authority to represent a member's estate, and if transfers by such person are registered the consequences may be serious. The following is an example of what happens in these cases. A dies, appointing B (his wife) to be his executor. B registers the probate, but does not become registered as a member. B dies intestate and her administrators lodge letters of administration and attempt to deal with the shares, but, as has been shown, they have no right to do so as the shares still belong to A's estate because B had not completed the administration of A's estate by transferring the shares or becoming registered in respect of them; therefore, letters of administration *de bonis non* to A's unadministered estate must be taken out before the company can deal with the shares. Even if B had been sole legatee of all that A dies possessed of, the position would

still be the same notwithstanding the argument that as the shares actually belonged to B surely her administrators can deal with them. And supposing B had no interest in A's estate at all, if the company permitted the shares to be dealt with by her administrators, the consequence might be that the shares are transferred to persons other than those beneficially entitled to them, and the company would be bound to make good this loss to the persons beneficially entitled, because it has permitted a transfer by persons not having the right to transfer; and as regards the purchasers of such shares, they would have no title as the person transferring to them (i.e. B's administrators) had no title, but if the purchasers had subsequently sold or mortgaged the shares to third parties relying on the company's certificate, then the company would be bound to register such third parties as the proprietors of an equivalent number of shares or alternatively to compensate them.

This example should impress the reader with the necessity for thoroughly understanding and correctly applying the " chain of representation."

Bankruptcy of a Member

Upon the bankruptcy of a member, his shares become vested in his trustee in bankruptcy, by virtue of Sect. 38 of the Bankruptcy Act, 1914, but not so any shares registered in the name of the bankrupt in the capacity of a trustee or representative for others beneficially entitled to the shares. The trustee in bankruptcy should produce to the company either an office copy of his appointment, or a copy of the *London Gazette* containing the advertisement of his appointment, before he can be allowed to deal with the shares, and a specimen of his signature is desirable also. Sect. 48 of the Bankruptcy Act gives the trustee the same right to transfer the shares as was possessed by the bankrupt.

Articles may permit or require the trustee to become registered as a member, but as this would make him personally liable, and because of the general urgency of winding up the bankrupt's affairs, it is unlikely that a trustee will become registered. If he became registered, it seems probable that he would lose his right of disclaimer, and for this reason, if the shares were only partly paid, he would not wish to become registered.

On the bankruptcy of a joint holder, his interest in the shares passes to his trustee in bankruptcy, and the procedure is the same as outlined before. In this case the instructions of the other joint holders and the trustee should be obtained as to the method of remitting dividends, giving notices, etc.

Lunacy of a Member

Property of a lunatic can be dealt with only under an Order of Court, and this order or an office copy thereof, must be produced to the company for registration, by the Committee in Lunacy appointed by the Court.

On the death of a person of unsound mind, the committee will cease to act, and transfer the shares to his executors or administrators, who will then deal with the estate. If a joint holder becomes lunatic, his committee will take control of his interest in the joint shareholding. The committee would have to be joined as a party to any transfer of the shares. The other joint holders and the committee may arrange for a partition of the holding so that the lunatic's interest may be effectively dealt with, but pending such an arrangement, the instructions of all concerned should be obtained as to the manner of remitting dividends, giving notices, etc.

Liquidation of a Company Member

Where a company holding shares goes into liquidation, future dealings in the shares will be conducted

by the liquidator, who should produce evidence of his appointment (for example a copy of the *London Gazette* containing the advertisement of his appointment, a certified copy of the resolution appointing the liquidator, etc.) together with a specimen of his signature. The fact of the liquidation should be noted in the register of members. The company retains its corporate state even though it is in liquidation, and therefore if the liquidator transfers the shares the transfer must be under the seal of the company and the sealing attested by the liquidator.

NOTE: The following four forms assume that the shares have distinguishing numbers (see Sect. 74).

REGISTER OF

Date Recd.	Date Regd.	TRANSFEROR							TRANS-	
		Name	Address	No. of Shares	Distinctive Nos.		No. of Cert.	Folio in Reg.	Name	Address
					From	To				

TRANSFERS

FEREE

Description	Folio in Reg.	New Certificate Nos.		Consideration Paid	Remarks	Chairman's Initials
		Transferee	Balance Cert.			

SPECIMEN BALANCE TICKET

BALANCE TICKET

No. ..... Date.....

No. of Cert.....

Shareholder's Name

.....

For .....shares, numbered

..... to .....

Issued to.....

THE EXEMPLARY COMPANY, LIMITED

99 Lune Street,
London, E.C.1

.....19.....

No.....

No. of Old Cert.....

Shareholder's Name .....

BALANCE TICKET for.....shares numbered.....

to.....inclusive.

A Certificate will be issued in exchange for this Ticket on and after.....

.....19.....

.....*Secretary*

NOTE. This Ticket should be carefully preserved, as further transfers can only be certified or a Balance Certificate issued on production of this Ticket.

Specimen Schedule Endorsed on Back of Share Certificates

TRANSFERS CERTIFIED OR LODGED

Date		Transferee's Name(s)	No. of Shares	Distinctive Nos.		Transfer No.	No. of New Cert.
Certified	Lodged			From	To		

SPECIMEN TRANSFER RECEIPT

No..... Date.....

From .....

To.....

for.....shares.

Fee Paid.....

Lodged by .....

Received by.....

THE EXEMPLARY COMPANY, LIMITED

99 Lune Street,
London, E.C.1

No.....

RECEIVED this.....day of.....19....., from.....

.....for registration, transfer to.....

.....of.....shares numbered.....

to.....also Transfer Fee of.....

.....*Secretary*

NOTE. A new Certificate will be issued in exchange for this receipt on and after 19...

CHAPTER IX

Miscellaneous Matters in Connection with Transfer and Transmission

In this chapter, various matters incidental to registration of transfers, and those falling within the sphere of the transfer department, have been collected together for the purpose of convenience.

Filing in the Transfer Department

All correspondence should be filed along with the transfer to which it relates. For reference purposes, and to facilitate filing, the serial number of the transfer should be stated on all letters, etc. As all the documents and correspondence relative to a particular transfer are thus kept together, if any letter or document relating to a particular person is required, the transfer number will be stated in his account in the register of members, and the papers can thus be traced easily. Owing to the large number of transfers, any method of filing correspondence separately would tend to be wasteful and not nearly so efficient. As regards correspondence not concerned directly with transfers (for example, inquiries from shareholders, applications for issuing of duplicate certificates, etc.), the inward letters with carbon copies of the replies thereto can be filed alphabetically year by year.

Dealing with Agents

If in any matter communications and dealings are conducted by an agent for a member, before delivering any documents to the agent, the secretary should require the written authority of the shareholder, and this authority should be carefully preserved. If possible, the signature on the letter of authority should be compared with the company's record of the member's

signature. The only departure from this practice should be the customary dealing with buyers' and sellers' brokers as regards share certificates and transfers, and with solicitors in cases of transmission, as the authority of these agents is implied and established by custom.

Transfer and Transmission Fees

Unless the articles prescribe the fees payable for registering transfers and transmissions, it is doubtful whether the payment of such fees could be legally demanded. An article prescribing the fee payable on registration of a *transfer* would not, *ipso facto*, entitle a similar charge to be made for the registration of a *transmission*. As regards fees for issuing duplicate share certificates and the like, as the company is not obliged to issue these (unless the articles so prescribe), a reasonable charge therefor could hardly be objected to. It is desirable, however, that particulars of the charges which are likely to be levied for various purposes—transfers, transmissions, change of name on marriage of a female shareholder, issuing duplicates, registering powers of attorney, etc.—should be clearly stated in the articles. Most articles prescribe a fee of 2s. 6d. for registering a transfer (see Clause 25 of Table A). The Stock Exchange regulations prescribe that a fee of not more than 1s. shall be charged for a duplicate certificate (see Clause 9 of Table A, which now prescribes a fee of 2s. 6d.).

The recording of these fees should be carried out methodically. A suggested ruling for a subsidiary cash book for this purpose is shown on page 202. Additional analysis columns can be provided if there are different classes of shares, or where debentures have been issued. The amount received should be handed to the accountant at regular intervals, the castings of the transfer fees book checked, and the totals incorporated into the general cash book.

Powers of Attorney

A power of attorney is a written document whereby one person appoints and authorizes another to act in his stead. The person making the appointment is known as the donor, principal, grantor or appointor, and the person appointed is known as the donee, agent, grantee, or attorney, although the terms "donor" and "donee" are those in most general use. The donee may only be given the power to carry out a specified act or acts, in which case the power is said to be "special," or he may be given a general authority to do all acts and things on behalf of the donor, when the power is said to be "general." The exact scope of the donee's authority depends, of course, on the interpretation of the document. "General words clauses" are usually construed *ejusdem generis*, and not as giving the donee authority to do acts other than those incidental to those expressly mentioned. A power of attorney need not be under seal unless the donee is to execute deeds. The stamp duty on a power of attorney is 10s., whether under seal or not, but certain powers attract lesser stamp duties; amongst these are the following—

Power for receipt of interest or dividends (one payment only)	1s.
The like for more than one payment	5s.

The following is an outline of the points to which attention should be given when scrutinizing a shareholder's power of attorney lodged for registration—

1. The name, address, and description of the donor must agree with the company's records, and if possible his signature should be verified.

2. Observe that the instrument is correctly signed, attested, and stamped. If the company's shares are required to be transferred by deed, the power of attorney must be under seal if the donee is empowered

to transfer or purchase shares and wishes to exercise such power.

3. The scope of the authority given must be noted. The secretary will be chiefly interested in any powers of dealing with shares, etc., receiving dividends, bonuses, etc., and giving valid receipts therefor, and the donee's authority in this respect should be carefully examined. For example, the donee may have power to sell, but not to buy shares, and in such a case transfers to the donor executed by the donee as his attorney cannot be accepted.

4. The duration of the instrument must also be noticed. The power may be for a fixed term, or for an indefinite period, for example, "during my absence from England." Sometimes a power is expressed to be irrevocable for a fixed period. By Sect. 127 of the Law of Property Act, 1925, if a power is expressed to be irrevocable for a fixed period not exceeding one year, then in favour of a purchaser of property who relies on the power, it is enacted that such power shall not be revoked during that period, even by the death, disability, or bankruptcy of the donor. The term "property" includes shares and other choses in action.

Registering a Power of Attorney

Having scrutinized the power of attorney and found it to be in order—

1. Enter the necessary particulars in the register of probates, etc. (a special register may be used if found more convenient), noting especially powers given to the donee which specially concern the company, for example, buying, selling, pledging, and mortgaging shares, debentures, etc. An attorney has no implied power to borrow.

2. Record the fact that the power of attorney has been granted, in the donor's account in the register

of members, quoting the reference to the register where particulars of the power are entered.

3. Endorse the power of attorney to show that it has been produced—

THE EXEMPLARY COMPANY, LIMITED
Registered
Date.....
No.....
.....*Secretary.*

4. Return the instrument to the *donee* or to the agent who submitted it for registration. A power of attorney is the property of the donee (*Hibberd* v. *Knight* (1848)). A fee of 2s. 6d. is usually charged for registering powers of attorney.

5. When a power of attorney is presented for registration, a specimen signature of the donee should be demanded.

A specimen signature authenticated by the donor is desirable, but if this cannot be obtained, then a specimen authenticated by a banker, solicitor, or other person of standing, should be required.

Transfers Executed Under a Power of Attorney

When registering a transfer executed under a power of attorney, it is essential to ensure that the transfer is authorized by the power and that the power is still in force and unrevoked. Sect. 124 (1) of the Law of Property Act, 1925, provides—

> Any person making any payment or doing any act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become subject to disability or bankrupt, or had revoked the power, if the fact of death, disability, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.

And further, it is a well-known principle of agency that a principal is estopped from denying his agent's

authority to deal with third parties who know of the agency, unless he notifies such third parties of the withdrawal. But notwithstanding the foregoing remarks, reasonable diligence should be exercised in ensuring that the power has not been revoked. If the power is expressed to be irrevocable for a fixed period not exceeding one year, Sect. 127 of the Law of Property Act, 1925, provides that a purchaser is protected against revocation during such fixed period and therefore transfers authorized by the power, if made during the fixed irrevocable period, may be safely registered. If the duration of the power is uncertain, or if a fixed irrevocable period has expired, the secretary should require to be satisfied that the power is still in force before registering any transfers executed under it. The written assurance of the donor, if this can be obtained, is desirable, but if this is impossible, then a statutory declaration by the attorney that he has received no information as to the revocation of his power should be asked for. Section 124 (2) of the Law of Property Act, 1925, provides—

> A statutory declaration by an attorney to the effect that he has not received any notice or information of the revocation of such power of attorney by death or otherwise shall, if made immediately before or within three months after any such payment or act as aforesaid, be taken to be conclusive proof of such non-revocation at the time when the payment or act was made or done.
>
> Where the donee of the power of attorney is a corporation aggregate, the officer appointed to act for the corporation in the execution of the power may make the statutory declaration in like manner as if that officer had been the donee of the power.

Upon revocation it is usual, although not always the case, for the instrument to be returned to the principal, and thus the possession of the instrument by the attorney is prima facie, but not conclusive, evidence that revocation has not taken place, and in cases of

doubt as to whether revocation has or has not taken place, evidence that it is still in force should be obtained in the manner indicated.

Sect. 123 of the Law of Property Act, 1925, enables an attorney to sign his own name and signature and use his own seal (where sealing is required), but the more common practice is for the attorney to sign documents in the name of the donor or clearly to indicate that he signs for and on behalf of the donor, for example, " A. B., by his attorney, C. D.," so as to negative the possibility of his being personally liable.

Any statutory declaration by an attorney pursuant to Sect. 124 of the Law of Property Act, 1925, should be retained by the company as its authority for recognizing the power of attorney as still in force.

Forged Transfers

A forged transfer gives no rights to the shares to the alleged transferee, whether he acted innocently or not, even if the company registers him as a member and issues to him a certificate, because he would be registered and the certificate would be issued consequent upon a forgery, and forgery can never give a title. If such a transferee's name has been entered on the register, on the forgery becoming known the company is bound to restore the name of the true owner of the shares and to pay to him all dividends declared, and recognize his right to all benefits his holding entitled him to, since his name was wrongly removed from the register, and the alleged transferee is bound to indemnify the company in respect thereof.

In *Sheffield Corporation* v. *Barclay* (1905), it was held that a person calling upon a company to register a transfer is bound on an implied contract to indemnify the company against any liability which it may incur as a result thereof, and it makes no difference that the person presenting the transfer for registration is not

aware of the invalidity of his title to call upon the company to register the transfer.

If the transferee under a forged transfer receives a share certificate and subsequently sells or pledges the shares, and the purchaser or pledgee acts *bona fide* in reliance on the certificate and has no notice of the forgery, then the company is estopped from denying its certificate, and consequently is bound to compensate the purchaser or lender, or alternatively is bound to register him as the proprietor of shares of the kind or value comprised in the certificate. If such purchaser or pledgee had been registered as holder of the shares, the name of the true owner must, of course, be restored, but the company can, following the decision in the above case, call upon the person who purported to sell or pledge the shares, i.e. the transferee under the forged transfer, to refund the loss suffered in compensating or otherwise satisfying the purchaser or pledgee.

It is thus apparent that in cases of forged transfers, the company may lose considerably if the transferee under the forged transfer is a person of small means, or is adjudicated bankrupt, or cannot be traced, and for this reason it is very desirable that the signatures of all transferors should be verified. Although this is not conclusive protection against clever forgeries, it is nevertheless a practice to be recommended. Too much reliance should not be placed on the advice of transfer sent to the transferor, since, as was stated on page 147, the transferor is under no obligation to reply thereto, and, furthermore, it may be possible for such advices to be intercepted by parties to the forgery.

In *Ruben* v. *Great Fingall Consolidated Trust* (1906), the secretary forged a share certificate, and the person named as the proprietor sold the shares, but the company having discovered the forgery, refused to register the transferee, and the court held that the company was entitled to do so, and neither could the company

be compelled to compensate the transferee. He was an innocent transferee, as were the purchaser and pledgee in the example previously outlined, but there is this distinction: the purchaser or pledgee in the example outlined relied on a *genuine certificate issued* by the company, although it was issued consequently upon a forged transfer, whereas the transferee in Ruben's case was relying upon a *forged certificate*, and a company is estopped from denying a genuine certificate, but not from denying a forged one.

If a transfer of shares was executed under a forged power of attorney, the transfer would be ineffective, inasmuch as the person purporting to transfer would have no title to do so, but following the decision in *Sheffield Corporation* v. *Barclay* (1905), it would appear that both the transferee and the person acting under the forged power would be liable to indemnify the company for any loss it might sustain as a consequence of acting upon the transfer.

Forged Transfers Acts, 1891-2

These Acts empower companies to use their funds to make compensation to transferees who find themselves deprived of shares which they have bought, owing to their acting innocently under forged transfers or transfers executed under forged powers of attorney. The company is not, of course, *liable* to pay such compensation except to a party acting *bona fide* on a genuine certificate issued to a person acquiring shares through a forgery as before mentioned.

A company can exercise the powers given by the Acts without any necessity to adopt the Acts by its articles or by resolution, and whether the company has or has not adopted the Acts, there is no obligation to make such compensation (except as stated previously). The compensation is payable out of the company's funds, and a fund may be established for

this purpose, by charging a fee on transfers not exceeding 1s. per £100 nominal value of the shares transferred, or by reservation of profits, or by insurance or otherwise. If a company pays compensation under the Acts, the rights of the person compensated, against the person who has caused the loss, are subrogated to the company.

Procedure Where a Forgery is Discovered

If on comparing the signature of the transferor with the records, the secretary is of opinion that it is a forgery, he should communicate at once with the transferor. The fact that forgery is taking place may become known by the transferor communicating with the company in reply to the advice of transfer. The matter should also be brought to the notice of the board, and if it is quite certain that a forgery has taken place, the *transferee* should be informed so that he may take steps to protect his position. If the transferee had been registered before the forgery was discovered, his name should be removed from the register, and if a certificate had been issued to him he should be asked to return it. If he is unwilling to do so, the matter should be placed in the hands of the company's legal advisers with a view to proceedings being taken to compel him to return the certificate.

Change of Name of a Member

1. *Marriage of a Female Member.* On receiving notice of marriage, the name, address, and description of the husband, and a specimen signature of the wife, should be asked for, if not furnished. The share certificate should be produced and be endorsed to show the change of name. Some companies prefer to issue a new certificate in the name of the married woman. The marriage should be recorded in the register of members, and the index amended, and if a new certificate has

been issued, the fact should be noted, indicating the number of the new certificate. Some companies demand production of the marriage certificate or a copy thereof, and others require a form of request to register the married name, but it is submitted that a letter signed by the member notifying her marriage and giving the particulars above-mentioned is all that is necessary. A fee of 2s. 6d. is usually required (Table A, Clause 28).

2. *Adoption of Another Name.* A person may change his name in the following ways: (*a*) Without any legal formality—simply adopting the new name and discarding the use of the old one. (*b*) By Deed Poll, i.e. a document under the seal of the person concerned declaring his adoption of the new name. This is usually followed by an advertisement in the *London Gazette* and/or *The Times*. (*c*) By Royal Licence. (*d*) By Act of Parliament. The last two are not common.

In case (*a*) an attested declaration of the change, showing both the old and new signatures, is desirable. In the other cases the document by which change is evidenced will probably be produced; if it is not, an attested declaration should be asked for. The share certificate should be handed in for endorsement to show the change, and the change should be recorded in the register of members, and the index thereto amended.

3. *Change of Name of a Company Member.* The new certificate of incorporation, or a certified copy of the special resolution changing the name, should be produced, together with an authenticated specimen of the new seal. The share certificate should be endorsed and the change recorded in the register of members. In all these cases, it should be observed that the company obtains a receipt for the endorsed share certificate when the latter is returned to the member.

Closing of Transfer Books

It is customary for most companies to suspend

registration of transfers for a period, usually fourteen days, before the annual general meeting. In the case of preference stocks and shares, it is the practice with many companies to pay the dividends thereon by half-yearly payments on regular dates. Many companies also declare interim dividends regularly, and the transfer books are usually closed before the time the dividends are to be paid, the "close" period expiring on the date payment is to be made. Usually, the board passes a resolution closing the transfer books, and members are notified by advertisement, or where the close period precedes the annual general meeting, notification of closing of transfer books is incorporated in the notice of the meeting. If the shares are quoted on the Stock Exchange, notice is also given to the secretary of the Stock Exchange, so that the shares may be quoted "ex div." in the case of sales not completed in time for the transfers to be lodged for registration before the close period. It is not essential for a resolution closing the transfer books to be passed, nor is it necessary for articles to authorize the closing of the transfer books.

Below are specimen notices—

THE EXEMPLARY COMPANY, LIMITED

NOTICE IS HEREBY GIVEN that the Ordinary Share Transfer Registers of this Company will be closed from 18th to 31st May, both dates inclusive, for the preparation of Dividend Warrants to be posted on 1st June next.

By Order of the Board,

.....*Secretary.*

99 Lune Street, E.C.1.
13th May, 19..

THE EXEMPLARY COMPANY, LIMITED

NOTICE IS HEREBY GIVEN that the Preference and Ordinary Share Registers and Transfer Books will be closed from 20th May to 1st June, 19.., both dates inclusive.

By Order of the Board,

.....*Secretary.*

99 Lune Street, E.C.1.
15th May, 19..

Every company is allowed two months within which to register or refuse to register a transfer (see Sects. 78 and 80), and when it becomes necessary to balance the share ledger for purposes of paying dividends, it would be quite competent for the company to suspend registration of transfers without notice, in order to balance the share ledger, provided the statutory limit of two months was not exceeded. But companies whose shares are quoted on the Stock Exchange would not act so peremptorily, and for the convenience of its members and the Stock Exchange it is customary to give formal notice of closing of transfer books, and most articles contain some direction on this point.

Table A provides: "The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine, provided always that such registration shall not be suspended for more than thirty days in any year." (Clause 27).

The closing of the register of members must not be confused with the closing of the transfer books. Under Sect. 115, the register of members may be closed, i.e. inspection thereof can be refused, for any time or times not exceeding in the whole 30 days in each year, provided notice is given by advertisement in some newspaper circulating in the district in which the registered office is situated. As has been shown, it is competent for a company to close its transfer books without giving notice, but inspection of the register could not be refused except during a period when it was properly closed by notice in accordance with Sect. 115. Many companies never avail themselves of this right to close the register of members, for the reason that they never find it necessary to do so; if the register is required to be balanced as on a certain date, no more transfers are registered after that date, and the balancing can accordingly proceed, as interruptions

caused by persons seeking to exercise their statutory right of inspection would not be very frequent, and therefore the expense of notifying the closing of the register can be saved.

Trusts

Sect. 117 provides that " No notice of any trust, express, implied, or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies registered in England." The word " registrar " in this section means the " registering officer of the company concerned," i.e. the secretary, or transfer registrar. The object of the section is to prevent the company being placed in the position of a trustee for any person other than the registered holder, who claims to have an interest in or right to the shares registered in the name of another. A simple example will make the position clear. A, B, and C are trustees of a settlement made by Z in favour of his children—the funds settled on the children are partly invested in shares in a registered company—the terms of the settlement provide that the children enjoy the income from the trust funds during their lives, and on their death, their issue, if any, become entitled to the capital, i.e. the trust will come to an end. The shares will be registered in the names of A, B, and C as though they were beneficial joint holders—as though they were themselves the true owners of the shares—and no notice of the fact that they are merely trustees for others can be indicated in the register. A, B, and C can dispose of the shares when and on such terms as they choose, so far as the company is concerned, and the company is not bound to inquire whether such dealing is in accordance with the terms of the trust—but the company might be so bound to inquire if it was obliged by law to recognize the fact that A, B, and C were merely trustees for others. Again, if A, a shareholder,

deposited his certificate with B to secure repayment of a loan, and A or B gives notice of the fact to the company, the fact that B is interested as pledgee of the shares must be ignored, and the company cannot recognize his rights in any way; for example, if A fraudulently re-obtained possession of the share certificate and sold the shares in fraud of B's rights, the company could not refuse to register the transfer on the ground that B's position would be prejudiced.

The only way in which a company can be affected with notice that a person other than the registered holder is interested in the shares, is by means of a notice in lieu of distringas (see page 153). Other matters of interest in this connection are " Liens on Shares " (page 154), and " Public Trustee " (page 152).

Charging Orders

A charging order is a means whereby a judgment creditor seeks to obtain payment of the judgment debt when the judgment debtor makes default in complying with the judgment. A well-known example is the charging of a partner's share of the partnership property with payment of his separate debt. In order that a judgment creditor can obtain a charging order on stocks or shares, they must belong to the judgment debtor beneficially, i.e. they must be registered in his name, or in the names of his trustees. A charging order cannot be obtained against shares or stock registered in the name of the debtor as a trustee for others. If the debtor is only entitled to the income from shares held in trust for him, an order charging the dividends may be obtained by the creditor, but as the trustees are the legal owners of the shares, the company will be bound to pay the dividends to them, and then they will have to pay such dividends to the creditor in accordance with the terms of the order. When the Court grants a charging order, it first makes an " order *nisi*,"

i.e. a provisional order which will be made "absolute," unless the debtor can show cause why it should not be made absolute. The creditor will serve the "order *nisi*" on the company, and its effect is to restrain the company from permitting transfers of the shares stated in the order (or paying dividends thereon as the case may be) until it is made absolute or discharged. A company failing to comply with a charging order is liable to compensate the creditor for any loss he may thereby sustain. If a charging order is served on a company, the secretary should ascertain that shares or stock are registered in the name of the debtor, and should note in the register of members the fact that the order has been made, and the document should be carefully preserved.

In *Gill* v. *Continental Gas Co.* (1872): A executed a transfer of shares to B on 28th December. B presented it for registration on 17th January following, but the company rejected it as not properly stamped. On 16th February the company was served with a charging order, charging A's shares. On 19th February B re-presented the transfer duly stamped, and it was registered. HELD the property in the shares had passed to B, and therefore Gill, the chargee, could not recover from the company, as at the date of the notice of the order, the judgment debtor was not beneficially entitled to the shares.

When the order is made absolute, if the debtor does not pay the creditor and get the order discharged, the creditor can apply to the Court for an order to sell the securities or transfer them to himself, and if the debtor refuses to execute the transfer, the Court will give directions as to how the transfer is to be executed. The company would, of course, be bound to recognize a transfer executed under an Order of Court by a person other than the registered holder. On such a transfer being presented, an office copy of the Order of Court giving directions as to the execution of the transfer should be asked for.

Debentures cannot be the subject of a charging order,

but the judgment creditor of a debenture holder may obtain a garnishee order in respect of the debentures.

Issuing of Duplicates

Companies are not infrequently called upon to furnish duplicates of various documents which have been lost or mislaid by their members. The procedure in these matters is dealt with fully in the succeeding paragraphs.

1. LOST SHARE CERTIFICATE. Require the shareholder to deliver a statutory declaration as to the loss and a letter of indemnity (stamped 6d.) indemnifying the company against any liability it may incur by reason of the original certificate having been lost and a new certificate being issued. This letter of indemnity should be supported by the guarantee of a banker or person of good financial standing, or a guarantee company, if the value of the shares warrants it. The matter should be brought before the board, and the new certificate sealed and attested in accordance with the articles, the sealing being recorded in the seal book. The new certificate should be conspicuously marked "DUPLICATE," across its face, and an entry made in the register of members that a duplicate has been issued.

A fee of 2s. 6d. is now usually charged for issuing a duplicate certificate. This is so provided by Table A, Clause 9, but the Stock Exchange regulations provide that 1s. shall be the maximum fee charged for a duplicate certificate, although it is not unusual for companies to make an additional charge for the incidental work involved. The applicant must himself bear the stamp duty on the letter of indemnity and guarantee, and the cost of preparing them and the statutory declaration, unless the company provides the forms.

When the fees are paid, the duplicates can be issued, and a receipt therefor should be obtained. The letter

of indemnity usually provides that the applicant undertakes to surrender the lost certificate if and when it is found. If he sells the shares, the duplicate certificate must be produced with the transfer. If the original is lodged, inquiries should be made into the circumstances and the duplicate must be surrendered before the transfer is registered, otherwise the company may be liable to compensate a third party relying *bona fide* on the duplicate.

2. LOST SHARE WARRANT OR BEARER SECURITIES OF ANY DESCRIPTION AND/OR COUPONS ANNEXED THERETO. Owing to the nature of these documents the secretary must be satisfied quite clearly that the person applying for the duplicate is the proprietor of the lost document, and that a thorough and exhaustive search has been made and everything possible done to discover the whereabouts of the document. Not only will it be necessary to have a full guarantee from a person or firm of the highest standing, a statutory declaration by the applicant that he is the owner and has lost the document, and a letter of indemnity from him containing an undertaking to surrender the document should it subsequently be found, but in addition the application should be supported by a statutory declaration by a third party of repute, who can vouch that to his own knowledge the applicant is the proprietor of the document and has lost it. The matter should be brought before the board for its approval of the indemnity and guarantee offered. It is also desirable that before a duplicate is issued, the applicant should be required to pay the expense of prominent advertisement in leading newspapers stating that the document has been lost and that, after the expiration of a certain period, a duplicate will be issued to the applicant, whose name and address, together with full particulars of the document, should be disclosed. Eventually, if the board consents to a duplicate being issued, the necessary

document will be prepared and clearly marked "DUPLICATE," sealed and attested, and, if necessary, stamped. The issuing and sealing of the duplicate should be authorized by a resolution of the board and the sealing duly recorded in the seal book. On the statutory declarations, indemnity and guarantee duly stamped being handed to the company, together with a remittance for the stamp duties (if any) and incidental expenses and fees, the duplicate can be handed to the applicant and his receipt therefor obtained. If the duplicate has coupons attached, or if duplicates of lost coupons have been issued, the company's bankers must be notified of the numbers of the lost coupons and instructed to stop payment thereof pending further inquiries, should the lost coupons be presented for payment. The duplicate document and coupons should bear a different number from the original.

See also page 220 regarding presentation for payment of coupons from share warrants or bearer debentures alleged to have been lost.

3. LOST CERTIFIED TRANSFER. Before issuing a duplicate, a statutory declaration as to loss, and a letter of indemnity (including an undertaking to surrender the lost transfer should it be found) should be required. A guarantee would not be necessary in this case, for if a person fraudulently presents the lost certified transfer for registration he would have no title to the shares. The company would at once know that someone was not acting *bona fide* and could refuse to register the transfer. Inquiries could be instituted as to how the lost instrument came to be used—and probably the duplicate which was issued would have been acted upon, and the shares registered in the name of the true transferee at the time the lost transfer is presented, so that the company would have no need for the protection of a guarantee.

Before issuing a duplicate certified transfer, the

authority of the board should be obtained. The duplicate must be clearly marked "DUPLICATE," and a note that it has been issued should be made on the back of the relevant share certificate (and in the register of certified transfers where one is in use). On payment of a small fee for the incidental work, the duplicate may be issued to the applicant and his receipt therefor obtained. When the transfer is presented for registration, it must be observed that it is the duplicate which is lodged. If the original is lodged it should not be registered until inquiries have been made into the circumstances and the duplicate also surrendered.

4. LOST LETTER OF ALLOTMENT. A statutory declaration and letter of indemnity should be obtained as previously outlined, supported by a guarantee if thought desirable. Obtain the consent of the board before issuing the duplicate. Prepare the duplicate clearly marking it "DUPLICATE," have it signed and make a note in the application and allotment sheets and register of members that a duplicate has been issued, indicating the number thereof. On payment of the fees, issue the duplicate to the applicant and obtain his receipt. When the share certificates are issued for the allotment letters, it must be observed that the duplicate allotment letter is surrendered. If the original is surrendered inquiries should be made into the circumstances and no share certificate issued until the duplicate is lodged also.

5. LOST DIVIDEND WARRANT. If the amount of the warrant is only small, a duplicate may be issued if the member writes a letter declaring his loss and agreeing to indemnify the company against any loss (stamp duty on such a letter is 6d. if amount involved is £5 or over), but if the amount is large, a statutory declaration is desirable and the letter of indemnity should be supported by a guarantee. A letter should be addressed

to the company's bankers, inquiring if the warrant has been paid, and if not paid, instructing them to stop payment of the lost warrant, quoting the number, date, name of payee and amount. Before issuing a duplicate, the matter should be brought to the notice of the board. The duplicate should be so marked, and when handing it to the applicant the fees for issuing the duplicate and a receipt therefor should be obtained.

Sect. 69 of the Bills of Exchange Act, 1882, deals with the replacement of lost bills, and from this it appears that no claim may be made under an indemnity unless some loss is suffered through the finding of the lost document. If it is merely delivered up to the proper owner there is no loss. If the shareholder had *not* endorsed the warrant, then no valid claim lies against the company by anyone who subsequently becomes possessed of the warrant, because the shareholder's endorsement would have to be forged in order to put the warrant in circulation; nevertheless the company cannot take any risks, e.g. the shareholder might have endorsed the warrant before he lost it, or might find the warrant and put it into circulation—therefore the company requires an indemnity, supported by a guarantee if the amount involved is large.

6. Lost Income Tax Counterfoils of Dividend Warrants. Occasionally, members lose the upper portion of their dividend warrants, and as these are necessary where members claim repayment of the tax deducted from the dividend, applications for duplicates may be received. Some companies refuse to issue such duplicates and state so on their dividend notices. However, if it is the practice of the company to issue such duplicates, the applicant should be requested to send a letter declaring his loss, and requesting duplicates. Reference should be made to the register of members to ascertain that the applicant was a member during the period for which duplicates are required,

and the necessary figures will be found from the dividend lists for those periods. (See also page 217 regarding dividends on bearer securities.) Sometimes a supply of unused dividend warrant counterfoils is preserved for making duplicates, but if none is retained, or if the stock is exhausted, the document should be made out somewhat in the form appearing below. A charge of 1s. is usually made for issuing each duplicate. Duplicates should be issued to members only, and not to their agents. If a member wishes the duplicates to be issued to his agent, he should give the company authority to do so in writing.

Duplicate

EXEMPLARY COMPANY, LIMITED

DIVIDEND ON ORDINARY SHARES

for the year ended 31st December, 19..

A. MEMBER, Esq.,
10 Lowton Street,
St. Mary's, Highshire.

	£	s.	d.
Dividend at 10 per cent on 100 Shares of £1 each.	10	–	–
Less Income Tax at 9s. in £	4	10	–
Net Dividend payable .	£5	10	–

I CERTIFY that the sum set forth as deducted for Income Tax has been, or will be, duly accounted for by the Company to the proper officer for the receipt of taxes.

For and on behalf of the Exemplary Co., Ltd.,
G. SMART, *Secretary*.

99 Lune Street, E.C.1
25th May, 19..

Filing of Statutory Declarations, etc.

A convenient method of filing such documents as statutory declarations, letters of indemnity, and guarantee, is to keep the documents and correspondence relating to each particular case in a suitably docketed envelope. Each envelope and document should be numbered and this number quoted in the register

of deeds and documents, wherein particulars of the documents should have been entered. The envelopes should then be filed in numerical order and kept in a safe or strong room. The same system can be adopted for preserving and filing all manner of legal documents.

Effect of Death, Bankruptcy, or Lunacy of a Party to a Transfer

1. DEATH. (*a*) *Of Transferor.* The death of the transferor does not affect the validity of the transfer, whether it be under hand or under seal, because the making of the transfer passes the interest of the transferor to the transferee as from the date of sale. It is therefore quite in order to register a transfer even after notice of the death of the transferor. If a long time has elapsed between the date of the transfer and the date it is presented for registration, inquiries should be made to ensure that the transfer is quite in order.

(*b*) *Of Transferee.* Obviously a deceased person cannot be registered as a member. If notice of the transferee's death is received, and the death occurred prior to registration of the transfer, the personal representatives of the transferee should be communicated with. If the transferee had been registered after the date of his death, his name should be struck out with a note of explanation. It would *not* be safe to rely on the original transfer and to register the personal representatives in pursuance of a letter of request by them, or a transfer by themselves as representatives to themselves as members, for this procedure is applicable only where the deceased was a registered member. The best course to adopt is for the transferor to execute a fresh transfer to the transferee's personal representatives as members (they cannot be registered as representatives), and the representatives will subsequently reclaim the stamp duty on the original transfer.

(*c*) *Of a Joint Transferee.* Where a transfer is to

joint holders and one or more of them dies before registration of the transfer, the survivor(s) should be registered on production of evidence of death of the deceased transferee(s), because on the deathof a joint holder, his interest in the holding passes to the survivor(s). If all the joint holders die before registration of the transfer, the representatives of the last surviving joint holder will be entitled to the benefit of the transfer, and the matter should be dealt with as though a sole transferee had died before registration, as outlined under the previous heading.

2. BANKRUPTCY. With the object of preventing a debtor from realizing his assets and squandering the proceeds, or making transfers with the intention of fraudulently preferring creditors, Sects. 44, 45, and 46 of the Bankruptcy Act, 1914, make void certain transfers made after the commencement of the bankruptcy. The company will not usually be in a position to ascertain whether the transfer is or is not void, and the company will not be liable in any way if it registers a transfer which is void. If the trustee in bankruptcy succeeds in upsetting a transfer, the company must rectify the register in pursuance of the Order of Court declaring the transfer void, and the company is not liable in any way to the other party, who must seek his redress from the estate of the bankrupt.

3. LUNACY. A person found lunatic by inquisition cannot be bound by any contract for the sale or purchase of shares made by him (*in re Walker* (1905)), but a person *not* so found lunatic by inquisition *would* be bound unless he or his representatives could prove the incapacity *and* that the other party was aware of the incapacity at the time the contract was made (*Imperial Loan Co.* v. *Stone* (1892), and *York Glass Co.* v. *Judd* (1924)). Therefore—

(*a*) In the case of a person found lunatic by inquisition—if before registering the transfer the company

had notice of the incapacity, it must not register the transfer. If it does so, the entry is of no effect. If notice of the incapacity was received after registration, the register should be rectified, as the entry was ineffective by reason of the disability of the lunatic (or "person of unsound mind," as is now the correct phrase) to enter into the contract of transfer.

(*b*) In cases other than those where the party is found lunatic by inquisition, the company would not usually be in a position to judge whether a transfer was or was not binding on the lunatic party, but if it had notice of the incapacity it is advisable to delay registration pending a decision as to the validity of the transfer by the parties concerned, and if such a decision was not arrived at after the expiration of two months, it would appear that in pursuance of Sect. 80 the transfer *must* be registered (or registration refused where the articles so empower) within two months after the date of presentment for registration. If the transfer had been registered before notice of the incapacity reached the company, the company on receiving such notice would not be justified in rectifying the register, and the party seeking to have the transfer set aside must obtain an Order of Court declaring the transfer void before any rectification of the register can be attempted.

Forms D.1 and D.2

At the outset of the Second World War it became necessary to restrict dealings in stocks, shares, and other securities, except between residents within the scheduled territories. The list of these varies from time to time, and reference should be made to the various circulars issued by the Bank of England for the guidance of secretaries. The matter is now controlled by the Exchange Control Act, 1947. All persons outside the scheduled territories are known as

"non-residents." Every form of transfer now bears on its reverse side the forms D.1 and D.2, and in the vast majority of cases it is a simple matter for the transferor and transferee being residents within the scheduled territories (formerly known as "the sterling area"), to get D.1 and D.2 respectively signed by a stockbroker, a solicitor, or an authorized bank. Where the normal procedure is not possible owing to the fact that one or more of the parties to a transfer resides outside the scheduled territories, or is acting as a nominee for a person resident outside those territories, the form D.1A and/or D.2A, obtainable from banks and other quarters, must be completed and submitted to the Bank of England for its approval of the transfer. A specimen Form D.1 and D.2 will be found on page 203.

Dr. TRANSFER FEES CASH BOOK *Cr.*

Date	Transfer No. or Details	Transfers						Probates			Miscel-laneous			Total			Date	Details	Amount		
		Ordy.			Defd.																
		£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.					
19.. Jan. 2	1011 . . . P/A J. Wynne . .		2	6								2	6		2	6	19.. Jan. 2	Stamp Duty on Letter of Indemnity—J. Wild . .			6
																		To General C.B.		4	6

EXCHANGE CONTROL ACT, 1947

Title of Security (1) .....

Nominal Amount ..... , say, ...

1. TO BE COMPLETED ON BEHALF OF THE TRANSFEROR(S).

(If this declaration cannot be made, Declaration 1A of Form D, obtainable from banks, must be completed.)

The holder (2) of the above-mentioned security (3) ..... not resident outside the Scheduled Territories (4) and from facts known to us or from enquiries we have made (3) ..... not to the best of our belief holding the security as the nominee (2) of any person resident outside those Territories.

Stamp and Signature of Authorized Depositary (5) or Temporary Recipient (6) .....

Address ..... Date .....

2. TO BE COMPLETED ON BEHALF OF THE TRANSFEREE(S).

(If this declaration cannot be made, Declaration 2A of Form D, obtainable from banks, must be completed.)

The transferee (3) ..... not resident outside the Scheduled Territories (4) and from facts known to us or from enquiries we have made (3) ..... not to the best of our belief acquiring the security as the nominee (2) of any person resident outside those Territories.

Stamp and Signature of Authorized Depositary (5) or Temporary Recipient (6) .....

Address ..... Date .....

NOTES.

(1) This Form is to be used for securities which are—
  (*a*) registered in the Scheduled Territories (4) otherwise than in a Subsidiary Register (3) and on which interest or dividends are not payable by coupon, and
  (*b*) not Prescribed Securities (2).

(2) Defined in Notice E.C. (Securities) 1 issued by the Bank of England.

(3) Insert "is" or "are."

(4) Defined in Notice E.C. (Securities) 1 as "the British Empire (excepting Canada and Newfoundland), British Mandated Territories of Cameroons, Nauru, New Guinea, South West Africa, Tanganyika, Togoland and Western Samoa, British Protectorates and Protected States, Burma, Iraq, and Iceland."

(5) Authorized Depositaries are the Bank of England, the Share and Loan Department of the Stock Exchange, London, and offices in the United Kingdom of the banks set out in Appendix II to Notice E.C. (Securities) 1.

(6) A list of persons classified as Temporary Recipients is given in Appendix III to Notice E.C. (Securities) 1 and includes members in the United Kingdom of Stock Exchanges or Associations recognized for the purposes of the Prevention of Fraud (Investments) Act, 1939, firms of solicitors in the United Kingdom, the Public Trustee and the Accountant-General of the Supreme Court. Temporary Recipients must indicate their classification, e.g. "Members of the Birmingham Stock Exchange," "Solicitors."

CHAPTER X

PAYMENT OF DIVIDENDS

ORGANIZING the payment of dividends and debenture interest constitutes an important part of the company secretary's duties, and he should know how to conduct such work correctly, methodically, and expeditiously. The procedure involved is dealt with in this chapter.

Prior to the annual general meeting, the directors usually decide what dividend (if any) shall be recommended to be paid. (Articles invariably contain a clause to the effect that no dividend shall exceed the rate recommended by the directors; for example, clause 114, Table A.) In the case of preference shares and preference stock, the rate of dividend will, of course, be fixed. At the same time as the board determines what dividends shall be paid, a resolution is passed closing the transfer books for the purpose of balancing the share registers and preparing the dividend warrants (see page 187). The transfer books are frequently closed for a period, usually fourteen days, expiring on the date of the annual general meeting. This enables the share registers to be balanced to ascertain the names of the members entitled to receive notice of the annual general meeting and payment of dividends, and also affords time to prepare the dividend warrants in readiness for posting, on the dividend resolution being passed at the annual general meeting (see page 333). Many companies make a practice of paying interim dividends on regular dates, and quite a large number of companies pay their preference dividends half-yearly on certain specified dates. In these cases the interim or preference dividends are declared at a board meeting,

and the transfer books closed for a short period before the date on which the dividend is to be paid.

It should be observed that dividends are payable to the members registered on the date of the declaration of the dividend (*Eastern Union Railway Co.* v. *Symonds* (1860)) unless the dividend resolution provides otherwise. But if the resolution is worded " payable on .... 19.." the dividend would be payable to those members registered on the date of the resolution because the direction concerning date of payment merely refers to the date those members are to receive payment, and therefore, if it is desired to make the dividend payable to the members registered on a future date, the resolution should be worded " payable *to the members registered in the books of the company on* ..... 19.," and then the intention is quite clear. Dividends are calculated on the nominal value of the shares irrespective of the amount paid up, unless the articles provide otherwise (*Oakbank Oil Co.* v. *Crum* (1883)).

Procedure on Payment of Dividends on Registered Shares or Stock

1. On the closing of the transfer books, dispose of all transfers awaiting registration, and balance the share registers.

2. Draft the form of dividend notice and warrant, which will require to be approved by the company's bankers and have a sufficient number of copies printed. The warrants must also be stamped twopence each, and for this purpose they are lodged at one of the Inland Revenue stamping offices with a remittance for the total duty payable. If too many warrants are stamped, the duty paid can be recovered on returning the surplus warrants to the stamping office. A specimen dividend warrant is given on the next page. Warrants for different dividend payments can be distinguished by using different colours of paper, or by means of a number

Form of Dividend Warrant

EXEMPLARY COMPANY, LIMITED

No..... ..... **23**

99 Lune Street,
LONDON, E.C.1.

To (*Name and address of shareholder*) ....19....

(INTERIM) DIVIDEND ON ORDINARY SHARES FOR THE (HALF) YEAR ENDED ....19....

Dividend at 10 per cent (per ann.)
on.....shares registered in
your name . . . . . £ : :
LESS INCOME TAX AT ..... in the £ : :

NET AMOUNT OF WARRANT ANNEXED £ : :

The Warrant requires your signature at the foot.

It is hereby certified that the sum set forth as deducted for Income Tax, has been, or will be, duly accounted for by the Company to the proper officer for the receipt of taxes.

Shareholders claiming exemption from, or return of Income Tax, are informed that the Inland Revenue Authorities will accept this statement as evidence of deduction of Income Tax, and it should therefore be preserved. Should a duplicate be required, a fee of 1s. will be charged.

G. SMART,
Secretary.

EXEMPLARY COMPANY, LIMITED
DIVIDEND ON ORDINARY SHARES

No... ..... **23**

.....19....

WEST BANK, LTD.,
41 OLDBURY, LONDON, E.C.3

2d. Stamp

PAY.....or Order,

the sum of..... £.....

Signature
of payee.....

For and on behalf of the Exemplary Co., Ltd.

.....*Director.*

.....*Secretary.*

in bold figures printed in a prominent position on the warrants.

This latter method is more usual and practical. Different colours of warrants may be used for distinguishing dividends on different classes of shares.

3. Prepare a list of members on the appropriate date, showing the gross dividend, tax deducted, and net dividend due to each member. Specimen dividend lists are given on the following two pages. The calculations of the dividends and tax deducted should be individually checked and totalled, and the total of the gross dividend column should agree with the gross dividend on the whole of the issued capital on which the dividend is being paid, and the totals of the tax deducted and net dividend columns should together equal the amount of the gross dividend. The entries in the dividend list should be numbered consecutively, and these numbers should be noted on the dividend warrants to facilitate reference.

4. Write out the dividend warrants, check them, and pass them for signature. Arrangements are usually made with the bankers for the signature of the secretary or other responsible official to be accepted, to obviate the necessity for the warrants to be signed by the directors, as would be usual in the case of cheques. Some companies print the signatures of the directors on the dividend warrants, which are countersigned or initialed by the secretary or other officer.

5. Open a special dividend account at the bank, and credit it by transfer from the general account of the total amount of the dividend payable, and instruct the bankers to debit all dividend warrants to this account, and to state in the pass book the numbers of the dividend warrants, for purposes of checking. The bankers may be provided with a list of warrants issued, and be instructed to mark off the warrants as presented and paid.

Ruling of a Simple Dividend Sheet

ORDINARY SHARES

DIVIDEND at .....% per annum, payable on ....., 19....., in respect of year ended .....

Folio	Warrant No.	Name	Address	Holding	Gross Dividend	Tax at 9s. £	Net Dividend	Date Paid	Remarks

8—(B.6196)

Ruling of a Combined Dividend Sheet

DIVIDENDS payable on ....., 19...., in respect of the year ended ....., 19....
ORDINARY SHARES at 10%. PREFERENCE SHARES at 6%. DEBENTURE INTEREST at 5%

Warrant No.	Name	Address	Holding			Gross Dividends			Total	Tax at 9s. £	Net Amt.	Date Paid	Remarks
			Ordy.	Pref.	Debs.	Ordy.	Pref.	Debs.					

As a special dividend account will be opened for each dividend payment, each dividend payment is usually distinguished by a number which is printed on the warrants, and forms part of the title of the account, for example, "Dividend Account No. 23."

6. The warrants are then dispatched to the members, and the clerk responsible for posting them should initial the dividend sheets and certify on each the total number of warrants posted, and the date and time of posting. Posting of the warrants constitutes payment by the company (*Thairlwall* v. *Great Northern Railway Co.* (1910)).

7. Check due payment of the dividend warrants. This may be done—

(*a*) By instructing the bankers to enter in the pass book the numbers of the dividend warrants presented and paid, and then the secretary marks off the dividend list with the dates appearing in the pass book against each warrant number.

(*b*) The actual warrants paid may be collected from the bank, arranged in numerical order, and marked off accordingly on the dividend list.

(*c*) The bankers may be provided with a copy of the dividend list and instructed to mark off the warrants as paid.

8. In due course, bind the dividend sheets together, have them endorsed to show the dividend to which they relate, and carefully preserve them.

Miscellaneous Points

In the case of a company with different classes of shares and debentures, it is sometimes found that many members have holdings of more than one class of shares, or shares and debentures, and in such cases it is both

expedient and economical to arrange that all dividend and debenture interest payments be made on the one date, and to forward to such members one cheque to cover the whole of the payments to which they are entitled. This will necessitate some co-ordination of the holdings of the various members (this question is dealt with on page 84), and also a combined dividend list somewhat on the lines of the specimen shown on page 209.

If a cash bonus is paid in addition to the dividend, a special column should be ruled to show the bonus. Tax at the standard rate must be deducted from the dividend and bonus, and the upper portion of the dividend warrant should show the amount of the bonus separately, although the deduction of tax from dividend and bonus can be done by one operation.

Where a company has a dominion register or registers, it is recommended that a separate dividend list be prepared for each dominion from the branch registers at the head office of the company, and a sum sufficient to pay the dividend to the members in each dominion be remitted to the company's banker's agent or representative in each dominion, the dividend warrants being suitably endorsed so as to be made encashable in the dominion on presentation to the bank's agent or representative. The dividend warrants should be sent together, to the dominion secretaries, who will be better acquainted with the correct addresses of the members resident in the dominions, and they will issue them to the members. When preparing the dominion dividend lists, it will be necessary to ascertain by cable or telephone whether any removals from the dominion to the principal register are in transit on the dividend date, and if so, the dividend list will have to be amended accordingly. Alternatively, it could be arranged that all applications for removal be made not

later than, say, one month prior to the annual dividend date so as to allow the removals to be effected in time for the preparation of the dividend warrants, so that as regards applications lodged after the date prescribed, the dividends in respect of the shares would be payable only in the dominion.

When organizing payment of dividends and interest, full use should be made of the various labour-saving devices at the disposal of the secretary. Addressing machines can be used for inserting names and addresses on dividend lists, warrants, and counterfoils, and addressing envelopes (alternatively, window envelopes could be used). Adding typewriters can be used for inserting amounts in the warrants, calculating machines for calculating the dividends and tax deducted, cheque writers for inserting amounts and figures in the warrants, etc. Tables can be prepared in advance showing the gross, tax, and net amounts in respect of any holding, from one share or £1 of stock upwards, and these will greatly facilitate the work of compiling the dividend lists.

If many members have holdings of the same amount, it may save time if a sufficient number of warrants are printed with the figures and amounts appropriate to such holdings.

Care should be exercised in drafting dividend warrants to ensure that the manner in which the dividend is calculated is quite clear, particularly in the case of interim or half-yearly dividends, as some warrants are merely worded "Dividend for the half-year ended .....19.. £....." or if the percentage is shown, in some cases it is not stated whether the percentage is actual, or whether it is per annum. Such deficiencies are apt to be very confusing to persons who have to handle the warrants.

Where there are several classes of shares, or shares and debentures, the upper portion of the dividend

warrant will be drawn in the form of a schedule, on the following lines—

(HALF) YEAR ENDED ..... 19....			
"A" PREFERENCE SHARES			
Dividend at 6% (per ann.) on.....shares.	£	:	:
"B" PREFERENCE SHARES			
Dividend at 7½% (per ann.) on..... ,, .	£	:	:
ORDINARY SHARES			
Dividend at 8% (per ann.) on..... ,, .	£	:	:
DEBENTURE BONDS (STOCK)			
Interest at 5½% (per ann.) on £..... .	£	:	:
GROSS TOTAL .	£	:	:
LESS INCOME TAX at..... in £ .	£	:	:
NET AMOUNT OF WARRANT HEREWITH	£	:	:

This form of warrant would obviate the necessity for printing separate warrants for each class of share, or debentures, as well as enabling all the dividends and interest payments due to persons holding more than one class of security to be collected together, and one warrant sent to cover the whole.

Payment of Dividends to Shareholders' Bank Accounts

Many shareholders who have a banking account, request that their dividends be credited direct to their banking accounts. This saves the shareholders the trouble of endorsing their warrants and attending to the collection of them, and it also saves the secretarial department a not inconsiderable amount of clerical work, and stamp duties on warrants, so much so that many companies ask all new members to consent to their dividends being paid direct to their banking accounts. It is obvious that if the company had to forward the warrants to the particular branches of each bank where the accounts of shareholders were kept, the only saving would be a small amount of postage, and so the essential point of the system for crediting dividends direct to shareholders' bank

accounts is that the company makes arrangements with the head offices of the various banks whereby one cheque for the total dividend payable to customers of each bank is handed to its head office, which in turn makes arrangements for the dividends to be credited to the shareholders' accounts at the various branches where they are kept. Dividends should be credited direct to members' banking accounts in this manner, only on the written request or authority of the members, and many companies provide a special form of request for this purpose. Such forms of request or authority are usually known as " dividend mandates," and the method of dealing with them is as follows: Where members wish their dividends to be paid direct to their bank accounts, a note of the fact is recorded in the share register, and the index, and when the dividend lists are being compiled, the names of their bankers are stated in the " Remarks " column, and with this information, lists of the dividends to be paid to each bank can then be made out to send to each banker concerned. Alternatively, analysis columns for each bank can be added to the dividend lists, the amounts of the net dividends payable to each bank being entered in these columns. In order to check the analysis, another column should be provided to record the dividends payable direct to the members, and the totals of all the analysis columns should agree with the total net dividend payable. A list of the dividends to be paid to each banker is then prepared from the analysis columns. These lists, accompanied by a cheque for the amount payable to each bank, are then forwarded to the head offices of the various banks together with certificates of deduction of tax showing each shareholder's name, address, gross dividend, tax deducted and net amount. The head office of each bank then sorts the certificates according to the branches at which the shareholders have their accounts, and

forwards the certificates to those branches, who credit shareholders' accounts and then send the certificates to the shareholders concerned, the branch endorsing each certificate to show that the amount has been credited to the shareholder's account.

Where a number of dividends are paid direct to bankers, a number of warrants should be left unstamped, as only the upper portions (which are not dutiable) will be needed, because each bank receives only one cheque for the total dividends payable to its customers.

It may be added that a certain great British corporation has adopted a novel system to induce transferees to have dividends credited to their bank and Post Office accounts. On the front of each transfer lodged for certification is stamped in red ink the following notice to transferees: "If this is a first purchase of this security your attention is drawn to the Dividend Mandate stamped on the back hereof." On the reverse side of the transfer is stamped in black: "To the Secretary, X Company Limited. Please send dividend warrants on the within-mentioned sum of stock or on the amount which may hereafter so stand to . . . (Name and Address of Bank or other Agent)." This dividend mandate is signed by all the transferees.

The idea is a useful and a successful one, and could with great advantage be used by all companies that certify a fair number of transfers.

Income Tax Requirements

Sect. 33 of the Finance Act, 1924, provides that every dividend warrant must have annexed a statement showing (*a*) the gross amount which, after deduction of income tax appropriate thereto, corresponds with the net amount actually paid; (*b*) the rate and amount of tax appropriate to such gross payment; (*c*) the net amount actually paid. All this information is disclosed in the specimen dividend warrant shown on page 206,

as the dividend was for purpose of illustration deemed to be a dividend declared " less tax " (a dividend is always deemed to be " less tax " unless it is declared to be " free of tax "). Where a dividend is declared to be " free of tax " the wording of the upper portion of the warrant would have to be altered as follows in order to comply with Sect. 33—

Dividend at ..... % (per ann.) free of tax on ..... shares registered in your name	£	:	:
This is equivalent to a gross amount of	£	:	:
Less tax thereon at ..... in £	£	:	:
NET AMOUNT OF WARRANT . .	£	:	:

To obviate the necessity for writing on the warrant counterfoils the gross equivalent and tax deducted, some companies prepare tables showing this information for holdings of any and every amount, and have such tables printed on the back of the upper portions of the dividend warrant, showing only the net dividend on the front, the gross equivalent and tax deducted being easily ascertained on reference to the table at the back.

The penalty for failure to comply with the provisions of Sect. 33 is £10 for each warrant issued without the requisite statement annexed, with a maximum penalty of £100 in respect of each distribution of dividend.

Preference dividends cannot be declared " free of tax " unless the conditions of issue make the rate " free of tax." The expression " free of tax " is really a misnomer, because all dividends are taxable. The actual effect of a dividend declared to be " free of tax " is just the same as declaring a proportionately higher dividend " less tax "; in other words, the dividend declared is the actual net amount to be distributed after deduction of tax. No purpose is therefore served in declaring dividends " free of tax," and

such declarations only impose additional work on the secretarial department.

Payment of Dividends on Share Warrants to Bearer

Share warrants may be issued with or without dividend coupons annexed. If coupons are annexed they will be distinguished by numbers, as it would not be possible to distinguish them by dates because dividends may not be paid regularly. If the first dividend payment is being made, coupon No. 1 will be detached, and so on until all the dividend coupons have been used. A further coupon known as a "talon," is also annexed to the share warrant, and on surrendering the " talon " a new set of dividend coupons will be issued to the holder of the share warrant. Each set of coupons will also have a " talon " annexed, so that when all those coupons have been used a further supply may be obtained. On a sale of shares represented by a share warrant, the share warrant is not a good delivery unless all unused coupons are annexed.

For purpose of identification, all share warrants are numbered, and the number of the share warrant appears on all coupons annexed to it or supplied subsequently on surrender of a " talon."

When share warrants are issued, a register thereof is kept showing the number of the warrant, the name of the holder, value, and distinctive numbers (if any) of the shares comprised therein, date of issue, etc., and from this record the total amount required to pay any particular dividend can be ascertained.

The procedure for payment of dividends on share warrants will vary slightly according to whether dividend coupons are or are not annexed, as is shown in the following outline of the procedure.

1. When the resolution declaring the dividend is passed, advertise the fact, calling on holders of share

warrants to deposit the appropriate coupon (or to deposit their warrants where dividend coupons are not annexed) with the company's bankers for verification prior to payment of the dividend. A specimen of such an advertisement, to meet either case, is as follows—

EXEMPLARY COMPANY, LIMITED

HOLDERS OF SHARE WARRANTS TO BEARER IN THE ABOVE COMPANY are hereby informed that in accordance with the resolution passed at the Annual General Meeting, held on 15th May, 19...., a (Final) Dividend of 5s. per share, *less* income tax, for the year ended 31st December, 19...., will be payable on or after 31st May, 19...., at the West Bank, Ltd., 41 Oldbury, London, E.C.3, on presentation of Coupon No. 45 (Share Warrants).

Coupons (Share Warrants) must be listed on forms which will be provided by the Bank, and must be left four clear days for examination.

By Order of the Board.

99 Lune St., E. C.1. G. SMART, *Secretary*.
20th May, 19....

The articles may prescribe particular newspapers in which the advertisement is to appear, and may also provide as to the number of insertions.

Some companies require the coupons or warrants to be deposited at their registered office, and not at their bankers.

2. From the register of share warrants issued, prepare a list showing numbers of warrants, value of shares comprised in each, gross dividend, tax deducted, and net dividend payable in respect of each warrant. Check the calculations and castings.

3. Draft, and have printed and stamped, a sufficient number of dividend warrants, and also listing forms and coupon tickets. The dividend warrants should show the share warrant numbers, the names of the holders being inserted afterwards from the details recorded on the listing forms which consist simply of a statement of the name and address of the warrant

holder and the number(s) of the coupon(s) or share warrant(s) deposited with the bankers. Each dividend warrant must, of course, have annexed the usual statement of gross dividend, tax deducted, and net dividend, in compliance with Sect. 33 of the Finance Act, 1924.

4. Credit a special dividend account at the bank with a sum sufficient to meet the dividends due on the warrants. In the case of those companies whose shares are issued partly as registered shares, and partly in the form of share warrants, the one dividend account will suffice for payment of dividends on both classes.

5. As the coupons are presented for payment, receipts, known as "coupon tickets," are issued (or where share warrants are deposited, "lodgment receipts" are issued), and after verification of the coupons or warrants, for which purpose three or four days are usually stipulated, dividend warrants, accompanied, of course, by a statement showing the tax deducted, are issued on surrender of the coupon ticket (or where share warrants were deposited, the share warrants are endorsed with a rubber stamp "Dividend No.....paid on....., 19...," and returned to the persons lodging the same, together with the dividend warrant, on surrender of the lodgment receipt). As the dividends are paid, the list of share warrant dividends is marked off accordingly. All this work can be, and is usually, entrusted to the company's bankers, who are furnished with listing forms, coupon tickets (or lodgment receipts) and signed dividend warrants complete with income tax vouchers, and the bankers would issue the dividend warrants after verification of the coupons or share warrants. Verification consists of verifying the coupon number with the number of the share warrant issued, and scrutinizing the coupon (or share warrant where such are surrendered) to guard against forgeries or counterfeits. It is at times when

dividends are paid that any warrants supposed to be lost may be found to be still in circulation. On the issue of a duplicate, in the place of a lost warrant, the duplicate and coupon (if any) annexed bears a different number from that of the lost warrant. Should coupons from the lost warrant (or the lost warrant itself) be lodged, payment of the dividend should be stopped and inquiries made to ascertain how it comes to be in circulation, and it will be necessary to communicate with the person to whom the duplicate was issued.

6. The share warrant dividend lists are subsequently bound, endorsed, and carefully preserved. As to method of filing paid coupons, see page 222.

It should be noted, however, that the issue of share warrants to bearer is now subject to Treasury permission under the Exchange Control Act, 1947. The Exchange Control Act provides that no person may issue except by Treasury permission any bearer bond, share warrant to bearer or other similar document of title in which ownership passes by mere delivery. The Treasury embargo consequently also extends to bearer debentures, discussed below.

While the Exchange Control Act, 1947, operates, all share warrants must be deposited with an "Authorized Depositary," which collects the dividends for crediting to the account of the owners of the share warrants.

Payment of Interest on Bearer Debentures

1. Coupons are always annexed to bearer debentures, and the interest will be payable on definite dates stated on the coupons, usually half-yearly. Payment of the interest is advertised beforehand, holders being instructed to lodge their coupons, usually at the company's bankers, for verification and payment. A specimen advertisement is given on the next page.

EXEMPLARY COMPANY, LIMITED

NOTICE TO HOLDERS OF 5 PER CENT DEBENTURE BONDS TO BEARER.

NOTICE is hereby given that Coupon No. 39 for the half-year's interest due on 1st June, 19...., will be payable, *less* income tax, at West Bank, Ltd., 41 Oldbury, London, E.C.3.

Coupons must be left four clear days for examination, and listing forms may be obtained on application at the bank.

By Order of the Board.

99 Lune St., E.C.1. G. SMART, *Secretary*.

14th May, 19....

2. From the register of bearer debentures issued, prepare a list showing the number and value of each, gross interest, tax deducted, and net interest payable. Check calculations and castings.

3. Draft and have printed and stamped a sufficient number of interest warrants, with a statement annexed showing the gross interest, tax deducted, and net amount. The numbers of the bearer debentures will be stated on the interest warrants, the names of the payees being inserted subsequently by the bankers, from the details appearing on the listing forms which are completed by the persons lodging coupons for payment.

4. Credit a special interest account at the bank with a sum sufficient to meet the total interest payable, and instruct the bankers as to the verification and payment of the coupons, providing them with a list of coupons payable, and the completed interest warrants, listing forms, and coupon receipts.

5. As the coupons are presented for payment at the bank the bank issues a coupon receipt, and after the expiration of the time stipulated for verification, if the coupons are found to be in order, the interest warrants with income tax voucher annexed are issued in exchange

for the coupon receipt, and the bank will mark off the list of coupons payable accordingly.

6. The coupon lists are then bound, endorsed, and filed away, and the paid coupons should also be filed in manner outlined below.

Filing of Paid Coupons from Bearer Debentures and Share Warrants

The paid coupons detached from these documents can be filed in various ways—

(*a*) The coupons relating to each payment of interest or dividend are arranged in numerical order and secured by a band or clip. If some coupons have not been presented, and paid, a slip of paper bearing an indication of the reason why the coupon is missing, for example, "No. 534—not presented," "No. 560—reported to be lost—duplicate No. 589 issued in its place," etc., may be inserted in the place of the missing coupon.

(*b*) The coupons relating to each payment can be pasted in numerical order on a sheet or sheets of paper ruled off into spaces sufficient in size to accommodate the coupons and numbered to correspond therewith. Missing coupons and their respective numbers will thus be revealed at a glance by the fact that such coupons would not be pasted in the relevant numbered space.

(*c*) Sheets bound in book form, and ruled with numbered spaces sufficient to accommodate all the coupons relating to one share warrant or bearer debenture, can be used. Each sheet will be numbered to correspond with a debenture or share warrant, and the spaces numbered to correspond with the numbers of the coupons. As the coupons are paid they are pasted in their correct positions on the appropriate sheet, each sheet thereby constituting a record of the paid coupons of each debenture or share warrant.

When asked to issue duplicate income tax vouchers

in respect of interest or dividend payments under bearer securities, the secretary must, of course, verify that the applicant for the duplicate was the person receiving the payment in respect of which the duplicate is required, and his only means of doing this is possession of either the listing forms and coupon tickets which would bear the names and addresses of the persons claiming the dividend or interest payments on each occasion a payment was made, or the dividend or interest warrants which would bear the payees' endorsements. Some companies leave the paid dividend or interest warrants, listing forms, and coupon tickets (or lodgment receipts) with their bankers; others require the bank to hand over these documents.

The listing forms, with surrendered coupon tickets (or lodgment receipts) annexed, and the paid dividend or interest warrants, can be filed in alphabetical or numerical order, whichever is thought more convenient.

Issue of New Sheets of Coupons in Exchange for "Talons"

When all the coupons annexed to bearer securities have been used, if the securities are to remain in force, it will be necessary to issue new sheets of coupons. Each new sheet of coupons will also have a "talon" annexed, to be surrendered in exchange for a further supply of coupons when that sheet is used. The procedure on issuing new sheets of coupons is as follows—

1. A list of the bearer securities is drawn up showing the number of each document.

2. The number of coupons to be comprised in each sheet is decided, and the sheet is then drafted for handing to the printers. Each coupon will bear the name of the company, particulars of the nature of the security, the number of the document to which it is annexed, a statement of the purpose for which the coupon is to be

used, for example, " coupon for dividend on ordinary shares," " coupon for half-year's interest on 5 per cent bearer debenture stock payable on ..... day of ..... 19...," and the coupons in each sheet are numbered consecutively, being so arranged that coupon No. 1 on each sheet is the first to be detached, coupon No. 2 the second, and so on. Each sheet will also contain a " talon." The entire sheet is usually engraved to make forgery difficult. The draft is then passed on to the printers with the necessary instructions as to numbering the sheets, which will, of course, bear the same numbers as the securities to which they are to be annexed.

3. An advertisement, informing holders of the debentures or share warrants that new sheets of coupons will be issued in exchange for talons, is then inserted in such a newspaper as *The Times*. This advertisement is usually incorporated in the advertisement concerning the payment of dividend or interest which is payable on presenting the last coupon of the old series, but for purpose of convenience, the date for issuing new sheets of coupons is often fixed about a month or so after the dividend or interest date. The advertisement will instruct the holders to lodge their talons with the company's bankers, who will have been previously instructed to conduct the work of issuing the new sheets of coupons. After verifying the talons lodged, the bankers will issue the new sheets of coupons, the persons to whom the coupons are issued signing a receipt therefor endorsed on the talon.

4. The surrendered talons will then be collected from the bankers and filed along with the coupons to which they relate (see page 222).

Unclaimed Dividends

The amount of unclaimed dividends after any particular distribution will appear by the balance remaining

to the credit of the dividend account at the bank, and the total should be verified by comparison with the dividend sheets. Being specialty debts, the Statute of Limitations will not make the dividends irrecoverable against the company until a lapse of twelve years after they became due (*Drogheda Steam Packet Co.* (1903), *Artisans' Land and Mortgage Corporation* (1904)). Articles may provide that unclaimed dividends may be forfeited after a certain number of years, but the Stock Exchange object to any such provision. Most articles provide that unclaimed dividends shall not bear interest against the company (clause 122, Table A). It was held in *Burnham* v. *Atlantic and Pacific Fibre Importing and Manufacturing Co.* (1928) that the insertion in a company's balance sheet of unclaimed debenture interest constituted a sufficient acknowledgment of the company's liability to prevent the Statute of Limitations running in favour of the company, and it can be accepted that this ruling would also be applicable to unclaimed dividends.

CHAPTER XI

ALTERATIONS OF CAPITAL

IN this chapter the secretarial duties incidental to various alterations of capital are dealt with fully.

Procedure on Increase of Capital

1. Articles must authorize increase of capital, and the power can only be exercised in general meeting (Sect. 61). Power to increase the *issued* capital, but not to increase the nominal capital may be vested in the directors. Increase of capital may be effected by issuing preference or other shares unless the memorandum forbids such an issue (*Andrews* v. *Gas Meter Co.* (1897)), but preference rights must not be interfered with unless the consent of preference shareholders is obtained.

2. An ordinary resolution is sufficient unless the articles provide otherwise. Table A requires only an ordinary resolution (Clause 44).

3. Convene the meeting to pass the necessary resolution. Specimen resolutions will be found on pages 328–9.

4. Within fifteen days after the passing of the resolution, file with the Registrar of Companies a statement of increase on the official form (impressed fee stamp, 5s.), and pay the capital duty of 10s. per cent on the amount of the increase and also, in accordance with the Twelfth Schedule, an amount equal to the difference (if any) between the amount which would have been payable on first registration by reference to its capital as increased and the amount which would have been so payable by reference to its capital immediately before the increase. The statement of increase must (in accordance with Sect. 63) include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new

shares have been or are to be issued, and must be accompanied by a printed copy of the resolution authorizing the increase. Where the increase was effected by extraordinary or special resolution in accordance with the company's articles, the filing in due course of such extraordinary or special resolution pursuant to Sect. 143 (see page 333) fulfils the requirements of Sect. 63 that the statement of increase shall be accompanied by a printed copy of the resolution. If default is made in filing the statement of increase, the penalty is £5 per day, and if default is made in paying the capital duty, the amount thereof with interest at 5 per cent per annum from the date of the passing of the resolution is a debt recoverable from the company. (Revenue Act, 1903, Sect. 5.)

5. All copies of the memorandum in stock must be altered to show the increase of capital. (Sect. 25.)

6. If the new capital is to be issued, and it is desired to have an official quotation for the shares, the permission of the Stock Exchange should be sought. If a new class of shares is to be issued, the new share certificates must be printed, and attention given to such matters as new rulings for share registers, organization for dealing with applications and allotments, etc.

Procedure on Subdivision of Shares

1. Articles must authorize subdivision (Sect. 61). If they do not, a special resolution must be passed incorporating the necessary provision in the articles. If the shares are quoted, the Stock Exchange should be informed of the proposed change, and their requirements complied with.

2. The power to subdivide shares can be exercised only in general meeting (Sect. 61 (2)); therefore, when the board has decided to recommend subdivision and settled the manner in which the shares are to be divided, a general meeting must be convened to pass the necessary

resolution. The articles may prescribe an extraordinary or special resolution, but otherwise an ordinary resolution is sufficient. Table A requires only an ordinary resolution (Clause 45). The notice convening the meeting is usually embodied in, or accompanied by, a circular to shareholders explaining the reasons for the change.

Specimen resolutions for subdivision of shares will be found on page 329, and it should be observed that in the case of partly-paid shares the proportion of paid to unpaid liability must be the same after subdivision as before. (Sect. 61 (1) (*d*)).

3. When the resolution for subdivision has been passed, the procedure involved in order to carry the resolution into effect will be put in hand—

(*a*) Close the register of members, for, say, fifteen days for the purpose of balancing the register and issuing the new certificates. Advertise the closing of the register in accordance with Sect. 115. The transfer books of the original shares will have to be finally closed, and notice thereof should be inserted in the financial newspapers, with an intimation that pending issue of certificates for the new shares, transfers of the old shares will be accepted for registration, but only certificates for the subdivided shares will be issued to the transferees.

(*b*) On the closing of the transfer books, all transfers in hand should be registered, the register of members balanced, and a list of members drawn up showing: folio, name, address, description, number and distinctive numbers (if any) of old shares held, amount of holding, number of old certificate, number of new shares and distinctive numbers (if any) thereof, number of new certificate, dates of surrender of old certificate, and issue of new certificate, and a remarks column.

(*c*) The new share numbers are then allocated (where this system is still followed), written in the list, checked,

and entered in the register of members to facilitate subsequent dealings with the shares. A rubber stamp worded, for example, "SUBDIVIDED INTO £1 SHARES ON 1ST DEC., 19...." can be used to indicate the change in the share accounts, the stamp being impressed after the last entry in the account and the new details of the holding entered on the next line.

(*d*) Circularize shareholders calling in the old certificates for exchange. For the convenience of members desiring their certificates to be sent by post or handed to a nominee, forms of authority for this purpose should be annexed to the circular. A specimen circular is appended. Circulars will not, of course, be sent to members who have acquired shares by transfers in course of registration, because they will not have received their certificates, and certificates for the new shares should be issued direct to such members.

Specimen Circular Calling in Share Certificates for Exchange on Subdivision

EXEMPLARY COMPANY, LIMITED

99 Lune Street,
London, E.C.1.
1st December, 19....

Dear Sir (Madam),

I beg to inform you that by a Resolution passed at the Extraordinary General Meeting held on the 15th November last, it was decided that the existing fully paid Ordinary Shares of £5 each be subdivided into five ordinary shares of £1 each fully paid.

Certificates for shares of the new denomination will be issued in exchange for the present certificates, and members are requested to surrender their old certificates at once so that the exchange of certificates may be completed quickly.

The new certificates will be ready on the third day after deposit of the old certificates, between the hours of 10 and 2 (Saturdays 10 to 12) at the above address.

If you so desire, the new certificate will be sent to you by post, or handed to some other person on your behalf, provided you complete and sign the form annexed hereto, and return it to me accompanied by the old certificate.

The Transfer Books of the £5 Ordinary Shares were finally closed as and from 28th November, and pending exchange of

certificates transfers of the original shares will be accepted for registration, but only certificates for the subdivided shares will be issued to the transferees, so that in the event of your having disposed of your holding prior to the receipt of this circular, you need take no further action as the new certificate will be issued to the transferee, and if you have disposed of part of the holding represented by one certificate, you will receive a certificate for the balance of the new shares to which you are entitled in exchange for the balance ticket issued when the transfer was lodged. If you have retained part of your holding represented by a separate certificate or certificates, these should be at once forwarded for exchange.

By Order of the Board,
For Exemplary Co., Ltd.
G. SMART, *Secretary*.

To the Secretary, Exemplary Co., Ltd.
Dear Sir,

I/We enclose the following certificates for £5 Ordinary Shares registered in my/our name(s) and request you to issue certificates for £1 shares in accordance with the Resolution for subdivision passed at the Extraordinary General Meeting held on the 15th November, 19....

Nos. of Certificates	Number of Shares	Distinctive Numbers	
		From	To

[1] Please forward the certificate for the new shares to me/us by post at my/our risk.

[1] Please deliver the certificate for the new shares to..... .....of..... whose receipt for the new certificate shall be your sufficient discharge therefor.

Signature .....

Date..... Address .....

[1] The paragraph not used should be struck out.

Where a company has availed itself of Sect. 74, providing for the omission of distinguishing numbers, columns 3 and 4 will not be included.

(*e*) Draft and have printed new forms of share certificate, and cancel all old certificates in stock.

(*f*) As the old certificates are surrendered, they should be at once cancelled, and the date of surrender marked off on the list with a note as to whether the member wishes the new certificate to be sent by post or handed to a nominee. Forms of receipt for surrendered certificates should be printed for issuing to persons lodging certificates by hand.

(*g*) The new certificates will then be written out, sealed at a properly constituted board meeting, and issued. It is recommended that the new certificates be made out only as and when the old ones are surrendered, and not all together, because changes of ownership may have occurred of which the company has no notice, and, moreover, it is not desirable to have in hand a large number of certificates which may not be issued for a considerable time, if members are lax in surrendering their old certificates. Pending sealing and dispatch, the new certificates can be attached to the relevant old certificates together with the shareholder's authority to send the new certificate by post or to hand it to his nominee—this will facilitate checking and issuing of the new certificates. The new certificates should be printed with a slip perforated receipt attached, to be detached and signed by the recipient, and returned to the company. Certificates forwarded by post should be accompanied by a memorandum requesting acknowledgment of receipt of the certificate on the form annexed to it. These receipts should be filed by being annexed to their respective counterfoils in the share certificate book, together with the letter authorizing the company to send the certificate by post or hand it to a nominee.

It may happen that some members will have disposed of part or the whole of their holdings before

receiving the circular calling in the certificates for exchange, and in this case, when the transfers are registered, the new certificates will be issued direct to the transferees (and to the transferors in respect of any unsold balances), and the list should be marked off to indicate the certificates issued in these circumstances. As regards the filing of the surrendered certificates—those that are surrendered in connection with transfers will be attached to the transfer deeds, and those that are surrendered by members retaining their shares, should be cancelled and filed in alphabetical order.

(*h*) As the new certificates are issued, the date of issue should be marked on the list of members, and the number of the certificate noted in the member's account in the share register.

(*i*) After the expiration of a reasonable length of time, those members who have not surrendered their certificates for exchange should be communicated with.

(*j*) The necessary changes will have to be made in the share register index, unless this is merely an index of names only.

4. Within one month after the passing of the resolution for subdivision, notice thereof specifying the shares affected must be filed on the official printed form (impressed fee stamp 5s.) with the Registrar of Companies (Sect. 62). The penalty for default is £5 per day. Further, every copy of the memorandum in stock must be altered to show the subdivision (Sect. 25).

5. If the articles require a special or extraordinary resolution, the printed copy thereof must be filed with the Registrar of Companies, on the prescribed form (impressed fee stamp 5s.), within fifteen days after the passing of the resolution, and a copy of the resolution annexed to every copy of the memorandum and articles in stock (see page 334).

Procedure on Consolidation of Shares

1. Articles must authorize consolidation, and the power can be exercised only in general meeting. (Sect. 61.)

2. An ordinary resolution is sufficient unless the articles provide otherwise. Table A requires only an ordinary resolution. (Clause 45.)

3. Convene the meeting to pass the necessary resolution. Specimen resolution will be found on page 330.

4. The secretarial duties involved in exchanging the certificates will, *mutatis mutandis*, be the same as those outlined under the heading " Subdivision of Shares " in this chapter, and the following is a brief summary of the procedure—

(*a*) When the resolution has been passed, close the register of members and transfer books, dispose of all transfers awaiting registration, balance the share register, and prepare a list of members showing folio, name, address, and description, number and distinctive numbers (if any) of old shares held, amount of holding, number of old certificate, number and distinctive numbers (if any) of new consolidated shares, amount of any fractions, number of new certificate (and fractional certificate, if any), and a remarks column.

(*b*) Allot the new numbers (if any) to the shares and make the necessary changes in the share register.

(*c*) Circularize members, calling in old certificates for exchange.

(*d*) Have new share certificates printed, and cancel all old certificates in stock.

(*e*) As the old certificates are surrendered, prepare the new ones, have them sealed at a properly constituted board meeting, issue them to the members, and obtain and file receipts therefor.

(*f*) As the certificates are exchanged, mark off the list of members accordingly, and enter the numbers of the new certificates issued in the share register, and

after the expiration of a reasonable length of time send reminders to those members who have not surrendered their certificates for exchange.

(*g*) Where the consolidation of shares involves fractions, owing to the holdings of some members not being evenly divisible by the rate of consolidation, fractional certificates will be issued to such members. (As to the use of fractional certificates see page 94.) The practice usually adopted on issuing bonus shares, of selling the shares representing the total of the fractions, is not possible on consolidation, as this would amount to compulsory sale of shares, whereas on a bonus issue the practice is a term of the issue.

5. Within one month after the passing of the resolution for consolidation, notice thereof specifying the shares affected must be filed on the official form (impressed fee stamp 5s.) with the Registrar of Companies (Sect. 62). The penalty for default is £5 per day. Every copy of the memorandum in stock must be altered to show the consolidation (Sect. 25).

6. If the consolidation is effected by extraordinary or special resolution in accordance with the terms of the company's articles, a printed copy of the resolution must be filed with the Registrar on the official form (impressed fee stamp 5s.) within fifteen days after the passing of the resolution, and a copy of the resolution annexed to every copy of the memorandum and articles in stock (see page 334).

Procedure on Conversion of Shares into Stock and Reconversion

Only fully paid shares can be converted into stock. The articles must authorize conversion (or reconversion), and the power must be exercised in general meeting (Sect. 61). An ordinary resolution is sufficient unless the articles provide otherwise. Table A requires only an ordinary resolution (Clause 40). Specimen

resolutions will be found on page 331. If the articles do not contain provisions as to transfer of stock, and other necessary provisions (see for example Clauses 41–43 of Table A) opportunity should be taken, when the resolution for conversion is passed, to add the appropriate provisions in the articles, which can be done by special resolution. If the shares have an official quotation, the Stock Exchange should be informed of the proposed change, and its consent obtained. The incidental procedure for exchanging certificates and filing notices of change with registrar, etc., will, *mutatis mutandis*, be the same as is outlined in this chapter under the heading "Subdivision of Shares."

Many companies, particularly trust companies, now adopt the practice of converting their shares into stock at the earliest opportunity, and other companies are contemplating doing the same, because of the economies which can be effected in the transfer department by reason of the fact that distinguishing share numbers will not be necessary. However, as stated in Chapter VI, Sect. 74 now provides for this difficulty by permitting companies to dispense with distinguishing numbers, if desired, provided that all the shares, or all the shares of a particular class, are fully paid up and rank *pari passu* for all purposes.

Procedure on Cancellation of Unissued Shares

1. The articles must authorize the cancellation and the power can only be exercised in general meeting (Sect. 61).

2. An ordinary resolution is sufficient unless the articles provide otherwise. Table A requires only an ordinary resolution (Clause 45).

3. Convene the meeting to pass the necessary resolution. A specimen resolution is given on page 331.

4. File notice of the change with the Registrar, and amend copies of memorandum to show the cancellation

as outlined under the heading "Consolidation of Shares."

It may be asked what purpose will be served by a cancellation of unissued shares. At first sight no benefit is derived, and the only result of the cancellation is to reduce the nominal capital. The company may not wish to issue shares of the kind cancelled, because of the conditions attaching to them, and may wish to issue shares of another kind instead. Ordinarily, this would mean that the capital duty paid on the cancelled shares would be lost, and that additional capital duty must be paid on the increased capital represented by the new shares, but if a resolution increasing capital is passed at the same time as a resolution cancelling capital, no capital duty is payable on the amount of the increase, it being considered that such increase is set-off by the cancelled capital on which duty would have already been paid. Thus, a company can in effect alter the nature of unissued shares. Cancellation of unissued shares is not deemed to be a *reduction* of capital within the meaning of Sect. 66.

Procedure on Reduction of Capital

1. The authority of the articles, a special resolution for reduction, and an order of Court confirming the reduction, are necessary to effect a reduction of capital (Sect. 66 (1)). Power in the *memorandum* to reduce capital is not sufficient, as the Act requires the authority of the *articles* (*re Dexine Patent Packing Co.* (1903)). If it is necessary to add the appropriate provision in the articles, the special resolution for that purpose can, of course, be passed at the same meeting at which the resolution for reduction is submitted, the former resolution being taken first, so that it will not be necessary to hold two meetings.

2. The reduction may take place (Sect. 66 (1))—

(*a*) by reducing unpaid liabilities on shares,

(*b*) by writing off capital which is lost or not represented by available assets,

(*c*) by paying to shareholders capital which is in excess of the wants of the company,

(*d*) in any other manner of which the Court approves.

Professional assistance is usually obtained in preparing schemes for reduction of capital. The Court will only confirm a scheme which is " fair to all concerned." If unpaid liability is being reduced, or capital repaid to shareholders, the position of creditors will be affected, as the funds available to meet their claims would be reduced, and in such circumstances creditors would be entitled to object to the scheme. If more was being written off some shares than off others, the shareholders suffering most may object to the scheme. Therefore, before any resolution for reduction is submitted, the terms of the reduction should be communicated to the large creditors and/or shareholders (whichever body is affected, according to the circumstances) to ascertain whether there is a likelihood of any opposition, and if possible, to consider their opinions and suggestions.

3. Convene the meeting to pass the special resolution for reduction. The notice convening the meeting is usually accompanied by a circular outlining the necessity for, results, and effects of the proposed reduction. Specimen resolutions for reduction will be found on page 330.

4. On the passing of the resolution, a petition is presented to the Court for an order confirming the reduction. If unpaid liability is to be reduced or capital repaid (or in any other circumstances if the Court so directs) creditors are entitled to object to the reduction, and the Court orders advertisements for creditors, and settles a list of creditors. The claims of creditors who refuse to consent must be secured or discharged by payment in full (or by payment of such

an amount as the Court determines if the debt is disputed or contingent), but the Court may, if it thinks fit, dispense with the consent of any creditor (Sect. 67 (2) (*c*)) or all or any class of creditor (Sect. 67 (3)).

5. The Court, if satisfied, makes an order confirming the reduction and may, if it thinks fit, (*a*) direct that the words " and reduced " be added to the name of the company from such date and for such period as the order shall specify (if such an order is made the secretary must see that the words " and reduced " appear as part of the company's name wherever it is used, i.e. on all letters and documents, accounts, invoices, the seal, share certificates, etc.); (*b*) direct publication of the reasons for, causes of, and other information concerning the reduction.

6. If an order confirming the reduction is made, there must be filed with the Registrar of Companies (*a*) the Order of Court and a copy thereof; (*b*) a minute in the form approved by the Court showing the amount of the reduced share capital, how it is divided into shares, the amount of such shares, and the amount deemed to be paid up on each share at the date of the registration of the minute. The resolution for reduction becomes effective *only when the order and minute is so registered*, and notice of registration must be published in such a manner as the Court directs. The Registrar issues a certificate of reduction of capital, which is conclusive evidence that all the requirements of the Act have been complied with.

7. When registered, the minute is deemed to be substituted for the capital clause of the memorandum, and in accordance with Sect. 25, every copy of the memorandum subsequently issued must be amended to show the alteration. This can be done by pasting printed slips of the minute in the appropriate place in the memorandum.

8. If the shares are quoted, send notice of the reduction to the Stock Exchange.

9. Close the transfer books for conducting the routine work involved in carrying the reduction into effect. Balance the share register, and prepare a list of members showing the reduction of the individual shareholdings. Circularize the shareholders to surrender their certificates to be endorsed to show the reduction, or, alternatively, new share certificates may be issued.

10. If capital is being returned to shareholders, on surrender of share certificates, issue cheques to shareholders and return amended share certificate. Obtain and file receipts for cheques and certificates. The total amount to be returned to shareholders should be paid to a separate bank account, and all cheques drawn on that account.

11. Make the necessary entries in the share register and financial books.

In order to save capital duty in the event of the company desiring to increase its capital subsequently, it is usual on a reduction of capital, at the same time to pass a resolution increasing the capital by the same amount, and if this is done capital duty is not payable on the amount of the increase. Readers will find in *The Times*, many notices issued in the course of reductions of capital by companies, and a careful perusal of such notices will be very beneficial, to students particularly.

Procedure on Alteration of Rights Attaching to Shares

If the memorandum or articles authorize alteration of the rights, the rights may be altered in the manner prescribed in the articles. Sect. 72 protects dissentients and provides that where the memorandum or articles authorize alteration of rights by the consent of, or by a resolution of, a specified proportion of the holders of

a class of shares, then dissentient shareholders holding together not less than 15 per cent of the issued shares of the class may (if they appeal to the Court within twenty-one days after the variation was effected) apply to have the variation cancelled, and if such an application is made, the variation is not effective unless and until it is confirmed by the Court. If the Court finds that the variation would unfairly prejudice the holders of the class of shares affected, it disallows the variation, otherwise the variation is confirmed and the decision of the Court is final. A copy of the Order of Court must be filed with the Registrar of Companies within fifteen days after its date, the company and every officer concerned being liable to a penalty of £5 per day in default.

The secretarial duties involved will necessarily depend on the nature of the alteration, and general rules cannot be laid down. It may be necessary to call in the old share certificates for exchange; if so, the procedure outlined on page 229 will, *mutatis mutandis*, apply. If the alteration affects the provisions of the memorandum, then in compliance with Sect. 25, every copy of the memorandum in stock should be amended to show the change. If the alteration was effected by special or extraordinary resolution, or by a class resolution, or by an agreement between all the members of a class, then a copy of the resolution or agreement must be filed with the Registrar within fifteen days, and a copy thereof annexed to every copy of the articles in stock (Sect. 143).

Reorganizations of Share Capital

Reorganizations of share capital by consolidating different classes of shares or subdividing shares of one class into shares of several classes, are now carried out under Sect. 206 (5); and the procedure involved is dealt with in Chapter XVI. The new provisions of

Sect. 207 regarding information as to compromises with creditors and members are also discussed in that chapter. It should be noted here that with every notice summoning a meeting of creditors or any class of creditors, or of members or any class of members, shall be sent a statement explaining the effect of a compromise or arrangement and how the *interests of directors* may be affected, if differing from the interests of other persons.

Redeemable Preference Shares

Under Sect. 58 a company may, if so authorized by its articles, issue preference shares which are, or at the option of the company are liable to be, redeemed. If such shares are issued, every balance sheet must show what part of the capital consists of such shares, and state the earliest date on which the company has power to redeem the shares. Only fully paid shares can be redeemed, and such shares can be redeemed only out of profits available for dividend or out of the proceeds of a fresh issue made for the purpose of redemption, but any premium payable on redemption must be provided out of profits or out of the company's share premium account before the shares are redeemed. If redemption is made out of profits, the available fund is transferred to a reserve fund to be called the "capital redemption reserve fund." The sum so transferred must be equal to the nominal amount of the shares redeemed (Sect. 58 (1) (*d*)). The redemption of redeemable preference shares is not to be taken as a reduction of authorized share capital.

Where preference shares have been or are about to be redeemed, the company may issue shares to the same amount without having to pay capital duty on the new issue, but if the new shares are issued before the redemption takes place, for example, to raise capital for the purpose of the redemption, capital duty is payable

unless the redemption takes place within one month thereafter.

Sect. 58 (5) provides that the capital redemption reserve fund may be applied in paying up unissued shares to be issued to members of the company as fully paid bonus shares.

A point which may arise is whether on redemption, arrears of dividend on cumulative preference shares would lapse if at the time of redemption profits sufficient to pay the arrears had not been earned.

Procedure on Redemption of Preference Shares

Subject to the foregoing provisions, redemption of preference shares may be effected on such terms and in such manner as the articles provide, and the following is a general outline of the procedure that would be involved.

1. The directors having fixed the date for redemption, and appropriated profits or raised fresh capital for the purpose, the transfer books of the preference shares will have to be finally closed on the redemption date. It is desirable to close the transfer books a short time before that date to afford time for making the needful arrangements for paying off the shares on the due date. The notice closing the transfer books should state that no transfers will be registered after the specified date, and should publicly call the attention of the shareholders to the fact that redemption is taking place.

2. Prepare a list of preference shareholders showing the amount due to each (including any accrued dividend).

3. Circularize shareholders calling in the share certificates.

4. Cancel the share certificates as they are surrendered, and issue to shareholders cheques for the amount due in respect of capital and dividend. The cheques

may be drawn with an appropriate form of combined endorsement and receipt printed on the back, or alternatively, separate receipts may be used, and the cheques should be accompanied by a certificate stating the necessary details with regard to the tax deducted from the dividend in compliance with Sect. 33 of the Finance Act, 1924. It is advisable to open a special account at the bank and to credit the whole of the redemption moneys and accrued dividend to such account, and to draw the cheques on that account. If the redemption date coincides with a dividend date, it may be thought more desirable, although it is not so economical, to pay the dividend separately.

An alternative method of repaying the shareholders is to furnish each with a form of receipt to be annexed to, or endorsed on, the share certificate, which is then handed to the company's bankers, who will be provided with a list of the shareholders, and authorized to pay the redemption moneys after the expiration of, say, three days for verification purposes.

5. The appropriate entries should be made in the register of preference shareholders and financial books, and the cancelled share certificates, and receipts for the redemption moneys (or endorsed cheques as the case may be) carefully preserved.

6. Within one month after the redemption takes place, file with the Registrar notice of the redemption specifying the shares redeemed, on the official printed form (impressed fee stamp 5s.) (Sect. 62). It is submitted that a redemption of preference shares is an alteration of the memorandum within the meaning of Sect. 25, and consequently all copies of the memorandum in stock should be altered to show the redemption.

CHAPTER XII

DEBENTURES

A DEBENTURE may be defined as a document issued by a joint-stock company as evidence of its liability to repay money raised in addition to the shareholders' capital, and if purporting to give a charge, creates the security for repayment of the loan. Sect. 455 of the Companies Act, 1948, defines " debentures " as including " debenture stock, bonds, and any other securities of a company whether constituting a charge on the assets of the company or not."

Debentures which are not secured by a charge on the company's property are called " simple " or " naked " debentures, and the holders stand in the position of ordinary unsecured creditors except that the debentures may provide for the payment of interest, whereas ordinary unsecured creditors are not entitled to interest on their debts save in exceptional circumstances. Debentures which are secured by a charge on the company's property are usually styled " mortgage " debentures.

Debentures, whether secured or unsecured, may be issued in the form of (*a*) bonds of certain fixed amounts —£50–£100; (*b*) stock certificates being issued for the amount of stock to which each holder is entitled. Either bonds or stock may be issued (*a*) as registered securities, i.e. payable only to the registered holders and transferable only by instrument of transfer, or (*b*) in the form of bearer securities. Bearer debentures are fully negotiable by mercantile custom (*Bechuanaland Exploration Co.* v. *London Trading Bank* (1898); *Edelstein* v. *Schuler* (1902)).

The security for debentures may be by either fixed or floating charge, or by both. A fixed charge means

that the company encumbers its legal title to specific assets—land and buildings, etc.—by a charge in favour of the debenture-holders, or their trustees, with the effect that the company cannot deal with those assets other than by creating charges ranking after the first charge, or possibly by selling subject to the charge if the conditions of the debentures so permit. A floating charge means that the whole or a certain specified portion of the assets is charged to secure the debentures, but with the provision that the company may deal with such assets in the ordinary course of business, i.e. selling and mortgaging, etc. A fixed charge ranks before a floating charge on the same property. Usually land and buildings are made the subject of a fixed charge and other assets such as plant, securities, fixtures, motors, ships, etc., are the subject of a floating charge. Floating charges are not always very desirable securities because of the fact that the company may sell or mortgage the assets, but they are common because a floating charge is the only satisfactory method of charging assets other than land and buildings.

The charge may be created by the debentures themselves, but almost invariably the charge is created by a trust deed for the benefit of the debenture-holders. Banks, trust, and insurance companies are often appointed trustees. The prime advantage of a trust deed is that the trustees watch the interests of the debenture-holders far better than a large number of disconnected holders could do, and in the event of default on the part of the company, the trustees can immediately take steps to protect the interests of the debenture-holders —if there was no trust deed the initiative would have to be left to one or more debenture-holders. Careful perusal of the specimen debentures shown in the following pages will be well repaid in amplifying the foregoing points.

Specimen Certificate of Registered Debenture Stock

No..... £.....

DEBENTURE STOCK CERTIFICATE

EXEMPLARY COMPANY, LIMITED

Incorporated under the Companies Act, 1948.

Regd. Office : 99 Lune Street, London, E.C.1.

NOMINAL CAPITAL: £ divided into shares of £ each, the whole of which are issued and fully paid up.

ISSUE OF £ 5% MORTGAGE DEBENTURE STOCK made under the authority of the Company's Memorandum and Articles of Association, and pursuant to a resolution of the directors of the company, dated ..... 19..... INTEREST PAYABLE half-yearly on ..... and .....

THIS IS TO CERTIFY that ..... of ..... is the registered holder of ..... pounds of the above stock subject to and with the benefit of the provisions contained in a Trust Deed dated the ..... 19. ....., and made between the Company of the one part and ..... as Trustees of the other part, and subject also to the conditions endorsed hereon.

GIVEN under the Seal of the Company this ..... day of ....., 19.....

(Seal of the Company) .....

.....*Directors.*

.....*Secretary.*

Note. This certificate must be surrendered before any transfer of the whole or part of the stock comprised therein can be registered.

A debenture stock certificate to bearer would follow the above form except that the certificate would read "THIS IS TO CERTIFY that the bearer is the proprietor of ..... pounds of the above stock subject to, etc., ..." and the interest coupons and a talon would be annexed.

Specimen Debenture Bond where there is no Trust Deed

No..... £100

Impressed Stamp 5s.

EXEMPLARY COMPANY, LTD.

Incorporated under the Companies Act, 1948.

Regd. Office : 99 Lune St., London, E.C.1.

SHARE CAPITAL: £250,000.

ISSUE OF MORTGAGE DEBENTURE BONDS OF £100 EACH Ranking *Pari passu.*

BEARING INTEREST at % per annum payable half-yearly on the day of and the day of in each year.

1. EXEMPLARY COMPANY, LIMITED (hereinafter called the Company) will on the day of 19...., pay to or other the registered holder hereof (who and whose personal representatives and assigns where the context admits are hereinafter referred to as the debenture-holder) the sum of £100, and until payment of the said sum will pay to the debenture-holder interest thereon at the rate of £ % per annum by equal half-yearly payments on the day of and the day of in each year.

2. The Company hereby charges with such payments its undertaking, land, premises, stock-in-trade, plant, and effects whatsoever (present and future) to the intent that the charge hereby created shall operate as a floating security, and that the Company may sell, lease, exchange, or otherwise deal with all its property and effects for the time being subject to such charge as it may deem fit, subject only to conditions annexed hereto.

3. This debenture bond is issued subject to and with the benefit of the conditions endorsed hereon, which are deemed to be incorporated into and form part hereof.

GIVEN under the seal of the Company this .....day of ..... 19.....

....

(Seal of the Company) .....*Directors.*

.....*Secretary.*

CONDITIONS

(Here would be set out the conditions affecting the Debentures.)

Where there is a trust deed, Clause 2 would state that the debenture-holders were entitled to the benefit of the trust deed, giving its date and the names of the parties. If the debenture was to be to bearer, Clause 1 would state that the company would on the specified date "pay to the bearer of this debenture the sum of £100....." and as regards payment of interest, would refer to the interest coupons annexed to the debenture.

It will be observed from the foregoing specimen debentures that each consists of two parts: (1) the instrument containing the acknowledgment of the company's liability to pay principal and interest, and particulars of the security (if any) given, and (2) the conditions endorsed on or subject to which the debentures are issued. These conditions are very important, and the secretary of a company which has issued debentures must be well acquainted with the conditions affecting those debentures, as the following brief outline of the usual contents of well-drawn conditions will show—

1. Terms and methods of repayment (this is dealt with more fully later on in this chapter).

2. That all holders of the same class of debentures shall rank *pari passu*. But for this condition, debentures would rank according to their serial numbers, or according to date, where they were not all dated the same.

3. How and when the interest will be payable. In the case of registered debentures, interest is usually payable half-yearly on specified dates, by means of interest warrants, in the same manner as dividends on shares. Interest on bearer debentures is paid by means of interest coupons annexed to the debentures. These matters are dealt with in Chapter X.

4. The events on the happening of which the principal is to be repayable, for example—winding up of the

company, default in payment of principal and interest, etc.

5. That every debenture or certificate of debenture stock shall bear a denoting number.

6. In the case of registered debentures, provisions as to the register of debenture-holders (including where it is kept, if not at the registered office), and what such register shall show, how and when it may be closed from inspection, etc.

7. The method of transferring the debentures. This is dealt with in detail later on in this chapter.

8. That the company will not recognize any trust affecting the debentures, nor be bound by notice thereof, nor will enter any trust on the register in the case of registered securities. In the case of bearer securities, that the bearer shall be the only person recognized to receive payment of principal and interest. These provisions prevent the company being placed in the position of a trustee of the interests of any person other than the registered holder or the bearer.

9. That holders shall be entitled to the debentures free from any equity, set-off, or cross claim by the company against the original or any intermediate holder. This is usually inserted to make the debentures more desirable marketable securities, for obvious reasons.

10. That the executors or administrators of a deceased sole holder, or the survivor(s) of joint holders, shall be the only persons recognized by the company as having any title or interest in the debentures. This prevents the company being approached by parties beneficially interested in the debentures.

11. That persons becoming entitled in consequence of death or bankruptcy *must* register as holders or make a transfer, otherwise the company may withhold payment of interest.

12. Provisions concerning joint holders—that the company may deal with any one of several joint holders,

and that his receipt for the debenture, interest, or principal shall bind the others.

13. Conditions on which a new debenture or certificate shall be issued in place of one worn-out, defaced, lost, etc. Stock Exchange rules provide that the cost of issuing a duplicate certificate shall not exceed 1s., but power is usually taken to compel the applicant to pay the cost of investigating his title, statutory declarations as to loss, etc.

14. Regulations as to meetings of debenture-holders —provisions concerning notices of meetings, etc.

15. That where there is a trust deed, no debenture-holder shall take any proceedings against the company other than through the trustees.

Liability of Trustees for Debenture-holders

Sect. 88 introduces new and stringent provisions regarding the liability of trustees for debenture-holders. Any provision in a trust deed for securing an issue of debentures, or in any contract with the holders so secured, is void in so far as it has the effect of exempting a trustee from or indemnifying him against liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee.

The same section, however, operates to protect the trustee. The following *inter alia* shall not be invalidated: (*a*) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or (*b*) any provision enabling such a release to be given (i) on the agreement thereto of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.

Issue of Debentures

The legal requirements as to prospectuses, allotments, certificates, etc., applicable to shares also apply to debentures, and the procedure on a public issue of debentures follows much the same lines as a public issue of shares, which is dealt with in Chapter VI. (It should, however, be observed that in the case of an allotment of debentures, no return of allotments under Sect. 52 is required as in the case of shares.) The following is a brief summary of the procedure with necessary amendments peculiar to an issue of debentures—

1. It will be necessary to draft and print forms of application and allotment sheets, allotment letters, and letters of regret (and ruling of register of debenture-holders in case of an issue of registered debentures; a specimen ruling is given on page 274).

2. The application and allotment sheets will be written up, checked, and balanced, the allotments made, and the allotment letters and letters of regret (if any) issued, but before any allotment letters are issued it must be observed that the statement of loan capital is filed with the Commissioners of Inland Revenue (see heading "Stamp Duties" in this chapter). The drafting of the debentures and trust deed (if any) and the stamping of these documents will be attended to by the company's solicitors and trustees' solicitors (if any).

3. Accounts will have to be kept of the allottees, and the instalments due and paid, and in due course the definitive debenture bonds and stock certificates, as the case may be, will have to be issued. The procedure on issue of share certificates will, *mutatis mutandis*, apply (see Chapter VI). A common practice is to issue scrip certificates in exchange for allotment letters. These scrip certificates state when the instalments are due, and have bankers' receipt forms annexed. Many scrip certificates also have annexed a coupon for the

first payment of interest, and if this procedure is followed, it will be necessary to calculate the accrued interest on the instalments from the due dates thereof, and insert the amounts in the coupons, or the coupons can be drawn without definitely mentioning the amount of interest, and on the interest date the bankers will be furnished with a list of coupons payable, and the amount of interest due in respect of each. In either case it will be necessary to make arrangements with the bankers for payment of the interest, and to take steps to ensure that coupons are cashed only where the instalments have been paid punctually and in full. The payment of interest coupons is dealt with in Chapter X.

These scrip certificates are often issued as bearer instruments, and when all the instalments are paid the scrip certificate is surrendered for the debenture bond or stock certificate. The method of issuing scrip certificates to bearer has much to recommend it, as the secretarial department is saved the considerable trouble involved in dealing with transfers pending payment in full of the instalments.

Interest coupons annexed to scrip certificates attract a 2d. stamp duty, as a cheque. A specimen debenture scrip certificate is given at the end of this chapter.

4. In the case of registered debentures, the register of debenture-holders will have to be written up. This will be kept and indexed on the same lines as the share register (see Chapter VI). A specimen ruling is given on page 274.

5. Within twenty-one days after the creation of the charge securing the issue of the debentures, the company must duly register the necessary particulars with the Registrar of Companies. Registration formalities are usually attended to by the company's legal advisers. The subject of registration of charges is dealt with under

the next heading. A copy of the Registrar's certificate of registration must be endorsed on every debenture or certificate of debenture stock which is issued.

6. A copy of the trust deed (if any) and one copy of each series of debentures must be kept at the registered office (Sects. 103 and 104).

7. Details of the charge must be entered in the company's register of mortgages and charges (Sect. 104).

8. In the case of registered debentures, arrangements for dealing with transfers should receive attention.

Registration and Filing of Charges Securing Debentures

Sect. 95 provides that any charge for securing an issue of debentures must be registered within twenty-one days after the creation of the charge, otherwise the security is void against the liquidator and any creditor, but without prejudice to any obligation for repayment of the amount secured, and in default of registration of the charge, the money thereby secured becomes immediately payable. Registration is the duty of the company (although any interested person may apply for registration), and Sect. 96 (3) imposes a fine of £50 per day on the company and every officer who is in default in registration.

In the case of an issue of debentures there must be lodged with the Registrar the following documents (Sect. 95 (8) and (9))—

1. The prescribed form (duly stamped with a 5s. fee stamp) showing—

(*a*) Total amount secured by whole series of debentures.

(*b*) Amount of present issue of series.

(*c*) Dates of resolutions authorizing the issue.

(*d*) Date of trust deed—if none, date of execution of debentures.

(*e*) General description of property charged.

(*f*) Names of trustees (if any) for the debenture-holders.

(*g*) Amount or rate per cent of any commission, discounts, or allowances, for underwriting the issue of debentures.

2. The trust deed (if any). If no trust deed, one of the debentures of the series.

If more than one issue is made of debentures in the series, the Registrar must be notified of particulars of the date and the amount of each issue.

The prescribed registration fees must also be paid.

The Registrar issues a certificate of registration which is conclusive evidence that the requirements of the Act have been complied with, and a copy of this certificate of registration must be endorsed on every debenture or certificate of debenture stock issued, payment of which is secured by the charge so registered, under penalty of £100 on any person knowingly or wilfully a party to default.

If the omission to register a charge within twenty-one days is proved to be due to inadvertence or accidental, the Court may extend the time for registration (Sect. 101).

Transfer of Debentures

Bearer debentures, whether issued in the form of bonds or stock certificates, are, of course, negotiable instruments, and are transferable by delivery.

As regards registered bonds, or registered stock certificates, these are *choses in action*, and would ordinarily be transferable by any assignment in writing which complies with the requirements of Sect. 136 of the Law of Property Act, 1925, concerning assignments. The signature of the transferee would not be necessary, the transferee could retain possession of the assignment or transfer, and could not be compelled to hand it over to the company, a fee for registration of the transferee could not be demanded by the company, as

it would be bound by notice of assignment under the Law of Property Act, etc. To obviate the inconveniences which such a state of affairs would surely entail in the registration of transfers of registered debentures, the conditions of issue of the debentures invariably prescribe the mode of, and other requirements concerning transfers, the following being typical conditions—

(*a*) Every holder of stock shall be entitled to transfer the same or any part thereof not involving a fraction of £1 (or in the case of an issue of bonds, that every holder shall be entitled to transfer his bond) by an instrument in writing in the usual common form.

(*b*) Every such instrument of transfer to be signed by both transferor and transferee, and the transferor shall be deemed to remain owner of the bond or stock transferred until the name of the transferee is entered in the register of debenture-holders. (It should be observed, however, that by virtue of Sects. 78 and 80 of the Companies Act, 1948, the company must either refuse to register the transfer, or must issue a certificate of stock (or endorse a debenture bond to show the interest of the transferee) *within two months after presentation of the transfer for registration*, unless the conditions of issue of the debentures provide otherwise.)

(*c*) That every transfer must be left at the registered office of the company for registration, accompanied by the stock certificate or bond, and such other evidence as the company may require to prove the title of the transferor.

(*d*) That all instruments of transfer which shall be registered shall be retained by the company.

(*e*) That a fee of 2s. 6d. will be charged for the registration of each transfer, and if required must be paid before registration of the transfer.

(*f*) That no transfer will be registered during the fourteen days immediately preceding the days fixed for payment of the interest on the bonds or stock.

Other conditions of interest in connection with transfers such as the question of notices of trusts, procedure on transmission, joint holders, whether or not subject to the equities, are also usually included, and are dealt with previously in this chapter.

The procedure on transfer of debentures follows exactly similar lines to transfer of shares, and similar care and precautions should be taken when dealing with transfers of debentures (see Chapter VIII), and the provisions of the Companies Act, 1948, concerning issue of certificates and registration of transfers (Sects. 78 and 80) apply to debentures as well as shares; but an important point to note in connection with registration of transfers of debentures, is that usually a debenture bond can only be transferred in its entirety —it cannot be split or divided between different holders—whereas debenture stock can be transferred in fractional amounts (although there is usually a restriction on transfers of fractions less than a certain minimum, £1, or £5). The reason for this distinction is that the stamp duty on debenture bonds is usually impressed on the bonds themselves, whereas in the case of an issue of debenture stock, the stamp duty thereon is usually impressed on the trust deed. Consequently, on a transfer of a debenture bond, the bond is endorsed to show the name, etc., of the transferee, whereas on a transfer of debenture stock, the old certificate would be cancelled and a new certificate made out for the transferee, or if only a part of the stock comprised in one certificate was sold, the transfer of that part would be " certified " against the stock certificate in the same way as transfers of part of a shareholding are certified (see Chapter VIII) and, in due course, a certificate would be made out for the transferee in respect of his part of the stock, and a new certificate for the transferor for the unsold balance of his holding. Obviously, in the case of stamped bonds,

if these were cancelled when a transfer took place, the new bonds would have to be stamped, and this would be wasteful, whereas there is no duty on stock certificates because the duty is impressed on the trust deed

Winding up does not operate to suspend registration of transfers of debentures, as it does transfers of shares, because debenture-holders are not members of the company; they are creditors.

Transmission of Debentures

The legal personal representatives of deceased, bankrupt, or lunatic debenture-holders are, of course, entitled to deal with the debenture holdings of the person they represent, and, generally speaking, the company will require the same evidence of title, and would follow the same procedure in dealing with the representatives, as in the case of a transmission of shares (see Chapter VIII), but the conditions of issue of the debentures may prescribe certain regulations as to transmission of debentures, as for example, the specimen conditions on page 249.

In *Edwards* v. *Ransomes & Rapier* (1930), it was held that where the executor was entitled to certain registered debentures as part of his share as beneficiary of the estate, he was entitled to be registered as owner without further transfer; the company had already registered him in his representative capacity, and a further transfer would be unnecessary.

Payment of Interest on Debentures

The procedure on payment of interest on registered debentures will follow the same lines as that for payment of dividends on registered shares, which is dealt with in Chapter X. Interest on bearer debentures is paid by means of coupons annexed to the debentures, and this matter is also treated in the same chapter.

Redemption of Debentures

The conditions of issue and/or the trust deed (if any) will state the terms and methods of redemption. Debentures may be redeemable in various ways, for example—

(*a*) Only on a fixed future date.

(*b*) On the company giving a stipulated length of notice of redemption.

(*c*) By annual drawings.

(*d*) By the company purchasing them in the open market at or under a fixed maximum price. In this case where a company purchases its own debentures they are cancelled, the register of debentures is amended accordingly, and the necessary entries made in the financial books.

(*e*) On the demand of debenture-holders—such a provision is rather uncommon.

Sect. 89 authorizes the issue of perpetual or irredeemable debentures, but such issues are not common.

The usual arrangement for redemption of debentures is that the company undertakes to redeem them either on a fixed date, or by annual drawings of a certain amount, but reserving to the company the right to redeem the whole or part on giving a stipulated length of notice, and/or the right to purchase its debentures in the open market. In some cases, where the debentures have depreciated in value, or have no quotation, the company has invited debenture-holders to tender for redemption of their debentures before the fixed redemption date, i.e. to state the lowest price at which they would be willing to sell their debentures to the company or to its nominees.

Where the redemption of all the debentures is to take place on a fixed date, the conditions of the debentures usually make provision as to how the company must raise the redemption moneys, e.g. by annual appropriations of fixed amounts to be invested in approved

securities, or in an insurance policy, etc. Where redemption is to take place by annual drawings, the debentures or trust deed set out minutely the method of conducting the drawings. Slips of paper bearing the numbers of the outstanding bonds are placed in a box (or in the case of stock, the holdings are sorted into batches of a stipulated value, say £1,000, each batch being allotted a number, the numbers being written on slips of paper and placed in the box) and slips are then drawn from the box according to the number of bonds or amount of stock to be redeemed, in accordance with the conditions of the debentures. The drawing is usually conducted by a notary public in the presence of the secretary and/or one of the debenture-holders, the notary issuing a certificate of the number of bonds drawn or amount and names of the holders of stock drawn for redemption.

Whether the debentures are repaid on maturity, or after due notice of redemption by the company, or by annual drawings, the secretarial routine is much the same in each case. Notice of redemption will be given to those holders whose debentures are to be redeemed. Registered holders will be circularized. Holders of bearer debentures will be informed by Press advertisements. Where the company is redeeming in pursuance of an option to redeem on giving a stipulated length of notice, the notice of redemption must be given the requisite length of time before the date proposed for redemption. The following is a specimen notice to

EXEMPLARY COMPANY, LIMITED

TO HOLDERS OF THE 5% MORTGAGE DEBENTURES OF THIS COMPANY

Notice is hereby given that pursuant to Clause 10 of the Trust Deed securing the above debentures, dated the ..... day of ..... 19...., and made between the company of the one part and the Trustworthy Trust Company, Ltd., as trustees for the debenture-holders of the other part, the company proposes on the 1st day of June, 19...., to redeem at

105 per cent the whole of the outstanding 5 per cent Mortgage Debentures secured by the said Trust Deed, together with the half-year's interest accrued due on that date.

The principal moneys secured by such debentures, and the current half-year's interest will be paid at the West Bank, Ltd., 41 Oldbury, London, E.C.3, on surrender of the debentures with all unpaid coupons annexed thereto, and the same must be left at the bank three clear days for verification. Payment will be made by cheque provided debenture-holders complete and sign and return to the bank a form of request for that purpose, which can be obtained at the bank on and after the 25th May, 19....

In case the said debentures are not presented for redemption on the 1st June, 19 .., all interest on the said bonds will cease from and after that date.

Dated this 28th day of February, 19....

By Order of the Board.

99 Lune St., E.C.1. G. SMART, *Secretary*.

holders of bearer debentures, and the circular to registered holders will follow the same lines, but in addition, it should state that no transfers will be accepted for registration after the proposed redemption date, although it is more convenient, if possible, to close the transfer books about a fortnight before that date.

A list of debenture-holders (or numbers of bearer bonds or stock certificates) showing the amount due to each on redemption will be drawn up. The accrued interest must also be calculated and shown in the list, and the necessary statements of tax deducted prepared in compliance with Sect. 33 of the Finance Act, 1924. The redemption dates often coincide with a half-yearly interest date, and this minimizes to some extent the labour of calculating the accrued interest. In the case of registered debentures the register of debenture-holders must be balanced.

The amount to be distributed by the company in respect of principal and accrued interest is usually credited to a special account at the bank to prevent overburdening the general account.

The organization for paying out debenture-holders must receive attention. In the case of bearer debentures,

the usual practice (as will be seen from the above specimen notice) is for the company's bankers to handle the repayment. The bankers will be provided with a list of the numbers of the debentures outstanding, and the amount of principal and interest payable in respect of each, together with the appropriate certificates of tax deducted from the interest. When the holders deposit their debentures with the bankers, they will be required to state their name, address, etc., number and value of the debentures on a form provided by the bank, a copy of which, duly receipted by the bank, will be handed to the depositor, who, on presenting it at the bank after the expiration of the time stipulated for verification, will be paid the principal and interest to which he is entitled on his signing a receipt therefor endorsed on the debenture. Subsequently, the redeemed debentures will be handed to the company. The following is a specimen form of receipt—

> RECEIVED from the Exemplary Co., Ltd., the principal sum of £..... secured by the within written security together with all interest accrued due in respect thereof.
>
> Dated this day of 19....
>
> WITNESS..... SIGNATURE.....
> Address .....
> Description .....

A rubber stamp could be used for the purpose of endorsing this form of receipt. No stamp duty is payable on the receipt as the Stamp Act exempts receipts for principal and interest written on a duly stamped document securing the same.

In the case of registered debentures, holders can be circularized to surrender their bonds or certificates, and these will be endorsed with a form of receipt and returned to the holders with an undertaking to pay the amount due on redemption on presentation of the debenture duly receipted, and for the convenience of those holders desiring payment to be made by post,

or to be made to their nominees, forms of request to send a cheque by post, or to pay the redemption moneys to a named nominee can be provided. Alternatively, the actual payment of the redemption moneys can be left in the hands of the company's bankers as in the case of bearer debentures. Sometimes, the trustees for the debenture-holders handle the redemption of the debentures.

As the bonds or certificates are redeemed, the list is marked off accordingly. If there is a trust deed, this must be discharged, a matter usually attended to by the company's solicitors, and in due course a memorandum of satisfaction should—but need not necessarily—be filed at the Companies Registry. This must be on the official form (fee stamp 5s.) which requires sealing in accordance with the articles, and supported by a statutory declaration by a director and the secretary. (This declaration is printed on the fly-leaf of the official form.) It should also be seen that the necessary entries are made in the company's register of mortgages and charges, and in the financial books (and in the register of debenture-holders in the case of redemption of registered debentures).

Where, on a redemption of part of a debenture stock issue by means of annual drawings, it happens that part only of a holding represented by one stock certificate is drawn for redemption, it is not sufficient, where the debentures have an official quotation, to endorse the stock certificate to show that it has been partly redeemed, as the Stock Exchange rules require that the old certificate be cancelled and a new one issued for the unredeemed balance.

Re-issue of Debentures and Issue of Debentures in Substitution for Others

Sect. 90 of the Companies Act, 1948, provides, in effect—

(*a*) That where a company has redeemed any debentures it shall have power to re-issue them either by re-issuing the same debentures or by issuing other debentures in their place, unless

a provision to the contrary is contained in the articles, or in any contract entered into by the company, or unless the company has by resolution or other act manifested its intention to cancel the debentures;

(*b*) That on a re-issue of redeemed debentures, the person entitled thereto shall be deemed to have the same priorities as if the debentures had never been redeemed;

(*c*) That where debentures are deposited to secure a fluctuating overdraft on current account or otherwise, the fact that the account may cease to be in debit does not, *ipso facto*, redeem the debentures.

Further, in accordance with the Eighth Schedule, particulars of redeemed debentures which the company has power to re-issue shall be included in every balance sheet.

A company may for some purpose, or in pursuance of some scheme or arrangement, wish to substitute existing debentures by an issue subject to different conditions and terms, or to substitute registered for bearer debentures, and vice versa.

The secretarial routine will, of course, depend on the circumstances. If redeemed debentures are being re-issued, the re-issue is in fact the equivalent of a new issue, except that the old debenture bonds (or new stock certificates in the case of stock) would be issued to the new applicants and the procedure would be the same as on an original issue of debentures. If at or before the date of maturity of the debentures, the company finds that it would be convenient not to repay the debentures, but to invite the debenture-holders to accept a renewal of the debentures for a further term, or to issue other debentures in their place, the trustees (if any) for the debenture-holders would be consulted, and the debenture-holders communicated with and asked to state if they would be willing for their debentures to be renewed or replaced. If the response was considered adequate, those debenture-holders agreeable to the company's proposals would be requested to sign a contract undertaking to accept the company's terms

—the form of such contract would be settled by the company's solicitors and trustee's solicitors.

A list of debentures outstanding would be prepared, and a note made thereon against the name of each debenture-holder who accepts the company's terms. The others would have to be paid out at maturity. (The procedure for redemption is dealt with previously in this chapter.)

Where there is a trust deed, a supplemental trust deed will be prepared outlining the terms of the arrangement for re-issue, or if a new series of debentures is to be issued, a new trust deed will probably be entered into.

The debenture bonds or certificates of debenture stock will be called in, and if the debentures are to be re-issued, the bonds or certificates will be endorsed to record the fact, unless it be thought more desirable to issue new forms of bond or certificate, or where the debentures are to be replaced by another issue, the new documents will be prepared. These will in due course be handed to the holders entitled thereto in exchange for a lodgment receipt which would be issued to them on their depositing their debentures with the company, the lodgment receipts containing an undertaking by the company to hand over the bonds or certificates within a stipulated time.

Other matters requiring attention are—

(*a*) The re-issue, or issue of the substituting securities, as the case may be, must be properly authorized either at a general meeting, or at a meeting of the directors, whichever is required by the articles, and the allotment of the debentures should be properly made at a valid board meeting.

(*b*) The necessary stamp duties must be paid.

(*c*) The requirements of Sect. 95 as to registration of charges, and endorsement on the debentures of a copy of the certificate of registration, must be complied with.

(*d*) The entry in the company's register of mortgages and charges must be amended.

(*e*) In the case of registered debentures, the register of debenture-holders will have to be written up and amended to show the re-issue of debentures, or the issue of new ones in their place.

(*f*) The appropriate entries must be made in the books of account.

(*g*) A copy of any new or supplemental trust deed and a copy of the new or re-issued debentures must be kept at the registered office in compliance with Sects. 103 and 104.

(*h*) A memorandum of satisfaction should be filed with the Registrar as regards debentures repaid.

(*i*) It will be necessary to see that accrued interest on any debentures to be replaced is duly accounted for.

Conversion of Registered to Bearer Debentures, and Vice Versa

Holders of registered debentures are sometimes accorded the right to convert their debentures into bearer debentures, and vice versa. In such cases, the practice is to require the debenture-holder to lodge his debenture with a signed form of request for conversion, at the registered office, in exchange for which he is given a lodgment receipt containing an undertaking to issue the new document in due course. The new document will be prepared, and brought before the board to confirm the conversion and authorize the sealing and signing and issue of the new document, and thereupon the surrendered debenture is cancelled and filed. The new document may require stamping; if so, this should be attended to. A register of conversions is kept, and details of the conversion entered therein. The new document is issued to the person entitled thereto on his surrendering the lodgment receipt, paying the prescribed fees and stamp duties (if any) and

signing a receipt for the new document. The necessary alterations must then be made in the register of debenture-holders, register of bearer debentures, and books of account.

It should be remarked, however, that in consequence of the passing of the Exchange Control Act, 1947, conversion of registered to bearer debentures would hardly arise at the present time, because the issue of bearer securities can only be made with the approval of the Treasury, which permission is not given.

Issue of Shares in Exchange for Debentures

Sometimes debentures are issued giving the holders the right on request at any time, or at stated times, or at maturity, to have their debentures converted into shares according to some pre-arranged scale of exchange, but the operation must not result in an illegal issue of shares at a discount (*Moseley* v. *Koffyfontein Mines* (1904)). Debentures issued on such terms are usually styled "convertible debentures." Before maturity, conversions may only take place gradually, on the initiative of the debenture-holders. At maturity the debenture-holders may be communicated with and asked to state whether they will take cash or shares on redemption, a record being kept of the replies received. The procedure will be the same in both cases, save that conversions on maturity may take place on a large scale.

Each debenture-holder will be required to lodge his debenture together with a signed form of request for conversion into shares, at the registered office, and he will be given a lodgment receipt undertaking to issue a share certificate in due course. The necessary new share certificate will be prepared, and will be brought before the board, which will pass a resolution allotting the shares in exchange for the debenture and authorizing the sealing, signing, and issue of the share certificate, whereupon the debenture will be cancelled. A register

of conversions will be kept, and the necessary details entered therein, and the share certificate issued to the person entitled thereto on his surrendering the lodgment receipt, paying the prescribed fees and giving a receipt for the share certificate. (See Chapter VI as to precautions necessary on issuing share certificates.) In addition it will be necessary—

(*a*) To take into account any interest accrued on the debentures at the date of conversion. It is convenient to arrange matters so that conversion takes place on an interest date.

(*b*) To make a return of allotments in compliance with Sect. 52. Where conversion takes place before maturity of the debentures, it will also be necessary to file a contract in writing constituting the title of the allottee or to file the prescribed form of particulars (No. 52). Where the conversion of debentures to shares takes place on maturity, it is submitted that this will not be necessary, because at maturity the debenture-holders have the option of taking cash or shares, and if they elect to take shares, they in effect pay for them in cash.

(*c*) To make the necessary entries in the register of members and index thereto.

(*d*) In the case of registered debentures, to amend the register of debenture-holders to show that the debentures were converted into shares, or in the case of bearer debentures, to note in the register of bearer debentures those debentures which have been converted.

(*e*) To amend the company's register of mortgages and charges to show to what extent the charge securing the debentures has been discharged by the conversions to shares.

(*f*) To make the appropriate entries in the books of account.

(*g*) To issue the share certificates in respect of the converted debentures within two months from the date of conversion in compliance with Sect. 80

Further, a memorandum of satisfaction should be registered at the Companies Registry, and where the whole of the debentures have been converted or redeemed, it is necessary to have the trust deed (if any) discharged, or where only part of the debentures are converted before maturity thereof, the trust deed should be endorsed accordingly. Moreover, if the company's capital is all issued, it will be necessary to increase the nominal capital, in order to make it possible to issue shares in place of the debentures.

Income Debentures

The interest on debentures is payable whether the company earns profit or not, and thus in the case of a not too prosperous company, the annual charge for debenture interest is a heavy burden, which if not met will accumulate and financially embarrass the company, whereas if the capital represented by the debentures was in the form of shares, the company would not pay any dividends, and could perhaps manage to survive lean periods without accumulating burdens to be met when better times came. To meet such circumstances, the expedient has been adopted of issuing debentures, the interest on which is payable only if sufficient profits are earned, the debenture-holders losing their right to interest if profit to pay it is not earned each year, but they stand in a better position than shareholders in that the debentures are secured by a charge on the company's property or part thereof. If issued in the form of bonds, such debentures are known as income bonds; if in the form of stock, as income debenture stock. They occupy, as it were, a half-way position between debentures and shares, and are often issued to creditors where reconstruction takes place. Apart from the fact that interest is payable only if profits are made, they are in all respects similar to, and should be dealt with as, ordinary debentures.

Register of Debenture-Holders

It is to be noted that Sect. 86 gives new provisions relating to the keeping of a register of debenture-holders, as follows: (*a*) The register of a company registered in England shall not be kept in Scotland, and vice versa. (*b*) The register may be kept at the place where it is made up, i.e. not at the registered office, but in this case the Registrar must receive notice and the fact be included in the Annual Return. This is so that it may be inspected, by registered debenture-holders and members of the company, which inspection is to be without charge. Other persons may inspect on payment of a fee of 1s. or less, and all may have a copy on payment of 6d. per 100 words (Sect. 87).

Stamp Duties Affecting Debentures (including Bonds, Mortgages and other Securities)

1. REGISTERED AND TRANSFERABLE ONLY BY INSTRUMENT OF TRANSFER—

	s.	d.
Where the amount secured does not exceed £10 . .		6
Exceeds £10 and does not exceed £25 . . .	1	4
,, £25 ,, ,, £50 . . .	2	6
,, £50 ,, ,, £100 . . .	5	–
,, £100 ,, ,, £150 . . .	7	6
,, £150 ,, ,, £200 . . .	10	–
,, £200 ,, ,, £250 . . .	12	6
,, £250 ,, ,, £300 . . .	15	–
,, £300, for every £100, and also for any fractional part of £100 of such amount . .	5	–
If given in substitution for a duly stamped security, whether registered or to bearer, for every £100, or part (Maximum duty 10s.)	1	–

2. TRANSFERABLE BY DELIVERY (BEARER SECURITIES)—

	s.	d.
(*a*) Repayable within not more than one year, for every £10, or part, of amount secured . . .	1	–
(*b*) Repayable within not more than three years, for every £10, or part, of amount secured . .	2	–

	s.	d.
(*c*) Repayable at a time exceeding three years, for every £10, or part, of amount secured . . .	8	–
(*d*) If given in substitution for one duly stamped under (*c*), for every £20, or part	4	–

A bearer security given in substitution for a registered security requires the full duty of eight shillings for every £10, or part.

The term "amount secured" includes in certain circumstances any bonus or premium covenanted to be paid when the bonds or debentures are redeemed. For instance, a bond of £100 which secures the payment of the £100 with a premium of £5 must be stamped for £105, unless such premium is payable only in consequence of some voluntary act of the company.

Where debentures are re-issued under the provisions of Section 90 of the Companies Act, 1948, either by the re-issue of the same debentures or by the issue of other debentures in their place, such re-issued debentures fall to be treated as new debentures for the purposes of stamp duty, and the full *ad valorem* duty is payable thereon. Similarly, if debenture stock is re-issued, further duty is payable.

3. TRANSFER OF DEBENTURES—same as on transfer of shares. (See page 133.)

4. DEBENTURE SCRIP CERTIFICATES—A receipt for an instalment written on a scrip certificate does not require a receipt stamp (*London & Westminster Bank* v. *Commissioners of Inland Revenue* (1900)), but an interest coupon annexed to a scrip certificate requires a 2d. stamp duty as a cheque.

5. RECEIPT "ENDORSED" ON ANY DULY STAMPED DEBENTURE, acknowledging receipt of principal thereby secured, is exempt from stamp duty (Stamp Act, 1891), but if the receipt is so drawn as to constitute a release or surrender of the charge securing the debentures, the duty is 1s. per £100 with a maximum of 10s.

6. TRUST DEEDS. On an issue of debenture stock, the stamp duty on the debenture stock is always

impressed on the trust deed, because on transfer of the stock, new stock certificates are issued, whereas in the case of debenture bonds, the duty is often (but not always) impressed on the bonds themselves, and on a transfer of the bond, it is merely endorsed to show the name of the transferee. Where the stamp duty on the debentures is impressed on the debenture or bond itself, the trust deed is stamped with a nominal duty of 10s.

7. LOAN CAPITAL DUTY. By the Finance Act, 1947, any company proposing to issue any loan capital, must before the issue thereof deliver to the Commissioners of Inland Revenue a statement of the amount proposed to be secured, stamped with duty at the rate of 5s. per cent, but any duty paid on the trust deed or other document (such as a debenture bond) securing the loan capital may be deducted. The term "loan capital" includes any money raised by means of debentures, but does not include any bank overdraft or other loan raised for a merely temporary purpose not exceeding twelve months.

Under Sect. 10 of the Finance Act, 1907, a rebate of 4s. per £100 is allowed, if it is shown that the loan capital is to be used for consolidation or conversion of an existing loan.

The term "amount secured" used in connection with the above stamp duties, includes any bonus or premium on redemption, except where the debentures are redeemable at par with an option for the company to redeem at an earlier date at a premium (*Knight's Deep, Ltd.* v. *Commissioners of Inland Revenue* (1900)). For example, a registered debenture for £100 redeemable at £105 on a fixed future date, must be stamped 7s. 6d., but if it was redeemable at £100 only, with an option for the company to redeem at an earlier date on paying a premium of 5 per cent, then the stamp duty would be only 5s. In other words the term "amount

secured" means the amount which the company is *definitely obliged to pay* in order to redeem.

Specimen Debenture Scrip Certificate to Bearer

DEBENTURE SCRIP CERTIFICATE TO BEARER

No..... £.....

EXEMPLARY COMPANY, LTD.

Incorporated under the Companies Act, 1948.

Regd. Office : 99 Lune St., London, E.C.1.

NOMINAL SHARE CAPITAL: £250,000 divided into shares of £1 each, issued and fully paid.

ISSUE OF £ 5% MORTGAGE DEBENTURE STOCK made under the authority of the Memorandum and Articles of Association of the Company and pursuant to a Resolution of the Company, dated the ..... day of .....19...., and constituted and secured by, and issued subject to and with the benefit of, a Trust Deed, dated the ..... day of ..... 19...., made between the Company of the one part and ..... as Trustees for the Debenture-holders of the other part.

INTEREST PAYABLE HALF-YEARLY on 1st January and 1st July.

THIS IS TO CERTIFY that the EXEMPLARY COMPANY, LIMITED, has received the sum of ..... pounds, being the amount due on an allotment of ..... pounds of the above Mortgage Debenture Stock, and on payment of all the remaining instalments and surrender of this certificate with all receipts for such instalments annexed thereto, the bearer is entitled to be registered as holder of the amount of stock allotted as aforesaid, and to receive a Stock Certificate in respect thereof, on and after 30th June, 19.....

The remaining instalments, the amounts and due dates whereof are shown below, must be paid to the Company's Bankers, West Bank, Ltd., 41 Oldbury, London, E.C.3, and this certificate produced at the times of payment. Default in payment of any instalment by the due date will render the amounts previously paid liable to forfeiture, and the allotment to cancellation.

A Coupon is annexed for interest on the instalments at 5% from the due dates thereof, payable at the Company's Bankers on 1st July, 19....

GIVEN under the Seal of the Company this ..... day of .....19 ...

(Seal of the Company) ..... } *Directors.*
..... } *Secretary.*

No.....

EXEMPLARY COMPANY, LTD.

5% Mortgage Debenture Stock.

COUPON for interest on instalments. Payable on 1st July, 19..., at West Bank, Ltd., 41 Oldbury, London, E.C.3.

2d. Stamp Duty

For and on behalf of the Company.

..... *Secretary.*

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(3) EXEMPLARY CO., LTD.
5% Mortgage Debenture Stock.

Received £ .... being amount of instalment due on 1st June, 19...

Date ..... For West Bank, Ltd.....

---

(3) EXEMPLARY CO., LTD.
5% Mortgage Debenture Stock

No.....

£ ..... Instalment due on 1st June, 19....

Date ..... For West Bank, Ltd.....

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(2) EXEMPLARY CO., LTD.
5% Mortgage Debenture Stock.

Received £ ..... being amount of instalment due on 1st April, 19 ..

Date ..... For West Bank, Ltd.....

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(2) EXEMPLARY CO., LTD.
5% Mortgage Debenture Stock.

No.....

£ ..... Instalment due on 1st April, 19....

Date ..... For West Bank, Ltd.....

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(1) EXEMPLARY CO., LTD.
5% Mortgage Debenture Stock.

Received £ ..... being amount of instalment due on 1st February, 19.....

Date ..... For West Bank, Ltd.....

---

(1) EXEMPLARY CO., LTD.
5% Mortgage Debenture Stock.

No.....

£ ..... Instalment due on 1st February, 19....

Date ..... For West Bank, Ltd.....

Specimen Register of Debenture Stockholders

NAME .....

ADDRESS .....

ACQUIRED				TRANSFERRED OR REDEEMED			BALANCE		
Date	Transfer No.	No. of Cert.	Amount	Date	Transfer No.	Amount	Date	Amount	Balance Cert. No.
5/5/19....	65	899	500	5/8/19....	197	250	31/12/19..	250	1053

A register of debenture bond-holders would be ruled on similar lines except that the number of the bonds held and transferred would be shown instead of the certificate numbers.

CHAPTER XIII

SECRETARIAL DUTIES CONCERNING MEETINGS

A COMPANY is not corporately assembled so as to transact any business unless the meeting is convened by a proper notice which gives every member the opportunity of being present, and complies with law and the company's articles as regards stating the objects for which the meeting is held (*Baillie* v. *Oriental Telephone Co.* (1915)).

The regulations governing notices are drawn from the Companies Act, the company's articles, and from common law. The principal points requiring attention are enumerated below—

1. The notice must be adequate, and state clearly the place, day, and hour of the meeting, and if the meeting is convened to transact any special business, then a sufficient general indication of the nature of such business must be given, otherwise the meeting will be invalid (*Lawes' Case* (1852) and *Kaye* v. *Croydon Tramways* (1898)). This is a rule of common law, and is based upon the principle that where any special business is to be transacted, every person entitled to attend and vote at the meeting must be given adequate notice of the nature of such special business, so that he may exercise his own discretion whether or not to attend the meeting, otherwise he may consider the meeting to be just an ordinary one, i.e. he will think the business to be transacted is that which is usually transacted at an ordinary meeting, and that business only.

2. *As to Length of Notice.* The length of notice is usually determined by the articles. Clause 50 of Table A provides in relation to this matter as follows: "An annual general meeting and a meeting called for the

passing of a special resolution shall be called by twenty-one days' notice in writing at the least, and a meeting of the company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by fourteen days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business." The remainder of the clause should be studied closely. Clause 131 provides that "Where a notice is sent by post, service of the notice shall be deemed . . . to be effected . . . at the expiration of 24 hours after the letter containing the same is posted."

By Sect. 133, any provision of a company's articles shall be void in so far as it provides for the calling of a meeting (other than an adjourned meeting) by a shorter notice than: (*a*) in the case of the annual general meeting, twenty-one days' notice in writing; and (*b*) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, fourteen days' notice in writing.

It was held in *Railway Sleepers Supply Co.* (1885), that the days of notice must be clear days, i.e. exclusive of the day of service and the day of the meeting, and this rule is followed in the present Table A.

3. *As to Whom Notice must be Given.* This will also be determined by the articles. If the articles are silent on the point, then by Sect. 134 notice must be given to every member in the manner in which notices are required to be served by Table A. Sect. 162 (4) contains new law to the effect that auditors must receive notice of all general meetings, and may also speak on any part of the business which concerns them as auditors. Clause 134 of Table A runs as follows: "Notice of every general meeting shall be given in any

manner hereinbefore authorized to (*a*) every member except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them; (*b*) every person upon whom the ownership of a share devolves by reason of his being a legal personal representative or a trustee in bankruptcy of a member where the member but for his death or bankruptcy would be entitled to receive notice of the meeting; and (*c*) the auditor for the time being of the company. No other person shall be entitled to receive notices of general meetings." Clause 51 provides that "the accidental omission to give notice of a meeting to, or the non-receipt of notice by, any person entitled to receive notice shall not invalidate the proceedings at that meeting." As regards joint holders, articles usually provide that notice shall be effected by giving the notice to the first-named holder in the register of members. Articles also usually provide that members who are in arrear with calls are not entitled to receive notices of meetings.

4. The manner in which the notices are to be served will be determined by the articles, and if there is no provision therein, then Table A rules will apply by virtue of Sect. 134 before mentioned. See Table A, Clause 131.

5. Notices must be issued by the proper authority. The convening of meetings is usually left to the directors, and neither the secretary nor an irregularly constituted board meeting can convene meetings, although their act may be subsequently ratified by a properly constituted board meeting (*Harben* v. *Phillips* (1883)) and the ratification dates back to the performance of the act (per Cozens Hardy, J., in *Hooper* v. *Kerr* (1900)).

As regards the annual general meeting, Table A Clause 47, provides: "The company shall in each 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 not more than fifteen 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 eighteen months of its incorporation it need not hold it in the year of its incorporation, or in the following year. The annual general meeting shall be held at such time and place as the directors shall appoint." By Clause 49 of Table A, directors have power to convene extraordinary general meetings whenever they think fit, or they may be requisitioned to convene such a meeting under the provisions of Sect. 132 of the Companies Act. If the directors fail to call such a meeting on requisition, the requisitionists themselves, or any of them representing more than one half of the total voting rights of all of them, may convene the meeting. Lastly, Sect. 134 provides that in so far as the articles of the company do not make other provision, two or more members holding not less than one-tenth of the issued share capital, or if the company has not a share capital, not less than 5 per cent in number of the members, may call a meeting.

6. The notice must not be contingent or conditional on the happening of some other event, otherwise it is insufficient (Chitty, J., in *Alexander* v. *Simpson* (1890)).

Invalid Notices

If the notice is invalid on any of the grounds mentioned previously, then the meeting is not properly constituted, and any proceedings thereat are not valid. To be rendered valid they must be ratified at a subsequent meeting, properly constituted, provided the latter meeting is held within a reasonable time of the former (*Portuguese Copper Mines* (1889)).

Invalid notices cannot be cured by the acquiescence

of those attending the meeting (*Pacific Gold Coast Mines* v. *Arbuthnot* (1917)), but (subject to Sect. 133, below) where *all* the members of the company are present and none object to the informality, want of proper notice will be excused, and the proceedings cannot afterwards be invalidated on that ground (*Machell* v. *Nevinson* (1809), and *in re Oxted Motor Co.* (1921)).

Sect. 133 now enlarges the rule in *Oxted Motor Co.* (1921). Annual general meetings may be validly convened by shorter notice than 21 days if agreed by all the members entitled to vote thereat; and in the case of any other meeting, by a majority in number of the members having a right to attend and vote, being a majority together holding not less than ninety-five per cent in nominal value of the shares giving a right to attend and vote. Sect. 133 also provides for the case of a company without a share capital.

THE STATUTORY MEETING

Every public company limited by shares and every company limited by guarantee and having a share capital, must hold a first general meeting, called the statutory meeting, within a period of not less than one month, nor more than three months, from the date on which the company becomes entitled to commence business. (Sect. 130, Companies Act, 1948).

The secretary of a newly constituted company should therefore, as soon as the certificate entitling the company to commence business has been issued, make preparations for the holding of the statutory meeting.

Notice of the Statutory Meeting

When the date of the meeting has been fixed by the board of directors, the secretary will draw the notice convening the meeting, being careful to state that the notice *is* convening the statutory meeting.

If any business is to be transacted other than the discussion of the statutory report, and matters arising out of the formation of the company, specific notice thereof must be given.

The Statutory Report

The object of holding the statutory meeting is to acquaint shareholders of the progress of the company since incorporation, and to discuss matters arising out of the statutory report. The secretary will therefore direct his attention to the preparation of the statutory report, which must in compliance with Sect. 130 (3) set out the matters thereby required to be disclosed.

Having obtained the information necessary for its preparation, the secretary will proceed to draft the statutory report and obtain the approval of the directors thereto. The report will then be drawn up on the official printed form (obtainable from all law stationers), and it must be signed by at least two directors, or, where there are less than two directors, by the sole director and manager. The Act stipulates that as regards the shares allotted, cash received in respect thereof, and receipts and payments on capital account, the report must be certified by the auditors (if any). If auditors have been appointed prior to the statutory meeting, it will be necessary for the secretary to obtain their certificate and signature to the report.

Forwarding and Filing Statutory Report

Arrangements will have to be made for the printing of a sufficient number of copies of the statutory report, to be forwarded to members, etc., as required by the Act. (The statutory report and the notice convening the meeting are usually printed together.)

At least fourteen days before the day on which the meeting is to be held, a copy of the report must be forwarded to every member of the company and to

every other person entitled by the Act to receive it. Immediately after the copies have been forwarded to the members, the signed report, on the official printed form, must be filed with the Registrar of Companies, and it must bear an impressed fee stamp of 5s. Private companies are exempt from these provisions.

Other Requirements to be Observed

In compliance with Sect. 130 (6), the secretary must prepare a list showing the names, descriptions and addresses of members of the company, and the number of shares held by them respectively. The list must be open to inspection of any member during the continuance of a meeting.

The agenda for the meeting should next receive attention, and should be drawn up in collaboration with the chairman. A specimen agenda for a statutory meeting appears at page 308. A copy should be forwarded to each director. The secretary should provide himself with an indexed copy of the memorandum and articles of association for use, if necessary, at the meeting.

If the meeting is to be held elsewhere than on the company's premises, the hiring of the hall or room where the meeting is to be held must be attended to. Admission cards may be issued along with notices convening the meeting if thought desirable. The auditors must receive notice, and the solicitors to the company may be invited if thought necessary.

Arrangements for dealing with proxies, supervision of admission to meeting, appointment of door-keepers, etc., should be attended to.

At the Meeting

At the meeting the secretary will read the notice convening the meeting, and exhibit the list of members for inspection. The chairman will address the meeting as to the position and prospects of the company, and

invite discussion of any matter pertaining thereto, or arising out of the statutory report, or relating to the promotion of the company.

The secretary will during the progress of the meeting make notes of the proceedings from which he will afterwards write up the minutes. The minutes of the statutory meeting are usually read at a board meeting following the statutory meeting, and if found to be a correct record, are signed by the chairman of such meeting.

Specimen minutes of a statutory meeting appear at page 320.

THE ANNUAL GENERAL MEETING

Sect. 131 (1) of the Companies Act, 1948, provides for the holding of an annual general meeting in the same words as Clause 47 of Table A, already set out, but the four further sub-sections of Sect. 131 should be noted.

Articles of association may provide as to the date on which the meeting shall be held, or, as in Table A, Clause 47, may leave the matter in the hands of the directors with power to fix the place and date of the meeting.

Some weeks prior to the date fixed for the meeting, the secretary should be making preparations for the convening and holding of the meeting. The first matters to receive his attention will be the closing of the transfer books, the drafting of both the notice convening the meeting and the annual report of the directors, and the compilation of complete agenda.

Closing of Transfer Books

If it is intended to declare a dividend at the annual general meeting, the transfer books will be closed for the purpose of balancing the share registers and preparing the dividend lists and warrants. The period during which the transfer books are closed will be decided

at a previous board meeting and a resolution will be passed closing the books. The general practice is to close the books for a period (usually fourteen days) expiring on the day appointed for the holding of the meeting. This fixes definitely the names of those members entitled to receive notice of the meeting, and entitled to receive dividends, as there can be no change in membership during the time the notices and dividend warrants are being prepared, because registration of transfers will be suspended for this period.

As to closing of transfer books, see page 186.

On the first day of the closed period the secretary should immediately deal with any transfers awaiting registration, and proceed with the balancing of the share registers in order to ascertain the names of those members entitled to receive notice of the annual general meeting, and to whom dividends are to be paid. Preparations may also safely be made for payment of the dividend, compilation of dividend lists, printing and stamping of dividend warrants. Since articles of association usually provide that dividends shall not exceed the rate recommended by the directors (Table A, Clause 114, so provides), it is quite certain that the rate recommended cannot be increased by the shareholders in general meeting, and it is almost equally certain that the shareholders will not pass an amendment reducing the rate of dividend recommended by the directors.

The Notice Convening the Meeting

The length of notice given will be determined by the company's articles. In default of provisions in the company's articles, Table A will apply, but in no case must it be less than twenty-one clear days. In drafting the notice the secretary should be careful specifically to state any special business—for example, where a

shareholder has lodged special notice of his intention to nominate an auditor in the place of the retiring auditor —otherwise such special business cannot be validly transacted.

Incidentally, intention to nominate a fresh auditor, or providing expressly that a retiring auditor shall not be reappointed, has now to be by special notice of 28 days (see Sects. 142 and 160). On receipt of such an intended resolution the company must forthwith send a copy to the retiring auditor (if any). The retiring auditor may make representations in writing to the company, requesting notification to the members. The company shall then, unless the representations are received too late, (*a*) state the fact in the notice that the representations have been made, and (*b*) send a copy of the representations to every member to whom notice of the meeting is sent. If a copy of the representations is not sent, because received too late or because of the company's default, the auditor may, besides retaining his right to speak, require that the representations shall be read out at the meeting. Sect. 160 should be referred to for further details.

Notice must be given in accordance with the articles to every person entitled thereto, including the auditors. To ensure that only members of the company will obtain admission to the meeting, admission cards should be forwarded to each member, with a notification that admission to the meeting will be allowed only on delivering up the admission card (duly signed by the member).

In compliance with Sect. 158 (1) of the Companies Act, 1948, a copy of every balance sheet shall, not less than twenty-one days before the date of the meeting, be sent to every person specified in Sect. 158 (1), and such balance sheet shall have been signed by two directors, or by the sole director if there is only one (Sect. 155 (1)). Further, by Sect. 156 (1) the profit and

loss account (and group accounts where applicable) shall be annexed to the balance sheet, to which the auditors' report must be attached. A copy of the directors' report must also be attached (Sect. 157 (1)).

The Annual Report

One of the documents that have to be attached to the balance sheet is the directors' report on the state of the company's affairs (Sect. 157 (1)). The terms of the report should be agreed upon at a previous board meeting, the secretary being instructed to draft the report and to present it for final approval at a subsequent board meeting. (The reader is referred to page 65 for a specimen directors' report.)

The secretary will then make arrangements for printing, for circulation to members, (1) the notice convening the meeting, (2) admission cards, (3) copies of the annual report, and copies of the accounts and balance sheet, as duly certified by the auditors and signed on behalf of the board by two directors, or a sole director, in accordance with Sect. 155 (1) of the Companies Act, 1948.

The auditor must also be summoned to attend the meeting to read his report (for auditors have a right to notice of every general meeting), although some other person may perform this duty if the auditor is not present, and if a shareholder has lodged special notice of his intention to nominate another auditor, the retiring auditor, as well as all shareholders, must be notified thereof (Sect. 142 and Sect. 160).

It is usual to ask the company's legal adviser to attend the meeting to advise the chairman should it be necessary.

Proxies

A proxy may be defined as a person authorized to act and vote for another at a meeting, though the

expression is commonly applied to the document by which the proxy is appointed. Sect. 136 contains the important new provision that any member of a company entitled to attend and vote shall be entitled to appoint another person (whether a member or not) as proxy to attend and vote instead of him. In the case of private companies a proxy may also speak. Unless articles otherwise provide, a member of a private company cannot appoint more than one proxy, nor shall a proxy be entitled to vote except on a poll. In every notice calling a meeting there must appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy or (where it is allowed) one or more proxies. Sect. 136 goes on to state that a provision in articles shall be void if an instrument appointing a proxy is required to be received more than 48 hours before a meeting or adjourned meeting. If invitations to appoint a person or one of a number of named persons as proxies are forwarded by the company to any of the members, such invitations must be sent to all the members entitled to attend and vote, a fine of £100 being prescribed for failure to do so: but a proxy form or a list of persons willing to act as proxy may be given to any member who so requests, provided that the same form or list is available to every member who may apply therefor.

Clauses 67–73 of Table A contain further provisions as to proxies. Clauses 70 and 71 are of special importance. The 1929 Table A (Clause 61), which gave a form of proxy, did not provide for the proxy's failure to attend, but Clause 70 now provides for a second proxy to be named in case the first proxy fails to attend. Clause 71 is new, and provides for the case where it is desired to afford members an opportunity of voting *for or against* a resolution. The new proxy form, besides providing for absence of the first proxy named, states

that the form may be used in favour of or against a resolution. These are the debatable "two-way" proxies required by the Stock Exchange but opposed by some sound authorities on the ground that a carefully-prepared scheme could be wrecked by hostile members who had no access to the full information which actuated the policy of the directors. Undoubtedly some boards have in the past stampeded the members by providing for one-way proxies entitling certain members of the board to vote—which obviously would be in the affirmative. The only remedies possessed by the member are either to fail to return the proxy or to press for the removal of the directors—or both. These are admittedly poor remedies in practice, as some shareholders will sign and return any proxy form they receive, without considering its purport. It is submitted that on balance the "two-way" proxy is preferable.

Proxies must be scrutinized to ascertain that they are in the correct form and are properly signed. If a proxy is incorrect in any respect, it should be returned to the member for amendment. Any proxies lodged after the stipulated time limit must be returned with a note that they cannot be accepted. Each proxy if found to be in order is countersigned by the secretary as correct, recorded in a register of proxies, and returned to the member, together with an admission card made out in the name of the proxy.

A proxy is revoked by the death of the member granting it. The member may also revoke the proxy by written notice of revocation to the company, or by granting another proxy later in date in favour of some other person, provided the second proxy is lodged with the company within the prescribed time. If a proxy is revoked in any manner, the register of proxies must be amended to show the manner of revocation. On the day before the meeting the secretary should draw up a

list of valid proxies in force, for the purpose of regulating admission to the meeting and also to facilitate voting if a poll is demanded.

"In the absence of any special contract between a shareholder and the company expressly excluding the right to vote in person where a valid proxy has been given, the right of shareholders to vote in person is paramount to the right of the proxy." (*Cousins* v. *International Brick Co.* (1931).)

Poll

Sect. 137 contains important new provisions. Articles are void if they exclude the right to demand a poll at a general meeting on any question other than the election of the chairman or the adjournment of the meeting. Nor must articles make ineffective a demand for a poll which is made either—

(1) by not less than five members having the right to vote; or

(2) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote; or

(3) by a member or members holding shares conferring a right to vote, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

The section closes with the provision that the instrument appointing a proxy confers authority to demand or join in demanding a poll.

Sect. 138 is also new law. It provides that on a poll taken at a meeting of a company or at a meeting of any class of members, a member need not use all his votes or cast all the votes he uses in the same way. This may seem a curious provision but what is visualized is a nominee company holding a block of shares on behalf

of several persons. It is obvious that some might wish to vote one way and some the other.

The reader will find that there are several clauses in Table A dealing with polling, notably Clauses 58–62, 64, 67 and 72.

Preparations for Polling

Where it is expected that a poll will be demanded preparations should be made. Polling may be conducted in a number of ways—

1. A voting list is prepared on the lines of the specimen given on page 304. A list of proxies in force should also be drawn up. Those wishing to vote sign the voting list and write the number of votes to which they are entitled in either the column headed " For " or " Against," according to the way they wish to vote. Proxies sign their own name and also the name of the appointor. The register of members (or a list of members) is taken to the meeting and the votes are checked by the secretary (or scrutineers, if such have been appointed), totalled, and the figures communicated to the chairman, who then declares the result.

2. An alphabetical list of members is drawn up on the same lines as the voting list referred to above. To record their votes, voters sign a voting paper in the form shown on page 303, making a cross in either column " For " or " Against." Alternatively, each member present may be given a separate slip of paper whereon to record his vote. The votes having been cast, they are recorded in the list of members by the secretary or scrutineers, the number of votes to which each voter is entitled being entered in the column " For " or " Against," according to the way each voted, and these columns are totalled and the figures communicated to the chairman, who declares the result.

If the company has a very large body of shareholders the compiling of a list of members would take a great deal of time, and as only a comparatively small number of members might attend the meeting, the labour of compiling a list of members would be wasted. In such circumstances, the best course would be to follow the procedure outlined under head 1.

3. If the articles permit, a poll may be taken by post. Each member is supplied with a voting paper which he completes and signs, and returns to the company, the voting list being written up therefrom. A time limit for sending in voting papers would have to be fixed.

Immediate Preparation for the Meeting

The secretary should prepare a detailed agenda setting forth every step in the conduct of the meeting, the motions to be proposed, and the names of those members with whom arrangements have been made to propose and second the motions. A specimen of such an agenda appears at page 308. A copy of this agenda should be in the hands of every member of the board of directors. It is usual for the agenda paper to have ample space on the right-hand side, so that the directors may make notes if they desire.

Door-keepers must be appointed to regulate admission to the meeting. This duty is usually delegated to members of the secretary's staff. It is recommended that two door-keepers should be appointed—one to see that each person seeking admission produces a signed admission card—the other to check the cards. The latter will be provided with an alphabetical list of members and a list of proxies granted, and as the admission cards are surrendered and the members and proxies admitted, he will mark off the lists opposite the appropriate name.

A person acting as proxy must produce, duly signed,

an admission card issued when the proxy was lodged for registration.

The right of a member to vote in person is paramount to the right of his proxy, unless there is a special contract with the company providing otherwise.

At the Meeting

At the meeting the secretary will read the notice convening the meeting unless this is taken as read. It is the practice to read any communications from members of the board who are unable to attend the meeting, apologizing for their absence.

The secretary should have at hand an indexed copy of the memorandum and articles of association, for reference if necessary.

During the progress of the meeting, the secretary should make notes of the proceedings and record verbatim the terms of all resolutions passed, from which he will subsequently compile the minutes.

MEETINGS OF DIRECTORS

The regulations as to the convening of meetings of directors are usually contained in the articles of association. Clause 98 of Table A provides that " The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings, as they think fit. . . . A director may, and the secretary on the requisition of a director shall, at any time, summon a meeting of the directors." As most articles are based on Table A, it is not uncommon to find clauses similar to the above in companies' articles generally, giving directors a wide discretion as to the regulation of their meetings, but so that business may be conducted in an orderly and efficient manner, the board usually draw up a set of rules concerning how, where, and when they shall meet, and otherwise regulating their

meetings. These are commonly referred to as "Standing Orders."

Despite the old rule that "directors cannot think without meeting" (*Portuguese Copper Mines* (1889)), Table A, Clause 106, now provides that "A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held."

The standing orders will contain provisions as to notices of meetings. Where meetings are held at regular intervals, notice is usually dispensed with, unless there is some special business to transact. Failure to give notice of special business is not of so great importance as in the case of meetings of shareholders, because directors are a select managing body having power to deal with all the affairs of the company. The secretary should not, however, take any risks in this connection, and if there is any doubt, definite notice should be given.

Where there are no fixed regulations as to the convening of regular meetings, the secretary should be careful to see that notice is given to *all* directors, otherwise the meeting is invalid (*Portuguese Copper Mines, Steele's Case* (1889)). Notice need not, however, be given to a director who is abroad or out of reach, unless the articles so provide (*Halifax Sugar Co.* v. *Francklyn* (1890)). There is also a new provision in Table A, Clause 98, which states that "It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from the United Kingdom."

Where the regulations do not fix any definite length of notice, the notice must be sent a reasonable time before the date of the meeting. The form of notice convening a meeting of directors is usually as follows—

THE EXEMPLARY COMPANY, LIMITED

NOTICE IS HEREBY GIVEN that a Meeting of the Directors will be held at the Company's Offices on Thursday, 23rd inst., at 3 p.m.

AGENDA

General Business

By Order of the Board,

G. SMART, *Secretary*.

99 Lune Street, E.C.1
15th August, 19..

It is the practice to forward a copy of the agenda paper with the notice of the meeting, instead of setting out the agenda in the body of the notice, as above.

First Meeting of Directors

The first meeting of directors calls for special attention. There will, of course, have been many preliminary meetings of promoters and others interested in the formation of the company, but the meeting now referred to is the first meeting of the directors after the company has been registered, and the certificate of incorporation issued. At this meeting there will be numerous necessary matters to be attended to, consequent upon the registration of the company, and which must be dealt with to prepare the way for the carrying on of the company's business. Amongst such matters may be mentioned: Appointment of the chairman of the company, appointment of managing director, secretary, and other officers, adoption of preliminary contracts, adoption of seal, making arrangements with bankers, etc.

In the case of a public company, there may be also the question of the issuing of a prospectus, and raising the capital of the company. The capital of the company may have been already subscribed privately, or even publicly, as a prospectus may be issued in relation to an intended company, the promoters of which will not incur the expense of registration until they can be assured that the investing public are interested in the

proposed company, and that the necessary capital is forthcoming.

A detailed agenda for the first meeting of directors appears at page 307.

Preparation for Meetings of Directors

Directors' meetings will be held as and when required, or at fixed intervals of, say, a week or a fortnight, as arranged. A reasonable time before the date fixed for a meeting, the secretary will prepare the notice convening the meeting (unless the necessity for giving notice has been dispensed with by the directors themselves, or by standing orders).

During the intervals between board meetings, the secretary should make notes of all the matters which require to be brought before the next board meeting for consideration, such as the preparation of a report on some special matter. From the notes made, the secretary will prepare the agenda for the next meeting, collaborating with the chairman in this respect.

The secretary must be careful to include on the agenda any motion or proposal to be brought before the meeting, of which any director has given due notice of motion. Even where the necessity of giving notices of board meetings is waived, it is recommended that copies of the agenda should be forwarded to the directors a reasonable time before the meeting date.

Immediate Preparations

The secretary should prepare for the meeting well in advance, and he should have at hand everything likely to be required at the meeting. In addition to the usual stationery, pens, ink, blotting-paper, etc., the following should be in readiness at the meeting: the board-meeting minute book (with the minutes of the last meeting duly recorded), the seal, an indexed copy of the memorandum and articles of association,

financial statement to be considered, together with the bank pass book(s) and reconciliation statement, correspondence to be read and considered at the meeting, transfers to be passed, share certificates, contracts, and agreements to be signed and sealed, copies of any reports to be considered.

On the day preceding the meeting, the secretary should read through the agenda and generally satisfy himself that everything likely to be required at the meeting is in readiness.

At the Meeting

At the meeting, the secretary should obtain, in the directors' attendance book, the signature of each director present (a specimen ruling of a directors' attendance book is shown at page 302). It is the primary duty of a secretary so to assist the chairman in the conduct of the meeting that the business to be transacted is disposed of in an efficient and expeditious manner. The secretary should provide himself with a draft minute book wherein to record notes of the proceedings, and the terms of the resolutions passed at the meeting, which notes will form the basis of the minutes to be subsequently compiled.

EXTRAORDINARY GENERAL MEETINGS

It should be observed that the only difference between a notice convening an extraordinary general meeting to pass an extraordinary resolution, and a notice convening a similar meeting to pass a special resolution, is that in the latter case at least 21 days' notice must be given (Sect. 141 (2)). It must always be remembered that much business that is special (such as increase of capital) can be effected by passing an ordinary resolution. Thus, special business can be transacted by ordinary, extraordinary or special resolution, at either an extraordinary general meeting or an annual general meeting. It should be noted that Sect.

141 (2) also adds a new proviso stating that a resolution of which less than twenty-one days' notice has been given may be passed as a special resolution if it is so agreed by a majority in number of the members having the right to attend and vote at the meeting, being a majority together holding not less than ninety-five per cent in nominal value of the shares giving that right, or, in the case of a company not having a share capital, together representing not less than ninety-five per cent of the total voting rights at that meeting of all the members.

The necessary preparation for extraordinary general meetings will be similar to that for the annual general meeting, with such additional preparation as is necessitated by the special business for which the meeting is convened. The secretary must give attention to the following matters—

1. The notice convening the meeting must state the special business for which the meeting is convened, and if a special or extraordinary resolution is to be passed, the terms of the proposed resolution should be set out in full. In the case of extraordinary or special resolutions, the notice must state that it is the intention to propose the resolution as an extraordinary or special resolution as the case may be.

2. If a poll is anticipated, the necessary preparations therefor should receive attention.

3. Where proxies are expected, as when a poll is probable at the meeting, arrangements should be made for the registration of proxies.

COMMITTEE MEETINGS

In the case of large companies, the board of directors usually find it convenient, and often necessary, to delegate certain matters to a committee of their number, but the directors may only delegate their powers in this manner if the articles of association so provide.

By so doing, the full board will probably not need to meet more than four or five times each year.

Table A, Clause 102, provides that "The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors." It will be observed that under this clause a committee may consist of only one director.

Committees may be formed for special purposes, e.g. to consider the inauguration of a pensions scheme for the company's employees, and to report to the board thereon. Permanent committees are usually formed to conduct routine business such as "Share Transfers," "Finance," etc.

The terms of the resolution appointing the committee will indicate the manner in which the board is to be informed of, and kept in touch with, the proceedings of the committee. In some companies the chairman of the board is *ex officio* a member of all committees, and cohesion is thereby gained. In the case of permanent committees, it is both usual and desirable that a separate minute book be kept to record the business transacted by that committee, these minutes to be submitted periodically to the board. On the other hand, the terms of the resolution appointing the committee may require that a report of the proceedings of the committee be submitted to each board meeting.

Where a special committee has been appointed, it is commonly provided that a report of the committee's proceedings, findings, and recommendations, be presented for consideration to the board of directors.

As regards meetings of the committee, either the articles of association, or the terms of the resolution of appointment, should provide the regulations as to the manner in which the committee is to meet to

transact its business; or "Standing Orders," if any, may contain these regulations. If no provisions for regulating committee meetings are contained in the articles of association, or in the terms of the resolution of appointment, or in any standing orders, then Table A applies, unless excluded by the company's special articles of association.

Clause 104 of Table A provides that "A committee may meet and adjourn as it thinks proper . . ." Given such a power, a committee will probably draw up its regulations as to how, and when, it shall hold its meetings. Permanent committees usually fix a regular day and time for meetings, and if this is done, the necessity for giving notice of meetings will be dispensed with, save in circumstances when it is necessary to call a special meeting of the committee. In the case of a special committee, it is usual at each committee meeting to fix the date and time of the next meeting. Notice should, however, be given to any member of the committee who was absent, and thus will not know the date fixed for the next meeting.

MEETINGS CONVENED ON REQUISITION OF SHAREHOLDERS

Shareholders holding in the aggregate one-tenth of such of the *paid-up* capital of the company as at the date of the deposit of the requisition carries the right of voting at general meetings of the company, may requisition the directors to call a meeting, and the directors must forthwith proceed to convene a meeting as required (Section 132).

The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company. If the directors do not within twenty-one days from the depositing of the requisition proceed to convene a meeting, the requisitionists, or any of them representing more than

one-half of the total voting rights of all of them, may themselves convene the meeting, but such meeting must be held within three months from date of requisition. The right to requisition a meeting as stated above is a statutory right, and cannot be waived or altered by the company's articles of association.

Arising out of the above, the further fresh legislation of Sect. 140 should be noted. This provides that members may require the circulation by the company of motions to be proposed at the annual general meeting, and of statements not exceeding a thousand words in length regarding any matter referred to in any proposed resolution or the business to be transacted at any extraordinary general meeting. The motion or statement must be sponsored respectively by (*a*) any number of members representing not less than one-twentieth of the total voting rights, in the case of an annual general meeting; or (*b*) not less than one hundred members holding £10,000 paid up capital in the case of an extraordinary general meeting.

SPECIAL NOTICE

Sect. 142 introduces a new provision. Certain powers exercisable by a company in general meeting can only be exercised by a motion of which special notice has been given. Such notice must normally be given to the company not less than 28 days before the meeting at which it is to be moved, and the company must give notice to the members not less than 21 days before the meeting. Special notice is required (*a*) for appointing as auditor a person other than the retiring auditor, or providing expressly that such retiring auditor be not reappointed (Sect. 160); (*b*) for removing a director by ordinary resolution, or to appoint somebody instead of a director so removed (Sect. 184); (*c*) for appointing as director a person who has reached any age limit that applies (Sect. 185).

Specimen Notice Convening Statutory Meeting

THE EXEMPLARY COMPANY, LIMITED

99 Lune Street, E.C.1
6th July, 19..

NOTICE IS HEREBY GIVEN that in accordance with the provisions of Section 130 of the Companies Act, 1948, the Statutory Meeting of this Company will be held at the Common Hall, Victoria Street, London, S.W.1, on Thursday, the 23rd day of July, 19.., at 3 o'clock in the afternoon.

A copy of the Report required to be sent to the members by the above-mentioned section accompanies this notice.

By Order of the Board,
G. SMART, *Secretary.*

Specimen Notice Convening Annual General Meeting

THE EXEMPLARY COMPANY, LIMITED

NOTICE IS HEREBY GIVEN that the First Annual General Meeting of the members of this Company will be held at the Common Hall, Victoria Street, London, S.W.1, on Thursday, the 23rd day of July, 19.., at 3 o'clock in the afternoon, for the following purposes—

1. To receive and consider the Directors' Report, the Annual Statement of Accounts and Balance Sheet, and the Report of the Auditors thereon.
2. To declare a Dividend.
3. To elect Directors in the place of Mr. John Brown and Mr. Arthur Saunders, who retire by rotation, and, being eligible, offer themselves for re-election.
4. To fix the Auditors' fee.
5. To transact the other ordinary business of the Company.

NOTICE IS ALSO GIVEN that the Transfer Books of the Company will be closed from the 16th July to the 23rd July, 19.. (both days inclusive), for the purpose of paying Dividends.

Members are reminded of their statutory right to appoint a proxy (or proxies), who need not be a member of the Company.

By Order of the Board,
G. SMART, *Secretary.*

99 Lune Street, E.C.1
30th June, 19..

Specimen List of Proxies

Appointor	Share Reg. Folio	No. of Shares		Name of Proxy	No. of Votes
		Pref.	Ordy.		
J. Black . .	16	—	100	A. White. .	100

Specimen Notice Convening the First Meeting of Directors

THE EXEMPLARY COMPANY, LIMITED

THE First Meeting of the Directors of this Company has been arranged to take place at the Registered Office of the Company, 99 Lune Street, E.C.1, on Wednesday, the 8th day of June, 19.., at 3 p.m.

A copy of the Agenda is enclosed.

Yours faithfully,
For the Exemplary Company, Limited,
G. SMART, *Secretary pro. tem.*

99 Lune Street, E.C.1
1st June, 19..

Specimen Notice Convening an Extraordinary General Meeting

THE EXEMPLARY COMPANY, LIMITED

NOTICE IS HEREBY GIVEN that an Extraordinary General Meeting of the Members of this Company will be held at the Common Hall, Victoria Street, London, S.W.1, on Thursday, the 23rd day of July, 19.., at 3 o'clock in the afternoon, when the subjoined Resolution will be submitted to the Meeting to be passed in the manner required for the passing of a special Resolution—

That the Ordinary Share Capital of the Company be reduced from £100,000 to £50,000, by writing down each fully-paid One Pound Ordinary Share to the value of Ten Shillings fully-paid,

and that a Petition be made to the Court for an order confirming this reduction.

Members are reminded of their statutory right to appoint a proxy (or proxies), who need not be a member of the Company.

By Order of the Board,
G. SMART, *Secretary.*

99 Lune Street, E.C.1
30th June, 19..

Specimen Directors' Attendance Book

Director	Dates of Meetings and Directors' Signatures, 19..				
	July 2	July 9	July 16	July 23	July 30

Specimen Notice Convening a Committee Meeting

THE EXEMPLARY COMPANY, LIMITED

99 Lune Street,
London, E.C.1
4th September, 19..

Dear Sir,

The next Meeting of the Committee appointed to consider the advisability of inaugurating a Pensions Scheme for the Company's employees will take place at the Offices of the Company, on Monday, the 12th September, 19.., at 3 p.m.

Yours faithfully,
G. SMART, *Secretary.*

Specimen Notice Convening Meeting on Requisition

THE EXEMPLARY COMPANY, LIMITED

NOTICE IS HEREBY GIVEN that in accordance with a Requisition deposited by shareholders of the Company, under the power conferred on them by Section 132 of the Companies Act, 1948, an Extraordinary General Meeting will be held at the Registered Office of the Company, on Thursday the 17th day of

November, 19.., at 12 noon, when the following Resolution will be submitted to the meeting to be passed in the manner required for the passing of a *Special* Resolution—

That application be made to the Board of Trade for the appointment of an inspector to investigate the affairs of the Company.

Members are reminded of their statutory right to appoint a proxy (or proxies), who need not be a member of the Company.

By Order of the Board

G. SMART, *Secretary.*

99 Lune Street, E.C.1
24th October, 19..

Specimen Voting Paper

MOTION before Extraordinary General Meeting held on..... day of.....19..... " That . . ."

Signature of Voter	Appointor of Proxy (if any)	FOR	AGAINST
J. Green	——		×
A. White	*J. Black*	×	
A. White	——	×	

Separate sheets may be used for " For " and " Against " if thought desirable. If there are several resolutions it may be less confusing to voters if a separate voting list is used for each resolution.

Specimen Voting List

MOTION before Extraordinary General Meeting held on.....day of.....19..... " That . . .

Signature of Member	Share Reg. Folio	No. of Shares		No. of Votes	Votes by Proxy					FOR	AGAINST	Remarks
		Pref.	Ordy.		Appointor	Sh. R. Folio	No. of Shares		No. of Votes			
							Pref.	Ordy.				
A. White	10	100	100	200	*J. Black*	16	—	100	100	300	—	
J. Green	19	—	200	200	——				—	—	200	

If there is more than one resolution, all should be set out at the head of the List and numbered, and additional columns " For " and " Against " ruled to record the voting on each separate resolution, each pair of columns being headed with the number of the resolution.

CHAPTER XIV

AGENDA AND MINUTES

THE term "Agenda" literally means "things to be done." It is used in the business world to indicate the items of business to be transacted at a meeting, although it is commonly used to mean the "Agenda Paper." Agenda is the genesis of the meeting to be held and the minutes subsequently to be made; it is a statement of the business to be transacted at a meeting, and the order in which such business is to be dealt with.

An agenda has a two-fold object—it enables business to be transacted, and it particularizes the nature of such business. Its careful preparation is a necessary preliminary to the holding of a successful meeting. It is drawn up by the secretary, partly on his own responsibility, i.e. for routine matters, and partly on the responsibility of the chairman as regards matters of special importance.

At meetings of directors, it is the general practice to provide each director with a copy of the agenda on a loose sheet, but to keep the agenda used by the chairman in a bound book, using one side of the opening for the agenda, and the other side for the chairman's notes. It is said that the advantages accruing from this method are (1) the agenda of any particular meeting can be easily traced at any future time, (2) should the correctness of the minutes be questioned, the production of the chairman's notes in the agenda book will place the matter beyond all doubt. On the other hand, it is argued that the keeping of a double record is not advisable, since the two might not always agree. The authors subscribe to this view, and recommend that agenda be drawn up on loose sheets, copies of which should be retained and filed in date order, so that

there is a record of the business included in an agenda if any question subsequently arises on this point. After the minutes of any particular meeting have been read, approved, and signed by the chairman as being a correct record, the chairman's notes relating thereto should be destroyed, as there is no purpose in keeping them after the minutes have been signed.

The order in which business is usually stated on the agenda is as follows—

1. Election of chairman of the meeting (if this has not already been done).
2. Minutes of last meeting.
3. Routine matters such as correspondence, share transfers, etc.
4. New business, or discussion of some matter previously in hand.
5. Any other business.

Matters of a similar nature should be grouped together, or placed one after the other.

An unattractive agenda does not encourage attendances, and therefore the agenda should be full and informative, and should not be a mere list of headings. Although it is the common practice to proceed with the business in the order laid down in the agenda, the chairman may, with the consent of the meeting, deviate from that order if there is a sufficient reason for so doing.

Loophole Agendum

The item "Any other business" is invariably stated last on an agenda paper but is superfluous as any minor items, even though they are not specifically included in the agenda, may always be validly transacted, provided they are within the scope of the meeting.

Special business should be the subject of a definite heading on the agenda, and cannot be transacted under the heading "Any other business."

Specimen Agenda

Specimen Agenda for First Meeting of Directors

THE EXEMPLARY COMPANY, LIMITED

First Meeting of Directors to be held Monday, 9th day of January, 19—, at 10 a.m.

1. The election of Chairman of the Meeting.
2. The election of Chairman of the Company.
3. The Solicitor to produce Certificate of Incorporation, No....., dated 12th December, 19...
4. Appointment of Managing Director.
5. Appointment of Secretary.
6. Appointment of Auditors.
7. Appointment of Bankers, and regulations as to the drawing and endorsing of cheques for and on behalf of the Company.
8. The adoption of a contract appointing Mr. Arthur Black as Works Manager, for a period of five years, at a salary at the rate of £1,000 per annum.
9. The Common Seal to be produced for the Directors' approval with a view to adoption as the Official signature of the Company, and as to the custody of the keys.
10. The consideration of the draft Prospectus to be produced and read by Mr. Deeds, the Solicitor to the Company—adoption, filing, and issue thereof.
11. Date of next meeting.
12. Any other business.

NOTES. Purchase agreement with vendors. This is often a matter for consideration at the first board meeting. The company's solicitor generally produces the agreement between the vendors and the company, and after he has explained the effect of the various provisions, the meeting proceeds to complete the contract by affixing the seal thereto, passing resolutions allotting shares to the vendors, authorizing the drawing of cheques for the balance of the purchase money payable in cash, etc.

Re item 7. Bankers usually have their own form of resolution appointing them bankers to the company, and incorporating special provisions as to the drawing of cheques and otherwise dealing with the company's account, and bankers usually request that their form of resolution be adopted.

Agenda for Statutory Meeting

Statutory Meeting of the Exemplary Company, Limited, held at the Registered Office of the Company, on Thursday the 23rd day of July, 19.., at 3 p.m.

1. Speech by Chairman.
2. Chairman to exhibit List of Members and invite discussion and questions on the Statutory Report, and matters relating to the formation of the Company.
3. Approval of the modification of the Purchase Agreement between the Company and the Vendors, Messrs. Arthur Black and James Green, referred to in the Statutory Report.
4. Vote of thanks to the Chairman.

Agenda for a Board Meeting

THURSDAY, 23RD AUGUST, 19.., 10.30 a.m.

1. *Minutes of previous Meeting.* The Secretary to read the minutes of the Board Meeting held on 9th inst. The Chairman to sign the Minutes if it is agreed they are a correct record of the proceedings.
2. *Arising out of Minutes.* Mr. Brown to report the result of the negotiations with Messrs. Jones and Smith, of Birmingham, respecting the proposed appointment of this firm as the Company's representatives in Birmingham.
3. *Financial Statement.* The Secretary to produce the Financial Statement for the past fortnight, together with the Bank Pass Book and Reconciliation Statement.
4. *Share Transfers.* The Secretary to submit Transfer Deeds, Nos. 151 to 176, for approval, and Certificates, Nos. 5151 to 5176, to be sealed and signed in place of Certificates cancelled.
5. *Sealing of Contract.* The contract between the Company and Abels, Limited (as approved by the Company's Solicitor), for reconstruction work at the London Factory, to be submitted for approval, and to sanction the affixing of the Common Seal thereto.
6. Date of next Meeting.
7. Any other business.

Agenda for Annual General Meeting

THE EXEMPLARY COMPANY, LIMITED

AGENDA FOR SECOND ANNUAL GENERAL MEETING to be held at the Common Hall, Victoria Street, London, S.W.1, on Thursday, the 26th day of April, 19.., at 12 noon.

1. *Notice.* The Secretary to read the notice dated 2nd April, 19.., convening the meeting.

2. *Directors' Report.* The Chairman to move that the Directors' Report and Accounts, as printed and circulated, shall be taken as read.
3. *Auditor's Report.* Mr. F. Figures, the Company's auditor, to read his Report on the Accounts and Balance Sheet.
4. *Chairman's Address.* The Chairman to address the meeting on the Company's position and prospects.
5. *Discussion on Report, etc.* The Chairman:

   (*a*) To move "That the Report and Accounts for the year ended 31st December, 19.., as audited and certified by the Company's Auditor, and now submitted to this meeting be, and the same are hereby, approved and adopted."
   (*b*) To call on Mr. James Green to second the Motion.
   (*c*) To invite shareholders' discussion on the motion.
   (*d*) To reply to relevant questions.
   (*e*) To put the Motion to the meeting, and declare the result.

6. *Auditor.* A Shareholder to move, another Shareholder to second, "That Mr. F. Figures, Chartered Accountant, having agreed to continue in office as auditor for a further year, his fee be fixed at £..." The Chairman to put the motion to the meeting and declare the result.
7. *Re-election of Directors.* Mr. Brown to move—"That Mr. William White, the Director retiring by rotation and being eligible for re-election, be, and he is hereby, re-elected a Director of the Company."
   A Shareholder to second, the Chairman to put the motion to the meeting and declare the result.
8. *Dividend.* The Chairman to move—"That the Dividend recommended by the Directors, viz., 10 per cent on the Ordinary Shares for the year ended 31st December, 19.., be, and is hereby, declared; and that the said dividend be paid on 1st May, 19.., to those shareholders whose names appear on the Register of Members on 31st March, 19..."
9. The Chairman to declare the proceedings at an end.

The Compilation of Minutes

The Companies Act, 1948, Sect. 145 (1) enacts that "every company shall cause minutes of all proceedings of general meetings, all proceedings at meetings of its directors and, where there are managers, all proceedings at meetings of its managers to be entered in books kept for that purpose." There is now a default fine for failure to keep minutes.

Minutes may be defined as the written record of the proceedings, business transacted, and decisions arrived at, by a meeting of the directors or shareholders of a company. The important duty of compiling minutes devolves upon the secretary, who is responsible to his board for causing a true and correct record of proceedings of meetings to be made.

Minutes when signed by the chairman become the permanent and official record of the proceedings of meetings; accordingly great care is necessary when writing up the minutes to observe that a full, true, and accurate record of the proceedings is made.

For the guidance of the examinee and potential secretary, the main essentials in the compilation of minutes are generalized below.

Main Essentials

1. The minutes of each meeting should commence by stating the nature of the meeting, for example, "Meeting of Directors," "Second Annual General Meeting," the day, date, place, and hour of the meeting, followed by the names of the chairman, directors, and others present, and in the case of general meetings, should state the number of the shareholders present.

2. Only the actual business transacted and the decisions arrived at should be recorded. The secretary should provide himself with a "Minutes Note Book," for use at the meeting to make notes of the proceedings, and he will write up the minutes from these notes in conjunction with the notes made by the chairman on the agenda paper. The agenda is usually so prepared that by the alteration of a few words and writing the whole in the past tense the agenda will form the minutes. Before being written up in the minute book, the secretary should make draft minutes to be presented to the chairman for his approval. This is advisable to obviate the necessity for making alterations should any

matter be incorrectly minuted. Minutes should be written up as soon as possible after the meeting when the secretary's recollection of what occurred at the meeting is clear to supplement and amplify his notes.

3. Minutes should be written in brief but comprehensive plain language, capable of but one interpretation, and fully explaining the matter in hand A short explanation should precede the recorded conclusions if this is necessary for the full and complete understanding of the proceedings. Minutes are sometimes classified as (1) *Minutes of Narration*, i.e. explanations leading to decisions or statements of matters discussed, and (2) *Minutes of Decisions*, i.e. the formal resolutions passed at the meeting. Minutes should always be in the affirmative.

Minutes are not reports of the proceedings. A report would give a verbatim record of the proceedings, and would include speeches, arguments advanced and replies thereto. It is not the purpose of writing minutes to have a report of the whole proceedings, but merely to record the business transacted and decisions arrived at by the meeting, with such summarized narrations of the proceedings as are necessary for the clear understanding of the transactions and decisions to make them intelligible to a person unconnected with the company's business, e.g. a Court Judge.

4. No partiality must be attempted in writing minutes. Arguments advanced on either side should be ignored.

5. The inclusion of the names of proposers and seconders of propositions is optional, and the names of those persons who vote against, or abstain from voting, on any proposal should not be included save in exceptional circumstances, for example, to show that a director abstained from voting on a contract in which he was personally interested.

6. When a resolution is required to be passed by a

given majority, for example, in the case of a special or extraordinary resolution, the minutes should record the fact that the chairman declared the resolution carried by the requisite majority. A note should be made of the number " for " and " against " propositions put to the vote, although Sect. 141 (3) of the Companies Act, 1948, enacts " At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution."

Indexing of Minutes

In order to trace any particular decision or record of the proceedings concerning any matter, it is essential that the minutes should be kept well indexed. Two methods of indexing applicable are—

1. To number the minutes to correspond with the items on the agenda. Reference to the minutes is made by consulting the agenda file to find the date of the meeting at which the particular matter was put down for discussion, and then to turn up the minutes for that meeting.

2. The minutes could be numbered consecutively throughout the minute book, or the pages may be numbered, and an alphabetical index written up. The index should, of course, be confined to special items; and routine matter common to every meeting, such as " Signing minutes of the previous meeting," " Financial report," " Share transfers," etc., need not be indexed.

Separate minute books are kept for directors' meetings and general meetings of shareholders. A separate minute book should be used to record the proceedings of meetings of a standing or permanent committee.

Loose-leaf Minute Books

As loose-leaf books have come rapidly into favour during the past few years, the legislature has now decided, in Sect. 436 of the Companies Act, 1948, that, subject to adequate precautions being taken for "guarding against falsification and facilitating its discovery," loose-leaf minute books may be used. It should be the rule to lock the loose-leaf binder securely to prevent unauthorized individuals from tampering with the minutes. The loose leaves should be kept under lock and key, and only the secretary and his immediate assistants should be allowed access thereto. If loose-leaf minutes are in use, it is possible for each year's minutes to be kept together in one book, and agenda and notice convening each meeting can be interleaved with the minutes for that meeting, thus preserving complete documentary evidence of every meeting.

Signing of Minutes

Sect. 145 (2) of the Companies Act, 1948, enacts that " Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings."

Minutes are not required to be " confirmed " at the next meeting, or confirmed in any other manner. All that is required by the Act is that minutes should be signed either by the chairman of the meeting to which they relate, or by the chairman of the next succeeding meeting, whether he was or was not chairman of the previous meeting. Although it is the usual practice for the minutes to be read and signed at the next meeting, the secretary would be quite in order if he had the minutes signed at *any time* after the meeting to which they relate by the chairman of that meeting. It will be observed that the Act does not even require the minutes to be read over to the meeting prior to

the chairman signing them, but it is usual for the chairman or secretary to read out the minutes in order that those present who were also present at the previous meeting may be assured that the minutes when signed are a true and correct record of the proceedings at the previous meeting. For these reasons the use of the expression "confirmation of minutes" should be avoided. The acts and proceedings at the previous meeting do not require to be confirmed in any way. If they were within the scope of that meeting they would be valid and enforceable by the very fact that they were passed at that meeting without the necessity for any confirmation, and for that matter, without the necessity even for a written record. What is commonly known as "confirmation" is nothing more nor less than the "*verification*" *of the written record as correct.*

Minutes of general meetings of shareholders are usually read and signed at the meeting of directors next following.

Alterations of Minutes

Generally speaking, once the minutes are written up they cannot be altered, but if when minutes are being read to the meeting, it is found that there are trivial mistakes in the minutes, these should be rectified and initialed by the chairman. If the mistake is of a more serious nature, such as a material misdescription or incomplete description of the business transacted or decisions arrived at, the minutes should be ruled out, but not obliterated, so that the portion intended to be altered can be seen clearly afterwards as evidence of the reason for the alteration. The correct record should then be written in and initialed at the beginning and end by the chairman. It is submitted that this procedure is sufficient of itself, but to place the validity of the alteration absolutely beyond all doubt, the minutes of the meeting at which the alteration was

made should record the fact that the alteration was made before the minutes were signed, and should state clearly the nature of the alteration and the reason therefor.

This procedure is permissible only where there is a misdescription or omission, and it cannot be adopted if the meeting wishes to rescind any part of the previous decisions and proceedings. To effect this a formal resolution must be passed to rescind the former decisions or conclusions, i.e. there must be clear evidence that the meeting wishes to nullify its previous acts and decisions pertaining to a particular matter. To endeavour to carry out the rescission in any other manner (for example, by striking out the minute) would be most dangerously irregular (cf. *Cawley & Co.* (1889)).

Such a rescission is not always possible. Events may have taken place in consequence of, and in pursuance of, the decision of the meeting. If this is so, the company's position regarding these matters must be carefully considered; each case would depend upon its own particular circumstances, and no general rules can be laid down.

Minutes as Evidence

Minutes are not conclusive, but are only prima facie evidence of the proceedings. Sect. 145 (3) enacts that "Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers, or liquidators, shall be deemed to be valid."

Such evidence as may be available is admissible to prove omissions from, or misstatements in, the minutes, but the burden of proof lies upon the person seeking to

question the minutes as recorded, and much will depend upon his relations with the company and the circumstances giving rise to his disputing the evidence afforded by the minutes.

If the minutes set out the terms of a contract requiring by statute to be evidenced by a note or memorandum in writing signed by the party to be charged, then, in the absence of any other note or memorandum of the contract, the signature of the chairman to the minutes is sufficient to satisfy the statute (*Jones* v. *Victoria Graving Dock* (1877)).

Failure to Keep Minutes

As has been noted above, Sect. 145 now provides a penalty for failure to keep minutes. But even without this new provision the consequence of failing to preserve an official record of the proceedings at meetings is of itself a sufficient penalty, and any company which does not keep proper minutes would be severely handicapped in the conduct of business, not to mention the difficult position in which the company would find itself if any of its proceedings were called into question, or were required to be proved in a court of law.

Since the old Sect. 120 (1) provided that every company *shall* keep minutes, and Sect. 121 entitled *members* to inspect and to demand copies of minutes of general meetings and imposed penalties for non-compliance, a company which neglected to keep minutes of general meetings would have been unable to comply with Sect. 121, and would thereby have incurred the prescribed penalties. The relative Sections are now 145 and 146.

Table A, Clause 86, regarding the obligation to keep minutes, should be noted.

Inspection of Minute Books

Notwithstanding the dictum of Lord Esher in *Cawley*

& Co. (1889), that "Minutes of board meetings are kept in order that shareholders may know exactly what their directors have been doing, why it was done, and when it was done," it is not the practice to permit shareholders to inspect the minute book of directors' meetings.

The only way that members can acquire access to the directors' minute book is when such minute book may be inspected and reported upon by inspectors appointed by the Board of Trade to investigate the affairs of the company under the extensive provisions of Sects. 164–175 of the Companies Act, 1948. Regarding the rights of an auditor to inspect the directors' minute book under the powers conferred upon him by Sect. 162 (3) of the Companies Act, 1948, in a joint opinion of eminent counsel obtained by the Institute of Chartered Accountants, it was considered that the words "Books of the Company," to which auditors have access under Sect. 113 (1) of the 1908 Act (now Sect. 162 (3) of the 1948 Act), include, *inter alia*, all minute books.

The position concerning inspection of minutes of meetings of shareholders is different.

Sect. 146 of the Companies Act, 1948, provides that—

(1) The books containing the minutes of proceedings of any general meeting of a company held on or after the first day of November, nineteen hundred and twenty-nine, shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding sixpence for every hundred words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within

the proper time, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding two pounds and further to a default fine of two pounds.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies shall be sent to the persons requiring them.

Specimen Minutes

Specimen Minutes of First Board Meeting

THE EXEMPLARY COMPANY, LIMITED

MINUTES OF FIRST MEETING OF DIRECTORS,

held at the Registered Office of the Company on Monday, 9th day of January, 19.., at 10 a.m.

Present : Mr. B. Black, Chairman.
Mr. Charles Black, Managing Director.
Mr. Arthur Black, Works Manager.
Mr. J. Green, Director.
Mr. W. Rothwell ,,
Mr. W. White ,,
G. Smart, Secretary. Mr. Deeds, Solicitor.

1. *Chairman of Meeting.* By general desire Mr. B. Black occupied the chair.

2. *Chairman of Company. It was unanimously resolved* " That Mr. B. Black be, and he is hereby, elected Chairman of the Company and of the Board of Directors."

3. *Certificate of Incorporation.* Mr. Deeds, the Solicitor, produced the Certificate of Incorporation of the Company, No. 66648, dated 12th December, 19...

4. *Appointment of Managing Director. It was resolved* " That Mr. Charles Black be, and he is hereby, appointed Managing Director of the Company for a period of five years at a salary at the rate of £1,500 (One thousand five hundred pounds) per annum, payable quarterly, such terms to be embodied in an agreement to be prepared by the Company's Solicitor." (In compliance with clause 110 of the Company's Articles, Mr. Charles Black, being an interested person, refrained from voting on this motion.)

5. *Appointment of Secretary. It was resolved* " That Mr. G. Smart be, and he is hereby, appointed Secretary of the Company at a salary at the rate of £600 (Six hundred pounds) per annum, payable monthly, the appointment to be terminable by three months' notice by either party, and that the Company's Solicitor be, and he is hereby, instructed to prepare an agreement to this effect."

6. *Appointment of Auditor. It was resolved* "That Mr. F. Figures, Chartered Accountant, be, and he is hereby, appointed auditor to the Company at a fee of £... for the current year."

7. *Appointment of Bankers, Drawing and Endorsing of Cheques, etc. It was resolved—*

"That the Midland Bank, Ltd., be, and is hereby, appointed Bankers to the Company."

"That the said Bank is hereby authorized to debit the Company's account with all cheques and/or other orders drawn upon such account, when signed for and on behalf of the Company by any two Directors and countersigned by the Secretary."

"That Bills of Exchange, and other negotiable instruments, shall be drawn, or accepted, for and on behalf of the Company, by any two Directors and countersigned by the Secretary."

"That all cheques and other instruments requiring the endorsement of the Company may be endorsed for and on behalf of the Company, by any one Director or the Secretary."

The Secretary was instructed to forward to the Bank a sealed copy of this Resolution signed by the Chairman and Secretary, together with specimen signatures of the Directors and the Secretary, and a copy of the Memorandum and Articles of Association of the Company.

8. *Adoption of Contract Appointing Works Manager. It was resolved, nem. con.* "That the provisional agreement dated 1st December, 19.., made between Mr. Arthur Black of the one part, and Mr. B. Black (as trustee for the Company) of the other part, appointing Mr. A. Black as Works Manager for a period of five years at a salary at the rate of £1,000 (One thousand pounds) per annum, be, and is hereby adopted, and that the Solicitor be, and he is hereby, instructed to prepare a contract between Mr. A. Black and the Company embodying the terms of the said provisional agreement."

9. *Seal.* The Secretary produced the Seal, and *it was resolved—*

"That this seal (of which an impression is affixed to these Minutes) be, and is hereby, adopted as the official signature of the Company."

"That a key of No. 1 lock of the Seal be held by the Chairman, and a key of No. 2 lock be held by the Secretary, and that the duplicate keys be deposited with the Company's Bankers."

10. *Issue of Prospectus.* The Draft Prospectus was produced and read to the meeting by Mr. Deeds, who assured the Board that all the statutory provisions relating to the Prospectus had been fully observed, and after some discussion *It was resolved* "That the Prospectus be, and is hereby, approved and adopted, that the Prospectus be dated 9th January, 19.., be signed by all the Directors as required by the Companies Act,

1948, and Mr. Deeds be, and he is hereby, instructed to file one signed copy with the Registrar of Companies."

A draft agreement with the All White Trust Corporation Ltd. for publication of the prospectus, underwriting, and cognate matters, was produced. *It was resolved* "That the draft agreement with the All White Trust Corporation Ltd. be approved, and that Mr. Deeds be, and he is hereby, instructed to prepare this for signature.

11. *Date of Next Meeting.* The next Meeting of the Board was fixed for Wednesday, 18th January, 19.., at 12 noon.

Statutory Meeting

THE EXEMPLARY COMPANY, LIMITED

MINUTES OF STATUTORY MEETING

held at the Registered Office on Thursday, 23rd July, 19—, at 3 p.m.

Chairman : Mr. B. Black.
Directors : Mr. Charles Black.
Mr. J. Green.
Mr. W. Rothwell.
Secretary : Mr. G. Smart.
And 42 shareholders.

1. *Notice of Meeting.* The Secretary read the notice, dated 6th July, 19.., convening the meeting.

2. *Chairman's Speech.* In opening the meeting the Chairman referred to the circumstances leading to the incorporation of the Company, and briefly reviewed the position and progress to date, referring those present to the Statutory Report as printed and circulated, for particulars of the financial progress recorded. The Chairman reminded those present that in accordance with the requirements of Sect. 130 (6) of the Companies Act, 1948, a list of the shareholders of the Company was open to the inspection of any shareholder during the continuance of the meeting.

3. *Discussion and Questions on the Report.* The Chairman concluded his speech by inviting shareholders' discussion and questions on the Report, and on matters pertaining to the formation of the Company.

The questions raised were dealt with to the satisfaction of the meeting.

4. *Modification of Purchase Agreement.* The Chairman read a letter from Messrs. Slow & Sure, Solicitors for Messrs. Arthur Black and J. Green, who are selling their business to the Company, stating that their clients desired to retain ownership of 5000 square yards of land fronting to Swan Lane, Bathtown, and offered in exchange 10,000 square yards of land adjoining the railway sidings leading into the factory. The chairman explained the advantages of this proposal

from the point of view of the company, and on the proposition being put to the meeting *It was resolved* that the purchase agreement dated 16th January, 19...., between Messrs. Arthur Black and J. Green of the one part and the Company of the other part be modified so that the Company shall surrender to the vendors a strip of land containing 5000 square yards and having a frontage of 100 yards to Swan Lane, Bathtown, in exchange for a plot of land containing 10,000 square yards adjoining the railway sidings leading into the factory.

5. On the conclusion of the business of the meeting, a hearty vote of thanks to the Chairman for presiding was carried with acclamation.

Annual General Meeting

THE EXEMPLARY COMPANY, LIMITED

MINUTES OF THE SECOND ANNUAL GENERAL MEETING, held at the Common Hall, Victoria Street, London, S.W.1, on Thursday, 26th April, 19.., at 12 noon.

Chairman : Mr. B. Black.
Directors : Mr. C. Black, Managing Director.
Mr. A. Black.
Mr. W. Rothwell.
Mr. J. Green.
Mr. W. White.
Secretary : Mr. G. Smart.
Auditor : Mr. F. Figures.
And 33 shareholders.

31. *Notice of Meeting.* The Secretary read the notice dated 2nd April, 19.., and convening the meeting.

32. *Directors' Report.* With the consent of the meeting, the Directors' Report and Accounts as printed and circulated were taken as read.

33. *Auditor's Report.* Mr. F. Figures, auditor of the Company, read his report upon the Company's Accounts and Balance Sheet.

34. *Chairman's Address.* The Chairman addressed the meeting upon the Company's present satisfactory position and good prospects, and invited questions on the Report and accounts as circulated to the shareholders.

The questions raised were dealt with by the Chairman to the satisfaction of the querists.

35. *Adoption of Report and Accounts.* On the motion of the Chairman, seconded by Mr. James Green, *it was resolved, nem. con.* " That the Report and Accounts for the year ended 31st December, 19—, as audited and certified by the Company's auditor, and now submitted to this meeting, be, and are hereby, approved and adopted."

36. *Auditor.* On the motion of Mr. A. Harris, seconded by Mr. J. Slater, *it was resolved* "That Mr. F. Figures, Chartered Accountant, 99 Lime Street, E.C.1, having agreed to continue in office as Auditor for a further year, his fee be fixed at £.."

37. *Re-election of Directors.* On the motion of Mr. Brown, seconded by Mr. J. Twist, *it was resolved* " That Mr. William White and Mr. J. Rothwell, the Directors retiring by rotation, and both being eligible for re-election, be, and they are hereby, re-elected Directors of the Company."

38. *Dividend.* It was proposed by the Chairman, and seconded by Mr. A. Cowley and unanimously *resolved,* " That the Dividend recommended by the Directors, viz., 10 per cent on the Ordinary Shares for the year ended 31st December, 19.., be, and is hereby, declared, and that the said dividend be paid on 1st May, 19.., to those shareholders whose names appear on the Register of Members on the 31st March, 19...

39. *Vote of Thanks.* The Chairman having declared the proceedings at an end, the meeting terminated with a hearty vote of thanks to the Chairman and the other members of the Board, which was acknowledged by the Chairman in appropriate terms.

Board Meeting

THE EXEMPLARY COMPANY, LIMITED

MINUTES OF BOARD MEETING HELD ON 23RD MAY, 19.., at 10 a.m.

Chairman: Mr. B. Black.
Directors: Mr. Charles Black. Mr. J. Green. Mr. W. Rothwell.
Secretary: Mr. G. Smart.
In attendance: Mr. J. Brown.

31. *Minutes of Previous Meeting.* The Minutes of the Board Meeting held on 16th May, 19.., were read and signed by the Chairman as being a correct record of the proceedings.

32. *Representation in Birmingham.* Mr. J. Brown reported that his negotiations with Messrs. Jones & Smith, of Birmingham, respecting their appointment as the Company's sole representatives in Birmingham, had been successful, and *it was resolved*—

" That Messrs. Jones & Smith, of Lozelles, Birmingham, be, and are hereby, appointed as the Company's sole representatives in Birmingham subject to the satisfactory completion of a formal agreement as stipulated for by Mr. J. Brown, to be prepared by the Company's Solicitor, incorporating the following terms—

" (1) The appointment to be for a period of five years.

" (2) An annual agency expense allowance of £250 (Two hundred and fifty pounds) to be paid.

" (3) Commission to be paid on the value of all orders introduced by Messrs. Jones & Smith, according to the following scale of rates, calculated on the turnover for the year ended 31st March, 19.., and each succeeding year during the continuance of the agency—

" On the first £5,000 at the rate of 2½ per cent.

" On the next £10,000, at the rate of 5 per cent.

" On all orders in excess of £15,000, at the rate of 7½ per cent.

" (4) The Company may determine the agency at the end of two years if it is considered by the Company to be desirable to do so."

33. *Financial Statement.* The Bank Pass Book was produced, showing a balance to the credit of the Company amounting to £2,248 11s. 7d., together with a Reconciliation Statement agreeing this balance with the balance shown by the Cash Book.

A statement of accounts owing, and due for payment, amounting to £777 7s. 6d., was produced and examined, and *it was resolved* " That cheques in discharge of the amounts so due be drawn and signed."

34. *Share Transfers. It was resolved* " That Transfer Deeds Nos. 151 to 176 inclusive be passed and the Common Seal affixed to the new Certificates Nos. 5151 to 5176 inclusive, and that the names of the Transferees be forthwith entered in the Register of Members."

The Seal was duly affixed to the new Certificates as authorized, the affixing being attested by Messrs. C. Black and W. Rothwell, two of the Directors present, the Certificates being countersigned by the Secretary.

35. *Sealing of Contract with Abels, Ltd.* The contract (as approved by the Company's Solicitor) for reconstruction work at the London Factory was produced and read to the meeting, and *it was resolved*—

" That the contract between the Company of the one part and Abels, Ltd., of the other part for certain reconstruction work at the London Factory as detailed in the specification dated 2nd April, 19.., signed by the Company's architect (a copy of which specification is annexed to the contract) be, and is hereby, approved and adopted, and that the said contract be dated 23rd May, 19.., and the Seal affixed thereto."

The Seal was duly affixed, and attested by Messrs. B. Black and W. Rothwell, two of the Directors present, and the Secretary.

36. *Date of Next Meeting.* The date of the next meeting was fixed for Wednesday, 30th May, 19.., at 3 p.m.

This concluded the business of the meeting.

Specimen Minutes of Extraordinary General Meeting

THE EXEMPLARY COMPANY, LIMITED

MINUTES OF EXTRAORDINARY GENERAL MEETING held at Common Hall, Victoria Street, S.W.1, on Thursday, 23rd July, 19.., at 3 p.m.

Chairman: Mr. B. Black.
Directors: Messrs. Chas. Black and Arthur Black.
Secretary: Mr. G. Smart, and Mr. H. Willing, Assistant Secretary; and 232 shareholders.

1. *Notice Convening Meeting.* The Secretary read the notice dated 30th June, 19.., convening the meeting.

2. *Chairman's Address.* The Chairman addressed the meeting, referring to the losses made by the Company owing to the present financial policy of the Government, and recommended that the Share Capital be reduced.

After briefly explaining the object and method of carrying out the Reduction of Capital as recommended, the Chairman moved—

"That the Ordinary Share Capital of the Company be reduced from £100,000 to £50,000 by writing down each fully-paid One Pound Ordinary Share to the value of Ten Shillings fully-paid, and that a Petition be made to the Court for an order confirming this reduction."

The motion was seconded by Mr. Pleasant, a shareholder.

Several shareholders vigorously protested against the motion, and after the discussion had lasted some time, it was moved and seconded "That the question be now put." The motion of closure was immediately put to the vote, and declared by the Chairman to be carried, whereupon the original motion was put to the vote, and on a show of hands being taken the Chairman declared the resolution carried, whereupon Messrs. F. Howard, W. McGlue, and W. Byron demanded that a Poll be taken on the motion. The Chairman directed that the Poll be taken forthwith.

Messrs. W. Hurst and J. Robinson were elected scrutineers.

There were present, in person, 232 shareholders, holding in the aggregate 60,000 shares; and 30 shareholders, holding in the aggregate 20,000 shares, were represented by proxy. The result of Polling was as follows—

For the motion	61,000
Against	18,000
Votes not polled	1,000
	80,000

The Chairman accordingly declared the Resolution carried by the requisite three-fourths majority, and declared the proceedings at an end.

CHAPTER XV

RESOLUTIONS

As is generally well known, the method of transacting business at any meeting is to submit to those present for their considered decision, definite proposals or propositions appertaining to the particular matters of business in hand.

Each proposition before the meeting is discussed and debated, and finally put to the vote, whereupon, if it is carried by the requisite majority, it becomes the resolution of the meeting on that particular matter—it is the expression of the will of the majority—and, provided it conforms with law, is binding on all members.

Propositions, Motions, and Resolutions

These terms are often regarded as synonymous, and are consequently used indiscriminately when procedure at meetings is being discussed. To use the terms correctly, a *proposition* is a proposal or suggestion submitted for discussion, a *motion* is a proposition to be put to the vote, and it becomes a *resolution* when it is properly carried by the requisite majority, i.e. the decision or expression of opinion of the meeting. Strictly, the term *resolution* should only be used to refer to a motion passed at a meeting.

Kinds of Resolutions

There are four kinds of resolutions—

1. Ordinary

Those required to be passed by a simple or bare majority only of those present *and* voting.

2. Extraordinary

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

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

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

3. Special

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

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

Such a resolution is essential to change the company's name (Sect. 18); alter the objects (Sect. 5); alter the Articles (Sect. 10); create reserve liability (Sect. 60); application to the Board of Trade to appoint inspectors (Sect. 165); make liability of directors unlimited (Sect. 203); pay interest out of capital (Sect. 65);

approve assignment of office by a director (Sect. 204); wind up by the Court (Sect. 222) or voluntarily in general cases (Sect. 278); reduce share capital (Sect. 66).

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

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

Drafting Resolutions

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

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

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

Specimen Resolutions

A comprehensive selection of specimen resolutions is given below.

ALLOTMENT OF SHARES

That ten thousand ordinary shares of one pound each, numbered 1 to 10,000, be, and are hereby, allotted to those

persons whose applications have been recommended for acceptance in the proportions set opposite to their respective names in the Application and Allotment Sheets submitted by the Application Committee, which Application and Allotment Sheets are signed by the Chairman for purpose of identification, and that the Secretary be, and he is hereby, instructed to forward Letters of Allotment to the Allottees, and Letters of Regret returning application moneys to those persons to whom no allotment has been made.

Making a Call

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

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

Resolution to Forfeit Shares

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

Re-issue of Forfeited Shares

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

Increase of Capital

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

Issue of New Shares to Members *Pro Rata* to Their Holdings

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

Issuing a New Class of Shares

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

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

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

Subdivision of One Class of Shares into Shares of Different Classes

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

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

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

Subdivision of Shares

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

200,000 shares of £1 each, at present issued and fully paid up.

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

Issue of Bonus Shares

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

Consolidation of Shares

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

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

Consolidation of Shares of Two Classes into Shares of One Class

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

Reduction of Capital

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

or

That the capital of the Company be reduced from £200,000

divided into 100,000 Ordinary Shares of £2 each, fully paid, to £100,000 divided into 100,000 fully-paid Ordinary Shares of £1 each, by repaying to each shareholder the sum of £1 per share, being capital in excess of the wants of the Company;

or

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

Conversion of Shares into Stock

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

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

Conversion of Stock into Shares

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

Cancellation of Unissued Shares

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

Closing Transfer Books

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

Passing Transfers

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

Declaration of an Interim Dividend

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

Calling Annual General Meeting

That the *Third* Annual General Meeting of the Company be convened for Wednesday, the 11th June, 19.., to be held at the Registered Office of the Company, 99 Lune Street, E.C.1, at 3 p.m., and that the Secretary be, and he is hereby, instructed to prepare and dispatch the necessary notices and make the other necessary arrangements for giving effect to this Resolution.

Calling Extraordinary General Meeting to Submit Resolution for Altering Articles

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

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

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

Authorizing Payment of Accounts and Drawing of Cheques

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

	£	s.	d.
J. J. Johnson, Ltd., London . .	117	17	7
R. W. Welsby & Co., Newcastle . .	37	10	–
G. K. France, Ltd., Liverpool . .	57	17	–

Resolution Calling upon the Cashier to Resign Owing to Inefficiency

That Mr. V. Underwork be requested to resign the office of Cashier to the Company as from 30th June, 19.., and that the Secretary be, and he is hereby, instructed to communicate to him the terms of this resolution.

RESOLUTION THAT THE DIVIDEND RECOMMENDED BY THE DIRECTORS BE PAID

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

RESOLUTION APPOINTING AB & CO., AUDITORS

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

RESOLUTION TO WIND UP VOLUNTARILY

Ordinary Resolution

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

Extraordinary Resolution

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

Special Resolution

That the Company be wound up voluntarily.

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

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

Filing of Resolutions with Registrar

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

1. Special resolutions.

2. Extraordinary resolutions.

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

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

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

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

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

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

at the front of, or in an appropriate space in, the copies in stock.

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

CHAPTER XVI

RECONSTRUCTION, REORGANIZATION, AND AMALGAMATION

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

This subject is really very interesting, but is intricate, and it is hoped that the treatment of it in this chapter will prove instructive, and that the reader

will be amply repaid by a careful perusal of the following pages; but the earnest student will amplify and sound his knowledge by studying Press reports and advertisements concerning reconstructions and amalgamations, etc., of public companies, and will in this way gain much valuable information on the subject in both its legal and its economic aspects.

Objects and Reasons

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

1. RAISING OF FRESH CAPITAL BY A NOT TOO PROSPEROUS COMPANY WHICH FINDS IT DIFFICULT TO RAISE NEW CAPITAL ON SUITABLE TERMS. For example, a company earning little or no profit because it is handicapped by lack of working capital has not for some years paid any dividends on its shares, which are fully paid. Clearly, an offer of shares or debentures would meet with poor response. What is the company to do? Its only hope lies in the possibility that its shareholders may be willing to risk a little more capital with the object of saving what capital they have already sunk in the concern. If the shareholders are willing to subscribe the necessary additional capital, well and good; but if a majority of them were not willing to subscribe *pro rata*, sufficient could only be raised by others taking the greater risk of sinking more capital than is proportionate to their interest in the company, and they might object to take on themselves a risk which may fructify for the benefit of others not willing to share that risk, with the consequence that the scheme would not materialize, because of the inability of the company to compel a majority of the shareholders to

put up new capital *pro rata* to their holdings. A common way out of such a situation is to sell the undertaking to a new company which would issue *partly-paid* shares to the members of the old company, and to call up the unpaid liability on such shares. In this way, the majority of the shareholders will be obliged to invest more capital proportionate to their holdings, so that all take a fair risk. It may be argued that there are no means of compelling shareholders to sanction such a scheme. The reply is that it is to their advantage—there is every possibility that the new company having additional working capital will make good. The shareholders are, it is true, asked to accept less than the nominal value of their holdings in the old company, but is that holding worth its nominal value? Probably not, and if the shareholders did not sanction the scheme, the company might eventually go into liquidation and the shareholders get little or nothing.

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

2. REHABILITATION OF A COMPANY WHICH IS IN DIFFICULTIES OWING TO BURDENSOME LIABILITIES, OVER-CAPITALIZATION, HEAVY LOSS OF CAPITAL, MISMANAGEMENT, ETC. For example, creditors may be

asked to agree to a moratorium, or to accept a composition, or to accept shares or debentures in satisfaction of their claims. (See head 4.) In the case of over-capitalization, or heavy loss of capital, the capital would certainly be reduced, and brought more into accord with the true value of the assets, and this would necessitate the usual procedure for reduction of capital (see Chapter XI). It may be pointed out in connection with reduction of capital that, where the capital lost equals or exceeds the amount of the ordinary share capital, the ordinary shareholders could hardly complain if their shares were written down to nil, because they have lost all they are entitled to, and would not receive a penny in the event of liquidation. But such a course is not usually practicable, because the ordinary shareholders would not vote in favour of a scheme in which they are annihilated, and it is usual to reserve a small interest in the reduced capital for the ordinary shareholders, in order to ensure their assent to the proposed reduction. Consequently, one observes cases in which, say, £1 ordinary shares are written down to a low figure—6d. or 1s. Looking at the subject broad-mindedly, we see that the nominal value is no guide to the actual value of ordinary shares which are entitled to the equity in a company, i.e. those which receive the surplus profits and assets. Each ordinary share entitles its holder to a fixed and definite proportion of the profits and assets, whether its nominal value is 1d. or £100, and, therefore, the writing down of an ordinary share by a very considerable amount does not prejudice the position of its holder in the slightest way whatever. The holder of, say, one-tenth of the issued ordinary capital of a company would be entitled to one-tenth of the surplus profits and assets, even though the nominal value of his shares was written down by 99·99 per cent. Thus, in cases where the whole or most of the ordinary share capital has been lost, and the ordinary shares

are written down considerably, it is not unusual to find that, as part of the proposed scheme of reduction and reorganization, the rights of ordinary shares are taken away in other directions (for example, by limiting their dividends, giving preference shareholders additional rights to participate in profits, giving preference shareholders rights to surplus assets, dividing preference shares partly into ordinary shares and partly into preference shares, etc.), because otherwise the ordinary shareholders would stand to benefit most by the future prosperity of the company by reason of the fact that (as shown above) the effect of writing down ordinary shares is more apparent than real. It must be pointed out that these remarks apply only to ordinary shares which are entitled to the " equity " in the company as explained previously. In some cases, the equity vests in the holders of deferred, founders', or management shares, and in such circumstances the position of the ordinary shareholders is to some extent comparable with that of preference shareholders in the above remarks.

Sometimes capital is reorganized as well as reduced; for example, the capital arrangements of some companies are not satisfactory—the preference capital may greatly exceed the ordinary capital, and thus the preference shares are virtually ordinary shares entitled to a fixed dividend because they have provided most of the capital, and in the event of liquidation, though they may have priority as to capital over the ordinary shareholders, such priority is mythical because of the smallness of the ordinary share capital, which, as it takes the surplus profits, thus benefits from the prosperity of the company and should bear the burden in the event of liquidation. In such circumstances, when reorganization is being effected, it is not uncommon to divide the preference holdings partly into ordinary shares and partly into preference shares, and thus the original

preference shareholders will stand to benefit as is their just right, viz., the proportion of their holdings which remain as preference shares will ensure them a prior claim on any profits, and some real priority as to capital in the event of liquidation, but at the same time, by the conversion of the other part of their holdings into ordinary shares, they will be entitled to share in the surplus profits which would otherwise accrue to the original ordinary shareholders, who would thus stand to benefit most by future successful working of the company. The same principles are usually applied where there are issues of founders', deferred or management shares which, whilst contributing only a small fraction of the capital, nevertheless claim a large portion of the surplus profits and assets.

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

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

3. EFFECTING OF COMPROMISES WITH SHAREHOLDERS. For example, a company owing to lean times has accumulated large arrears of preference dividends. These have to be met before dividends can be resumed on the preference and ordinary shares. The company may propose that the arrears be cancelled, and to

prevent the same state of affairs occurring in the future, may propose that the preference shares be made non-cumulative, or be converted into ordinary shares, or that the preference dividend be reduced, and so on. Modification of rights in this manner may be carried out under provisions in that behalf contained in the memorandum or articles (see page 341), but if the memorandum or articles do not authorize the modification, the sanction of the Court to a scheme of arrangement under Sect. 206 would be necessary.

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

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

to pay arrears of interest, to expedite repayment of principal by annual appropriations from future profits, etc.

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

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

(*a*) Company A purchases the assets of company B, allotting shares or paying cash for the purchase consideration, and company B goes into liquidation. Such a scheme is usually effected under Sect. 287, but the

expense of formal liquidation may be avoided by proceeding under Sects. 206 and 208 as under the latter section the Court may order dissolution *without liquidation* of company B.

(*b*) Both company A and company B (or as many companies as there are to be amalgamated) sell their assets to an amalgamating company. Such amalgamations may be effected under Sect. 287 or under Sects. 206 and 208, as mentioned above.

(*c*) Company B would sell its assets to company A for shares in company A, such shares being allotted in agreed proportions to the shareholders of company B, who would transfer their individual shareholdings in company B to company A or its nominees. Company B would continue its corporate existence, company A and its nominees thus becoming the only shareholders of company B. This is the method adopted where it is thought desirable for company B to continue its activities as before, but under the complete control of company A, and the scheme is effected under Sects. 206 and 208. This is a method of acquiring a controlling interest in a company. Other methods are—

(*x*) Company A may purchase in the open market a sufficient number of shares of company B to give it a controlling interest in that company. Such a method is patently not very practicable, as the price of the shares may rise to prohibitive heights.

(*y*) Company A may, after consultation with the directors of company B, make an offer for the purchase of the shares of company B; the offer is communicated to the shareholders, and if a number sufficient to give company A a controlling interest agree to sell, company A may purchase the shares of those members. If nine-tenths in value of the holders agree to the terms offered, the holders of the remaining one-tenth may, under the provisions of Sect. 209, be compelled to dispose of their

holdings at the same price to company A, subject to the right of dissentients to appeal to the Court.

In both cases (*x*) and (*y*) it must be observed that the number of members of company B is not allowed to fall below the statutory minimum, and that the directors remain qualified so as to pass transfers of the shares to company A. If company A acquired the whole or the major portion of the shares of company B, some shares could be transferred to nominees of company A to preserve the statutory minimum, and probably such nominees would, in due course, be appointed to the board of company B.

(*z*) Company A and company B may agree to an exchange or sale of shares in order to give company A a controlling interest in company B. For example, company A would acquire from company B, either for cash or for shares in company A, an allotment of shares in company B on such terms as would give it voting control, for instance, £1 shares carrying twenty votes each, or supposing the capital of company B was in £1 shares, each entitled to one vote, company B could issue to company A 1s. shares each entitled to one vote. Such an arrangement would require the sanction to the scheme of the shareholders of company B in general meeting, authorizing the issue of the shares to company A, or may be carried out under Sects. 206 and 208.

Schemes of reconstruction or amalgamation may be very comprehensive and involve compromises with shareholders, creditors, and debenture-holders, reduction, consolidation and/or subdivision of capital, and sale of assets to, or acquisition of a controlling interest by another company, but where any reduction, consolidation, or subdivision is involved, the usual procedure for carrying them out as required by the Act must be complied with, for example, the Court when sanctioning a scheme of reorganization under Sect. 206,

cannot by that sanction authorize a reduction of capital although it is an essential part and parcel of the scheme; the Court must be specially petitioned to sanction the reduction of capital after the passing of the necessary resolution.

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

Section 287

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

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

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

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

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently

with a resolution for voluntary winding up or for appointing liquidators, but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

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

Observe that—

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

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

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

Appropriate notice of the meeting to sanction the

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

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

The usual arrangement for vesting the new shares in the members of the old company, is for the liquidator to issue forms inviting applications from members for the number of new shares in the purchasing company to which they are entitled, a time limit for application being fixed. The liquidator lists the applicants, and the purchasing company allots the shares direct to the applicants. If fractions are involved, fractional certificates may be issued or the fractions may be satisfied by a cash payment by the purchasing company. The forms of application are usually accompanied by a letter indicating the number of new shares which each member may apply for, the method of dealing with fractions (if any), the time limit for

sending in applications, and that the old share certificates must be surrendered with the application forms. A letter of renunciation may also be annexed to enable members to renounce their right of allotment in favour of others, as it must be remembered that no transfers can be registered (except with the consent of the liquidator) because the old company is in liquidation.

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

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

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

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

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

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

6. The position of creditors and debenture-holders can be summed up as follows: A scheme for selling a

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

7. The consideration for the sale of the business must be distributed amongst the members of the old company in strict accordance with their respective rights, and the scheme cannot provide for a distribution otherwise, unless the shareholders affected agree to the proposal. Consequently, where there are different classes of shares in the old company, difficulties might arise. For example (to take a simple illustration), the capital of the old company is divided into 25,000 £1

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

Some schemes of reconstruction involve compromises with shareholders, debenture-holders, and creditors, in addition to the sale of the business, and in such cases the Court may sanction the whole scheme under Sect. 206 (and Sect. 208 if applicable), and the Court in sanctioning such a scheme may, if it thinks fit, insist on dissentient shareholders being given the same rights and privileges of dissenting as if the scheme had been carried out under Sect. 287. Where a scheme for selling a business is essentially one to be carried out under

Sect. 287, the company cannot override its obligations to dissentients under Sect. 287 by calling the sale a scheme of arrangement under Sect. 206, as the Court would not sanction the scheme. (*Anglo Continental Supply Co.* (1922).)

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

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

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

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

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

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

5. The agreement for the sale of the assets will in due course be entered into between the liquidator and the purchasing company. If a new company is being

formed to take over the assets, before the agreement can be entered into, the new company must, of course, be registered and should have received the certificate entitling it to commence business (Sect. 109 (2) will probably apply).

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

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

Section 206

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

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

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

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

(5) An order under subsection (1) of this section pronounced in Scotland by the judge acting as vacation judge in pursuance

of section four of the Administration of Justice (Scotland) Act, 1933, shall not be subject to review, reduction, suspension or stay of execution.

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

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

No scheme will be sanctioned by the Court unless it is fair to all concerned.

It should also be observed that the majority necessary to pass the scheme is a majority in number and three-fourths in value of those concerned *who are present and vote at the meeting* either in person or by proxy, and thus, if only a tenth of those summoned attend *and vote* at the meeting, their majority vote is sufficient to bind all the other members of their class, unless the Court considers that the class of persons concerned was not properly represented at the meeting. Furthermore, schemes of arrangement can be sanctioned whether the company is or is not in course of liquidation; for example, in a liquidation, creditors or contributories or a class of creditors or contributories may arrange a compromise of their claims or rights; or a scheme for continuing the business may be entered into, one creditor taking over the assets and paying the costs of liquidation and a composition to the creditors.

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

Briefly, the procedure in a scheme under Sect. 206 is as follows—

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

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

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

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

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

4. The holding of the meeting(s).

In order to ascertain whether the statutory majority

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

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

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

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

Section 208

(1) Where an application is made to the court under section two hundred and six of this Act for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown

to the court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as " a transferor company ") is to be transferred to another company (in this section referred to as " the transferee company "), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters—

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

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

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

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

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

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

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

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

(4) In this section the expression " property " includes property, rights and powers of every description, and the expression " liabilities " includes duties.

(5) Notwithstanding the provisions of subsection (6) of section two hundred and six of this Act, the expression "company" in this section does not include any company other than a company within the meaning of this Act.

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

Section 306

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

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

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

to bind a class of creditors, but the expense of an application to the Court may be a factor which may militate against Sect. 206 being invoked.

Section 209

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

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

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

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

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the

date of the transfer comprise or include nine tenths in value of the shares in the first-mentioned company or of any class of those shares, then—

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

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

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

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

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

(5) In this section the expression " dissenting shareholder " includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to

transfer his shares to the transferee company in accordance with the scheme or contract.

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

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

The transfers of shares to a purchasing company may be carried out in the following manner. The shareholders are circularized and asked to sign a form of acceptance, if they agree to the purchasing company's proposals. When acceptances sufficient in value to satisfy the requirements of the purchasing company have been received, forms of transfer of each acceptor's shares to the purchasing company are prepared, and forwarded to the acceptors, and arrangements made with bankers to pay the agreed purchase moneys to the transferors on their depositing the duly executed transfers and relevant share certificates with the bankers,

A time may be prescribed for verification of the documents. Where the purchasing company is allotting shares or debentures to the acceptors, the transfers will set out the allotment to be made (and cash payment representing any fractions), and on execution and surrender of the transfer, accompanied by the share certificates, the new shares or debentures will be allotted and certificates therefor issued in due course.

The Power of a Company to Sell Its Undertaking

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

A sale for shares under the provisions of Sect. 287 demands protection for dissentients, and procedure under Sects. 206 and 208 involves the expense of an application to the Court, and the Court might stipulate that dissentients be protected. The company may desire to sell without providing for dissentients or applying to the Court. Can this be done? There is apparently nothing to prevent a company selling its undertaking for cash under a power contained in the memorandum, continuing in business, and re-investing the proceeds, or going into liquidation and dividing the proceeds of the sale amongst its members. But if the sale

was made for shares in the purchasing company, could the vendor company convert them into cash, go into liquidation and divide the proceeds amongst its members, or could it go into liquidation, and divide the shares amongst its members if the articles empowered the liquidators to distribute in specie amongst the contributories any part of the company's assets? Such transactions were common at one time. In *Doughty* v. *Lomagunda Reefs* (1902), the memorandum empowered the company to sell its undertaking for shares in another company and to distribute in specie amongst its members any part of its property. The articles empowered the liquidators in a winding up of the company, with the sanction of an extraordinary resolution, to distribute in specie amongst the contributories any part of the assets. The company sold its assets for *fully-paid* shares in a purchasing company, and these shares were divided amongst its members. It was held that the sale was good, and was not vitiated by the fact of the company's immediate liquidation, and that the transaction was not in disguise a sale under Sect. 161 of the Companies Act, 1862 (now Sect. 287 of the Companies Act, 1948).

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

Following this decision, the view is now generally

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

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

It is very desirable that a company should have wide powers in its memorandum enabling it to purchase shares in another company, to amalgamate with other companies or acquire controlling interests in them, to purchase businesses of a nature similar to its own, or to float and finance subsidiary companies, and

other such powers enabling it to enter into arrangements with other companies, as such powers are very convenient, and often necessary, in order to carry out schemes for amalgamation, reconstruction, enlargement of the company's activities, etc. Unless expressly mentioned in the memorandum, such powers cannot generally be implied, and their absence might necessitate the formation of a new company having the necessary powers, or an application to the Court for an extension of the objects clause, in order to enable the scheme of amalgamation, reconstruction, etc., purchase of shares in other companies, to be carried out.

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

Relief from Stamp Duties on Reconstruction, Amalgamation, etc.

With the object of facilitating reconstructions and amalgamations, by reducing the heavy burden of stamp duties so often incidental to such schemes, Sect. 55 of the Finance Act, 1927, Sect. 31 of the

Finance Act, 1928, and Sect. 41 of the Finance Act, 1930, provide for some relief from capital duty (*a*) on the nominal capital of any new company registered in connection with the scheme, or (*b*) on the increase of the nominal capital of an existing company where the increase is effected in order to enable the scheme to be carried through, and relief is also granted from conveyance or transfer duty on instruments vesting in the transferee company the assets or shares of transferor companies.

CHAPTER XVII

PRIVATE COMPANIES

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

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

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

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

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

For failure to comply with the provisions above

outlined, the company and every officer of the company are liable to a default fine of £50.

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

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

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

Exempt Private Companies

Owing to the fact that many large public companies formed private companies as their subsidiaries in order to cloak their operations, the Companies Act, 1948, removed the privilege extended to private companies of not being required to file accounts with the annual return. But where it can be proved that the private company is a *bona fide* one (e.g. a family business of the kind visualized when private companies were first introduced in 1907) then by fulfilling certain conditions and filing a certificate relating thereto with its annual return the Registrar of Companies permits it to be classed as an "exempt private company," which need not file accounts. The main conditions are three, but Sect. 129 and the Seventh Schedule should be referred

to. These conditions are: (1) That no body corporate is the holder of any of its shares or debentures, and no person other than the holder has any interest therein; and (2) that the number of debenture-holders is not more than fifty; and (3) that no body corporate is a director, and that there is no arrangement whereby the policy of the company is capable of being determined by persons other than the directors, members and debenture-holders or trustees for debenture-holders (Sect. 129 (2)).

Privileges and Exemptions

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

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

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

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

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

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

7. No minimum subscription (Sect. 47).

8. Sect. 176 which requires every company to have

at least two directors, allows a private company to have at least one director.

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

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

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

Conversion into Public Company and Vice Versa

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

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

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

Specimen Resolution on Conversion into a Public Company

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

(*b*) That Articles numbered to and to are hereby deleted from the Articles of the company.

If it is desired to add any further Article considered necessary because of the change—

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

(Here follows the new Article)

Specimen Resolutions on Reconversion into a Private Company

"That the Company do now become a Private Company."

"That Articles numbered to and to are hereby deleted from the Articles of the Company."

"That the following new Articles, to be numbered . . . to . . ., be inserted and form part of the Articles of the Company."

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

CHAPTER XVIII

STATUTORY COMPANIES

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

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

Formation

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

1. An advertisement relative to the proposed statutory company is inserted in the *London Gazette* and in a local newspaper.
2. A " Bill " is prepared and deposited in Parliament.
3. Opposition (if any) to the " Bill " has to be overcome, necessitating the appearance of counsel before the various committees of the Houses of Parliament.
4. " Special Acts," when passed, invariably incorporate the Land Clauses Act, the Companies Clauses Acts, and the appropriate general Acts particular to the proposed undertaking, for example, the Railway Clauses Acts, the Gasworks Clauses Acts.

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

Under the Companies Clauses Consolidation Act,

1845, the keeping of the following books is obligatory on a statutory company—

1. Register of shareholders. (Sect. 9.)
2. Shareholders' address book. (Sect. 10.)
3. Register of transfers. (Sect. 15.)
4. Register of mortgages and bonds. (Sect. 45.)
5. Register of holders of consolidated stock (i.e. shares converted into stock). (Sect. 63.)
6. Minute books of proceedings of directors, and of all the other meetings of the company. (Sect. 98.)

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

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

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

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

3. *The remuneration of the secretary* is fixed by a general meeting of the company (cf. Sect. 91 of Clauses Act, 1845), but the neglect of the meeting to fix the remuneration of the secretary cannot be pleaded in defence of an action by the secretary for the salary due to him (*Bill* v. *Darenth Valley Railway Co.* (1856)).

4. In addition to the usual requirement as to the keeping of a " register of shareholders " (to which there is no right of inspection), there must be kept a " shareholders' address book."

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

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

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

(*a*) The secretary must keep the transfer.

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

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

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

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

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

6. TRANSMISSION. (Sects. 18 and 19 of 1845 Act.) Before a person to whom a shareholding has been transmitted can be recognized, the circumstances in which the transmission has taken place must be authenticated (1) by a declaration in writing made by a credible person before a justice of the peace or master of the High Court of Chancery, or (2) in such other manner as the

directors may require. A declaration is usually dispensed with, the directors usually accepting a written request by the person becoming entitled to the shares to register him as a holder thereof, *provided* the request sets forth the circumstances of the transmission. The appropriate evidence of transmission, such as probate of will, letters of administration, etc., must of course be produced in addition.

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

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

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

In order to give the company power to sell forfeited shares, the forfeiture must be confirmed and a declaration to sell passed at a general meeting held not less

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