

REPORT OF THE COMMITTEE ON COMPANY LAW AMENDMENT

(Cohen Report 1945)

*Presented by the President of the Trade to Parliament by
Command of His Majesty*

June 1945

LONDON

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COMPANIES ACT, 1929

MINUTE OF APPOINTMENT

The President of the Board of Trade is hereby pleased to appoint the undermentioned gentlemen to be a Committee to consider and report what major amendments are desirable in the Companies Act, 1929, and, in particular, to review the requirements prescribed in regard to the formation and affairs of companies and the safeguards afforded for investors and for the public interest:-

Mr. JUSTICE COHEN (Chairman).
Mr. BASIL G. CATTERNS.
Mr. ARTHUR F. B. FFORDE.
Mr. MONTAGU L. GEDGE.
Professor ARTHUR L. GOODHART, K.C.
Mr. GEOFFREY HEYWORTH.
Sir EDWARD HODGSON, C.B., O.B.E.
Mr. RUSSELL KETTLE, F.C.A.
Col. HAROLD P. MITCHELL, M.P.
Mr. GEORGE W. THOMSON.
Mr. LAURENCE H. WATSON, M.C., K.C.
Mr. ROBERT P. WILKINSON.
Mr. JOHN WILMOT, M.P.

The President is further pleased to appoint Mr. C. W. Jarome to be Secretary to the Committee.

(Signed) HUGH DALTON.

Board of Trade.

26th June, 1943.

NOTE.-The following corrections have been incorporated in this reprinted edition:

Page 44. The reference at the end of paragraph (h) has been amended from "Para. 81)" to " (Para. 82)"

Page 77. Para. 125, line 3, " Section 114 " has been amended to " Section 115 ".

Page 99, Para. 156, line 24, " (page 101, I (b) has been amended to (page 101, I (i) (b)

TABLE OF CONTENTS.

	Paragraph
INTRODUCTORY	1-10
MEMORANDA OF ASSOCIATION	
Existing Provisions	11
Doctrine of ultra vires	12
Recommendation	(page 10)
NAMES OF COMPANIES	
Existing provisions	13
Present practice	14
Abuses	15
Power of rejection to be unfettered	16
Recommendation	(page 11)
SHARES OF NO PAR VALUE	
Existing provisions	17
Conclusion of the Committee	8
PROSPECTUSES	
Issue and Contents-	
Normal practice	19
'Stags '	20
Offers for sale	21
'Placings'	22
Permission to deal	23
Stock Exchange requirements	24
Existing law regarding prospectuses	25
Influence of the Press	26
'Lists'	27
Time limit for applications for permission to deal	28
Inclusion of memorandum in prospectus	29
Disclosure of previous transactions in property of company	30
Material contract.	30
Report by auditors	
on results of company	32
in relation to a holding company	33
Report by accountants on profits of business to be acquired	34
Length by reports	35
Omission of material information	36
Assets and liabilities	37
Inclusion in prospectuses of statements by experts	38
Disclosure of borrowing and other powers of company issuing prospectus	39

Other amendments	40
Recommendations	(pages 19-23)
Liability for Prospectus-	
Criminal liability for statements in prospector, Misleading statement.	41 42
Civil liability of directors, promoters, etc.	43
Civil liability of private	44
Right to contribution	45
Civil liability of bankers and others for statements in prospectus	46
Recommendations	(pages 24-5)
PRIVATE COMPANIES	
Definition	47
Statistics	48
History and privileges	49
Exemption from obligation to file accounts	50
Exposure of small private companies to competition	51
Private company subsidiaries of public companies	52
Conclusion of the Committee as regards exemption of private companies	
from obligation to file accounts	53
Circulation of accounts to members of private companies	54
Directors and secretaries of private companies	55
Recommendations	(pages 28-9)

PRIVATE COMPANIES – continued	Paragraph
Auditors	56
Fraud	57
Restrictions on transfer of shares	58
Excessive remuneration of directors	59
Oppression of minorities	60
MORTGAGES AND CHARGES	
Trustees-	
Trustees for debenture-holders	61
Individual and corporate trustees	62
Trustees with conflicting interest	63
Liability of trustees	64
Recommendation.	(pages 32-3)
Receivers-	
Existing provisions	65
Accounts of receivers here debentures are secured by floating charges	66
Application to Court by receiver for guidance	67
Liability of receive	68
Disqualification of bankrupt from acting as receiver	69
Standardised powers for receivers	7
Recommendations	(pages 35-6)
Registration of Charges-	
Registration of charges given by trustee over property of a company	71
REGISTERS OF MEMBERS AND DEBENTURE-HOLDERS AND ANNUAL RETURN	
Existing provisions regarding register of members and annual return	71
Suggested simplification	73
Place at which register of members is to be kept	74
Register of debenture-holders	75
Details of charges in annual return	76
Recommendation.	(Pages 38-9)
NOMINEE SHAREHOLDINGS	
History	77
Popularity of nominee system	78
Arguments in favour of disclosure of beneficial ownership	79
Difficulty of securing complete disclosure	80
Disclosure by registered members as to whether or not they are beneficial owners	81
Disclosure by beneficial owners	82

Bearer shares	83
Board of Trade powers to investigate beneficial ownership of shares	84
Definition of Board of Trade powers	85
Recommendations	(pages 43-5)

FINANCIAL RELATIONS BETWEEN COMPANIES AND DIRECTORS

Share transactions by directors	86
Disclosure of share transactions by directors	87
Payment to directors of fees or salaries tax-free	88
Disclosure of remuneration of directors	89
Conclusions of the Committee regarding disclosure of remuneration of directors	90
Remuneration of managing firms, agent. and secretaries	91
Compensation to directors for loss office	92
Directors' pensions	93
Loans by companies to directors	94
Voting by directors on matter in which they are interested	95
Recommendations	(pages 50-3)

ACCOUNTS

Balance Sheet and Profit and Loss Account	Paragraph
General	96
Present practice	97
Function of balance sheet	98
Present requirement as to balance sheets	99
Fixed assets	100
Undisclosed reserves	101
Assurance companies	102
Profit and loss account	103
Requirements as to accounts to be subject to modification by Order	104
Directors' report and Chairman's speech	105
Recommendations	(pages 58-63)

Signature of accounts	106
------------------------------	-----

Circulation of accounts	107
--------------------------------	-----

Share premium account	108
------------------------------	-----

Books of account	109
-------------------------	-----

AUDITORS

Qualification	110
Appointment	111
Right to attend general meetings	112
Remuneration	113
Report	114
Recommendation's	(pages 67-8)

RELATIONS BETWEEN HOLDING AND SUBSIDIARY COMPANIES

Existing provision	115
Defects of existing provision	116
General principles	117
Definition of holding company and of subsidiary company	118
Consolidated accounts	119
Cases in which consolidation is inappropriate and in which dates of accounts differ	120
Power of Board of Trade to alter requirements in particular cases	121
Conclusion of the Committee regarding consolidated accounts	122
Recommendation.	(pages 72-6)

PRE-ACQUISITION PROFITS AND LOSSES OF SUBSIDIARY COMPANIES	123
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SHAREHOLDERS' CONTROL	
General	124
Meetings	125
Notice of meetings	126
Date and place of meetings	127
Communications between shareholders	128
Miscellaneous recommendations regarding meetings	129
Election of directors	130
Retiring age for directors	131
Proxies	132
Qualification of proxies.	133
Validity of instruments appointing proxies	134
Voting by nominees	135
Polls	136
Right of Preference shareholder and debenture-holders in winding up	137
Variation of shareholders' rights (section 61)	1388
Recommendations	(pages 84-7)
LIABILITY OF COMPANIES IN CONNECTION WITH CERTIFICATION TRANSFERS	139

ARRANGEMENTS, RECONSTRUCTIONS AND AMALGAMATIONS	Paragraph
Procedure under section 153	140
Power to acquire share of minorities	141
Recommendation	(pages 90-1)
WINDING-UP	
Method of winding up	142
Declarations of solvency	143
Proposed remedies in connection with	144
Criminal liability in relation to	145
Fraudulent preference	146
Fraudulent preference in relation to banks and sureties	147
Avoidance of debentures	148
Liability for debts of companies in cases of fraud	149
Power to restrain fraudulent persons from managing companies	150
Protection of delinquent officers and members of a company	151
Power of Court to make winding up Order	152
Miscellaneous winding-up matters	153
Recommendations	(pages 95-7)
INVESTIGATION OF AFFAIRS OF COMPANIES	
Powers of Board of Trade under section 135	154
Principal defect of section 135	155
Suggested Widening of powers of Board of Trade	156
Action on report of inspector	157
Costs of investigation	158
Minor amendment to section 135	159
Inspector appointed by the company	160
Recommendations	(page 101-4)
PROSECUTIONS	
Prosecutions by the Director of Public Prosecutions	161
Cost of prosecutions	162
Juries in trials in England for company effects	163
Right to inspect books of companies	164
Penalty for conspiracy	165
Indictment of a company in Scotland	166
Prosecutions by Board of Trade in England	167
Summary jurisdiction Act	168
Recommendations	(pages 106)
MISCELLANEOUS	
Execution of deeds in Scotland	169
Prohibition of provision of financial assistance by company for purchase of its shares	170
Redeemable preference shares	171

Publication of name by company	172
Loose-leaf registers and books and accounting records not kept in books	173
Directors and secretaries of companies	174
Dividend announcements and statements of profits	175
Standing Advisory Committee	176
Companies not registered under the Companies Act	177
Pension Funds	178
Conclusion	179

APPENDIX

	Page
A. Memorandum issued to certain organisations and individual	112
B. Organisations and individuals who gave oral evidence before the Committee	113
C. Statement of Affairs to be annexed to declaration of solvency	115

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printing and publishing.

To The Rt. Hon. OLIVER LYTTELTON, D.S.O., M.C., M.P.

President of the Board of Trade.

SIR,

We, the undersigned members of the Committee appointed under the Minute of your predecessor, The Rt. Hon. Hugh Dalton, M.P., dated 26th June, 1943, " to consider and report what major amendments are desirable in the Companies Act, 1929, and, in particular, to review the requirements prescribed in regard to the formation and affairs of companies and the safeguards afforded for investors and for the public interest," have now the honour to submit our report.

INTRODUCTORY

1. We have regarded the question of general economic policy which embraces such matters as monopolies as outside our terms of reference. The company law should, in our view, deal with companies irrespective of their particular activities; questions of economic policy should be dealt with by legislation directed to that subject, and kept distinct from the general law governing companies.

2. In the course of considering major amendments, we have had brought to our notice a number of suggestions which, though not perhaps of major importance, are of sufficient substance to be worth dealing with at the same time: @ Other suggestions, for minor or purely drafting amendments, have been noted by the Board of Trade for consideration in connection with a new

Companies Act.

3. We desire to make it clear that our report assumes that special war-time legislation will have lapsed before legislative effect is given to our proposals, and accordingly does not take it, or the special difficulties of wax-time, into account.

4. We have held 47 meetings at 26 of which we heard oral evidence. We issued to certain organisations and individuals a questionnaire in the form of the memorandum which is reproduced as Appendix A. A list of the organisations and individuals who gave oral evidence before us is set out in Appendix B. The oral evidence,

together with the memoranda submitted by those who gave oral evidence, has been published by the Stationery Office. The questionnaire also appeared in the Press, and in addition to those who gave oral evidence, many associations and individuals submitted suggestions to us. The evidence and the suggestions submitted to us have been of great assistance in our enquiry and we should like to take this opportunity of expressing our gratitude for them.

5. We are satisfied by the evidence that the great majority of limited companies, both public and private, are honestly and conscientiously managed. We believe that the system of limited liability companies has been and is beneficial to the trade and industry of the country and essential to the prosperity of the nation as a whole. The Companies Acts have been amended from time to time to bring them into accord with changing conditions, but if there is to -be any flexibility opportunities for abuse will inevitably exist. We consider that the fullest practicable disclosure of information concerning the activities of companies will lessen such opportunities and accord with a wakening social consciousness. Accordingly, while in making our recommendations we have borne in mind the importance of not placing unreasonable

fetters upon business which is conducted in an efficient and honest manner, we have included a number of proposals to ensure that as much information as is reasonably required shall be made available both to the shareholders and creditors of the companies concerned and to the general public. We have also sought to find means of making it easier for shareholders to exercise a more effective general control over the management of their companies. The result will be, we believe, to strengthen the already high, credit and reputation of British companies. We must emphasise, however, that this objective will be attained more by the selection by the shareholders of the right governing body of each company than by the provisions of any statute.

6. It seems to us important that observance of the requirements of the Companies Act should & vigorously enforced and still more important that where companies are improperly or dishonestly conducted, their affairs should be investigated and the offenders prosecuted. The recommendations which we make to this end will necessitate some increase in the staff of the Board of Trade. We are satisfied that the expenditure thus involved would represent money well spent.

7. Since the Companies Act, 1929, came into force, public attention has been drawn particularly to the following aspects of company law:

(a) **Prospectuses**

The heavy losses which investors, many of whom subscribed for their shares on unsatisfactory prospectuses, suffered in the slump which followed the 1928-9 boom, caused a feeling that the law relating to prospectuses was inadequate. It is right, however, to point out that neither the Companies Act, 1929, nor the revised Rules of the London Stock Exchange governing the grant of official quotations and permission to deal had come into force in time to affect the prospectuses in question.

(b) **Private Companies**

The question has arisen whether the exemption of private companies from, the obligation to file accounts with the Registrar of Companies should be allowed to continue.

(c) **Nominee Shareholdings**

The belief that the practice of placing shares in the names of nominees for the real owner, is being used to conceal the seat of control or for dubious purposes, has led to a demand that the real ownership should be disclosed.

(d) **Accounts**

The present legal requirements as to the contents of the accounts to be presented to shareholders are too meagre. The practice of showing a number of diverse items in one lump sum and thereby obscuring the real position as to the assets and liabilities, and as to the results of trading, makes it difficult and often impossible for a shareholder to form a true view of the financial position and earnings of the company in which he is interested. While auditors have tended to press for standards in advance of the requirements of the present law, it has been suggested that their hands won] be strengthened if the law were to accord more nearly with what the), regard as t& best practice.

(e) **Control**

The illusory nature of the control theoretically exercised by shareholders over directors has been accentuated by the dispersion of capital among an increasing number of small shareholders who pay little attention to their investments so long as satisfactory dividends are forthcoming, who lack sufficient time, money and experience to make full use of their rights as occasion arises and who are, in many cases, too numerous and too widely dispersed to be able to organise themselves.

8. We have thought it convenient to summarise in the preceding paragraph the principal developments of which public opinion appears to us to have taken notice. We shall, however, deal with these matters at greater length in succeeding paragraphs. In setting out our views we follow roughly the order in which the various aspects of company law are set out in the memorandum which is reproduced in Appendix A.

9. We have made a number of our recommendations in the form of draft sections for inclusion in a new Bill since we consider that this is the best method of testing the practicability of our recommendations and giving precision to them. Owing to pressure of other work it has not been possible for Parliamentary Counsel to assist us in preparing them and they should, therefore, not be regarded as prescribing the form in which our recommendations, if adopted, should be embodied in a statute. We have added in the explanatory paragraphs of the report, references in italics to the passages in our specific recommendations to which they refer, with the object of avoiding repetition of the recommendations.

10. We consider that if an amending Act be passed by Parliament it should be followed immediately by a consolidating Act. Constant reference has to be made to the Companies Acts by business men and the advantages of having the statute law embodied in a consolidating Act which can easily be referred to without the necessity for cross-reference, are obvious.

MEMORANDA OF ASSOCIATION

11. Existing provisions.—Section 1 of the Companies Act, 1929, lays down that persons wishing to form a company, must subscribe their names to a memorandum of

association. Section 2 requires that the memorandum must state, among other things, the objects of the company. Section 5 provides that a company may, by special resolution, alter the provisions of its memorandum with respect to its objects, subject to confirmation of the alteration by the Court. Section 11 provides that the form of the memorandum shall be in accordance with forms set out in the First Schedule to the Act or as near thereto as circumstances admit. The forms set out the objects of the company briefly. The memorandum of a company defines its objects and a company's objects are limited to those expressly mentioned and such as are ancillary to the expressed objects. A contract made by the directors upon a matter not within the ambit of the company's objects is ultra vires the company, and, therefore, beyond the powers of the directors. This principle is intended to protect both those who deal with the company, and its shareholders.

12. Doctrine of ultra vires. - Had memoranda of association closely followed the forms in the First Schedule to the Act, this protection might have been Teal, but, partly with a view to obviating the necessity of applying to the Court for confirmation of an alteration of objects, a practice has grown up of drafting memoranda of association very widely and at great

length so as to enable the company to engage in any form of activity in which it might conceivably at some later date wish to engage and so as to confer on it all ancillary powers which it might conceivably require in connection with such activities. In consequence the doctrine of ultra vires is an illusory protection for the shareholders and yet may be a pitfall for third parties dealing with the company. For example, if a company which has not taken powers to carry on a taxi-cab service, nevertheless do I third persons who have sold the taxi-cabs to the company or who have been employed to drive them, may have no legal right to recover payment from the company. We consider that, as now applied to companies, the ultra vires doctrine serves no positive purpose but is, on the other hand, a cause of unnecessary prolixity and vexation. We think that every company, whether incorporated before or after the passing of a new Companies Act, should, notwithstanding anything omitted from its memorandum of association, have as regards third parties the same powers as an individual. Existing provisions in memoranda as regards the powers of companies and any like provisions introduced into memoranda in future should operate solely as a contract between a company and its shareholders as to the powers exercisable by the directors. In our view it would then be a sufficient safeguard if such provisions were alterable by special resolution without the necessity of obtaining the sanction of the Court, subject in cases where debentures have been issued before the coming into force of a new Act, to the consent of the debenture-holders by extraordinary resolution passed at a meeting held under the provisions contained in the trust deed or (in the absence of such provisions) convened by the Court.

Recommendation

We recommend that section 5 be repealed and a new section be inserted in the Act to give effect to our suggestions in paragraph 12.

NAMES OF COMPANIES

13. **Existing provisions.** - The existing provisions regarding names of companies are set out in section 17 of the Companies Act, 1929. Subsection (i) of that section provides that no company shall be registered by a name which is identical with that by which a company in existence is already registered, or so nearly resembles

that name as to be calculated to deceive (subject to certain exceptions); or which contains the words "Chamber of Commerce" (subject to certain exceptions); or which contains the words "Building Society". Subsection (2) provides that, except with the consent of the Board of Trade, no company shall be registered by a name which contains the words "Royal" or "Imperial" or, in the opinion of the Registrar, suggests royal patronage or connection with the Government; which contains the words "Municipal" or "Chartered" or, in the opinion of the Registrar, suggests connection with any municipality or other local authority or with any -society or body incorporated by Royal Charter; or which contains the word Co-operative ".

14. Present practice. - The powers conferred by section 17 are exercised by the Board of Trade and by the Registrars of Companies, of whom there are two, one for England and Wales normally in London and one for Scotland in Edinburgh. In the exercise of the Registrars' powers contact is maintained with the Registrar of Friendly Societies with a view to preventing the incorporation of companies with names which closely resemble those of existing industrial and provident societies; the Registrars also advise applicants to be careful to avoid confusion with existing registered trade marks, but in neither

of these cases have the Registrars any power to refuse registration of the names. If they are unable to persuade the applicants not to take the names for their companies, the only remedy open to a person who feels that his right in a name has been infringed, is to bring an action in the Courts against the company concerned. Such an action, which is commonly called a 'passing-off' action, is expensive and it therefore seems desirable to increase the powers of the Registrars of Companies to reject a name in a case of this kind. If they are given the wider powers which are recommended, they will, no doubt, consult the Registrar of Trade Marks in appropriate cases.

15. **Abuses.** - There is at present no power to prevent a company from taking a name which is likely to mislead those with whom the company deals, whether persons from whom it obtains credit or persons to whom it sells its goods, except where the name resembles that of an existing company or contains one of the words listed in section 17. Examples have been brought to our attention of companies with very small resources formed with names which contain, for instance, the words 'bank' or 'trust', suggesting to the ignorant that the companies have large resources and great stability; and of companies formed under high-sounding names but for purposes which do not justify the names.

16. **Power of rejection to be unfettered.** - We suggest that the Registrars should have, subject to appeal to the Board of Trade, discretion to reject any name which they consider is calculated to mislead. We have considered whether to recommend that this power should be subject to appeal to the Courts that the Board of Trade should be obliged to state Regulations to be laid before Parliament the precise circumstances in which they will, reject names on the ground that they are misleading. In our view, the power of the Board of Trade in this respect should be unfettered. In refusing to allow a particular name, they would not be depriving anyone of an existing right, but would, in effect, be doing no more than rejecting a request that a vested interest in the name proposed should be created and conferred on the company. Nor do we think it desirable that they should be bound by any Regulations having the force of law, in the exercise of their discretion. The cases in which a name may mislead are so various that an attempt to catalogue them would be unlikely to include them all. Section 17 of the existing Companies Act was, no doubt, intended to set out the

cases in which it was desirable that the Board of Trade should have power to reject names, but the list of misleading words has not proved sufficiently comprehensive; any similar list which might be drawn up now might well be proved incomplete by subsequent experience. The exercise of the existing powers appears to have given satisfaction to the public and we see no reason to fear that there will be abuse of the wider powers we recommend.

Recommendation

We recommend that section 17 (i) be replaced by a section giving the Board of Trade discretion to refuse a name wherever they consider that the name is calculated to mislead the public. [A consequential amendment to section 19 (2) will be required.]

SHARES OF NO PAR VALUE

17. **Existing Provisions.** - Section 2 (4) of the Companies Act, 1929, provides that in the case of a company having a share capital the memorandum must, unless the company is an unlimited company, state the amount of

share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount, while section 2I provides that every provision in the memorandum or articles or in any resolution of a company limited by guarantee and registered after January 1, 1901, purporting to divide the undertaking into shares or interests, shall be treated as a provision for a share capital. For many years in the United States of America there has been a practice of issuing shares which have no par value, a practice which, owing to the above-mentioned sections, companies registered in this country are not permitted to follow, It has been suggested to us that we should recommend that shares of no par value should be permitted, at, least in the case of public companies. It is argued that to attach a nominal value to a share is misleading as, except perhaps immediately after the formation of the company, and not always then, the nominal value bears no relation to the real value of the share; nevertheless, the ignorant are apt to think that a share is cheap if bought at less than, and dear if bought at more than, its nominal value. The advocates of shares of no par value recognise that if their issue were permitted, numerous safeguards would be necessary to prevent abuse, for example, provisions as to the price at which the shares might be issued and as to the extent to which the money received by the company in payment for the shares might be treated as a distributable surplus, not as capital, and used accordingly.

18. Conclusion of the Committee. - While there is, in our view, much logic in the arguments put forward in favour of shares of no par value, there is little public demand for, and considerable opposition to, the proposal. We have also had some evidence that in practice this class of share has given an opportunity to the unscrupulous to manipulate accounts which could be defeated only by a series of elaborate provisions t ' he substantial effect of which would be to re-introduce a capital account and, with it, most of those same complications which the no par value share was designed to avoid. Nor would the proposal bring any of the other major subjects of our enquiry nearer to solution. We therefore refrain from recommending any change in this matter.

PROSPECTUSES

Issue and Contents

19. **Normal practice.** - It may be convenient to set out the various methods by which the public is able to invest in public companies. In a typical case the promoter, who may or may not be identical with the vendor, arranges the terms of acquisition of the business, drafts the prospectus, secures the consent of the proposed directors to act as such and arranges with an underwriter to guarantee the subscription of the proposed issue. The company is then registered and the prospectus delivered for registration to the Registrar of Companies and published, the underwriter having as a rule previously protected himself by agreements with sub-underwriters to which the company is not a party. Very shortly after the publication of the prospectus, the lists, as they are called, are opened, or, in other words, the bank authorised by the company to receive applications and subscriptions from the public, is prepared to accept them. When sufficient applications have been received, the lists are closed, and the company allots shares or securities to the public. Until his allotment letter has been posted, it is open to the applicant to withdraw his application.

20. '**Stags.**' - Applications for shares or securities are normally made by intending investors but there is a class of applicant, known colloquially as 'stags', who apply only in the hope that if the issue is popular and

over-subscribed they may be able promptly to sell at a premium any shares or securities allotted to them. If, before the shares or securities have been allotted, the 'stag' has reason to think that they will not be saleable at more than the price of issue, he is in the habit of withdrawing his application. These withdrawals, which are sometimes very numerous, may continue throughout the process of allotment, each time with consequential alterations in the basis, thereby causing grave inconvenience. Occasions have been known where an offer which had been over-subscribed when the lists closed, became under-subscribed before the allotment letters could be posted.

It is necessary in practice to announce the closing of the lists and unless this announcement is accompanied by a statement that the issue has been over subscribed, the implication is that some portion has had to be taken up by the underwriters; the falsification of a statement of over-subscription through no fault of those making it causes a feeling of grievance and creates an uneasy atmosphere in the market when dealings commence.

The view has been expressed that there have been cases where 'stags' have fulfilled a useful function, but we consider that their activities should not be allowed to cause confusion during allotment and consequently that applications should be made irrevocable for a short period after the opening of the lists (page 19, II (b)). It has been suggested that a 'stag' could cause trouble by stopping his cheque, but if he did so, the fact would become known and he would be unlikely to receive allotments on future issues.

21. Offers for sale. - As a variant of the typical process described in paragraph 19, the company may sell the issue outright to an issuing house which then invites the public to buy the shares or securities not from the company but from the issuing house. This invitation also may be underwritten. Section 38 of the Companies Act, 1929, provides that where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company.

22. '**Placings.**' - Shares and securities are also issued to the public by means of 'placings'. The shares or securities may occasionally have been allotted in the ordinary course a considerable time before the 'placing', but may, on the other hand, be, and often are, allotted in the first place to a broker or issuing house or syndicate and then made available to members of the public, who make purchases through their stockbrokers. Information as to the facts of the issue is given to the public by means of the advertisement of 'Stock Exchange particulars'. The letters of allotment of the shares or securities purchased are renounced in favour of the public by the broker, issuing house or syndicate and the ultimate allotment is then made by the company to the purchasers.

The impression is current that in no case does a 'placing' of unissued shares or securities involve the issue of a 'prospectus' or of an offer for sale' within the meaning of the Companies Act, 1929. Whatever may be the proper legal construct on of the existing provisions of sections 34 and 38 of the Act, we feel no doubt that in many cases the transaction involves the issue of a document to the public offering the shares or securities for sale. We see no reason for specifically providing by statute that every 'placing' shall be deemed to involve an offer to the public of shares or securities for subscription, purchase or sale. But we think that 'placing' which are to all intents and purposes offers to the public should be brought indisputably

within the provisions of the Act (page 22, VI). Where, however, the 'placing' is of shares or securities issued in the ordinary course some time previously, the existing rules of the Stock Exchange with regard to advertisement will apply.

23. Permission to deal - Where a company issues shares or securities to the public, the latter naturally expect to obtain a marketable investment. The company therefore, normally applies to a Stock Exchange through a broker who is a member of the Stock Exchange, for permission to deal in the shares or securities and the prospectus contains a statement that application for permission to deal has been or will be made to the X Stock Exchange in due course. The public assumes that permission is likely to be granted and is thereby encouraged to subscribe. Application for permission to deal is normally made to the Stock Exchange, London, as it is the largest Stock Exchange in the country and consequently provides the widest market for shares and securities. The Committee* of the London Stock Exchange, before granting permission to deal, make searching enquiries as to the promotion and the personnel connected with the company and impose stringent requirements as to the articles of association of the company and as to disclosure of the facts relating to the business and the information material to the prospectus. Permission to deal is never granted until after the publication of the prospectus, as valuable information about the comp and its promotion sometimes reaches the London Stock Exchange Committee only as a result of the publication of the prospectus. Where the shares or securities have been allotted and permission to deal in them is refused or a final decision on the application for permission is deferred, the holders find that their shares or securities are practically unmarketable. These cases are, however, the exception to the rule. We were informed by the London Stock Exchange that in the years 1929 to 1939 there were two cases in which permission to deal was refused outright, ii cases in which permission was granted after deferment and 27 cases in which permission was deferred and which still remain deferred.

* Since March -25, 1945, the Stock Exchange, London, has been governed by a Council but it has beep thought convenient to retain the word 'Committee' throughout.

24. Stock Exchange requirements. - Some of the requirements of the London Stock Exchange Committee as to

the information to be disclosed in prospectuses and advertisements go beyond the requirements of the Companies Act. The sanction behind these requirements, and it is a powerful one, is the fact that if the London Stock Exchange Committee are not satisfied, they can refuse permission to deal or defer decision on the matter. On the other hand; as the requirements are not laid down by statute, the London stock Exchange Committee can waive some or all of them in suitable cases. Their flexibility makes it possible for the rules to be more stringent and to afford the investor a greater measure of security than could be achieved by a statute except at the cost of hampering legitimate business. We recognise that particularly in recent years the London Stock Exchange Committee have exercised a beneficial influence in the matter of issues and we consider that they should approach the provincial Exchanges with a suggestion that in respect of new issues it would be in the public interest for the rules and practice of the provincial Exchanges to be brought into line with those prevailing in London.

* Since March 25, 1945, the Stock Exchange, London, has been governed by a Council but it has been thought convenient to retain the word 'Committee' throughout.

25. Existing law regarding prospectuses. - The provisions of the existing law regarding prospectuses are set out in sections 34-8 of the Companies Act. A prospectus is defined in section 380 of the Act as any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company. Section 34 deals with dating and registration of a prospectus (the section should be amended to make it clear that it applies to offers to existing members or debenture-holders (page 19, I (i))). Section 35 and the Fourth Schedule to the Act set out the information which under the existing law has to be included in a prospectus; invitations to existing members or debenture-holders of a company are exempted from the operation of these provisions. Section 37 provides that, subject to certain exceptions, directors, persons named in the prospectus as present or future directors, promoters and persons who have authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus, for the loss or damage they may have sustained by reason of any untrue statement therein. Criminal charges for fraudulent statements in prospectuses are normally brought in England under section 84 of the Larceny Act, 1861, and in Scotland at common law.

26. Influence of the Press. - Informed Press comment is or should be a deterrent to misleading prospectuses; but comment tends to be stifled by fear of proceedings for libel. The law of libel is outside the scope of our enquiry but we think that if any reform were possible which encouraged freedom of comment without opening the way to unjustified defamation, it would undoubtedly afford an additional weapon against the type of promoter who is averse to disclosure of all material factors.

27. Lists. - Under the existing law a company can close the lists and proceed to allotment immediately after the publication of the prospectus. This does not allow sufficient opportunity for the Press to comment or for the public to obtain expert advice. As will be seen below (page 19, 11 (a)), we recommend a minimum compulsory interval of two days between the publication of the prospectus and the opening of the lists. We should have preferred to increase still further the time allowed for consideration, were it not for the danger that dealings in the shares or securities before allotment might thereby be encouraged; for although Stock

Exchanges could prohibit their own members from carrying out such dealings, they could not control persons who were not members. Promoters would be able in the future, as they have been in the past, to 'rig the market' with the result that if the shares or securities were at a premium before allotment, subscribers would be encouraged to apply, only to find after allotment that the shares or securities were at a substantially lower price.

28. Time limit for applications for permission to deal. -

We have already referred in paragraph 23 to the unfortunate results to the subscriber in cases where permission to deal is refused after allotment of the shares or securities. We think that the hands of Stock Exchanges would be strengthened and the mischief mitigated by requiring the company, in any case where the prospectus contains a statement that application has been or will be made for permission to deal, to make that application not later than two days after the issue of the prospectus and, if permission to deal is definitively refused within 21 days of the closing of the lists, to cancel allotments and return subscription moneys (page 19, III). If this latter suggestion is adopted it would be advisable to require a statutory declaration that such permission has been granted or has not been refused before the expiration of that period as a condition precedent to the commencement of business (page 20, IV). Such an alteration of the law will not afford complete protection to the investor as Stock Exchange committees may decide to defer, not to refuse, permission. Under present arrangements, in the event of the London Stock Exchange Committee considering an application where the facts set out in the prospectus are either obscure or the proposition is of a highly speculative character.

consideration of the application would be deferred until after the issue of the first report and accounts of the company, when the matter could again be brought forward. If no such discretion were retained by the Committee they might in such a case be driven to err on the side of leniency, as it would be within their knowledge that a refusal might well prevent the eventual establishment of a legitimate business useful to the community.

29. Inclusion of memorandum in prospectus. - The information required under the provisions of the Fourth Schedule as to the contents of the prospectus is, in our view, adequate, subject to the few points mentioned in paragraphs 30-40. In one particular the provisions require disclosure which serves no useful purpose (page 20, V (a)). To print the whole memorandum wastes space and study thereof would not assist an intending investor to decide on the merits of an issue. The prospectus could not in practice be issued without stating the principal objects of the company and that is all the information on this aspect of the question which investors require.

30. Disclosure of previous transactions in property of company. - Paragraph 8 of Part I of the Fourth Schedule, which should be read in conjunction with paragraphs 3 and 4 of Part III of the Fourth Schedule" provides that there shall be disclosed the names and addresses the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares or debentures, to the vendor, and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor. Promoters sometimes enter into a contract with a vendor for the purchase of property which they resell to the company at a higher price. If the first and second contracts are both completed prior to the issue of the prospectus, the purchase price under neither contract needs to be disclosed. If the second contract is completed after the issue of the prospectus, then the purchase price under this contract only needs to be disclosed; but in either case investors are left in ignorance of the margin between the price at which the property was originally acquired by the promoter and that at which the company bought it. We recommend an

amendment to Part I of the Fourth Schedule to remedy this position (page 20, V (C)).

31. **Material contracts.** - Paragraph 13 of Part I of the Fourth Schedule provides that there shall be set out in the prospectus the dates of and parties to every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of is of the prospectus, and a reasonable time and place at which any such material contract or a copy thereof may be inspected. At present this provision is of little value to the intending investor since it does not require the disclosure of any information as to the nature or terms of the contracts and the interval between the publication of the prospectus and the closing of the lists is so short that the intending investor has not time to inspect the contracts. If our recommendation for prescribing a period between the publication of the prospectus and the opening of the lists is adopted (page 19, II (a)), the intending investor or his advisers will have an opportunity, even if only for a short period, to inspect the contracts copies of which, we think, should be required to be delivered to the Registrar of Companies for registration (Page 19 I (ii) (a)). This would have the additional advantage that the contracts would be available for future reference. We consider it desirable also that the prospectus should give the

intending investor some means of judging which material contracts are of most importance by stating the general nature of each contract (page 20, V (g)). We have considered whether to recommend that the prospectus should contain a summary of the material contracts, but we have come to the conclusion that this is not desirable. Were it required, the legal advisers of the company, for their own protection or for the protection of their clients, would probably be obliged to summarise the contracts in such detail that the summary would swell the prospectus to inordinate length without necessarily conveying clear information to the ordinary investor.

32. Report by auditors on results of company. - Paragraph I of Part II of the Fourth Schedule requires that there be set out in the prospectus a report by the auditors of the company with respect to the profits of the company in respect of each of the three financial years immediately preceding the issue of the prospectus (or if the company has carried on business for less than three years; and accounts have only been made up for two years or one year, then for such years or year), and with respect to the rates (if the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the said years, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years and, if no accounts have been made up in respect of any part of the period of three years ending on a date three months before the issue of the prospectus, containing a statement of that fact. We consider this requirement inadequate in that-

(a) the period may be too short in some cases to give a true picture of the trend of profits;

(b) it does not make it clear that the auditors' report should give effect to such adjustments as are, in their opinion, necessary for purposes of the prospectus (page 21, (i) I, (i) and (iii)).

33. Report by auditors in relation to a holding company. - There is no provision at present which requires in the case of a prospectus issued by a holding company information as to the results of the group as a whole (page 21, (i) I, (ii)).

34. Report by accountants on profits of business to be acquired. - Paragraph 2 of Part 11 of the Fourth Schedule provides that if the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, there should be set out in the prospectus a report made by accountants to be named in the prospectus upon the profits of the business in respect of each of the three financial years immediately preceding the issue of the prospectus. This does not in terms cover the case where control of a business is obtained through the purchase of shares (Pages 21-2, (1)).

35. Length of periods, covered by reports. - The annual profits of a business over a fixed statutory period may not always be representative of the fair trend of the results of the business. This possibility cannot be dealt with by legislation but we think that accountants will appreciate that mere compliance with an obligation to report on profits during a fixed statutory period would not justify them in refraining from making some additional statement if for any reason, as, for example, war or trade cycles, the period covered by the report on profits was affected by exceptional circumstances. These observations apply to the reports referred to in paragraphs 32-34.

36. Omission Of material information - Section 37 (i) imposes liability for damage sustained 'by reason of any untrue statement', but does not impose liability for the omission of any material information. Such an omission may be just as mischievous as an untrue statement and we think that there should be a. statutory obligation to disclose any material fact the omission of which has the effect of rendering misleading a statement included in the prospectus (pages 20-1, V (h)).

37. Assets and liabilities. - As a general rule a prospectus contains a statement of the assets and liabilities of the company, or if the company is a new one formed to acquire an existing business, of the assets and liabilities of the business, but there is no obligation to do so. We consider that this should be made a statutory obligation and that the auditors should be required to report thereon (pages 21 (i).II (iv) and 22, (j) 2 (ii)). The amount at which the fixed assets appear in such a statement often represents the value placed thereon by an expert valuer. Such a valuation is -usually based on the value of the assets as part of a going concern, that is, the value to a purchaser who would possess all the assets of every kind, enjoy all. the advantages of the existing management and goodwill, and be able to derive all the advantages of the earning power of the undertaking; in other words, it is the value of the fixed assets for the purpose for which they have been acquired and are held on the assumption that the business, with all its facilities and potentialities, continues to be carried on . Such valuations, however honestly made, are liable to wide margins of difference according as to whether the valuer takes an optimistic or a pessimistic view of the earning power of the business.

38. Inclusion in prospectuses of statements by experts. - As will be seen below, we recommend the imposition of a certain measure of liability under section 37 on experts as defined by that section. We also consider that it should be made illegal to include in a prospectus any copy of or extract from or summary of the report or valuation of an expert without his written approval of the insertion of the proposed subject matter in the form and context in which it is intended to appear (page 19, I (ii) (c) and II (c)

39. Disclosure of borrowing and other powers of company issuing prospectus. - It has been suggested to us that there should be a requirement to disclose in the

prospectus the borrowing powers of the issuing company and those of each of its subsidiaries, any power of the company or of its subsidiaries to guarantee capital or interest in respect of other companies and any provision for modifying the rights of the class of share or debenture for which subscriptions are being sought. This suggestion was based in particular on cases where by means of the exercise of the borrowing powers of a subsidiary company the security of debenture-holders of the holding company was, in effect, postponed, although it had been issued as a first mortgage security. We consider, however, that the importance of the provisions in question must vary so much according to the circumstances of the particular case that such protection as is required should be given by the trust deed. The Stock Exchange committees might well take such matters into consideration in deciding whether to grant permission to deal and, in our view, the matter is one that can be more suitably covered by the flexible machinery of the Stock Exchange committees than by rigid provisions in an Act of Parliament.

40. Other amendments. - We have suggested a few minor alterations to the Fourth Schedule and some amendments to sections 354 and 355 relating to prospectuses of companies incorporated outside Great Britain, the nature of which sufficiently appears from our recommendations below (page 20, V (b), (d)-(f); Page 22, VIII and page 23, IX).

Recommendations.

We recommend that: -

I. Section 34 be amended by-

(i) making it clear. that this section applies to offers to existing members or debenture-holders (para. 25);

(ii) adding a requirement that there shall be delivered to the Registrar of Companies for registration with every prospectus not being an offer to existing members or debenture-holders-

(a) a copy of every material contract mentioned in the prospectus (para. 31)

(b) a statement signed by the auditors or accountants making a report pursuant to Part II of the Fourth Schedule, showing any adjustments made by them in making such report (para. 32); and (c) the written consent of any expert as defined by section 37 (4) to the inclusion in the prospectus of any copy of or extract from or summary of his report, in the form and context in which it appears (para. 38);

(iii) extending the penalty imposed by subsection (5) to the omission to deliver any of the above documents.

II. Section 35 be amended so as to provide that-

(a) every prospectus must specify the date on which the lists will open and such date shall not be less than two days, excluding Saturdays, Sundays and Bank Holidays, after the date of the first advertisement of the prospectus or, if the prospectus be not advertised, of the first issue thereof to the public (para. 27);

(b) all applications pursuant to a prospectus shall be irrevocable for a period of three days, excluding Saturdays, Sundays and Bank Holidays, after the opening of the lists (para. 20);

(c) no statement purporting to be a copy of or extract from or summary of a report or valuation by an expert shall be included in a prospectuses without the written consent of that expert to its insertion in the form and context in which it appears (para. 38).

III. A new section be enacted so as to ensure that-

(a) if a prospectus states that application has been or will be made to any Stock Exchange for permission to deal in the shares or securities thereby offered, the company shall make such application not later than two days after the issue of the prospectus and shall be bound to pay all moneys received from subscribers pursuant to such prospectus to a separate account and to keep such moneys in such separate account until permission to deal is granted by every Stock Exchange to which application was to be made or 21 days elapse from the date of the closing of the lists, whichever first occurs (para. 28);

(b) if such permission is not applied for within the time limit specified in (a) or is definitively refused before the expiration of 21 days from the date of the closing of the lists by any Stock Exchange to which it is stated that application has been or will be made, all allotments pursuant to such prospectus shall be cancelled and all moneys received from applicants shall be forthwith repaid to them without interest (para. 28); and

(c) the directors shall be under a similar liability in respect of such repayment to that imposed by section 39 (4) (para. 28).

IV. Section 94 be amended by adding at the end of section 94 (i) a new provision to the following effect-

(d) if the company has issued a prospectus containing a statement that application has been or will be made to any Stock Exchange for permission to deal, there has been delivered to the Registrar of Companies for registration a statutory declaration by the secretary or one of the directors that such permission has been granted or was applied for not later than two days after the issue of the prospectus and has not been definitively refused before the expiration Of 21 days from the date of the closing of the lists (para. 28).

V. The Fourth Schedule be amended by-

(a) Omitting paragraph i of Part L which requires with certain exceptions the memorandum Of association to be included in the prospectus, and by striking out of paragraph i of Part III the words 'the memorandum and' (para. 29);

(b) adding after paragraph 7 of Part I a new paragraph to the following effect-

7A. Particulars of any shares or debentures which are under option or agreed conditionally or unconditionally to be put under option by the company, together with the price and duration of the option, the consideration for the grant thereof and the name of the grantee:

Provided that where an Option has been granted or agreed to be granted to all the members or. debenture-holders or to any class of members or debenture-holders, it shall be sufficient, so far as the names are concerned, to record that fact without giving the names of the grantees (para. 40);

(c) adding -after paragraph 8 of Part 1, which deals with vendors of properties to be paid for out of the proceeds of the issue, a new paragraph to the following effect-

8A. Short particulars of all transactions relating to any property failing within the immediately preceding paragraph which have taken place within two years of the date of the issue of the prospectus and in which any vendor or any director or proposed director or any promoter was or is directly or indirectly interested (para 30);

(d) adding at the end of paragraph ii of Part I which deals with preliminary expenses, the words 'and by whom the same are payable ' (para. 40);

(e) adding after paragraph ii of Part I the following new paragraph-

11A. The amount or estimated amount of the expenses of the issue so far as the same are not included in the statement of preliminary expenses, and by whom the same are payable (para. 40);

(f) substituting for paragraph I2 of Part I a paragraph to the following effect-

12. The amount paid or benefit given within the two preceding years or intended to be paid or given to any promoter, and the consideration for any such payment or benefit (para. 40);

(g) adding in paragraph 13 of Part I, dealing with material contracts, after the words 'parties to' the words 'and the general nature of' (para. 3*

(h) adding at the end of Part I a new paragraph to the following effect-

18. All other facts known, or which could on reasonable enquiry have been known, to the directors, the omission of which would make any statement in the prospectus misleading (para. 36);

(i) substituting for paragraph i of Part II a paragraph on the following lines- A report by the auditors of the company-

(i) with respect to the profits or losses of the company in respect of each of the five financial years immediately preceding the issue of the prospectus or in respect of each of the years since the incorporation of the company, if this occurred less than five years prior to such issue, and, if no accounts have been made up in respect of any part of such period ending on a date three months before the issue of the prospectus, containing a statement of that fact. In making such report the auditors shall make such adjustments (if any) as are in their opinion necessary for purposes of the prospectus (para. 32);

(ii) in the case of an issue by a holding company as defined by section I26 (as amended in accordance with our recommendations (pages 72-3)), in lieu of the report in (i), a like report with respect to the profits or losses of the company and of its subsidiary companies, so far as such profits or losses are attributable to the interests of the holding company. For the purposes of this report the financial years of each company shall mean as regards that company the financial years immediately preceding the issue of the prospectus (para. 33);

(iii) with respect to the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the said five years or shorter period as the case may be, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years (para. 32);

(iv) with respect to the assets and liabilities of the company, and in the case of an issue by a holding company as defined by section :126 (as amended in accordance with our recommendations), a like report with respect to the assets and liabilities of the company and of its subsidiary companies. In making such reports the

auditors shall make such adjustments as are in their opinion necessary for purposes of the prospectus (para. 37);

(j) substituting for paragraph 2 of Part II a paragraph to the following effect-

2. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of a business or of shares in a company which is, or will by reason of such purchase become, a subsidiary company of the company as defined by section I26 (as amended in accordance with our recommendations), a report made by accountants who shall be named in the prospectus and shall be qualified for appointment as auditors under section I33 (as amended in accordance with our recommendations (pages 67-8));

(i) with respect to the profits or losses of the business or to the profits or losses attributable to the interests acquired or being acquired by the second-mentioned company in the first-mentioned company

in respect of each of the five financial years immediately preceding the issue of the prospectus or in respect of each of the years since the commencement of the business or the incorporation of such company if this occurred less than five years prior to such issue, and, if no accounts have been made up in respect of any part of such period ending on a date three months before the issue of the prospectus, containing a statement of that fact. In making such report the accountants shall make such adjustments, if any, as are in their opinion necessary for purposes of the prospectus:

Provided that where any such first-mentioned company is a holding company as defined by section 126 (as amended in accordance with our recommendations), the report shall be made with respect to the profits or losses of that company and its subsidiary companies which shall be ascertained in the manner laid down in sub-paragraph (ii) of paragraph i of Part II of this Schedule (para. 34);

(ii) with respect to the assets and liabilities of the business or of the first-mentioned company and where such company is a holding company as defined by section 126 (as amended in accordance with our recommendations), a like report with respect to the assets and liabilities of that company and of its subsidiary companies in the manner laid down in sub-paragraph (iv) of paragraph I of Part II of this Schedule (para. 37).

VI. Section 38 (2) (a) be amended by adding after the word 'public' the words 'whether as clients of stockbrokers or otherwise ' (para. 22).

VII. Amendments be made in the forms of statement in lieu of prospectus set forth in the Third and Fifth Schedules corresponding to those in recommendations V (b), (c), (d), (f), (g) and (j), and companies be required to file a statement signed by the accountants making a report pursuant to the Third and Fifth Schedules showing any adjustments made by them in making such report. The Third Schedule should also be amended so as to require a statement of the dividends in each of the five, instead of three, financial years immediately preceding the date of the statement.

VIII. Section 354 be amended (para. 40)-

(a) so as to ensure that a copy (certified as provided by section 354 (i) (a) (i)), of any prospectus issued,

circulated or distributed in Great Britain offering for subscription to existing members or debenture-holders shares in or debentures of a company incorporated outside Great Britain, shall be delivered for registration to the Registrar of Companies, and that every such prospectus so issued, circulated, or distributed shall state on its face that the copy has been so delivered. Consequential amendments should be made to subsection (2);

(b) so as to ensure that there shall be delivered for registration with every prospectus to which section 354 applies (not being a prospectus offering for subscription shares or debentures only to existing members or debenture-holders),

(i) a copy of every material contract mentioned in the prospectus;

(ii) a statement signed by the auditors or accountants making the report pursuant to Part II of the Fourth Schedule, showing any adjustments made by them in making such report; and

(iii) the written consent of any expert as defined by section 37 (4) to the inclusion in the prospectus of any copy of or extract from or summary of his report, in the form and context in which it appears.

IX. Section 355 be amended (para. 40)-

(a) so as to make it clear that the section is not to apply to prospectuses offering shares or debentures only to existing members or debenture-holders;

(b) by altering subsection (i) (a) (i) so as to require only the primary objects to be specified. As consequential amendments, the words ' (other than those specified in paragraph i of the said Part 1) ' should be deleted from subsection (i) (b) and provisos (i) and (iii) to subsection

(i) (b) should be omitted;

(c) so as to make the amendments to section 35 (see recommendation II at Page 19) applicable to any prospectus to which section 355 applies;

(d) by making the proposed new section referred to in recommendation III (page 19), applicable to any prospectus to which section 354 applies (including a prospectus offering for subscription shares or debentures only to existing members or debenture-holders), with the consequential imposition on directors of a liability in respect of repayment of any moneys under such section, similar to that imposed by section 39 (4) in the case of companies incorporated in Great Britain.

Liability for Prospectus

41. Criminal liability for statements in prospectus. - We consider that the sanctions for failure to comply with prospectus requirements need to be strengthened. As regards criminal prosecutions, we have already mentioned that prosecutions for the issue of misleading prospectuses are normally brought in England under section 84 Of the Larceny Act, 1861, and in Scotland at common law. As the law stands, the onus is on the prosecution not merely to establish the false statement, but to prove a guilty knowledge in the directors that the statement was false. We. recognise that as a general principle the onus should rest on the prosecution to prove the whole of its case, but we think that if a director signs a prospectus containing a false statement, the case is exceptional and that once the falsity has been established, the onus should be on him to establish that he did not know that the statement was false and could not, by taking reasonable precautions, have

ascertained its falsity (page 25, III). Among other precedents for the shifting of the onus of proof are section 2 of the Prevention of Corruption Act, 1916, the now obsolete section 356 (6) of the Companies Act, 1929, section 29 of the Betting and Lotteries Act, 1934, and section 18 of the Prices of Goods Act, 1939.

42. Misleading statements. - As a corollary to the amendment we have recommended in paragraph 36 (page 18), we suggest that the civil liability under section 37 should be made expressly to extend to misleading as well as false statements (page 24, 1 (a)).

43. Civil liability of directors, promoters, etc. - Directors, promoters and others escape liability under section 37 for a false statement purporting to be a statement by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, provided it fairly represented the statement or was a correct and fair copy of or an extract from the report or valuation. Under the proviso to subsection (i), a director, promoter, or other person will be liable notwithstanding that the copy or extract is accurate if it is established by the plaintiff that the defendant had no reasonable ground for believing that the expert was competent. We think that the Onus should be shifted and that the duty should be on the defendant to establish affirmatively that he had reasonable ground for relying on the expert (Page 24-5 I (d)).

44. **Civil liability of experts.** - Accountants, valuers and other experts whose report are, with their consent, reproduced in the prospectus are, in the absence of conspiracy to defraud to which they are party, under no liability to subscribers for any false statement in their reports. They are liable to the company as their employer for any damage it suffers by reason of such false statement, if attributable to fraud or negligence, but, unless the company can establish that it has entered into some contract to acquire the property on which the report was made, at an excessive price by reason of such false statement, the company will be unable to prove damage, for it has received the subscribers' money and has suffered no loss. The directors and promoters will be under no liability for they will be protected by the fact that the false statement was made on the authority of the expert. We consider that in principle an expert who makes a report and authorises the inclusion of that report or a summary thereof in a prospectus, should be liable to those who subscribe on the faith of that prospectus unless he can show that he had reasonable ground for believing the statement to be true up to the time of the allotment of the shares or debentures comprised in the offer (page 24, I (b)).

45. **Right to contribution.** - If an expert is made liable under section 37, the right to contribution under section 37 (3) should extend to experts (page 23, (e)).

46. **Civil liability of bankers and others for statements in prospectus.** - A prospectus normally contains the names of the bankers who are receiving the application moneys for the issue, of the brokers and the solicitors concerned and of the accountants who prepare the reports referred to in paragraphs 32 and 34. Some or all of these names are set out very prominently in the prospectus and are a to lead many investors to think that the persons concerned are recommendation. It has, therefore, been suggested that the same civil liability to directors and promoters for untrue statements in the prospectus should attach to the bankers, brokers, solicitors and accountants whose names appear on the prospectus. While we do not consider that it would be justifiable to extend to banks and professional men the liability imposed by section 37 by reason only of their consent to the fact of their appointment being stated in the prospectus, we think that the public have the right to expect them to exercise the greatest discrimination before allowing their names to appear on any prospectus.

Recommendations

We recommend that:-

1. Section 37 be amended by-

(a) adding 'or misleading' after 'untrue' I in section 37(I) wherever the same occurs; and the words ' and not misleading after the word ' true ' in section 37 (I) (iv) (a) (para. 42);

(b) including in the list of persons liable every expert who consents in writing to the inclusion in the prospectus of any copy of or extract from or summary of his report in the form and context in which it appears (Para. 44);

(c) adding at the end of paragraph (iv) (b) of subsection (i) the words ' and the expert had consented in writing to the inclusion of such statement, copy or extract, in the form and context in which it appeared.';

(d) substituting for the proviso at the end of subsection (i) provisos to the following effect-

Provided that-

(i) a person shall be liable to pay compensation as aforesaid, notwithstanding paragraph (iv) (b) of this subsection, unless he proves that he had reasonable cause to rely on the expert making the statement, report or valuation;

(ii) an expert shall only be liable for an untrue or misleading statement of such expert included in the prospectus with his written consent as aforesaid, and shall not be so liable if he proves that he had reasonable ground to believe, and did, up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true and not misleading, or if he proves that on becoming aware of the untruth of the statement or that it was misleading he notified the directors and withdrew his consent thereto (Para. 43);

(e) adding to subsection (3), which deals with contribution, after the words 'by reason of his being a director or named as a director or as having agreed to become a director or of his having authorised the issue of the prospectus', the words 'or by reason of his being an expert who has consented in writing to the inclusion in the prospectus of any copy of or extract from or summary of his report in the form and context in which it appears', in order to extend the right of contribution to experts (Para. 45).

II. Provision be made that if a prospectus contains any copy of or extract from or summary of the report of an expert and the expert withdraws his consent to the inclusion of such copy or extract or summary before allotment, it shall not be lawful to proceed to allotment on the basis of such prospectus.

III. A section on the lines of section 84 of the larceny Act, 1861, be introduced into the Companies Act but so modified as to provide that if a statement is proved false or misleading the onus should lie on the person prosecuted to establish that he had reasonable ground to believe the false statement to be true or the misleading statement not to be misleading, as the case may be (Para. 41) -

47. **Definition.** - Section 26 defines a 'private company' 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.

Under sections 357 and 358 no company, association or partnership consisting of more than twenty persons (or ten persons in the case of a banking business) can be formed for the purpose of carrying on any business which has for its object the acquisition of gain unless it is registered as a company under the Companies Act or formed in pursuance of some other Act of Parliament or of Letters Patent or (in the case of a non-banking business) is a company engaged in working mines within the stannaries and subject to the jurisdiction of the Court exercising the stannaries jurisdiction,

48 - **Statistics.** - In recent years not only has the number of private companies steadily increased but also the proportion of private to public companies, as the following table shows:

Year	Public		Private	
	No.	Paid-up Capital £ million	No.	Paid-up Capital £ million
1930	16,263	3,894	95,598	1,591
1934	14,852	3,851	115,603	1,697
1939	13,920	4,117	146,735	1,923
1944	13,303	4,052	169,205	1,935

49. **History and privileges.** - The private company first received legal recognition in the Companies Act of 1907. That Act required companies to file a balance sheet with the Registrar of Companies but exempted private companies from that obligation. A private company is also entitled to the following privileges. It may register and carry on a business with a minimum of two members and even one member may carry on business for six months before his liability becomes unlimited. The requirements as to obtaining a minimum subscription before allotting shares do not apply to a private company. It is not required to file a statement in lieu of prospectus and may commence business without the formalities to which a public company is subject. It does not have to file a list of persons who have consented to be directors, nor the signed consents of the directors, and, indeed, as the law stands at present, it need not have any directors. It is not required to hold a statutory meeting or to file a statutory report. Partners or employees of officers of the company may be appointed auditors.

50. **Exemption from obligation to the accounts.** - The most highly prized of the privileges enjoyed by private companies is their exemption from the obligation to include a written copy of their last balance sheet in the annual return and if our recommendations as to the filing of profit and loss accounts and as to increased detail in balance sheets are accepted, this privilege will be enhanced unless corresponding additional obligations are made applicable to private companies.

There is a demand that all private companies should be required to file their accounts; it is argued that the existing exemption deprives traders of information which they require in deciding whether to grant credit to a

private company, and trade unions of information which they need to enable them to assess the justice of the wage rates offered by employers. The value to creditors or trade unions of the information that would be derived from a perusal of the annual accounts of a company was the subject of much difference of opinion among the witnesses who gave evidence before us. Whatever be the right conclusion on this point, much of our report is based on the principle, of the validity of which we are convinced, that the fullest information practicable about the affairs of companies should be available to the shareholders and the public, and we consider that this principle applies to the question whether private companies should be required to file their accounts except in. so far as a case can be established for continuing to exempt from the general obligation to file accounts private companies with a small number of members carrying on businesses of no great size and in which no other company is the beneficial owner of any of the shares.

51. Exposure of small private companies to competition.

- We have had evidence that publication of the accounts of small companies would give large concerns valuable information about the finances of their smaller rivals while the latter do not gain any corresponding advantage from the publication of accounts of the larger concerns. The larger and more diversified the business of a company, the less useful to a competitor is the information which he can derive from a perusal of its accounts, even if other things are equal. But other things are not equal because whatever the small company could learn from the accounts of its large rival, the large concern may be able to drive the small out of business, but the latter can do little harm to the former. While recognising that these fears are sincerely expressed, we do not believe that publication would have so completely one-sided consequences. In any event, in the public interest, stimulation or elimination of the inefficient, whether small or large, is desirable. The application of this principle, however, concerns partnerships and individuals, which are outside our terms of reference, as well as public and private companies. Many small private companies are at least as much in competition with partnerships and individuals as with other companies, and this, in our opinion, is a sufficient reason for continuing the exemption while restricting its scope.

52. Private company subsidiaries of public companies. -

The argument that public companies, by trading through subsidiary private companies which they have acquired or may form for the purpose, may give to shareholders and the public less information than is available in the case of public companies carrying on their businesses without such subsidiaries, is met in general by our suggestions for consolidated balance sheets and profit and loss accounts (page 70). It seems desirable, however, that all subsidiaries (public or private) of holding companies should be uniformly treated as regards the filing of balance sheets and profit and loss accounts.

53. Conclusion of the Committee as regards exemption of private companies from obligation to file accounts. -

We have tried to devise a definition so as to exempt from the obligation to file accounts, what can roughly be called the small family business incorporated as a company. We have examined a number of suggestions to achieve this end, but are reluctantly driven to conclude that it is impracticable to define the companies which we

have in mind by reference to the capital, the number of employees or the turnover or even by a combination of these tests. The only workable, though admittedly complicated, definition which we have been able to devise, is that set out in our recommendations below (page 28). Its effect is to exempt private companies in which, subject to certain exceptions, all those the shares are beneficially owned by the persons in whose names they are registered and in which none of the shares is beneficially owned by another company. While the basic intention of this definition is to exempt small private companies which are not subsidiaries of public companies, we realise that it will include some companies which cannot be described as small, for there are companies through which a comparatively small number of individuals, all beneficially interested, nevertheless control large businesses. But unless it is decided to require the filing of the accounts of all private companies without exception, a course which we consider would impose a hardship on the small family business, we can see no alternative course to the adoption of a definition which, though it certainly involves some anomalies, will exempt those small companies which we are seeking to exempt -

54. Circulation of accounts to members of private companies. - Under the existing law the shareholders in a private company do not as of right receive a free copy of the balance sheet and auditors' report but are merely

entitled to a copy thereof on payment. We see no justification for this distinction and consider that shareholders in a private company should have the same right to copies of the accounts, including the profit and loss account and auditors' report, as the shareholders in a public company. We think this right should be extended to debenture-holders (page 29, III).

55. Directors and secretaries of private companies.-In view of the responsibilities and obligations placed upon directors under the Act, it is an anomaly that private companies need not be required to appoint any directors. We recommend later (paragraph 174) that a private company must appoint at least one director and also a secretary.

Recommendations

We recommend that:-

I. Section 110 (3) be amended by omitting the opening words down to 1909 and substituting ' subject as provided in the next two succeeding subsections ' (para. 53).

II. New subsections (3A), (3B) and (3c) on the following lines be added to section to (para. 53).

(3A) The preceding subsection shall not apply to an assurance company which has complied with the provisions of subsection (4) Of section 7 Of the Assurance Companies Act, 1909, or to a private company which fulfils the following conditions (such a last-mentioned company being hereinafter referred to as 'an exempt company');

(a) That the members of the company include no body corporate other than a corporation sole or a corporation falling under (c) (h) or (iii).

(b) That no body corporate other than a corporation sole is beneficially interested in any of the share capital.

(c) That no person is a member of the company other than-

(i) a person or corporation sole absolutely, exclusively and beneficially entitled to the shares registered in his or its name, or (ii) an executor or administrator of a deceased member or a trustee of a settlement of a deceased member constituted by will, or a trustee of a settlement made in contemplation or consideration of marriage or pursuant to a contract of marriage, of a

member or of his child or remoter issue, holding shares in each case in his capacity as such executor, administrator or trustee, or

(iii) a trustee of a settlement made in favour of the wife, children or remoter issue of the settlor or of any other person being a member qualified under subparagraph (i), without the reservation to any other person of any intermediate or subsequent interest, holding shares as such trustee.

Provided that a settlement shall be deemed to be within the ambit of sub-paragraphs (ii) and (iii) notwithstanding that there should be an ultimate trust in favour of charity or trusts over in default of issue.

(d) That similar conditions to (a), (b) and (c) are complied with in respect of any debentures or other loan capital of the company with the exception only of securities for advances made to the company by the bankers for the time being of the company, or by any other company whose ordinary business as currently transacted includes the lending of money and whose shares are for the time being quoted or dealt in on a recognised Stock Exchange, and that the number of the holders of debentures and other loan capital does not exceed 50.

(e) That every director of the company for the time being shall with the annual return make and deliver to the Registrar of Companies for registration a declaration to the effect that to the best of his knowledge and belief the members and the persons entitled to debentures or other loan capital of the company have throughout the period covered by the return been qualified as such under this subsection, that the number of the holders of debentures and other loan capital does not exceed 50, and that neither he nor any of his co-directors nor the company is, to his knowledge, party or privy to any arrangement or agreement whereby the policy of the company is capable of being determined by persons other than the directors and members of the company.

(3B) If any of the foregoing conditions cease to be complied with, then without prejudice to any other remedies, the company shall in respect of the financial year current at the date in question cease to be an exempt company, and shall so continue unless the Board of Trade on being satisfied that the company again complies with the conditions aforesaid, order that it shall again be exempt:

Provided always that no director or other officer shall be liable for any default in complying with the requirements as to filing accounts, if he proves that he did not know and could not reasonably have known that the company had ceased to be exempt.

(3C) If any declaration made pursuant to sub-paragraph (e) of subsection (3A) is false in any material particular, every director making the declaration and knowing it to be false shall be liable on summary conviction to a fine not exceeding 4500.

III. Section 130, be amended by-

(a) omitting the words 'not being a private company' at the beginning of subsection (i);

(b) altering '7 days' in subsection (i) (4) to '21 days'

(c) deleting in subsection (i) (a) the words 'persons entitled to receive notices of general meetings of the company' and substituting the words members and holders of debentures of the company

(d) (i) deleting subsection (i) (b);

(ii) omitting from the last paragraph of subsection (i) the words and if a copy of the document

(e) deleting subsection (2) (para. 54).

56. Auditors of private companies. - In paragraph 110 we refer to the provision in section I33 (1) (b) whereby the partners or employees of officers of a private company may be appointed auditors of the company. We think that this privilege at present accorded to private companies, should be withdrawn.

57. Private companies, Fraud. - The removal of the privilege accorded to private companies in the selection of auditors will tend to secure an independent audit, but we do not think that any changes in the law affecting private companies specifically will go far towards preventing fraud or securing the punishment of the fraudulent. Under the heading of avoidance of debentures we suggest in paragraph I48 some strengthening of the provisions of section 266 which, of course, affects both public and private companies. On the general question of long firm frauds, which have been perpetrated in certain cases by means of private companies, we have suggested in paragraphs 161-168 some measures intended to facilitate the discovery of frauds and to secure that offenders are prosecuted. It has been suggested to us that, in order to prevent the formation of unsound private companies, there should be a prohibition

on the formation of companies with a paid-up capital of less than, say, £5,000 or that companies should be compelled on formation to deposit a substantial sum with the Board of Trade to be held as a reserve which might be applied towards the payment of debts in a liquidation. We have rejected such suggestions because they would, apart from other defects, put obstacles in the way of the formation of private companies by persons of small means.

58. Restrictions on transfer of shares. - It has been represented to us that the provisions which are inserted in the articles of a private company for the restriction of the transfer of the shares have caused hardship especially where the legal representatives of minority shareholders have to raise money to pay estate duties. The directors of the company, who are usually the principal shareholders, sometimes exercise their power to refuse to register transfers to outsiders, with the result that executors, who must realise their testators' shares in order to pay estate duty, have to sell to the directors or persons approved by them at prices much lower than the values at which the shares are assessed by the Board of Inland Revenue in valuing the estate of the deceased for purpose of estate duty. This difficulty is not in law peculiar to private companies since there is no legal impediment to a public company having in its articles a provision subjecting transfer of shares to the approval of the directors though Stock Exchanges do not accept it where leave to deal is required. This restriction is valued as a means of keeping a family business under the control of the family and we see no sufficient reason for its removal, particularly if our suggestion in paragraph 60 is adopted.

59. Excessive remuneration of directors. - Another abuse which has been found to occur is that the directors absorb an undue proportion of the profits of the company in remuneration for their services so that little or nothing is left for distribution among the shareholders by way of dividend. This may happen where, for example, two persons trading in partnership form their business into a limited company and one partner dies-, leaving his shares to his widow who takes no active part in the business. At present the only remedy open to the minority shareholder is to commence an action to restrain the company from paying the remuneration on the ground that such payment is a fraud on the minority, since the Court would not make a winding-up, order in view of the alternative remedy.

60. Oppression of minorities.-We have carefully examined suggestions intended to strengthen the minority shareholders of a private company in resisting oppression by the majority. The difficulties to which we have referred in the two preceding paragraphs are, in fact, only illustrations of a general problem. It is impossible to frame a recommendation to cover every case. We consider that a step in the right direction would be to enlarge the power of the Court to make a winding-up order by providing that the power shall be exercisable notwithstanding the existence of an alternative remedy. In many cases, however, the winding-up of the company will not benefit the minority shareholders, since the break-up value of the assets may be small, or the only available purchaser may be that very majority whose oppression has driven the minority to seek redress. We, therefore, suggest that the Court should have, in addition, the power to impose upon the parties to a dispute whatever settlement the Court considers just and equitable. This discretion must be unfettered, for it is impossible to lay down a general guide to the solution of what are essentially individual cases. We do not think that the Court can be expected in every case to find and impose a solution; but our proposal will give the Court a jurisdiction which it at present lacks, and thereby at least empower it to impose a solution in those cases where one exists. Our specific recommendations will be found on page 95.

MORTGAGES AND CHARGES

Trustees

61. **Trustees for debenture-holders.** - Under this heading the principal matters which we have considered are the qualifications desirable in trustees and to what extent they should be free from liability for negligence. A trustee for debenture-holders is not an officer of the company and there are no provisions in the Companies Act affecting trustees for debenture-holders. His powers are usually defined in the instrument of charge. In general, his duties, Subject to any special provisions of the trust deed, can be defined as:-

(1) taking charge of any documents of title representing the security for the debentures;

(2) protecting the interests of the debenture-holders if and when the trustee's attention is called to any breach by the company of its obligations;

(3) appointing a receiver when the power of sale arises in the events defined in the instrument of charge. In practice, however, under (2) and (3) it is usually in form left to a debenture-holder to take action by application to the Court.

The position seems to us unsatisfactory as the use of the term 'trustee' may well lead the debenture-holder to the belief that he is getting more effective protection than is the fact. We consider the position further in dealing with the trustee's right to indemnity (see paragraph 64).

62. **Individual and corporate trustees.** - In recent years the practice of appointing individual trustees has declined and corporate trustees, especially banks and insurance companies, have been more frequently appointed. It is, as a rule, more convenient to have corporate trustees. If an individual trustee dies, it is troublesome and expensive to appoint a trustee in his place. Further, corporate trustees usually have greater experience and a more adequate Organisation to enable them to fulfil their functions. It has been suggested to us that, in order to give greater protection to debenture-holders, we might recommend that individual trustees should no longer be permitted. We do not agree with this suggestion as there may be circumstances in

which individual trustees are more suitable than, and as efficient as, corporate trustees.

63. Trustees with conflicting interests. - It has further been suggested to us that no person should be eligible to act as a trustee for debenture-holders who has interests liable to conflict with those of the debenture-holders. For example, directors of companies are sometimes trustees for the debenture-holders. Though a director may himself be the principal holder of the debentures and is likely to have a better understanding of the finances of the company than anyone else, his duty to the company may be to dissuade debenture-holders as far as possible from exercising any rights in a manner inconvenient to the company-though in the interests of the debenture-holders. Again the bankers of the company are often trustees for its debenture-holders. The company may owe money to its bankers who in their capacity as creditors have an interest 'in discouraging the debenture-holders from realising for their own benefit securities which would otherwise be available for creditors ranking after the debenture-holders. There is no reason to think that banks have knowingly abused their position as trustees for debenture-holders but the difficulties that may arise when their interests conflict with their duty were pointed out by Mr. justice (now Viscount) Maugharn in the case of Dorman Long Limited (1934, Ch. 635). A similar conflict of interests arises where a company has issued two separate series of debentures, one ranking in front of the other, and the same persons are trustees for the holders of both series

of debentures. We have considered whether to recommend that persons who have interests conflicting with those of the debenture-holders for whom they are trustees, should be prohibited from acting as trustees for such debenture-holders. Such a prohibition, if absolute, might interfere unduly with arrangements which, though in practice unobjectionable, involve in theory a conflict of interests; for example, it might prevent a bank from acting as trustee for the debenture-holders of a company in which the bank, or more probably, one of its subsidiaries, has, as executor of a will, a small shareholding. On the other hand, it would not, we feel, be possible to set forth in legislation all the exceptions which would be desirable to an absolute prohibition. We, therefore, refrain from recommending legislation on this subject but we trust that banks, insurance companies and others who act as trustees for debenture-holders, will take care not to undertake this work in cases where there is risk of a conflict arising between the interests of the debenture-holders and those of the trustees appointed to act for them and in cases where the possibility of conflict already exists, will take steps to secure the appointment of a successor who is independent.

64. Liability of trustees. - Most deeds under which trustees for debenture-holders are appointed contain clauses which absolve the trustee from liability for anything but his own wilful neglect or default. Such a clause, under the decision in City Equitable Fire Insurance Company (1925, Ch. 407), exonerates a trustee unless he has done wrong knowing that the act he is doing is wrong. It has been suggested to us that some check should be placed on the power of trustees to escape liability for failure to carry out functions for which they are paid; and that this end might be achieved by extending the provisions of section 152 to trustees for debenture-holders. This section provides that any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company or any person employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company, shall be void. It has been suggested to us that if the indemnity clauses commonly inserted in trust deeds were declared invalid, it would be difficult to

persuade suitable persons to act as trustees for debenture-holders. We doubt, however, whether there would be any greater difficulty than there has been in obtaining directors for companies since 1929 when section 152 first became law. We consider that a general provision for exempting trustees from liability should be prohibited but that enabling clauses -as distinct from indemnity clauses should be permitted. For instance, it would be necessary to allow trustees for debenture-holders to act on expert advice on which they could not otherwise act without coming under the general liability which attaches to trustees. The new Act should also make it clear that in determining whether there has been a breach of duty by trustees for debenture-holders, regard must be had to the enabling clauses.

Recommendations

We recommend that a section be added to the Act on the following lines (para. 64): -

Any provision for exempting any trustee of a trust deed securing debentures of a company from or indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to his duties under the trust deed, shall be void:

Provided that-

(i) nothing in this section shall render void-

(a) any express indemnity against any act of commission or omission for which he has become responsible, given to a trustee by a resolution of the debenture-holders, passed by a three-fourths majority at a meeting duly convened for that purpose and held under the Provisions of the trust instrument or pursuant to any Act of Parliament,

(b) any provision in an trust instrument authorising a trustee to rely upon Opinions or evidence or act -upon advice upon which he might not otherwise be entitled to rely;

(h) in determining whether a trustee has been guilty of negligence, default, breach of duty or breach of trust, regard shall be had to any powers or authorities or discretions conferred on such trustee by the trust instrument notwithstanding that the effect of having such regard may be to exempt the trustee from a liability which he would otherwise have been under;

(iii) nothing in this section shall prohibit the inclusion of a provision protecting a trustee from liability for any error of judgment made in good faith, unless it shall be proved that such trustee was negligent in ascertaining the pertinent facts;

(iv) in relation to a trust deed containing any provision for exemption or indemnification which is in force at the date of commencement of the new Act this section shall not have effect as regards any trustee of that trust deed appointed before that date.

Receivers

65. Existing provisions. - A receiver for debenture-holders can be appointed either under powers contained in the deed under which the debenture-holders have lent their money, or as a result of an application to the Court. The Companies Act lays down that notice of appointment of a receiver or manager of the property of a company shall be given to the Registrar of Companies by the person obtaining or making the appointment, that a receiver or manager if he ceases to act shall give notice to the Registrar to that effect, and that the appointment

of a receiver or manager must be stated on every invoice, order for goods -and business letter. Under section 310 of the Companies Act a receiver or manager appointed under powers contained in any instrument must file with the Registrar of Companies an abstract of his receipts and payments every six months and, finally within one month after ceasing to act; a receiver appointed by the Court accounts in such manner as the Court may direct, and obtains his release from the Court.

66. Accounts of receivers where debentures are secured by floating charges. - A receiver and manager deals with the assets for all practical purposes as a liquidator until he has satisfied the claims of the debenture-holders. The ability with which such a receiver carries out his duties affects the interests not only of the debenture-holders on whose behalf he has been appointed, but also of the unsecured creditors and the shareholders who hope to obtain any surplus which the assets of the company, after satisfaction of the claims of the debenture-holders, may realise. At present the shareholders and creditors and the debenture-holders themselves have insufficient information about the financial position of the company after the appointment of a receiver, We consider that the debenture-holders should receive a statement of affairs as at the date of the appointment of the receiver, similar to that which the directors are bound to prepare in the event of a winding-up order being made, a summary of the receipts and payments in the receivership

at yearly intervals and a statement showing the position at the conclusion of the receivership, and that these documents should be lodged with the company or its liquidator and -delivered to the Registrar of Companies for registration so that the unsecured creditors and shareholders may have access thereto and bespeak copies thereof on payment (page 35, II).

67. Application to Court by receiver for guidance. -

Doubts often arise as to the powers enjoyed by receivers and the manner in which they should be exercised. A receiver appointed out of Court has no means & obtaining the Court's directions although it may well be desirable that he should do so. We think it advisable to give him the right so to do (page 36, III). The procedure will no doubt be a matter for rules rather than statutory enactment. It would clearly be necessary that the company, a representative debenture-holder and the trustees for the debenture-holders (if any) should be made respondents to such an application.

68. Liability of receiver. - A receiver appointed by the Court to manage a business has a right to indemnity out of the assets of the business in respect of contracts he makes as receiver, but is personally responsible in respect of orders given by him unless the contract otherwise provides. A receiver appointed out of Court is as a rule the agent of the company and (so long, at all events, as the company is not in liquidation) is not personally responsible unless he pledges his own credit. In some cases receivers appointed out of Court have ordered goods and have not paid for them but the proceeds of realisation have been applied for the benefit of the debenture-holders, the seller of the goods being left to sue the company which has no assets. We consider that a receiver, however appointed, should be made personally liable (without prejudice to his right to indemnity out of the assets) on any contracts entered into by him subsequent to his appointment, except where the contract expressly excludes him from personal liability (page 36, IV). The effect would be that a receiver appointed on behalf of debenture-holders might be in -a different position from any other receiver appointed by a mortgagee ' under the provisions of the Law of Property Act, 1925, but we think that this distinction is justified by the fact that he is not a mere receiver, but is commonly also manager of a business and it is as such manager that he incurs the liability.

69. Disqualification of bankrupt from acting as receiver.

-Our attention has been drawn to a case in which an undischarged bankrupt was appointed receiver for debenture-holders, with unfortunate results.

Undischarged bankrupts are already disqualified under section IV from acting as directors except with the leave of the Court which adjudged them bankrupt. We think that in no circumstances should they be allowed to act as receivers (page 35, I) -

70. Standardised powers for receivers. - It has been suggested to us that it would be of advantage if there were set out in a schedule to the Act powers of receivers in the wide form normally contained in modern debentures and trust deeds (i.e. including such powers as those of management, sale, leasing and dealing with the mortgaged property); such powers to apply in the case of every receiver except in so far as varied or excluded by the debenture or trust deed or (in the case of a receiver appointed by the Court) by order of the Court. We have come to the conclusion that the suggested statutory powers would not be appropriate in the case of a receiver (in the true sense) of income or property or in the case of a receiver or manager appointed by the Court and that such powers would only properly be applicable in the case of a receiver or manager appointed under powers

conferred by the debenture or trust deed. The small saving in expense which would be gained in such latter case by scheduling standard powers in the Act does not in our view justify the proposal.

Recommendations

We recommend that the Act be altered by adding provisions to the following effect: -

I.(a) It shall be unlawful to appoint an undischarged bankrupt as receiver or manager in exercise of a power to appoint a receiver or manager under a debenture or any trust deed securing the same (para. 69).

(b) Any undischarged bankrupt acting as such receiver or manager shall be guilty of an offence and shall be liable to penalties similar to those to which an undischarged bankrupt acting as a director is subject under section 142 (para. 69).

II (a) It shall be the duty of a receiver who is appointed in respect of debentures secured by a floating charge on the assets and undertaking of a company forthwith on his appointment to notify the company or its liquidator thereof and within fourteen days of such notice, or such extended time as the Court or the receiver, in the case of a receiver appointed by the Court, or the receiver, if he should have been appointed out of Court, shall allow, there shall be made out and submitted to the receiver a statement as to the affairs of the company as at the date of the appointment of the receiver in the form prescribed by the Board of Trade under section 181, in the case of a winding-up by the Court, with appropriate modifications (para. 66).

(b) It shall be the duty of the receiver within one month after receipt by him of the statement of affairs, to send a copy thereof with his comments thereon to the Registrar of Companies, to the trustees, if any, for the debenture-holders, and to the company or any liquidator thereof and, in the case of a receiver appointed by the Court, to the Court, and to send to every debenture-holder of whose address he is aware, a copy of the statement of affairs, excluding the lists attached thereto, with his comments (para. 66).

(c) It shall be the duty of the receiver within one month or such extended period as, if the receiver is appointed

by the Court, the Court, or if he is appointed under powers contained in a deed, the Board of Trade, may allow after the expiration of a period of twelve months from the date of his appointment and of every subsequent period of twelve months, to send to this Registrar of Companies, to the trustees, if any, for the debenture-holders, to the company or any liquidator thereof, and to every debenture-holder of whose address he is aware, a summary of the receipts and payments in the receivership during that period of twelve months in a form to be approved by the Court or prescribed by the Board of Trade as the case may be (para. 66).

(d) It shall be the duty of a receiver within one month or such extended period as, if the receiver is appointed by the Court, the Court, or if he is appointed under powers contained in a deed, the Board of Trade, may allow, after he has ceased to act to send to the Registrar of Companies, to the trustees, if any, for the debenture-holders, to the company or any liquidator thereof and to every debenture-holder of whose address he is aware, a summary of the receipts and payments in the receivership in respect of the period of the receivership in a form to be approved by the Court or to be prescribed by the Board of Trade, as the case may be (para. 66).

(e) Subsections (2), (4) and (5) of section 181 shall apply with appropriate modifications to the statement of affairs and subsections (6) and (7) shall apply with appropriate modifications to the documents to be filed with the Registrar of Companies, but persons other than those mentioned in subsection (6) shall not be entitled under section 34 to inspect the lists forming part of the statement of affairs.

III. A receiver appointed out of Court may apply to the Court to determine any question arising in the administration of the assets comprised in the security by virtue of which he was appointed or as to the exercise of any powers thereby or by any statute conferred on him (para. 67).

IV. Notwithstanding anything to the contrary in the instrument under which he is appointed, a receiver appointed by the Court or out of Court shall be personally liable on any contract entered into by him in the exercise of his powers as receiver or manager, unless such contract otherwise expressly provides. The receiver shall be entitled to indemnity out of the assets comprised in the charge; such indemnity shall be entitled to priority over all debts other than preferential debts (para. 68).

Registration of Charges

71. Registration of charges given by trustee over property of a company - It has been suggested to us that the provisions regarding the registration of charges can be evaded in cases where a trustee holds property for a company and gives a charge over that property, as such charge, not being given by the company, does not require registration. We do not think that there is any real ground for the view thus expressed, but it might be advisable to remove, by a suitable declaratory amendment to the Act, all possible room for doubt.

REGISTERS OF MEMBERS AND DEBENTURE-HOLDERS AND ANNUAL RETURN

72. Existing provisions regarding register of members and annual return. - Section 95 provides that every company shall keep a register of its members and enter therein, among other things, their names, addresses and occupations, if any. Section 96 provides for the keeping of an index of the register, in the case of every company

having more than 50 members, and section 98 for facilities to enable members and the public to inspect the register. Section 108 provides that every company having a share capital shall once at least in every year make a return including, among other things, information as to the names, addresses and occupations of its members.

Section 110 provides that the annual return must be contained in a separate part of the register of members, and must be completed within twenty-eight days after the first or only general meeting in the year and that the company must forthwith forward a copy to the Registrar of Companies. Section 112 requires that a meeting must be held once at least in every calendar year.

73. Suggested simplification. - It has been represented to us that these provisions involve companies in much expenditure of labour, time and paper and that the documents resulting therefrom are not much consulted. In the case of companies with, say, 1000,000 shareholders the register of members may fill many cubic feet. We think it important that the public should have access to a record of the members of companies without having to go to the registered office of the company, because, firstly, it may be embarrassing for a person who wishes to make enquiries, especially if he suspects that the company is being dishonestly managed, to make them at the company's office, and, secondly, it is Convenient for a person who wishes to make

enquiries relating to several companies to be able to find the necessary information centralised in one office. There are, however, details of the existing provisions which can be modified so as to save trouble to the companies without depriving the public of information. It seems to us unnecessary for a return to be made in the year in which a company is incorporated. If the company is formed in the latter part of the year, it has to make an annual return of members very shortly after making the return of allotments required under section 42, and it should be sufficient for the return to be made within twenty-eight days of the first general meeting of the company (page 38, IV (a) take place within fifteen months from the date (page 86, VI (a)). We think that thereafter the company should be only required to file a complete return of its members every third year and should be given for each of the intervening two years the option of filling only a list of changes in the membership (page 39, (2)). In our view the requirement to state the occupations of the shareholders serves no useful purpose; the information given by companies as to the occupations of their members is often inexact and even where it is not, the information is of no value to, the shareholders or the public (Page 38, II). We also think it unnecessary for the company to be required to keep the annual return of its members in its register (page 39, V). The information is available to the public as the annual return is filed with the Registrar of Companies, and according to the evidence recourse is rarely had to the copy at the registered office.

74. Place at which register of members is to be kept. - Section 98 requires that the register of members shall be kept at the registered office of the company. We are informed that this requirement is not observed in the numerous cases where companies delegate the work of compiling the register to an independent registrar or transfer agent, often a specialised secretarial services company, or a bank, or a bank trustee company, and, in consequence, the register is kept not at the registered office but at the office of the independent registrar or transfer agent. The practice is convenient and the legal position should be regularised, but any change in the place at which the register is kept should be notified to the Registrar of Companies (pages 38, III, and 39, IV (b)).

75. **Register of debenture-holders.** - Section 73 provides that every register of holders of debentures of a company shall, except when duly closed, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company. A Member of the public, other than a shareholder or a debenture-holder, has no right to inspect the register or to copies of it, even on payment, though under section 82 the register of charges which has to be kept by the Registrar of Companies, is open to inspection by the public. Section 73 is also defective since it does not impose any clear obligation on the company to keep a register of debenture-holders. This defect should be remedied and it should be provided that, as in the case of the register of members, the register of debenture-holders may be kept at the office of an independent registrar (page 38, 1).

76. **Details of charges in annual return.** - Under Section 108 (3) (o) a company is required to give in its annual return information regarding the total amount of the indebtedness of the company in respect of all mortgages and charges which are required (or in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the Registrar of Companies. This provision apparently makes it necessary for information to be given about, for example, a Letter of Agreement granted by a company in Scotland in respect of the

deposit of title deeds of its heritable property in Scotland; because such a Letter of Agreement would constitute a charge in England although it does not do so in Scotland. The inclusion in the annual return of details of instruments which do not constitute a charge, is obviously misleading, and we suggest that section 108 (3) (o) should be amended (page 39, (c))

Recommendations

We recommend that: -

I. Section 73 be amended by-

(a) substituting for the first paragraph of the existing subsection (i) provision to the following effect: -

(i) Every company which has issued registered debentures, shall keep in one or more books a register of the holders of its registered debentures. Such register shall be kept at the registered office of the company or at the office of the person to whom the company has delegated the work of registration, provided that the register must be kept at an office in England in the case of a company registered in England and in Scotland in the case of a company registered in Scotland and any change of the place at which the register is kept must be forthwith notified to the Registrar of Companies. The register shall, except when duly closed, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, without charge, and of any other person on payment of one shilling or such less sum as the company may prescribe, for each inspection, but subject in either case to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day shall be allowed for inspection.

(b) substituting in subsection (2) the words 'any person' for the words 'every registered holder of debentures and every holder of shares in a company' (para. 75).

II. Section 95 (I) (a) be amended by the omission of the words 'and the occupations, if any,' (para. 73).

III. Section 98 (I) be amended by inserting after the words 'registered office of the company' the words 'or at the office of the person to whom the company has delegated the work of registration':

Provided that the register must be kept at an office in England in the case of a company registered in England, and in Scotland in the case of a company registered in Scotland.

Provided, further, that any change of the place at which the register is kept must be forthwith notified to the Registrar of Companies (para. 74).

[A corresponding amendment will be required in section 104 (3) .]

IV. (a) In section 108 for the existing subsections (i) and (2) there be substituted a provision to the following effect-

(i) Every company having a share capital shall within 28 days after the holding of each general meeting required to be held pursuant -to section in make a return to the Registrar of Companies which shall include a list containing the information specified in subsection (2) relating to the persons who on the fourteenth day after the date of holding such general meeting are members of the company and of all persons who have ceased to be members since the date of the last return, or, in the case of the first return, of the incorporation of the company (para. 73);

(2) The list must contain particulars of all shares transferred since the date of the last return or, in the case of the first return, of the incorporation of the company, stating the names and addresses of transferors and transferees, the number of shares transferred and the dates of registration of the transfers and in the case of the first return after the coming into force of the new Act and thereafter at least in every third year must also state the names and addresses of all persons who were members of the company on the date as at which the list is prepared and the number of shares held by each, and if the names therein mentioned are not arranged in alphabetical order, must have annexed to it an index sufficient to enable the name of any person in the list to be readily found:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar of Companies, the list must state the amount of stock comprised in each transfer and the amount of stock held by each of the existing members therein mentioned instead of the amount of shares (para. 73).

[If our recommendation in paragraph (j) on page 45 is adopted, it will be obligatory to divide the list into two parts corresponding to the two parts into which the register will be divided.]

(b) In the first sentence of subsection (3) there be inserted between the words 'company' and 'and' the words 'and, if the register is not kept at the registered office of the company, the place at which the register is kept' (para. 74).

(c) the following proviso be added at the end of subsection (3) (o) Provided that it shall not be necessary in the case of companies registered in Scotland to include indebtedness in respect of mortgages and charges which do not constitute a valid charge according to the law of Scotland (Para. 76).

[If these modifications are adopted, appropriate modifications will be required in section 109 and in the Sixth Schedule.]

V. Section 110 be amended by-

(a) substituting for the existing subsection (i) the following subsection-(I) The annual return must be signed by a director and by the secretary of the company.

(b) deleting subsection (2) (para. 73).

NOMINEE SHAREHOLDINGS

77. **History.** - We have already referred in paragraph 72 to the sections of the Act which oblige a company to keep a register of members and to give facilities to the members and to the public to inspect the register. Those provisions have been in operation since the Act of 1862 and it has been suggested to us that the intention thereof is to enable a shareholder to know who his co-adventurers are and the public to find out who control the business in which they are contemplating investment or to which they are considering granting credit. It is, however, to be observed that section 101 provides that, in England only, no notice of any trust shall be entered on the register, so that the legislature may have contemplated that the registered shareholder might not be the person beneficially interested in the shares. It is probable also that another matter which affected the minds of the legislators in 1862 was the practice of having shares in issue, part only of which had been paid up, leaving as a common state of affairs a continuing unpaid liability: the existence of which would, of course, have necessitated the maintenance of a register so that intending creditors could, on inspection of it, reach a view as

to the credit-worthiness of the concern and the sufficiency of the contributors. In so far as this was a reason for the establishment of a register of members it has fallen into disuse owing to the practice of calling up almost at the outset, the whole of the issued share capital. Whatever may have been the intention of Parliament, it is clear that at an early date investors made use of nominees, for as long ago as 1895 Sir Francis Palmer in his standard work, referring to the benefits of anonymity in private companies, said ' This is in many cases a matter of great importance, and especially in the case of syndicates, for it very commonly happens that leading financiers, Members of Parliament, and commercial men, whilst willing to subscribe to a syndicate, make it a condition that their names shall not appear.' We doubt whether public opinion would now endorse this view, but as will be seen from the particulars given in the next paragraph the practice is now adopted from a number of other motives to most of which we think no objection can be taken. It may be relevant to add that the widespread use of bearer securities on the continent of Europe indicates that little importance is there attached to the disclosure of beneficial ownership.

78. Popularity of nominee system. - How widespread the nominee system now is, is indicated by the following figures which have been supplied to us by the Committee of London Clearing Bankers. Approximately 600,000 individual holdings of debentures, stocks and/or shares in companies were in 1943 registered in the names of member banks of the British Bankers' Association or their nominee companies or others of their nominees. One of the clearing banks, after analysing its total of 72,456 of such holdings, gives the following classification which does not take into account any succeeding layers of further trusteeship, which may well become multiple in many cases before the real beneficial ownership is reached (e.g. holdings for foreign banks, for stock exchange firms, or for trustees and executors):-

	Category	Total	Per cent
1.	Residents outside U.K.	13,317	18.38
2.	Stock Exchange Brokers and jobbers	6,224	8.59
3.	Insurance and Trust Companies	2,798	3.86
4.	Security	8,085	11.16
5.	(a) Facilitation of Stock Exchange purchases and sales		

	(b) Convenience due to absence abroad	5,890	8.13
6	As Executors and Trustees under wills and settlements	35,705	49.28
7	Unidentified purposes which could embrace concealment	437	.60
		72,456	100.00

On this table we would observe that other heads besides number 7, could include concealment front motives to which objection could properly be taken.

The following information prepared by the same bank respecting the work of three of its nominee companies in the year 1938 (a relatively inactive period on the Stock Exchange) illustrate the frequent changes in nominee holdings:-

	Separate holdings at end of year,	Number of transfers sealed during year
No. 1 Company	18,318	87,543
No. 2 Company	4,757	38,623
No. 3 Company	14,899	11,049
Total for three companies	37,974	137,215

Two of these nominee companies had together on their books, 1,580 individual holdings in shares of Courtaulds Ltd., Imperial Chemical Industries Ltd., and the Imperial Tobacco Company (of Great Britain and Ireland) Ltd. Of the dividends reaching one of the nominee companies in the year 1938 from eight English companies, 840 Out Of 1,013 items were for foreign beneficiaries.

The figures we have quoted indicate that the practice of nominee registration serves in many cases a useful and legitimate purpose, and the majority of the Committee take the view that registration in the names of nominees should not be prohibited.

79. Arguments in favour of disclosure of beneficial ownership-If the practice of nominee registration is still permitted, the question arises whether the beneficial ownership should be disclosed. The principal grounds on which disclosure is urged, are-

(1) that foreigners may acquire control of essential British industries without anyone being aware of it;

(2) that in view of the influence of the press over public opinion the names of those who control the organs of the press should be a matter of public knowledge;

(3) that an unscrupulous director finds it easier to make illegitimate use of inside information if he can conceal his dealings under the cloak of nominees; and

(4) that a register of beneficial ownership would be useful to a share-holder who wishes to consult his fellow shareholders as to the affairs of the company.

80. Difficulty of securing complete disclosure. - We have had little concrete evidence to support these contentions, but we do not attach conclusive importance to the absence of proven cases of abuse since, in the nature of things, such evidence would not be forthcoming. In principle we consider that shareholders and the public are entitled to know in whom control is vested. No member of our Committee believes that any legitimate purpose would be prejudiced by disclosure of the names of the beneficial owners if such disclosure is considered desirable in the public interest and could be effectively and conveniently enforced without causing unnecessary work. Our doubts are on the question of enforceability,

and on the score of the work which would be imposed to no practical purpose if enforcement is not possible. We have examined a variety of schemes intended to secure such disclosure but none of these is watertight. Even a complete prohibition of registration in the names of nominees would not disclose where the real control lay since shares could be registered in the name of a company registered abroad and it would not necessarily be known who controlled that company. Moreover, the majority of the suggestions would involve a volume of work out of all proportion to the probable benefits to the public.

We make two suggestions which are intended to make the information given in the register of members more revealing than it is at present and which would not impose an intolerable burden on companies. We do not claim that these suggestions would result in disclosure of the real seat of control in every case. They would, however, provide information which would in some cases disclose where the control lay and would reduce the preliminary work of investigation in those cases in which, as we suggest later (paras. 84-5), the Board of Trade might feel it in the public interest to investigate further the beneficial ownership of shares.

81. Disclosure by registered members as to whether or not they are beneficial owners. - We suggest first that nominee share holdings should be distinguishable from other share holdings in the register. Accordingly, we recommend that all transfers should contain a declaration as to whether the transferee of shares is the beneficial owner thereof or is holding them as nominee

(Page 43, (a)). As regards existing holdings the company should be bound to send to its registered shareholders on the day of issuing the notice convening the first annual general meeting after the passing of the proposed new Act, a form, which the shareholder would be required to complete, stating whether he was the beneficial owner of the shares registered in his name or held them as a nominee (page 43, (b)), An obligation should also be imposed on the shareholder to notify the company of any change in the particulars thus furnished (page 43, (c) and (d)). In order that share-holders may not overlook their obligations, it should be provided that on the day of issuing the notices convening annual general meetings subsequent to the first annual general meeting after the passing of the new Act there should be issued also a warning drawing the attention of all shareholders to the obligations above indicated (page 44, (e)). We would emphasise that though it is tempting to extend this suggestion one step further and require in the case of shares shown as held by nominees the name of the person for whom the nominee directly holds, we have drawn the line short of that proposal for the reason that a very large additional burden would be imposed upon the companies, their registrars, and those concerned with the preparation of transfer forms, and upon trustees generally, without in the least affording to the public knowledge of the identity of those real owners whose real ownership it may be material to know, but who would (if anything turned on the question) very easily take steps to remain behind the curtain.

82. Disclosure by beneficial owners. - Secondly, we suggest that an obligation should be imposed on every person who is directly or indirectly the beneficial owner of one per cent. or more of the capital of a company or of any class of shares in a company, to file a declaration of such ownership within two months of the coming into force of the new Act or within 10 days after becoming such beneficial owner, whichever is the later. Such beneficial owner should also be under an obligation to make a declaration to the company regarding any change in his beneficial interest in the shares (page 44, (f)). These provisions should as a deterrent apply to bearer shares although detection of a breach would be difficult. For obvious reasons, they need not apply where all the shares of which a person is directly or indirectly the beneficial owner, are registered in his name. The information derived from these declarations should be entered in a book which should be available for

inspection and particulars of such information should be filed with the annual return (page 45, (k)). In our recommendations we have included a definition in wide terms of beneficial owner for the purpose of these provisions (Page 44, (9)).

We recognise that our proposal affords no absolute guarantee that the information will be available in all cases where the statute requires it: but we attach importance, from the practical standpoint, to creating a situation in which those who deliberately disregard the provisions of the statute will, if and when their default is detected, be put upon their defence and start that defence under a handicap which will certainly be severe. We feel also that the existence of this provision will be effective in many cases in which, if the provision were omitted, those concerned would see no danger in concealing their identity, and thus be deprived of any incentive to resist the temptation.

We have considered whether to extend the provisions suggested in this and the preceding paragraph to debentures but we think that the risk of control being exercised through debentures held in the names of nominees is too remote to justify the labour involved in attempting to deal with this possibility.

There should be severe penalties for false declarations under this or the preceding paragraph or for failure to make the required declarations (Page 44, (i)).

83. Bearer shares. - The existence of bearer shares must inevitably make the information furnished by the declarations suggested in paragraphs 81 and 82 less complete. We are not, however, on this ground prepared to recommend the abolition of bearer shares since, as we have already pointed out, we do not consider it practicable to secure complete disclosure of beneficial ownership. It was represented to us, on the one hand, that bearer shares attract foreign money which is of benefit to the commerce and industry of the country and, on the other, that they facilitate the evasion of taxation and undesirable capital movements, but we have not regarded it within our terms of reference to form a considered view on these points.

84. Board of Trade powers to investigate beneficial ownership of shares. - To meet cases where it is considered desirable in the public interest to ascertain more definitely by whom control of a company is exercised we suggest that drastic powers of investigation should be conferred on the Board of Trade (Page 45, (m) and (n)). The information available as a result of the declarations which in paragraphs 81 and 82 we have suggested should be made, would reduce the volume of enquiries which the inspector appointed by the Board of Trade would have to make.

85. Definition of Board of Trade powers. - We think that the Board of Trade should have power in any case where they are of opinion that it is desirable in the public interest to ascertain by whom control of a company is exercised,

(a) to appoint an inspector with wide powers to investigate beneficial ownership (Page 45, (m));

(b) to direct the company not to pay dividends on, or to permit the exercise of any rights attached to, all or any of the shares in the company specified in such direction until the Board of Trade otherwise direct (page 45, (n)).

Recommendations

That sections be added to the Act containing provisions to the following effect:-

(a) Every transfer of shares shall contain a declaration by the transferee stating whether or not he will be the beneficial owner of the shares comprised therein (para. 81).

(b) Every company shall on the day of issuing the notice convening the first annual general meeting of the company to be held more than one month after the coming into force of the new Act, send to every registered holder of shares, who has not signed a declaration as transferee under (a) above, a notice requiring him within two months after receiving such notice to sign and deliver to the company a declaration whether or not he is the beneficial owner of the shares registered in his name (para. 81).

(c) If any person who has signed a declaration of beneficial ownership ceases to be beneficial owner of any share comprised in such declaration, while remaining the registered holder, he shall be bound forthwith to send to the company a declaration of cesser of such ownership (para. 81).

(d) If any person who has signed a declaration that he holds the shares registered in his name as a nominee, ceases so to hold any of them, while remaining the registered holder, he shall be bound forthwith to send to the company a declaration to that effect (para. 81).

(e) Every company shall on the day of issuing the notice convening the annual general meeting of the company (other than the first annual general meeting after the coming into force of the new Act) send to every registered holder of shares, a notice drawing attention to the requirements set out under paragraphs (c) and (d) (para. 81).

(f) Where any person is directly or indirectly the beneficial owner of one per cent. or more of the issued capital of the company or of the issued shares of any class and where any of such shares are not registered in his name, he shall send to the company within two months of the date of coming into force of the Act or within, 10 days of the date on which he becomes such owner, whichever is the later date, a declaration stating the number and class of shares of the company of which he is such owner and the names of the registered holders of the shares and if any change occurs in the matters covered by such declaration, he shall send to the company within 10 days of the date on which the change occurs, a declaration stating the change:

Provided that the Board of Trade may grant exemption from this provision where it seems to them expedient in the national interest to do so (para. 82).

(g) A person shall for the purpose of this section be deemed to be the beneficial owner of a share if he is-

(i) absolutely entitled to the share; or

(ii) entitled absolutely or conditionally to require the transfer of the share to himself or to any person nominated by him; or

(iii) entitled directly or indirectly to control the exercise of the voting right in respect of the share (para. 82).

(h) Every company shall on the day of issuing the notice convening the first annual general meeting of the company to be held more than one month after the coming into force of the new Act, and on the day of issuing the notice convening subsequent annual general meetings of the company, send to every registered holder of shares, a notice drawing attention to the requirements in paragraph (f); (para. 82).

(i) (i) Any person,

(a) failing to make any declaration requiring to be made under the above provisions; or

(b) making a declaration under the above provisions which is false in any material particular; or

(c) voting in respect of any share as to which any declaration requiring to be made under paragraphs (a), (c) or (d) has not been made or has falsely been made; or

(d) instructing or allowing any person to vote or voting in respect of any share in respect of which he is under an obligation to make a declaration under paragraph (f) but has failed to do so or has made a false declaration;

shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £ 500 or to both such imprisonment and fine (paras. 81-2).

(2) If default is made in sending any notice required to be sent pursuant to paragraphs (b), (c) or (h) above, the company and every director or manager or secretary who is knowingly a party to the default, shall be liable to a default fine. *

*For provisions as to default fines see section 365 of the Companies Act, 1929,

(j) Every company shall keep its register of members, and compile the list of members required under section 108 (i), each in two parts, one part relating to members who have signed declarations that they are the beneficial owners of the shares registered in their names, and the other part relating to members who have signed declarations that they are not beneficial owners of the shares registered in their names (para. 81).

(k) Every company shall keep in one or more books a record of the names and addresses of the persons who have signed declarations under paragraph (f), the number and class of shares of which they have notified the company that they are directly or indirectly the beneficial owners, the names of the registered holders of the shares and any changes notified to the company in the matters covered by such declaration. Provisions as to inspection and the right to copies shall apply similar to those specified in section 98 (i) and (2). Every company shall file with the annual return required under section 108, particulars showing the names and addresses of the persons who have signed declarations under paragraph (1) and the number and class of shares of which they have notified the company that they are, directly or indirectly, the beneficial owners, and the names of the registered holders of the shares, as at the date of the annual return (para. 82).

(l) Notwithstanding anything in the paragraphs above, the company shall, for all purposes of company administration, be entitled to treat the registered owner as the legal owner of the shares registered in his name.

(m) If the Board of Trade consider it necessary in the public interest to investigate the ownership of shares in any company, they may appoint an inspector to conduct such investigation. Subsections (3), (4), (5) and (6) of section 135 as amended in accordance with our recommendations on pages 101-2, with the necessary modifications, should be made applicable to such investigation.

The inspector should report to the Board of Trade who should forward a copy of his report to the company and should be at liberty to publish such report or file a copy thereof with the Registrar of Companies (paras. 84-5).

(n) When the Board of Trade has appointed an inspector to conduct an investigation as regards any company under paragraph (m), the Board of Trade may at any time and from time to time direct that company not to pay dividends on, or to permit the exercise of any rights (including the right of transfer) attached to all or any of the shares in the company specified in such direction and may revoke, vary or suspend any such direction (paras. 84-5).

FINANCIAL RELATIONS BETWEEN COMPANIES AND DIRECTORS

86. **Share transactions by directors.** - Whenever directors buy or sell shares of the company of which they are directors, they must normally have more information than the other party to the transaction and it would be unreasonable to suggest that they were thereby debarred from such transaction; but the position is different when they act not on their general knowledge but on a particular piece of information known to them and not the time known to the general body of shareholders, e.g., the impending conclusion of a favourable contract or the intention of the board to recommend an increased dividend. In such a case it is clearly improper for the director to act on his inside knowledge, and the risk of his doing so is increased by the practice of registering shares in the names of nominees. None the less we do not recommend a prohibition on directors holding shares in the names of nominees. This is a useful convenience to the director and prohibition could be readily evaded,

e.g., through the medium of a company controlled by the director. We do, however' consider that the law should be altered so as to discourage improper transactions of the kind we have indicated. Even if the legislation is not entirely successful in suppressing improper transactions, a high standard of conduct should be maintained, and it should be generally realised that a speculative profit made as a result of special knowledge not available to the general body of shareholders in a company is improperly made. We would add that some directors who would not themselves take advantage of inside information do not so clearly appreciate the impropriety of letting it be known to their friends that events as yet unknown to the shareholders have made the shares of the company an attractive purchase.

87. Disclosure of share transactions by directors. - The best safeguard against improper transactions by directors and against unfounded suspicions of such transactions is to ensure that disclosure is made of all their transactions in the shares or debentures of their companies, (pages 50-1, I). The fact that disclosure is obligatory will of itself e a deterrent to improper conduct and the shareholders can, if they think fit, ask for an explanation of transactions disclosed in the return which we recommend it has been represented to us that disclosure by directors of their transactions in shares of their companies might be injurious to the shareholders; for example, if a director for legitimate private reasons sold his holding, the disclosure of the sale might give rise to an unwarranted rumour that the company had experienced misfortune, and the price of the shares would fall. We think, however, that the very fact that disclosure of transactions by directors was compulsory, would tend to negative this false impression, and in the event of misconception it would always be open to the director to make a statement as to the reasons for his transactions. The practice in the United States of America is to require the disclosure of directors' transactions and it does not appear that this has had any unfortunate results.

88. Payment to directors of fees or salaries tax-free. - In our view, the payment to directors of fees or salaries tax-free should be prohibited (page 52, IV). The principal objection to this practice is that it creates a class of person who is immune from any increase in taxation. If the remuneration were free of sur-tax (which would be still more objectionable) it would be

difficult for the shareholder, even if he were able to obtain information as to the amount of the tax-free payment, to estimate the total amount of remuneration before deduction of tax, as the amount of tax payable by the individual director but, in fact, borne by the company, would vary according to the total income of the director.

89. Disclosure of remuneration of directors. - In our view, the present provisions of the Companies Act for the disclosure of the remuneration of directors to shareholders do not go far enough. Section 128 provides that there shall be disclosed in the accounts the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, Percentages, or other emoluments, paid to or receivable by them by or from the company or by or from any subsidiary company. Subsection (3) provides, however, that the requirement as to disclosure shall not apply in relation to a managing director of the company, and that in the case of any other director who holds any salaried employment or office in the company there shall not be required to be included in the said total amount any sums paid to him except sums paid by way of directors' fees. We are informed that some companies, after the Companies Act, 1929, came into force, appointed all their directors, managing directors, in order to avoid having to disclose their remuneration. However that may be, in recent years there has been a growing tendency to

include in boards of directors men who hold managerial positions in the company. This tendency (which in itself is by no means to be regretted) has the result that the information given to shareholders under section 128 does not disclose the full emoluments received by the directors. Moreover, where the board consists entirely of executive directors, the result may be that their own remuneration is fixed by themselves, without the impartial judgment of any independent directors and without any obligation of disclosure. Section 148 provides that members of a company who are entitled to not less than one-fourth of the aggregate number of votes, can require from the directors a statement, to be certified by the auditors, as to the aggregate remuneration of the directors, including managing directors, in the company or in companies controlled by it. There is, however, a proviso that a demand for a statement shall be of no effect if the company within one month after the date on which the demand is made, resolve that the statement shall not be furnished. The insertion of this proviso was not recommended by the Greene Committee. It may result in minority shareholders being unable to obtain information about the remuneration of executive directors (page 52, III).

90. Conclusions of the Committee regarding disclosure of remuneration of directors. - We consider that full disclosure of the aggregate of directors' fees and, separately, of the aggregate of their other remuneration is desirable. If, as we believe is the case, the suggestion that managing director are paid excessive sums is, as a rule, unfounded, directors have nothing to fear from a greater measure of disclosure. In any event, it seems to us right that the shareholders on whose behalf the directors are appointed to act, should know how much they are paid for their services. It has been suggested to us that the disclosure of the remuneration of executive directors would lead to undesirable competition for their services but we are not impressed by this argument. One of us, however, feels that it would be undesirable to include the remuneration of a director also holding an executive office as where there is only one such director, inclusion would make public the amount which he receives from the company which might be his entire income. In that event disclosure would infringe the principle that as a general rule an individual is entitled not to make public the amount of his income, a principle which is in consonance with the traditions of this country. The Committee also consider it desirable

that the amount of any expense allowances which are not in reimbursement of expenses actually incurred, should be included as part of the total emoluments disclosed to the shareholders (pages 51-2, II (2), (3) and (4)). It would, of course, be impracticable to vouch all such expenditure, but we suggest that if the allowance or any part thereof were assessed to tax as income of the director, it should be included. It has been suggested that this disclosure should be extended to executives not being directors but in receipt of salary over a fixed amount. The principle on which we are basing our recommendations is that since directors are normally responsible for fixing the remuneration of directors employed in executive capacities the amounts they themselves receive should be disclosed; this principle is not applicable to executives who are not directors. We have considered whether the remuneration payable to each director should be shown separately but we do not consider it advisable to adopt this course. Apart from any objections which might be felt by the individuals concerned, we do not think that the shareholder would be in a position to estimate the value of the services of an individual director without detailed information as to the duties he performs, whereas by comparison of the total with the results of the company they can form a rough estimate as to whether they are getting proper value out of the services as a whole.

91. Remuneration of managing firms, agents and secretaries. - Certain companies are controlled by managing firms' managing agents or managing secretaries who may exercise the functions of the board of directors . if, in fact, the managing firms, agents or secretaries control the company, it seems to us that no alteration in the existing law is necessary to achieve our object, in view of the definition of director in section 380. If the company is controlled by a board, disclosure of the remuneration of the managing firms, agents or secretaries is not in our view necessary, for the reasons already indicated in the preceding paragraph.

92. Compensation to directors for loss of office. - The evidence given before us discloses that the practice of making payments to directors in connection with their retirement from office (commonly called 'compensation for loss of office') or in the case of directors holding other offices (e.g. as managing directors) in connection with their giving up such other offices is not uncommon and is on occasion abused. Compensation for loss of office may be paid (i) when the undertaking of the company is being sold, or (ii) when control of the company is acquired by a third party by means of a purchase of shares, or (iii) when apart from any sale of an undertaking of or share control a board desire to dispense with one of their number.

(a) **Paid by company,** - Dealing first with the third case, compensation for loss of office when paid by a company to any of its directors as consideration for or in connection with his retirement from the office of director should, in our view, always be subject to the approval of the company in general meeting (page 52, VI, I)

We do not, however, recommend that payments made to directors, otherwise than in connection with the sale of the shares or assets of the company, as consideration for or in connection with their giving up other offices (eg. as managing directors) should necessarily be approved by the company in general meeting. Our attention has been drawn to cases where the powers of 'settling' claims by a director who is also an executive and who is asked to give up his executive office, are exercised by a board member open to invidious comment, e.g. where a contract is entered into with a managing director with the very intention of terminating the contract and paying compensation in the form of capital and not of income. This

practice is open to obvious objections, but numerous cases must occur where a board desire to dispense with the services of an executive director and where it is to the advantage of the company to negotiate a resignation, on the footing of paying compensation, rather than to dismiss the executive director and face legal proceedings and, in our view, it would not be right to interfere with the exercise by a board of such power merely because a minority abuse it.

Having regard, however, to our recommendations with regard to disclosure of directors' remuneration, we consider that the aggregate of any payments made to directors as consideration for or in connection with the giving up of some office other than that of director and, separately, the aggregate of any payments made by way of compensation for loss of office as a director, should be disclosed in the profit and loss account (page 62, (xvi)).

(b) Not paid by company. A practice has grown up in cases of the sale of an undertaking or of share control for the payment to be made not by the company but by the purchaser. The danger inherent in this practice was recognised by the framers of the Companies Act, 1929, which by section 150 (i) declares it not to be lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his

retirement from office, unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal approved by the company. When, however, such a payment is to be made to a director in connection with the transfer to any persons as a result of an offer made to the general body of shareholders of all or any of the shares of the company, the section (subsection 3) only requires that director to take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders. In this class of case, as the law stands, no approval is necessary. We think that this matter can be dealt with only by some provision wider than the existing section 150, and that, in principle, where a purchaser whether of shares or of assets, is prepared to pay £X, the proportion (if any) of that total which is diverted, under the name of compensation to directors, should be such proportion as is approved by those who will receive the balance. The director's contractual rights should be preserved as regards any contract properly entered into between himself and the company (otherwise than in contemplation of an offer for the purchase of the shares or assets of the company) but a contract entered into within one year of the making of the offer should be deemed to have been made in contemplation of the offer unless the contrary is proved or the company in general meeting has, before the offer becomes effective, sanctioned the preservation of the contractual rights. The penalty for default should be that the director concerned should be under obligation to distribute the full sum involved, at his own expense, to the shareholders who would have received it if it had been added to the purchase consideration (pages 52-3, VI, 2).

93. Directors' pensions. - We consider that there should be disclosed in the profit and loss account as a separate item the gross amount of any pensions or like benefits paid by a company to any of its directors or former directors during the period covered by the account. We do not recommend that the amount of each individual pension should be stated but only that the aggregate amount of the pensions paid should be shown (page 62 (xvii)).

We do not, however, consider that pensions paid to a director or former director under a pension scheme need

be included in the aggregate amount since under our recommendations the company's contributions in respect of such pension would require to be disclosed as emoluments in the year in which they were charged (page 62, (XV)).

94. Loans by companies to directors. - There is nothing in the present Companies Act to prevent a director or officer of a company from borrowing from the company, though section 128 requires details of the loans to be disclosed in the accounts with certain exceptions; this section is defective in so far as it does not provide for the disclosure of loans made by subsidiary companies to directors or officers of the parent company. We consider it undesirable that directors should borrow from their companies. If the director can offer good security, it is no hardship to him to borrow from other sources. If he cannot offer good security, it is undesirable that he should obtain from the company credit which he would not be able to obtain elsewhere. Several cases have occurred in recent years where directors have borrowed money from their companies on inadequate security and have been unable to repay the loans. We accordingly recommend that, subject to certain exceptions, it should be made illegal for any loan to be made by a company or by any of its subsidiary companies or by any other person under guarantee from or on security provided by the company or by any of its subsidiary

companies to any director of the company. If our recommendation is adopted the provisions in section 128 will become largely redundant, except as regards loans to officers (page 51, II (i)).

95. Voting by directors on matters in which they are interested. - We have given consideration to suggestions that directors should be prohibited from voting at board meetings on contracts in which they are interested and that they should be required to disclose to shareholders exceptional contracts in which they are interested in their personal capacity, by including references to them in the directors' report. At present under section 149 a director has to declare his interest in a contract or proposed contract with the company at a meeting of the directors, or he may give a general notice to his fellow directors of his interest in any concern with which the company is constantly contracting. There is no prohibition on directors voting at board meetings on matters in which they are interested though the articles may contain such a prohibition. The London Stock Exchange Committee require companies which apply for permission to deal, to insert in their articles a provision which debars directors from voting save on limited classes of contracts. A general prohibition would, in our view, be impracticable. The amount of the directors' interest may vary greatly. The company may be considering the purchase of an estate owned by the director or merely a routine arrangement for the carriage of its goods by a railway company in which a director may be a small shareholder. In some cases, particularly in the case of contracts between a parent company and its subsidiary where the boards of directors are identical, it may not be possible to form a quorum of directors who are not interested in the contracts under consideration. We do not think it possible to define the class of exceptional contracts in respect of which we consider it desirable that the directors should not vote at board meetings and should make some disclosure to shareholders. In these circumstances we can only suggest that directors should as a general rule disclose to their shareholders in the directors' report, contracts of any magnitude in which any of the board have a substantial interest. Though the contracts in question cannot be defined in legal terms, there is usually no difficulty in deciding whether a particular contract is one in respect of which disclosure ought to be made to the shareholders. Our recommendations for amending section 149 are, therefore, limited to one relatively small matter. Where disclosure

is made by written notice under section 149 (3), it should be provided that the notice of disclosure should be deemed to be part of the proceedings of a meeting of directors so that the obligation to keep minutes of a meeting of directors laid down by section 120 shall apply (page 52, V).

Recommendations

We recommend that:-

1. There be added to the Act a new section on the following lines (para. 87)-

(1) A director of a company shall in writing declare his interest, direct or indirect, in any shares or debentures of the company, or of any of its subsidiary companies, or of any company in relation to which it is a subsidiary company, at a meeting of the directors of the company, and such declaration shall be made on the coming into force of this Act or on the acquisition of the interest, whichever shall last occur. He shall also notify in writing any sale or cesser of such interest at the first board meeting held after such sale or cesser.

(2) A record of the interest, whether direct or indirect, of each director in any shares or debentures of the company, or of any of its subsidiary

companies, or of any company in relation to which it is a subsidiary company, and a record of the sales and purchases made by or on behalf of each director of such interest in shares or debentures, showing the dates of the transactions and the prices received or paid, shall be made in a book kept specially for the purpose. Such book shall, for fourteen days before the annual general meeting, excluding Saturdays, Sundays and Bank holidays, be open to inspection at the registered office by any member or debenture-holder, who shall be entitled to take copies, and shall be laid on the table at the annual general meeting. The Board of Trade shall be entitled to inspect such book and to require copies thereof at any time.

(3) (i) A director of a company shall be deemed for the purposes of this section to have an interest in any such shares or debentures which are held by or on behalf of any company in which the director has a controlling interest and any sales or purchases of such shares or debentures or any interest therein by such a company shall be deemed to be sales or purchases made on behalf of the director but, save as aforesaid, a director shall not be deemed to have an interest in such shares or debentures by reason only of the dealing therein by a company in which he has an interest.

(ii) An option over a share or debenture or a right to acquire, sell or dispose of a share or debenture, conditionally or unconditionally, shall be deemed to be an interest in such share or debenture within the meaning of this section.

(4) If a director knowing of his interest fails to comply with subsection (i), he shall be liable to a default fine for each day that the default continues, and if a company fails to comply with subsection (2) every officer of the company who is in default, shall be liable to a default fine.

II Section 128 be amended by-

(i) making it illegal after the passing of a new Act for any loan to be made by a company or by any of its subsidiary companies or by any other person under a guarantee from or on security provided by the company or by any of its subsidiary companies to any director of the company, provided that this shall not apply in the case of a company the ordinary business of which includes the

lending of money, to a loan made by that company in the ordinary course of its business.

The existing provisions of section 128 as regards disclosure of loans to officers shall be retained (and extended to loans made to officers of a company by its subsidiary companies or by any other person under guarantees from or on security provided by such subsidiary companies) but not those relating to disclosure of loans to directors except that a new subsection should be inserted to provide for continued disclosure of loans existing at the coming into force of the new Act and of loans made to persons who become directors after the making of the loan until such time as the loans have been discharged, subject in each case to the present exemptions (para. 94);

(2) amending subsection (i) (c) on the following lines and inserting an additional paragraph (d)-

(c) the total emoluments attaching to the office of director as such, receivable by the directors from and as directors of-

(i) the company,

(ii) any subsidiary company,

(iii) any other company of which the director is a director by virtue of the nomination, whether direct or indirect, of the first-mentioned company;

(d) the total of all other emoluments receivable by the directors whether as directors or otherwise from such companies in connection with the management of their affairs (para. 90);

(3) repealing subsection (3) (para. 90);

(4) inserting in subsection (5) after the words ' as such ' the words or otherwise ' and adding at the end of the subsection the words ' including (a) any allowances for expenses which are part of the income of a director for purposes of income tax which it shall be the duty of the director to notify to the company as and when assessed upon him, provided that, when any amounts so assessed are not ascertainable at the date when the annual accounts are prepared, such amounts shall be disclosed separately by way of note in the profit and loss, or income and expenditure, account, covering the period during which they are ascertained and (b) any payments made in respect of a director to any pension scheme (para. 90).

III. Section 148 be repealed as redundant (para. 89).

IV. A new section be added to provide that any provision for the payment of tax-free remuneration to a director shall be void, without prejudice to any existing contract not being a contract constituted' only by service upon the terms of the articles (para. 88.).

V. Section 149 be amended by adding a new subsection on the following lines-

(3A) Any notice given under subsection (3) shall be noted at the meeting of the directors of the company next following the receipt thereof (para 95)-

VI. The existing section 150 be replaced by two sections on the following lines (para. 92)-

I. - (I) It is hereby declared that it is not lawful for any payment to be made to any director of a company by way of compensation for loss of office as such, or as consideration for or in connection with his retirement from such office, unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company, and the proposal has been approved by the company in general meeting.

For the purposes of this subsection approval of a pension scheme by the company in general meeting shall authorise any payment made thereunder without further approval.

(2) Where a payment which is hereby declared to be illegal is made to a. director of a company, the amount received shall be deemed to have been received by him in trust for the company.

2. - (I) Where-

(a) an offer is made for the acquisition of the undertaking and assets of a company, or of any substantial part thereof, or

(b) an offer is made for the acquisition of any shares of a company on terms that the same is available for acceptance by all holders of the shares of the company or of the shares of the class to which the offer applies, *or of any number of such holders exceeding 20*,

and in connection with such an offer it is proposed that any director of the company shall derive any benefit or advantage (over and above the receipt by him in respect of any shares of which he may be the holder

* These words are added to prevent evasion of the class which could but for these words be achieved by raising an offer which was not an offer to the whole class of shareholders,

of the same consideration as may be receivable by other holders of shares of the same class on sale thereof) - then and in every such case it shall be the duty of the director concerned to bring the benefit or advantage in question to the notice of the company in general meeting, or to the notice of a separate general meeting of the holders of each class of share to which the offer applies, as the case may be, and to account for the benefit or advantage in question in accordance with subsection (3) unless the meeting or meetings, as the case may be, shall otherwise resolve.

(2) Any benefit or advantage received by any such director within a period of one year before or two years after the date when the acceptance of the offer became effective. shall be deemed to have been received by him in connection with the offer unless he proves that the benefit or advantage would have been received by him whether or not the offer had been made or accepted:

Provided always that nothing in this section shall deprive any director as between himself and the company of any rights in respect to compensation for loss of office based upon any contract properly entered into between himself and the company, not being a contract entered into in contemplation of the making of the offer. A contract shall be deemed to have been entered into in contemplation of the making of the offer if it is made within one year before the date of the offer, unless the contrary is proved, or the company in general meeting shall, before the offer becomes effective, have resolved that the director be entitled to retain the benefit of such contract.

(3) Where a payment is made to a director of a company in contravention of subsection (i), any sum received by the director or on his behalf on account of the payment shall be deemed to have been received by him in trust for the company, save and except that where such a payment is made in connection with the transfer to any person, as a result of an offer made in accordance with subsection (i) (b), of all or any of the shares in the company, any sum received by or on behalf of the director on account of the payment shall be deemed to have been received by him in trust for the persons (including himself) who have sold their shares as a result of the offer made, in proportion to the number of shares sold by them.

(4) The director shall be liable for the cost of distributing the sum among those members or former members of the company for whom he is deemed under the preceding subsection to have received the sum in trust.

(5) For the purposes of this section the term ' director ' shall be deemed to include any former director of the company.

ACCOUNTS

Balance Sheet and Profit and Loss Account

96. **General.** - The history of company legislation shows the increasing importance attached -to publicity in connection with accounts. The Act of 1862 contained no compulsory provisions with regard to audit or accounts, though Table A to that Act did include certain clauses dealing with both matters. In 1879 provision was made for the audit of the accounts of banking companies but it was not until 1900 that any such provision was made generally applicable. It was only on 1st July, 1908, when the Companies Act, 1907, came into force, that provision was made for including a statement in the form of a balance sheet in the annual return to the Registrar

of Companies, and that provision exempted private companies from this requirement. The Act now in force requires directors to produce a balance sheet and a profit and loss account in every calendar year and to lay them before the company in general meeting. The Act lays down some requirements as to the contents of the balance sheet; we refer to them in greater detail in paragraph 99. But there are no requirements as to the form of the profit and loss, or income and expenditure, account, nor does the Act in terms make the auditors' report cover the profit and loss account, though, since the balance on that account is necessarily carried into the balance sheet, an auditor cannot discharge his duties without examining it. We consider that the profit and loss account is as important as, if not more important than, the balance sheet, since the trend of profits is the best indication of the prosperity of the company and the value of the assets depends largely on the maintenance of the business as a going concern.

97. **Present practice.** - The amount of information disclosed in the accounts of companies varies widely. The recent tendency has been to give more information and this tendency has been fortified by the valuable recommendations published from time to time by the responsible accountancy bodies as to the form in which accounts should be drawn up and the information which they should contain. The directors of many, but by no means all, companies now give shareholders as much information as they consider practicable and the accounts which they present contain much more detail than is required by law. Auditors use their influence to persuade directors to present their accounts in accordance with the principles laid down by the professional bodies to which they belong, but in the absence of statutory requirements they cannot override the directors and in some cases may be deterred from pressing their views by fear of losing their position as auditors. The professional bodies representing the accountants who gave evidence before us all agreed that the position of auditors would be strengthened if the law were to prescribe a minimum amount of information to be disclosed in all balance sheets and profit and loss accounts. We accept this view and have considered whether, as in the case of societies operating under the Friendly Societies Acts, Industrial Assurance Acts, Building Societies Acts and Industrial and Provident Societies Acts, there should not be prescribed forms of accounts with which all companies registered under the Companies Acts would be required to

comply. In our view the diversity of companies is such that it is doubtful whether standard forms of accounts would be practicable and in any event we fear that standard forms might restrict further progress in the technique of conveying information through the published accounts. We have also considered suggestions that, to assist those responsible for framing general economic policy, companies should be required to disclose in their accounts details of sales, expenses of production, selling and distribution, administration and management, and other like details. In our view, however, such information could not be given in sufficient detail to achieve the object in view without loading the published accounts, of which the primary purpose is to convey financial information in a form that can be assimilated by shareholders and creditors, with so much detail as to fail in that purpose. We consider that information required for general economic purposes would be more appropriately and conveniently obtained through some such machinery as the Census of Production Act, under which information could be required in greater detail than would be practicable in published accounts.

98. Function of balance sheet. - As stated in the evidence of the Institute of Chartered Accountants, 'the function of a balance sheet may be stated briefly to be an endeavour to show the share capital, reserves (distinguishing those

which are available for distribution as dividends from those not regarded as so available) and liabilities of a company at the date as at which it is prepared, and the manner in which the total moneys representing them are distributed over the several types of assets. A balance sheet is thus an historical document and does not as a general rule purport to show the net worth of an undertaking at any particular date or the present realisable value of such items as goodwill, land, buildings, plant and machinery, nor, except in cases where the realisable value is less than cost, does it normally show the realisable value of stock in trade'. Moreover, if a balance sheet were to attempt to show the net worth of the undertaking, the fixed assets would require to be re-valued at frequent intervals and the information thus given would be deceptive since the value of such assets while the company is a going concern will in most cases have no relation to their value if the undertaking falls.

99. Present requirements as to balance sheets. - The principal provisions of the Companies Act which relate to balance sheets, are contained in sections 121 and 124. Section 123 (2) provides that the directors shall cause to be made out in every calendar year, and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account, or the income and expenditure account, as the case may be, is made up. Section 124 provides that every balance sheet of a company shall contain a summary of the authorised share capital and of the issued share capital of the company, its liabilities and its assets, together with such particulars as are necessary to disclose the general nature of the liabilities and the assets of the company and to distinguish between the amounts respectively of the fixed assets and of the floating assets, and that it shall state how the values of the fixed assets have been arrived at. The reference to 'values of fixed assets' is inappropriate since the balance sheet does not purport to give their realisable value as at the date at which it is drawn up.

The Act does not define 'fixed assets' or 'floating assets', or, as we should prefer to call the latter, 'current assets'. We consider that such a definition is desirable (page 58). An asset may fall into one category in the case of one company and into the other in the case of another company according to the nature of the business, but we do not think that in practice any

difficulty will arise in determining into which class it falls.

100. **Fixed assets.** - There is no uniformity in the method of arriving at the statement of fixed assets in balance sheets. We consider that the proper course is to show the cost of the fixed assets in existence at the date of the balance sheet under appropriate headings and separately as a deduction therefrom the aggregate amount provided or written off for depreciation under each headings though we recognise that this will not always be practicable or at any rate immediately practicable in the case of companies which bought an existing business for a lump sum or where adequate inventories and other records are not available to enable the figures to be separately stated. If proper records of newly acquired assets are maintained in future, a statement in the form we think desirable should in most cases be practicable when the old assets have been replaced. In the case of certain fixed assets, such as loose tools, which are subject to renewal within comparatively short periods, it is not always practicable to ascertain in detail the cost and depreciation of the specific assets in existence. Where it is not practicable, we think that assets of this nature should appear in the balance sheet at a valuation. It is, however, the recognised practice of many companies carrying on the business of public utility undertakings to follow the practice adopted by some companies incorporated under special Acts of Parliament and to provide for the replacement of their fixed assets either by the establishment of renewal

reserves against which is charged the cost of replacing assets, or by charging the cost of replacement direct to revenue; we cannot see our way to recommending the abolition of this practice so far as public utility companies are concerned since so many of them are not governed by the Companies Act. That being so, we do not think it practicable to require a statement of fixed assets in the balance sheets of public utility companies in the same manner as we suggest such statements should appear in the balance sheets of other companies (page 59).

101. Undisclosed reserves. - The chief matter which has aroused controversy is the question of undisclosed or, as they are frequently called, secret or inner reserves. An undisclosed reserve is commonly created by using profits to write down more than is necessary such assets as investments, freehold and leasehold property or plant and machinery; by creating excessive provisions for bad debts or other contingencies; by charging capital expenditure to revenue; or by undervaluing stock in trade. Normally the object of creating an undisclosed reserve is to enable a company to avoid violent fluctuations in its published profits or its dividends.

The objections urged against undisclosed reserves can be summarised as follows. As the assets are undervalued or the liabilities over-stated, the balance sheet does not present a true picture of the state of the company's affairs; the balance of profit disclosed as available for dividends is diminished, and the market value of the shares may accordingly be lower than it might otherwise be; and the creation, existence or use of reserves, known only to the directors, may place them in an invidious position when buying or selling the shares.

On the other hand, if there is no detailed disclosure in the profit and loss account, undisclosed reserves accumulated in past periods may be used to swell the profits in years when the company is faring badly, and the shareholders may be misled into thinking that the company is making profits when such is not the case. Such abuses are rare, and, in general, directors have concealed reserves from shareholders in the belief that such concealment is in the interests of the company. None the less the practice has the unfortunate result that shareholders and investors and their advisers have not the information to enable them to estimate the real value of the shares.

We do not believe that, if fully informed, shareholders would press for excessive dividends and we are in favour of as much disclosure as practicable. It is also important in our opinion to ensure that there should be adequate disclosure and publication of the results of companies so as to create confidence in the financial management of industry and to dissipate any suggestion that hidden profits are being accumulated by industrial concerns to the detriment of consumers and those who work for industry. We have framed recommendations with which we think most companies should comply (pages 59-60).

There are, however, three classes of companies where other considerations must be taken into account, namely banking companies, discount companies and assurance companies (we use the term 'assurance companies' to cover both assurance and insurance companies). In the case of banking and assurance companies the interests of the depositors and the policyholders respectively outweigh the interests of the shareholders and in the case of all three classes of companies considerations affecting the public interest must be taken into account. The reputation for stability of these companies is a national asset of the first importance to the community in general and it is not in the public interest to endanger their stability or the confidence they enjoy at home and abroad. From time to time the values of their

assets and particularly their very large holdings of Government and other gilt-edged securities are adversely affected by political disturbances and economic conditions, national and international. In such circumstances it is desirable that their financial strength should be even greater than may appear. The history of the years after 1929 demonstrates the public advantage of their being able to present a reasonably stable position in a time of violent and sudden stress and for this reason it seems to us desirable that such companies should be permitted to retain a buffer of undisclosed reserves. In this country no one questions the stability of our banks, discount companies and assurance companies, but some countries are not so happily placed and countries abroad watch the evidence of stability very closely and react very quickly to any unusual symptoms. We consider, therefore, that banking and discount companies should be absolved from the obligation of showing separately reserves* and provisions* and transfers to and from such accounts, but that their balance sheets should indicate the existence of reserves and provisions and their profit and loss accounts should be appropriately worded so as to show whether any such transfers have been made during the period covered by the accounts.

The definition of banking company or discount company presents difficulty. Many companies call themselves banking companies or discount companies although they do not carry on the functions generally understood by these terms. We think the only solution of this difficulty is to vest in the Board of Trade the power to grant exemption from the requirements in question to such companies as they consider fall within the recognised conception of a banking or discount company (page 61).

102. **Assurance companies.** - Parliament has enacted special legislation dealing with the affairs of assurance companies transacting most classes of assurance business and the Assurance Companies Act, 1909, prescribes forms of annual accounts to be deposited with the Board of Trade by such companies. Under section 110 of the Companies Act they may deliver these accounts for registration to the Registrar of Companies instead of accounts drawn up in accordance with the Companies Act: shareholders and policy-holders are entitled to obtain copies of the prescribed accounts and the annual accounts issued to the shareholders are often based on the accounts so prescribed. We do not consider it desirable

to impose under the Companies Act any requirements for disclosure of reserves and provisions or transfers to and from such accounts beyond those contained in the prescribed forms. We suggest, however, that the Board of Trade should be empowered to alter the prescribed forms of the annual accounts so as to incorporate therein the requirements of the Companies Act including the amendments we suggest other than those relating to reserves and provisions (page 63, IV (I)).

103. Profit and Loss Account.-We have already referred in paragraph 96 to the absence of statutory requirements as to the contents of the profit and loss, or income and expenditure, account and to the importance of the trend of profits as the best indication of the prosperity of a company. We consider that the law should lay down minimum requirements as to the contents of the profit and loss, or income and expenditure, account calculated to ensure that it gives a fair indication of the earnings of the period covered by the accounts and that the auditor should be under specific responsibility to report on its contents. The account should be drawn up in accordance with accepted accountancy principles consistently maintained and if for any reason any

* The definition. of these term see. I(3) (c), (d) and (e) of our recommendations at pages 59 and 60.

change of a material nature, e.g. a change in the basis of stock valuation, is adopted, specific attention should be called to the change and to the effect thereof.

As a corollary to our recommendations relating to reserves and provisions of banking companies, discount companies and assurance companies, it follows that corresponding exemptions are necessary in the case of such companies from showing separately transfers to or from reserves and provisions in the profit and loss account (pages 61-2, III).

104. Requirements as to accounts to be subject to modification by Order - We have already made reference in paragraph 97 to the importance of seeing that legislative provisions do not restrict progress in the technique of conveying information through published accounts. We suggest that while the general principles applicable to balance sheets and profit and loss accounts should be included in the body of the Act, provisions as to the detailed contents of balance sheets and profit and loss accounts should be included in a schedule which should be capable of being modified or extended by statutory Order approved by affirmative resolution of Parliament. Such a provision would make it possible for developments, the usefulness of which is established, to be given legislative effect by a simple procedure. If this suggestion is adopted, it should be applied also to our recommendations as to consolidated account (pages 72-6).

105. Directors' report and chairman's speech. - Directors are required and section 123 to attach to the balance sheet a report with respect to the state of the company's affairs showing the amount, if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to a reserve account shown specifically on the balance sheet or to be shown specifically on a subsequent balance sheet. In a large number of cases the directors' report is quite uninformative and merely summarises the profit and loss account giving the specific information mentioned and the names of directors and auditors who retire and will be proposed for re-election. There is no requirement to publish or send to the shareholders a report of the proceedings at the annual general meeting, although many public companies did so prior to the war and in view of war-time difficulties of attending the annual general meeting a practice has grown up of sending with the accounts a print of the speech which the chairman

proposes to make. As comparatively few shareholders normally attend annual general meetings, we think this practice has much to commend it since those who are unable to be present at the meeting are kept more fully informed of the company's progress and those who do attend the meeting are in a better position to be able to take part in the proceedings. Whilst we consider that the directors' report should contain a review of the company's activities and be as informative as practicable, we do not think it possible satisfactorily to extend the existing requirements as the contents of the directors' report.

Recommendations

We recommend that: -

I. Section I24 (i) be amended so as to provide that the balance sheet shall give a true and fair view of the state of affairs of the company; that for this purpose it shall classify under headings appropriate to the business of the company the share capital, reserves, provisions, liabilities and assets of the company, shall distinguish between the amounts respectively of the fixed and of the current assets and shall state how the amounts at which the fixed assets are stated have been arrived at. The Section shall define 'fixed assets' as assets not held for sale or for conversion into cash and 'current assets' as cash and assets held for conversion into cash (para. 99).

It shall also be provided that without prejudice to the generality of the above the balance sheets of companies shall, in addition to the requirements contained in other sections of the Act, comply with the following provisions--

(i) Where ascertainable there shall be shown separately-

(a) the cost of fixed assets under each heading in existence at the date of the balance sheet, and

(b) the accumulated amount provided or written off for depreciation in respect thereof;

the difference to be recorded in the assets column. Where at the date of the coming into force of the new Act it is not practicable to ascertain this information in respect of the whole of the fixed assets under each heading, the fixed assets in respect of which it is not ascertainable shall be stated separately under the appropriate headings at the net amount thereof as shown by the company's books less subsequent sales thereof and amounts subsequently provided or written off for their depreciation:

Provided that-

(i) compliance with the above requirements shall not be obligatory in the case of companies carrying on the business of public utility undertaking,* which provide for the replacement of their fixed assets by the establishment of renewal reserves against which is charged the cost of replacing assets, or by charging the cost of replacement direct to revenue;

(ii) where a company has adopted for purposes of its accounts a valuation of fixed assets such valuation shall be substituted for the amount previously attributed to such fixed assets, and the date of the valuation shall be stated (para. 100).

(2) Investments in subsidiary companies shall continue to be shown separately -as provided by section 125 of the Companies Act, 1929; other investments shall be shown separately under the following headings(a) trade investments (other than investments in subsidiary companies);

(b) other quoted investments;

(c) other unquoted investments.

Provided that in the case of ' other quoted investments ' the market value shall be stated by way of note if it differs from the balance sheet amount.

(3) There shall also be shown separately-

(a) The nominal amount of any debentures of the company held by the company, not being debentures redeemed in accordance with the . ions as to redemption applicable thereto, and the amount at provisions which they are stated in the books

(b) The amount of premiums on share capital save so far as lawfully applied.

(c) The aggregate, if material, of any capital reserves, defined as any amounts which, whether or not they were originally set aside as provisions to meet any diminution in value of assets, specific liability, provision contingency or commitment known to exist as at the, date of the balance sheet, are not retained for that purpose and are not regarded as free for distribution through the profit and loss, or income and expenditure, account (para. 101).-

* Public utility undertakings should be defined as in section 70 (5) of the War Damage Act, 1943, but the definition should not be restricted to companies operating in the United Kingdom.

(d) The aggregate, if material, of other reserves, defined as any amounts which, having been set aside out of revenue or other surpluses, are free in that they are not retained to meet any diminution in value of assets, specific liability, contingency or commitment known to exist as at the (fate of the balance sheet (para. 101).

(e) The aggregate, if material, of provisions which, not being provisions for the diminution in value of assets, have been set aside out of revenue or other surpluses, and are retained to meet, in cases where the amounts cannot be determined with substantial accuracy, any specific liability, contingency or commitment known to exist as at the date of the balance sheet:

Provided that-

(i) amounts retained as provisions, whether for the foregoing purposes or for diminution in value of assets, shall not exceed such amounts as in the opinion of the directors are reasonably required for the purpose;

(ii) in any case where the Board of Trade are satisfied that such disclosure would be prejudicial to the company's interests and is not required in the public interest, the amounts concerned need not be shown separately but may be included under other headings if appropriate words are introduced to indicate that provisions of this character are included therein (para. 101).

(f) Bank loans and overdrafts whether secured or not.

(g) The net amount of any dividends recommended by the directors.

(4) Where during the period covered by the profit and loss, or income and expenditure, account any material amount is added to capital reserves, other reserves or provisions, the aggregate of which is required to be disclosed in accordance with (3) (c), (d) or (e) above, or where any amount, if material, standing to the credit of any such reserves or any surplus standing to the credit of such provisions is used, the amounts involved, the source from which they have been provided or the manner in which they have been used, shall be stated in the balance sheet unless the same shall appear on the face of the profit and loss, or income and expenditure, account or any statement or report annexed thereto.

(5) The following matters must be dealt with by way of note on the balance sheet or in any statement or report annexed thereto-

(a) Where in the opinion of the directors the current assets have not a value realisable in the ordinary course of business of the company of at least the amount at which they appear in the balance sheet, a statement to that effect.

(b) Where any material part of a company's assets or liabilities comprises foreign currency assets or liabilities, the basis of conversion from foreign currency into sterling for balance sheet purposes.

(c) The general nature and, where practicable, the amount, if material, of contingent liabilities not provided for in the balance sheet and particulars of any charge given over the property of the company for the debts of another person and also the amount thereof.

(d) The gross amount of arrears of fixed dividends on any class of share and the date to which such dividends were last paid.

(e) Where a company has given options over its share capital, the number of shares affected, the class of share, the option price, and the date or dates for exercise thereof.

(f) The amount or estimated amount of commitments for capital expenditure, if material, so far as not provided for in the balance sheet.

(g) The basis on which provision for United Kingdom income tax has been made.

(h) In the case of a holding company, the aggregate of any shares in and the aggregate of any debentures of, the holding company held by subsidiary companies.

(i) Corresponding figures at the date as at which the immediately preceding balance sheet was made up.

Provided that-

(i) such banking companies and discount companies as the Board of Trade may designate -(hereinafter referred to as exempted banking companies or discount companies) shall be exempted from complying with the requirements in (i), in the proviso to (2), in (3) (c), (d), (e) and (f) and in (4) above, but the balance sheets of such exempted companies shall indicate by appropriate words where reserves and provisions are included under other headings (para. 101);

(h) assurance companies shall be exempted from complying with the requirements in (i), in the proviso to (2), in (3) (c), (d) and (e) and in (4) above.

II Section I24 (2) (c) be amended so that the opening words read, ' If and so far as it is shown ' and so as to make it clear that the amount of the goodwill and of any patents and trade marks may be shown as an aggregate sum: for the purposes of recommendation I above, these assets be treated as fixed assets.

III. There be added to the Act a provision that the profit and loss account or income and expenditure account (para. 103) shall give a true and fair indication of the earnings or income of the period covered by the account and shall disclose any material respects in which it includes extraneous or non-recurrent transactions or transactions of an exceptional nature. It shall further be provided that if in any such period a material change is made in the basis on which the account or any item therein is calculated, attention shall be called to the change and to the effect thereof by way of note on the account. Without prejudice to the generality of the foregoing, the profit and loss, or income and expenditure, account shall include the following information-

(i) Amount of profit or loss, or net income or net expenditure, before charging or crediting the items enumerated in (ii) to (xiv) below, but after crediting or charging, if the company thinks fit, its revenue from or provisions for losses of subsidiary companies.

(ii) Provision for depreciation of fixed assets, provided that if provision is not being made by means of a depreciation charge, the method of making such provision or the fact that no such provision has been made, shall be stated.

(iii) Interest on debentures and other fixed loans.

(iv) Amount of United Kingdom taxation on profits, subdivided where practicable into-

(a) Income Tax; and

(b) National Defence Contribution or Excess Profits Tax or any other tax which may be assessed on profits.

In any event the basis of provision for United Kingdom income tax must be disclosed.

(v) Amounts provided for the redemption of (a) share capital and (b) loan capital.

(vi) The aggregate, if -material, of any amounts set aside to reserves.

(vii) The aggregate, if material, of any amounts set aside as provisions as defined in I (3) (e) of these recommendations, provided that in any case where the Board of Trade are satisfied that disclosure of any such provision would be prejudicial to the company's interests and is not required in the public interest, the amount concerned need not be shown separately if appropriate words are introduced to indicate that a provision of this character has been made in arriving at the profit or loss, or net income or net expenditure, for the period.

(viii) Income from, less provisions for losses of, subsidiary companies, except in so far as it is included under (i).

(ix) Income from other trade investments.

(x) Income from investments other than trade investments.

(xi) The aggregate, if material, of amounts withdrawn from reserves.

(xii) The aggregate, if material, of amounts withdrawn from provisions as defined in 1 (3) (e) of these recommendations.

(xiii) Pro-fits or losses of a non-current or exceptional nature, if material in amount.

(xiv) Dividends paid or proposed, disclosing whether such amounts are stated before or after deduction of income tax.

The profit and loss account or income and expenditure account shall also contain or give by way of note the following further information-

(xv) Emoluments of directors, including contributions made on their behalf to any pension scheme, in accordance with recommendation II (2) at page 51, and the aggregate amount thereof paid by the company (paras. 90 and 93).

(xvi) The aggregate amounts of any compensation paid to directors or former directors of the company, (i) as such and (2) otherwise, for loss of office or in connection with or arising out of their retirement from the company or from any of the other companies mentioned in the new subsection (i) (c) which we suggest to section 128 (see

recommendation 11 (2) at page 5i), sub-divided to show the amounts paid respectively

(a) by the company;

(b) by such other companies; and

(c) by any other person (para. 92).

(xvii) The aggregate amounts of any pensions paid to directors or former directors of the company, (i) as such and (2) otherwise, subdivided to show the amounts paid respectively

(a) by the company; and

(b) by any of the other companies mentioned in the new sub-section (i)

(c) which we suggest to section 128 (page 5i), but there need not be included in such amounts any pensions paid under a pension scheme if the company's contributions to such scheme would, under the new Act, be emoluments of the director or former director (para. 93).

(xviii) Corresponding figures for the immediately preceding period.
Provided that-

(i) exempted banking companies and discount companies shall be exempted from complying with this section except as regards the requirements in (xiv), (xv), (xvi), (xvii) and (xviii) above, but the profit and loss accounts of such companies shall indicate by appropriate words the manner in which the disclosed profits or losses have been arrived at; and

(ii) assurance companies shall be exempted from complying with (ii), (v), (VI), (vii), (xi). (xii) and (xiii) above (para. 103).

IV. (i) The Board of Trade be empowered to amend the forms set forth in the First, Second and Third Schedules to the Assurance Companies Act, 1909, so as to include the information required under the provisions of the Companies Act, 1929, as amended by the new Act, relating to balance sheets and profit and loss, or income and expenditure, accounts, other than the requirements of our recommendations in I (i), in the proviso to 1 (2), in 1 (3) (c), (d) and (e), in 1 (4) and in III (ii), (v), (vi), (vii), (xi), (xii) and (xiii) so far as not required in such Schedules (para. 102).

(2) Where any assurance company within the meaning of the Assurance Companies Act, 1909, is required to annex consolidated accounts (see recommendations at page 72.) to its annual accounts, a copy of such consolidated accounts shall also be deposited with the Board of Trade under section 7 Of that Act.

Signature of Accounts

106. Section 129 (1) provides that every balance sheet shall be signed on behalf of the board by two directors of the company or, if there is only one director, by that director, but this obligation does not extend to the profit: and loss, or income and expenditure, account, nor does the section require it to be annexed to the balance sheet.

Recommendation

We recommend that section 129 (i) be amended so as to extend the signature provisions to the profit and loss, or income and expenditure, account. A corresponding alteration be made in subsection (2). Section i29 (i) be further amended so as to require the profit and loss, or income and expenditure, account to be annexed to the balance sheet. Section 129 (3) be amended so as to cover copies of the profit and loss, or income and expenditure, account.

Circulation of Accounts

107. Section 130 of the Companies Act provides that in the case of public companies a copy of every balance sheet, including every document required by law to be annexed thereto, together with a copy of the auditor's report, shall, not less than seven days before the date of the meetings be sent to all persons entitled to

receive notices of general meetings of the company; and that any member of the company whether entitled or not to have sent to him copies of the company's balance sheets, and any holder of debentures of the company, shall be entitled to be furnished on demand without charge with a copy of the last balance sheet of the company together with a copy of the auditor's report on, the balance sheet. Section 130 provides further that in the case of private companies, 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 the balance sheet and auditor's report at a charge not exceeding sixpence for every hundred word . These provisions should clearly apply to the profit and loss, or income and expenditure, account, as well as to the balance sheet. If our recommendation that the profit and loss, or income and expenditure, account be annexed to the balance sheet, is adopted, the only alterations to section 130 which we suggest and which we have included in recommendation III at page 29, are that all shareholders and debenture-holders, whether entitled or not to receive notices of general meetings, shall be entitled to receive a copy of the annual accounts not less than 21 clays before the meeting.

Share Premium Account

108. Share premium, are in essence capital though the assets acquired therewith do not represent the capital account strictly so called and there is no legal objection, apart from any provision in the articles, to prevent the distribution thereof by way of dividend. In our view this is undesirable.

Recommendation

We recommend that a section be added to the Act providing that as from the coming into force of the new Act, the provisions of the Companies Act, 1929, relating to the reduction of share capital shall apply to any premiums received on the issue of shares of the company (whether received before or after the coming into force of the new Act) as if the share premium account were paid-up share capital save so far as lawfully applied for other purposes before the coming into force of the new Act: Provided that notwithstanding this section such premiums may be applied by the company in or towards paying up unissued shares of the company to be issued to the members of the company.

Books of Account

109. Section 122 provides that every company shall cause to be kept proper books of account with respect to-

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place;
- (b) all sales and purchases of goods by the company;
- (c) the assets and liabilities of the company.

We consider that there are circumstances in which a company could comply with section 122 but, nevertheless, would not keep adequate books of account for the nature of its business. It seems to us impracticable to set out in a statute all the matters with respect to which books of account should be kept, owing to the difficulty of compiling a comprehensive list which would cover the circumstances of every company, but we think that the section would be improved by adding introductory words in general terms, and by a special provision ensuring that companies carrying on business outside Great Britain keep

sufficient information as to the position of their foreign branches at their registered office or at such other place in Great Britain as the directors think fit. We think it important that the auditors should be required to certify in their report that at the offices visited by them the books required to be kept by section 122, were, in fact, kept by the company and that proper returns have been received from other offices. We refer to this matter again when we discuss the general question of the report by the auditors on the accounts (pages 66-7).

Recommendation

We recommend that section 122 be amended by:-

(a) altering the opening words of subsection (i) to read 'Every company shall cause to be kept such books of account as are necessary to exhibit a true and fair view of the state of the company's affairs and to explain its transactions. Without prejudice to this general provision, every company shall cause to be kept proper books of account with respect to. . .'

(b) adding the following subsection-

Where a company carries on business at one or more places outside Great Britain there shall be kept at the registered office of the company in Great Britain or at such other place or places in Great Britain

as the directors may decide, such accounts and returns from the business so carried on as shall disclose with reasonable accuracy the

financial position of such business at intervals not exceeding three months and shall enable the company to prepare the balance sheet and profit and loss, or income and expenditure, account required by sections of this Act.

AUDITORS

110. **Qualification.** - Section. 132 (i) of the Companies Act lays down that every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting. Section 133 (I) provides that none of the following persons shall be qualified for appointment as auditor of a company:-

(a) a director or officer of the company;

(b) except where the company is a private company, a person who is partner of or in the employment of an officer of the company;

(c) a body corporate.

With these limitations, anyone, whether professionally qualified or not, may act as an auditor. An audit by an unqualified person cannot in our view as a general rule be regarded as satisfactory. Societies registered under the Industrial and Provident Societies Act, 1893, and collecting societies which are subject to the Industrial Assurance Act, 1923, are compelled to employ 'Public Auditors' appointed by the Treasury for the purposes of those Acts.

In fulfillment of these provisions a list of public auditors was drawn up in 1920 by the Treasury. It was limited, as far as future appointments were concerned, to members of the various bodies of Chartered Accountants and of the Society of Incorporated Accountants and Auditors and in 1936 members of the Association of Certified and Corporate Accountants became eligible. We think that the qualifications thus laid down afford a useful precedent, but for reasons of reciprocity some provision must be made to allow accountants with adequate qualifications obtained abroad to act as auditors. We therefore recommend that not only members of societies

designated by the Board of Trade but also other persons authorised by the Board of Trade should be qualified to act as auditors of companies (pages 67-8, 11 (i) (a)). Where a member of a designated society conducted himself improperly, he would be subject to the discipline of the society, and, if his conduct were such as to cause his expulsion from the society, he would automatically cease to be eligible to act as auditor since he would no longer be a member of a designated society. Any authority granted to individuals should be revocable. There are, no doubt, cases in which the appointment of an auditor without professional qualifications may be convenient, for instance, where the company is formed for convenience of administration in running a members' club, but we think it essential to adhere strictly to the principle that the audit of accounts should be conducted by fully qualified persons. It is also of first importance, in our view, to ensure the independence of the auditor. Here again there are, no doubt, cases, for instance, where an auditor joins the board of a small private company at the invitation of the directors, where the exception in, favour of private companies which permits his partner to succeed him may be convenient. We feel, however, that such an appointment is wrong in principle. We consider, therefore, that the exemption of private companies from the operation of section 133 (i) (b) should be abolished. We also recommend that section 133 (i) should be extended so as to disqualify an employee of a company or an employee or partner of a director or of an employee of the company from being its auditor and so as to disqualify any

person who is ineligible for appointment as auditor of a company from being auditor of any company which is a member of the same group (page 68, II (i) (b) and (c)).

111. **Appointment.** - Cases may arise where no auditors are appointed. In such cases the company should, in our view, be obliged to inform the Board of Trade who would then have the duty of appointing auditors for the current year (page 67, I (a)). At present, under section 132 (2), if an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year; we think that the Board-of Trade should have the power whether they receive an application from any member of the company or not.

112. **Right to attend general meetings of the company.** - At present the auditors are entitled under section 134 (3) to attend any general meeting of the company at which any accounts examined or reported on by them are to be laid before the company and to make any statement or explanation they desire with respect to the accounts; but they have no right to attend other general meetings of the company. We think that they should be given the right to receive notices of and attend all general meetings of the company (page 68, III (3)), and the right, if other auditors have been nominated, or if there is a proposal that they should not be reappointed, to put their views before the shareholders orally at the meeting and in writing prior to the meeting (page 67 1 (c) and (d)).

113. **Remuneration.** - Section 132 (6) provides, subject to certain exceptions, that the remuneration of the auditors of a company shall be fixed by the company in general meeting. As a matter of practical convenience many companies have adopted a procedure whereby general meetings pass resolutions appointing auditors at fees to be arranged between the auditors and the boards of directors instead of fixing the remuneration at the general meetings. Whether this is strictly in accord with the existing law, is doubtful; we think that the practice should be regularised by an amendment of the Act, but that if the fee be fixed by the directors, it should be separately stated in the accounts (page 67, I (e)).

114. **Report.** - Section 134 (i) provides that the auditors shall make a report to the members on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and that the report shall state: -

(a) whether or not they have obtained all the information and explanations they have required; and

(b) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, according to the best of their information and the explanations given to them, and as shown by the books of the company.

This provision does not require the auditors to report on the profit and loss account, though, as the credit or debit balance of the profit and loss account is an item in the balance sheet, they cannot report on the balance sheet without enquiring into the correctness of the profit and loss account. The existing provision has been criticised on the ground that the words 'as shown by the books of the company' lessen the value of the auditors' report; and that if the company's affairs were incompletely revealed by its books, the auditors might nevertheless feel that they were entitled to certify that the report was properly drawn up if it was in accordance with the books. The professional bodies of accountants do not take so narrow a view of the duties

of auditors but any defects in the wording of section 134 '(1) may be a Source of temptation to the weak auditor. The proviso to section 134 (2) appears archaic and we suggest in our recommendations that it should be omitted (p 68, III). We deal with the question of the auditors' report on consolidated accounts under that heading (page 75, IV)-

Recommendations

We recommend that:-

I. Section 132 be amended by-

(a) substituting for the existing subsection (2) a provision to the following effect-

(2) If no auditor is appointed or deemed to be appointed at an annual general meeting, the company shall inform the Board of Trade who shall appoint an auditor of the company for the current year (para. 111);

(b) substituting in subsection (3) wherever the same occurs for the words ' fourteen days ' the words ' twenty-eight days ' and for the words ' seven days ' the words ' twenty-one days '; [These amendments are consequential on the proposals which we make later for longer notice of meetings (page 86, VIII (a))];

(c) adding in the first paragraph of subsection (3) after the words notice to the retiring auditor ' the words ' who shall have the right to send a written statement of his views to the shareholders at the reasonable expense of the company ' (para. 112);

(d) adding a new subsection (3A) on the following lines (yep3A) A retiring auditor, if willing to act and eligible for appointment under section 133, shall be deemed to be reappointed unless some other person is duly appointed in his place or a resolution that he shall not be reappointed is duly passed and notice of intention to propose such resolution has been given by a member to the company not less than twenty-eight days before the annual general meeting. If such notice is given, the company shall forthwith send a copy of any such notice to the retiring auditor who shall have the right to send a written statement of his views to the shareholders at the reasonable expense of the company (para. 112);

(e) substituting for the existing subsection (6) a new subsection on the following lines-

(6) The remuneration of the auditors of a company shall be fixed either by the company in general meeting or in such manner as may be prescribed by the company in general meeting except that the remuneration of an auditor appointed before the first annual general meeting, or of an auditor appointed to fill a casual vacancy, may be fixed by the directors, and that the remuneration of an auditor appointed by the Board of Trade may be fixed by the Board.

Provided that where the remuneration is not fixed by the company in general meeting, the amount thereof shall be stated as a separate item in the profit and loss, or income and expenditure, account of the accounting period to which the audit relates (para. 113).

II. Section 133 be amended by substituting for the existing subsection (i) a subsection on the following lines-

(i) None of the following persons shall be eligible for appointment as auditor of a company-

(a) a person who is not a member of any body membership of which has been designated by the Board of Trade as qualifying its members

to audit the accounts of companies or who has not been designated by the Board of Trade as qualified to audit the accounts of companies;

(b) a director or other officer or employee of the company or of any of its subsidiary companies or of a company which is a holding company in relation to the first-named company, or of any of the subsidiary companies of such holding company;

(c) a person who is a partner of or in the employment of a director or other officer or employee of the company or of any of the companies referred to in subparagraph (b);

(d) a body corporate.

For the purpose of this subsection an auditor shall not be deemed to be an officer of the company (para. 110).

III. For the existing section 134 there be substituted a section on the following lines-

(i) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet and profit and loss account or income and expenditure account, as the case may be, laid before the company in general meeting during their tenure of office, and the report shall state-

(a) whether in their opinion proper books of account have been kept or, in the case of a company with branches whose books have not been examined by the auditors, whether proper books of account have been kept at the principal office and branches visited by the auditors and proper accounts and returns adequate for purposes of their audit have been received from other branches;

(b) whether or not they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purposes of their audit;

(c) whether the balance sheet and profit and loss account, or income and expenditure account, referred to in the report are in agreement with the books, accounts and returns, and whether in their opinion and to the best of their information and according to the explanations given to them the accounts are properly drawn up in accordance with the provisions of the new Act and exhibit a true and fair view of (i) the state of affairs of the

company as at the date of the balance sheet and (2) the profit or loss, or net income or net expenditure, for the period ended on that date; and

(d) in the case of a holding company which does not annex consolidated accounts to its annual accounts (para. 122), whether in their opinion the reasons given by the directors for not presenting consolidated accounts are satisfactory and whether the particulars given in respect of the profits or losses, or net income or net expenditure, and the qualifications in the auditors' reports upon the accounts of subsidiary companies have been properly compiled from the information contained in such accounts and the auditors' reports thereon (para. 114).

(2) Every auditor of a company shall have a right of access at all times to the books, returns, accounts, and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanations as are in his opinion necessary for the performance of his duties (para. 114).

(3) The auditors of a company shall be entitled to receive notice of and attend any general meeting of the company and to make any statement or explanation they desire at such meeting (para. 112).

RELATIONS BETWEEN HOLDING AND SUBSIDIARY COMPANIES

115. **Existing provisions.** - Section I27 Of the Companies Act defines a subsidiary company. It says that where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee and whether that company is a company registered under the Companies Act or not, and (a) the amount of the shares so held is at the time when the accounts of the holding company are made up more than 50 per cent. of the issued share capital of that other company or such as to entitle the company to more than 50 per cent. of the voting power in that other company; or (b) the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions directly or indirectly to appoint the majority of the directors of that other company, that other company shall be deemed to be a subsidiary company. Section I25 provides that where any of the assets of -a company consist of shares in, or amounts owing from a subsidiary company or companies, the aggregate amount of those assets, distinguishing shares and indebtedness, shall be set out in the balance sheet of the first mentioned company separately from all its other assets and that where a company is indebted to a subsidiary company or companies, the aggregate amount of the indebtedness shall be set out in the balance sheet of the company separately from its other liabilities. Section I26 provides that in the case of a holding company, defined as a company which holds shares either directly or through a nominee in a subsidiary company or in two or more subsidiary companies, there shall be annexed to the balance sheet a statement stating how the profits and losses of the subsidiary company or companies have, so far as they concern the holding company, been dealt with in, or for the purposes of, the accounts of the holding company and in particular how, and to what extent, (a) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company, or of both; and (b) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the holding company as disclosed in its accounts. This requirement is subject to a proviso that it shall not be necessary to specify the actual amount of the profits or losses of any subsidiary company, or the actual amount of any part of any such

profits or losses which has been dealt with in any particular manner.

116. **Defects of existing provisions.** - This proviso largely nullifies the requirement as to disclosure. Thus, where the profits or losses or any part of the profits or losses are taken into account in the profit and loss account of the holding company, a statement to that effect without necessarily disclosing the amounts, is all that is required; where they are not so taken into account, it must be stated how they have been dealt with, but a mere statement that they have been carried forward in the accounts of the subsidiaries is sufficient and this gives no real information as to the results of their operations unless particulars of the profits and losses of the subsidiaries are made available. Further, the limited disclosure called for by section 125 as to the amount of the aggregate interests in subsidiary companies affords no real information as to their financial position unless particulars of their liabilities, reserves and assets are published to supplement the accounts of the holding company. The definition of a subsidiary company in section 127 is defective, notably because it does not cover sub-subsidiary companies or, in other words, companies which are subsidiaries to subsidiary companies.

117. **General principles.** - We consider that the accounting information published by the holding company to supplement the balance sheet which, as a separate legal entity, it publishes, should, as far as is reasonably practicable include information with regard to the financial position and results of the group similar to that which would be required by statute if the business were carried on by P. single company operating through a number of branches (pages 73-4, (3) and (4)).

118. **Definition of holding company and of subsidiary company.** - We have already referred briefly in paragraph 116 to the unsatisfactory nature of the existing definition of a subsidiary company. Apart from the failure to include sub-subsidiary companies, by its reference to a holding of a majority of the share capital the definition includes as subsidiaries, companies which may be neither under the holding company's de facto control for management purposes as branches of the business of the holding company group nor subject to its legal power of control as regards such matters as the appointment of a majority of their directors. A company may, for example, own the whole of a second company's preference capital which, though it carries no voting rights and has no rights to participate in profits beyond its fixed dividends, is greater in amount than the ordinary share capital to which the whole of the voting power and the whole of the equity in surplus profits are attached. Under the present definition the second company is deemed to be a subsidiary of the first even if it is not in fact in any way controlled by the first. If a majority of the ordinary share capital is owned by a third company, then the second company would be deemed to be a subsidiary of the third as well as of the first company. In our view the question of control should as a general rule be decisive and we consider that the only case where absence of legal power to control need not exclude a company from the status of a subsidiary company should be where the holding company owns more than one-half of the equity, since such a concentrated holding may well give practical control of the business although the holding company does not necessarily possess a majority of the voting power. We were informed that in the United States of America and in Canada, which are probably the two countries where accounting problems particularly affecting holding companies have received closest study, the existence of control is recognised as determining the inclusion of a company in the category of a subsidiary for accountancy purposes. In our recommendations we have

suggested a revised definition (pages 72-3, II (1) and (2)).

119. **Consolidated accounts.** - There has been a considerable and progressive growth in the number of subsidiary companies: the carrying on of a particular branch or activity of a business through the medium of one or more subsidiary companies is, no doubt, often convenient and advantageous but from the shareholders' point of view it has been accompanied in a large number of cases by an absence of information as to the financial position and results of the undertakings in which they are interested. The issue with the statutory balance sheet of consolidated accounts showing the aggregate assets, liabilities, reserves and results of the holding company and its subsidiaries is becoming more frequent, but there is still a considerable number of holding companies which fail to give shareholders the information necessary to enable them to form an adequate view of their interests. There are other methods of giving this information e.g., by the issue of the accounts of each subsidiary or of combined accounts of subsidiaries as a whole or in groups: we consider that the issue with the holding company's accounts of a consolidated balance sheet and a consolidated profit and loss account combining the figures of the holding company with those of its subsidiaries is the best means of showing the

financial position and results of the group as a whole and we think the submission of information as to the consolidated position and results in this form should be made obligatory where practicable (page 73, (3))

120. Cases in which consolidation of accounts is inappropriate and, in which dates of accounts differ. -

It is unfortunately not practicable to impose a general obligation, without any exceptions, that all holding companies should consolidate with their own accounts the accounts of all their subsidiaries. Exceptional cases may arise where the consolidation of accounts in whole or in part may be impracticable or misleading. The accounts of some subsidiaries may not be available because, for example, they are working in a country torn by civil war; if a subsidiary is hopelessly insolvent and the holding company being under no liability' to meet its debts, is not willing to do so; or if the assets of a subsidiary consist largely of balances in a foreign currency which owing to exchange restrictions cannot be transferred, it may be impracticable or misleading to include its liabilities and assets and results in consolidated accounts. There is the further difficulty that the accounts of companies which are members of the same group are not always made up to the same date and owing to the considerable diversity of businesses frequently carried on by members of the group it would not, in our view, be practicable to insist upon a common date; for example, where the business of a subsidiary company is seasonal it is a matter of practical business convenience that the accounts of such subsidiary should be made up at a date when the results of the season's operations can be most suitably ascertained. Although a divergence in dates may be an obstacle to consolidated accounts, we feel that in many cases no adequate reasons exist for the wide divergence which often occurs and in our opinion the accounts of many subsidiaries (including overseas subsidiaries when air mail facilities are restored after the war) could, without inconvenience, be made up to the dates of the holding companies' accounts or to dates nearer thereto than has been the practice or practicable in the past or the dates of the holding companies' accounts might be brought closer to those of their subsidiary companies. We think that where it is not practicable to make up the accounts to the same date, the best solution is to limit the consolidation to accounts which, after the necessary adjustments, can be consolidated without giving a misleading result.

The power of control which, we suggest, should as a general rule be the determining factor as to whether one company is subsidiary to another, may be exercised by a holding company with a minority interest, which may be quite small, in the net assets and in the profits or losses of a subsidiary. Also, the interests of a holding company in the net assets and in the profits or losses of one or more subsidiaries may in the aggregate represent only a very small part of the holding company's own assets and profits or losses. We have considered whether in such circumstances holding companies should be permitted to exclude accounts of such subsidiaries from consolidation: although there are, no doubt, cases where the additional information afforded by consolidated accounts would not be of any material importance, it is in our view impracticable to define such cases.

An exception to our general recommendation is, however, we think, desirable in the case of exempted banking companies and discount companies and in the case of assurance companies. It would, in our view, be inappropriate for such companies to issue consolidated accounts incorporating the figures of subsidiaries which carry on businesses of an entirely different character from the ordinary functions of the holding company, where such subsidiaries have been acquired as a temporary measure. In such a case we think that the Board of Trade should be empowered to exempt the banking company,

discount company or assurance company, as the case may be, from the obligation to consolidate the accounts of such a subsidiary (pages 73-4).

121. Power of Board of Trade to alter requirements in particular cases. - We realise that particular groups of companies may experience difficulties in giving effect to the provisions as regards consolidated accounts the technique of which is constantly developing. We accordingly suggest that the Board of Trade should be given power, similar to that conferred upon them by section 22 of the Assurance Companies Act, 1909, in respect of the accounts of assurance companies, to adapt the requirements of the Act to the circumstances of particular companies (Page 75, III).

122. Conclusion of the Committee regarding consolidated accounts. - We propose that the accounts of subsidiaries should be required as far as practicable to be consolidated with, and to be made up to the same date as, the accounts of the holding company, but that there should be excluded the accounts of subsidiaries which in the opinion of the directors of the holding company it would be impracticable or misleading to consolidate. The directors of the holding company should be required to annex to the consolidated balance sheet a statement of the reasons (a) why they consider it impracticable to make up the accounts of any subsidiaries to the same date as that to which the accounts of the holding company are made up and (b) why they consider it is impracticable or would be misleading to include in the consolidation the accounts of subsidiaries excluded therefrom. Where a holding company does not present consolidated accounts the directors should be required to annex to the balance sheet a statement under (b) (Page 74, (4) (a) and (b)). In the case of subsidiary companies of which the accounts are excluded from consolidation, the directors should be required to show in the statement the net aggregate amount of the profits or losses of such subsidiary companies attributable to the interests of the holding company so far as not dealt with in consolidated accounts or in the accounts of a holding company which does not annex consolidated accounts to its annual accounts, and particulars of any qualifications in the auditors' reports upon the accounts of such subsidiary companies (Page 74, (c) and (d)). This statement should be regarded as part of the accounts on which the auditors have to report (page 68, III (i) (d) and Page 75, IV).

Recommendations

We recommend that:-

I. The existing sections 126 and 127 be repealed.

II In their place provisions on the following lines be inserted in the Act (i) A company shall, whether it is a company within the meaning of the Companies Act or not, be deemed to be a subsidiary company of another company (hereinafter called the holding company) if it is either-

(a) a company in respect of which the holding company possesses power to appoint or remove or procure the appointment or removal of a majority of the directors either directly through the beneficial ownership of the whole or any part of its share capital or. indirectly through the beneficial ownership of the whole or any part of the share capital of any other company or companies or through a combination of these means including power liable to suspension in the event of default in the payment of dividends to persons other than the holding company and its subsidiary companies, but not including power arising by virtue only of the provisions of a debenture trust deed or by virtue of shares issued for the purpose in pursuance of those provisions; or

(b) a company in respect of which the holding company possesses power to appoint or remove or procure the appointment or removal of a majority of the directors of another company by some other means than as stated in (a) above and is directly or indirectly the beneficial owner of any part of the share capital of such other company; or

(c) a company in which more than one-half of the equity share capital is owned beneficially by the holding company and its subsidiary companies.

For the purposes of this provision 'equity share capital' means that part of the share capital which confers a right either to the whole or part of any residue of any profits or to the whole or part of any residue of any assets remaining for distribution after satisfying the claims of any other shareholders whose right to participate therein is limited.

(2) Where a company the ordinary business of which includes the lending of money, holds shares in another company as security only, no account shall, for the purpose of determining under this section whether that other company is a subsidiary company, be taken of the shares so held (para. 118).

[This definition would replace section 127.1

(3) A holding company shall annex to its annual accounts a consolidated balance sheet and a consolidated profit and loss, or income and expenditure, account, which shall be drawn up as far as practicable in a manner similar to that prescribed in the provisions of the new Act relating to the accounts of companies. The consolidated balance sheet shall combine the information contained in the balance sheet of the holding company with the information contained in the balance sheets of the subsidiary companies after eliminating inter-company shareholdings and indebtedness and shall show the aggregate interest, if any, in the share capital and reserves (including profit and loss, or income and expenditure, account balances) of subsidiary companies of shareholders other than companies the accounts of which are consolidated. The consolidated profit and loss, or income and expenditure, account shall combine the information contained in the profit and loss, or income and expenditure, account of the holding company with the information contained in the profit and loss, or income

and expenditure, accounts of the subsidiary companies after eliminating inter-company transactions and dividends and shall show the extent of the profit or loss, or net income or net expenditure, if any, attributable to shareholders in subsidiary companies (other than companies the accounts of which are consolidated) and the balance of the consolidated profit or loss, or net income or net expenditure, attributable to the interests of the holding company (para. 119).

The balance sheets of subsidiary companies shall as far as practicable be made up as at the date of the balance sheet of the holding-company, If the directors consider that in order to present a true and fair view of the state of affairs and of the profit or loss, or net income or net expenditure, of the company and its subsidiary companies, the consolidated accounts require adjustment, they should make such adjustments as appear to them to be appropriate. If the directors are of opinion that it is impracticable or misleading to include in the consolidated accounts the relative information contained in the accounts of any subsidiary company, they shall exclude such information.

Provided that the Board of Trade shall have power to exempt an exempted banking company or discount company or an assurance company from

consolidating with its accounts the accounts of any subsidiary company which carries on a business different from that of the holding company, if and so long as, in the opinion of the Board of Trade, the relationship of subsidiary company and holding company is temporary only (para. 120).

(4) The directors shall annex to the consolidated balance sheet (or, except as regards (a) below, to the balance sheet of a holding company which does not annex to its accounts a consolidated balance sheet add a-consolidated profit and loss, or income and expenditure, account) a statement-

(a) giving the reasons why they consider it is not practicable in the case of any subsidiary company whose balance sheet is not made up as at the date at which the balance sheet of the holding company is made up, for the balance sheet, of such subsidiary company to be made up as at that date;

(b) giving the reasons why in their opinion it is impracticable or would be misleading to include in consolidated accounts the relative information contained in the accounts of any subsidiary company;

(c) showing in respect of subsidiary companies whose accounts are not included in consolidated accounts, the net aggregate amount attributable to the interests of the holding company so far as not dealt with either in consolidated accounts or in the accounts of a holding company which does not annex consolidated accounts to its annual accounts-

(i) of the profit or loss, or the net income or net expenditure, for the period or periods covered by the profit and loss, or income and expenditure, accounts of such subsidiary companies made up to dates within the period covered by the profit and loss, or income and expenditure, account of the holding company, and,

(ii) as far as practicable, of the aggregate profit, or net income, including reserves, other than capital reserves, or loss, or net expenditure, since acquisition of such interests by the holding company and its subsidiary companies; and

(d) giving particulars of any qualifications in the auditors' reports upon the accounts of subsidiary

companies where such accounts are not included in consolidated accounts.

If for any reason the directors are unable to obtain any such particulars as are required under (c) and (d) they shall so report in the statement. For the purpose of the Act the expression 'qualification' shall be held to include, in addition to any qualification of the nature defined in section 126 (2) of the present Act, any note upon the balance sheet and profit and loss account of any company, the omission of which would have necessitated a qualification in an auditor's report.

The consolidated balance sheet shall show the information regarding subsidiary companies whose accounts are excluded from consolidation, which is required under the Act to be included in the balance sheet of every company, and the consolidated profit and loss, or income and expenditure, account shall show the income from, or provisions made for losses of, subsidiary companies whose accounts are excluded from consolidation,

(i) in respect of the period or periods covered by their profit and loss, or income and expenditure, accounts made up to a date within the

period covered by the profit and loss, or income and expenditure, account of the holding company; and

(ii) in respect of other periods (para. 122).

[Note: Recommendations II (3) and (4) would replace section 126.]

The consolidated accounts shall be signed on behalf of the board, if there is only one director, by that director, or otherwise by the two directors who sign the accounts of the holding company, and the statement annexed to the consolidated accounts or to the accounts of the holding company shall be deemed to be part of the annual accounts.

III. There be a new section on the following lines-

The Board of Trade may, on the application or with the consent of a company, alter the requirements set out in 11 (3) above, as respects that company, for the purpose of adapting them to the circumstances of that company (para. 121).

IV. There be a new section on the following lines-

In the case of a holding company the auditors shall examine the consolidated balance sheet and the consolidated profit and loss, or income and expenditure, account, and any statements required to be annexed to them, and shall make a report on them to the members of the holding company, and the report shall state whether, in the opinion of the auditors,

(a) the consolidated balance sheet and the consolidated profit and loss, or income and expenditure, account are properly drawn up in accordance with the provisions of the new Act from the balance sheet and profit and loss, or income and expenditure, accounts of the holding company and of the subsidiary companies, the accounts of which have been consolidated, after giving effect to any adjustments made by the directors;

(b) the adjustments, if any, made by the directors are appropriate, or any other adjustments are required, according to the best of their information and the explanations given to them by the directors of the holding company;

(c) the reasons given by the directors in the statement annexed to the consolidated balance sheet pursuant to II (4) (a) and (b) above, are satisfactory; and

(d) the particulars given in respect of the profits or losses, or net income or net expenditure, and the qualifications in, the auditors' reports upon the accounts of subsidiary companies excluded from consolidation, have been properly compiled from the information contained in such accounts and the auditors' reports thereon,

The auditors shall also refer in their report to any qualifications upon the accounts of the holding and subsidiary companies which have been consolidated, provided that it shall not be necessary to refer to any qualification which, whilst applicable to the accounts of a subsidiary company as a separate company, is not material in relation to the consolidated accounts (para. 122).

V. There be a new section to the following effect-

A subsidiary company shall disclose in its balance sheet-

(a) the total amount which it owes to the holding company and to companies which are subsidiaries of such holding company, and

(b) the total amount which is owing to it from such companies.

Provided that where a company is a subsidiary company in relation to two companies of which neither is a subsidiary in relation to the other, there shall be shown-

(a) the amount which it owes to each of such two holding companies, including the subsidiaries of each such holding company; and

(b) the amount owing to it from each of such two holding companies, including the subsidiaries of each such holding company.

PRE-ACQUISITION PROFITS AND LOSSES OF SUBSIDIARY COMPANIES

123. Profits earned and losses incurred by subsidiary companies before the acquisition by the holding company of the shares to which they are attributable, are, as a matter of accounting practice, viewed as being of a capital nature from the standpoint of the holding company. Such pre-acquisition results (whether dealt with in the accounts of the holding company or not) have, therefore, been regarded as not capable of being brought into account as profits or losses in determining the profits which the holding company might properly regard as available for distribution in dividend by itself. Difficulty may arise in applying this principle to the full where the accounts of the subsidiary company are not made up to the date on which the shares were acquired by the holding company. Our suggestion for meeting this difficulty appears from our recommendation below.

Recommendation

We recommend that there be a new section on the following lines:-

If a company becomes a subsidiary company in relation to another company or, where that relationship already exists, further shares in the first company are acquired by the second company, the proportion of the profits or losses of the subsidiary company attributable to the shares so acquired at the respective dates of acquisition shall not be brought into the accounts of the second company as revenue profits or losses. Where an acquisition of shares takes place at a date other than a date at which the accounts of the subsidiary company are made up and it is impracticable to ascertain or to

estimate with reasonable accuracy the profit or loss of the subsidiary from the date of its last accounts to the date of acquisition of the shares, the profit or loss for that period shall be deemed to be the amount arrived at by apportioning, on a time basis, the profit or loss for the period covered by the next succeeding accounts of the subsidiary company.

SHAREHOLDERS' CONTROL

124. **General.** - In the early days of joint-stock companies investors were usually people of wealth who had knowledge of and experience in financial matters; or if they were not, their affairs were administered by advisers who had such knowledge and experience. In the last hundred years there has been a great redistribution of wealth, so that many small investors have holdings in companies. This tendency is growing at the present time, and the number of shareholders is likely to increase further, with a corresponding diminution in the size of the average shareholding. The small investor seldom takes a close interest in or attends many meetings of the companies in which he holds shares. The following figures which have been supplied to us, show how numerous are the shareholders in big companies and how small the average shareholding is; they were compiled from the registers of ordinary shareholders only of ten well-known companies, over a decade ago.

The figures for total capital and number of shareholders have increased-in some cases very considerably in the interim.

Ordinary Shares of	Paid-up Capital £600	Number of shareholders	Proportion of total Shareholders, each holding		
			Less than 100 shares Per cent	Less than 200 shares Per cent	Less than 300 shares Per cent
Imperial Chemical Industries Ltd.	43,590	124,690	40.4	64.5	86.6
Imperial Tobacco Company (of Great Britain and Ireland) Ltd.	37,493	94,69	47.4	73.8	90.2
Cortaulds Ltd.	24,000	59,940	43.2	69.0	88.9
Dunlop Rubber Company Ltd.	7,851	52,620	28.4	55.9	81.6
J. & P. Coats Ltd.	14,75	49,570	48.3	75.5	91.6
Unilever Ltd.	11,319	19,140	48.1	75.4	91.8
Fine Cotton Spinners' and Doublers' Association Ltd.	4,410*	17,160	42.4	70.1	89.6
Cunard Steam Ship Company Ltd.	5,570	13,860	27.7	58.6	84.4
Stavley Coal and Iron Company Ltd.	3,385	6,290	27.8	50.4	76.6
Watney Combe Reid & Company Ltd.	3,185	4,520	25.0	54.0	80.3
Weighted average			41.4	67.5	87.7

* Subsequently reduced.

The growth of investment trust companies and of unit trusts in recent years has tended to divorce the investor still further from the management of his investments. Executive power must inevitably be vested in the directors and is generally used to the advantage of the shareholders. There are, however, exceptional cases in which directors of companies abuse their power and it is, therefore, desirable to devise provisions which will make it difficult for directors to secure the hurried passage of controversial measures, and as far as possible to encourage shareholders carefully to consider any proposals required by law to be put before them by directors.

125. **Meetings.** -It is by using their powers at meetings that they can exercise control over directors. The following are of the Companies Act regarding meetings. Section 115 provides that, in so far as the articles of the company do not make member is entitled to receive notice of a general meeting; (fact, frequently modify this provision, especially in the case of preference shareholders.

Section 113 provides that every company limited by guarantee and having a share capital, other than a private company, must hold a statutory meeting not less than one nor more than three months from the date at which the company is entitled to commence business. Under section 112 every company must hold a general meeting once at least in every calendar year and not more than 15 months after the previous meeting.

126. **Notice of meetings.** - Section 115 (i) provides that in so far as the articles of the company do not make other provision, a meeting of a company other than a meeting for the passing of a special resolution, may be called by seven days' notice in writing. It is unusual for the articles to require any longer period of notice. Under section 117 (2) a special resolution requires to be passed by a majority of three-fourths of those voting at a general meeting of which not less than 21 days' notice, specifying the intention to propose the resolution as a special resolution, has been given. A company can do

certain thing" only after the passing of a special resolution and with the sanction of the Court; for example, reduce its share capital or apply any capital redemption reserve fund for any purpose other than the payment up of u shares to be issued as fully laid bonus shares. It has been represented t us that the period of seven days between notice of a meeting and the holding of a meeting at which resolutions, other than special resolutions, are proposed, is insufficient. If shareholders who dissent from the proposals wish to issue a circular to their fellow-shareholders, they have, at present, no facilities for that purpose. There is frequently a provision requiring proxies to be lodged 48 hours, and sometimes even longer, before the meeting. In the case of a meeting convened on seven days' notice, this only allows four days for the opposition to organise it elf, and we do not think this time is long enough, though, on the other hand, the length of notice must not be so long as to create a situation in which important transactions could not be carried through with reasonable promptitude. We recommend, as a reasonable middle course, that there should be a provision requiring 21 days' notice in the case of annual general meetings and 14 days' notice in the case of other meetings except meetings for the passing of special resolutions for which 21 days' notice is already required. We suggest the longer period of notice for annual general meetings because we attach considerable importance to some of the business transacted thereat, e.g. the adoption of the directors' report and accounts and the election of directors, and because the company is bound to hold an annual general meeting and little inconvenience should be caused by the necessity to give longer notice of it. As meetings, other than annual general meetings, may need to be summoned in greater haste for urgent business, we think that in their case only 14 days' notice should be required and that, if a majority in number of the members holding 95 per cent. of the share capital carrying the right to attend and vote at the meeting agree to waive the notice Of 14 days or to accept shorter notice, 14 days' notice shall not be required. We think that the same facility should only be extended to annual general meetings with the sanction of all the members entitled to attend and vote at the meeting (page 86, V111 (a)).

127. Date and place of meetings. - Cases have been brought to our notice where directors anxious to pass resolutions without thorough scrutiny by the shareholders, have convened meetings of the company to be

held at times and places calculated to be inconvenient to the shareholders. These cases are exceptional and it is difficult to deal with this abuse by legislation. We do not think that it would be practicable to lay down by statute the places and the times at which a company may not hold a meeting. We hope that the proposals which we make regarding notice of meetings and regarding proxies, will enable shareholders to secure adequate consideration of controversial resolutions.

128. **Communications between shareholders.** - The annual general meeting should be the occasion on which the ordinary members can introduce resolutions on their own account, or, if they so desire, can oppose the resolutions submitted by the board of directors. The opportunity is under existing conditions largely illusory because with the great increase in the number of shareholders it has become difficult for any single shareholder, or even for a group of shareholders, to seek the support of their fellow-members. The machinery by which the shareholders can be approached is in the hands of the company and we believe that with reasonable safeguards this should be made available to the members. We think that 100 members holding on the average not less than L100 of the paid-up capital per member or a member or members holding not less than 5 per cent. of the shares carrying voting rights should be entitled, subject to giving notice not less than 35 days before the annual general meeting, to require the company

to send out with the notice convening the annual general meeting a notice of any resolution which the members propose to introduce at the meeting together with a statement in support of it, the statement not to exceed 1,000 words (page 85, IV (1)). We think that they should also be entitled to require that the company shall distribute to the members on their behalf a communication also limited to 1,000 words, relating to any matter pending before any general meeting. They should, however, be permitted to avail themselves of the latter right only where they supply the company with the communication not more than 7 days after the date of service of the notice convening the meeting as otherwise the directors would not have sufficient time in which to circulate an answer to any criticism which might be contained in the communication issued by the shareholders (page 85, IV (2)). If shareholders exercise either of these facilities, we think that they should be required to pay in advance the reasonable cost of printing, but that the company should be empowered to authorise the refund thereof (page 86, (3)).

129. Miscellaneous recommendations regarding meetings. -
We wish to make the following minor recommendations in connection with meetings of companies.

Under section 112 a company is obliged to hold in the calendar year of its incorporation a general meeting (which by reason of section 108 must be an ordinary general meeting). This meeting serves no useful purpose (particularly in the case of a company incorporated in the latter half of a calendar year) because 'ordinary business' is lacking, and the annual return which is linked with the annual meeting is not of importance as a return of allotments will have been filed and, in the case of public companies limited by shares, the statutory report will have been filed and circulated to every member. We recommend that it should be sufficient to hold an ordinary general meeting within fifteen months of incorporation (page 86, VI (a)).

Section 112 (3) provides that if default is made in holding a meeting, the Court may on the application of any member of the company, call, or direct the calling of, a general meeting of the company. We think that to save expense this power should be transferred from the Court to the Board of Trade (page 86, VI (b)).

Section 115 (2) provides that if for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in the manner prescribed by the articles or by the Companies Act, the Court may either of its own motion or on the application of any director Of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit. In view of the use of the word 'meeting' there is some doubt as to whether one shareholder only can constitute a quorum, and it should be made clear that the Court may direct that one shareholder can do so for the purposes of section 115 (2) (page 87, VIII (b)). This has in fact been already decided in an unreported case.

Section 117 should be amended so as to make it clear that special or extraordinary resolutions, if signed in writing by all the members before the date on which the resolution is, according to the terms thereof, to come into operation, are valid (page 87, X (b)).

130. **Election of directors.** - It seems to us desirable to give shareholders greater powers to remove directors with whom they are dissatisfied, than they have at present. Table A provides for one-third of the directors to

retire each year, but this applies only. to directors who do not hold managerial positions under the company, and there is nothing to prevent companies adopting articles which provide for less frequent rotation of directors. Table A also provides that a company may by extraordinary resolution (which requires the approval of 75 per cent. of those voting at the meeting) remove any director before the expiration of his period of office. If this article is excluded from the articles of a particular company, it is necessary for shareholders who wish to remove a director, first to secure the passage of a special resolution to alter the articles. We recommend that resolutions for the election of directors should be submitted in respect of each director separately unless the meeting otherwise resolve without dissent, and that there should be a provision, overriding anything to the contrary in the articles of a company, that any director, whether under a service contract or not, should be removable by an ordinary resolution, without prejudice to any contractual right for compensation. There is one case which requires special consideration, that of a permanent director of a private company holding office as such under the articles. This right arose in substance as an agreed matter of contract and we consider that an exception should be made to protect a permanent director holding office in a private company at a fixed date which we suggest should correspond to the date of publication of our report (page 84, 1).

131. Retiring age for directors. - It has been suggested to us that there should be an age limit for directors. We agree, since there are undoubtedly cases in which it would be beneficial to enforce the retirement of men who do not themselves realise that the time has come to retire and as to whom their colleagues would feel it difficult to raise the question. We think, however, that to meet the varying requirements of companies each company should by its articles of association fix an age limit for the retirement of its directors.

Accordingly we recommend that there should be a provision that every director of every company, not being a private company, shall retire from office at such age as may for the time being be fixed by the articles of association of the company and shall not be eligible for re-election, but that in default of such age being fixed he should retire from office at the annual general meeting next after he attains the age of 70 and not be eligible for re-election. Companies should, however, be empowered by

special resolution to retain the services of a director notwithstanding that he has reached the retiring age.

These provisions should apply to existing companies as well as to new companies, though we consider that to avoid inconvenience and to protect rights under existing contracts, no director holding office at the date of coming into force of the new Act should be bound to retire on the ground of age until he becomes due to retire under the articles of association.

To prevent abuse of this exemption we suggest that any contract entered into after a date corresponding to the date of publication of our report, which would have the effect of retaining a director in office after he reaches the retiring age, should have effect as if it provided for his retirement at that age unless the company by special resolution otherwise determines
(page 84, II)

132. **Proxies.** - There are no provisions in the Companies Act itself regarding proxies. Table A contains provisions regarding proxies which have been adopted by many companies. For many years it has been the practice of directors when sending shareholders notices of meetings, particularly in

connection with business which they think important, to enclose a form of proxy and to invite shareholders to appoint the directors as their proxies to vote on their behalf. These forms of proxy were often completed by the shareholders without a full realisation of what their signatures involved. In 1943 the London Stock Exchange Committee issued to companies of which the shares are dealt in on that Exchange, a circular recommending that circulars and statements sent to shareholders on proposals other than those of a purely routine nature, should be unambiguous and couched in clear and simple language, which should set out the alterations proposed so that an opinion could be formed without reference to other documents not readily available, such as the articles of association; that, where the statutory period of notice of a meeting was 7 days, a longer notice (14 days if possible) would be desirable; and that in such cases stamped proxy forms should be sent out and should be so worded that the shareholder might vote either for or against the resolutions. The London Stock Exchange Committee have also stipulated as a condition for obtaining permission to deal in new issues that the company should undertake to word proxy forms so that a shareholder or debenture-holder may vote either for or against the resolutions in question in all cases where proposals other than of a purely routine nature are to be considered. In defining what business is not of a purely routine nature, or, in other words, is special business, the Committee have followed the definition in article 44 of Table A. This lays down that all business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors. The London Stock Exchange regulation has been criticised principally on the ground that it requires voting to precede discussion. As far as it goes, this is a fair criticism. The term 'two-way proxy' applied to the new system, is misleading. In many cases, it is, in effect, a system of voting by referendum, the questions at issue being set out in circulars issued before the casting of the votes. Though the criticisms are based on sound logic, we regard the so-called 'two-way proxy' as a practical move towards giving greater reality to the control by the shareholders over the directors.

We have considered whether the two-way proxy or a suggested alternative system under which the shareholder would be enabled to vote either for or against each resolution or to appoint a proxy to attend the meeting and vote at discretion, should be imposed on companies by legislation. We doubt whether such a course would be practicable; difficulties would arise where complicated matters come before meetings and it might be necessary for the chairman to adjourn meetings at which in the light of the discussions it was thought desirable to amend the resolutions. We think it wiser to leave such matters to, the regulations of the London Stock Exchange Committee which can waive or modify them in suitable cases. The position of shareholders will be considerably strengthened if effect is given to the various recommendations which we have made in regard to fuller information regarding certain matters to be dealt with at the meeting, longer notice of meetings (see paragraph 126), the right to appoint non-members of the company as proxies and a requirement that the rights of members in this respect should be clearly stated in notices convening meetings (see next paragraph). In addition, we suggest that directors should not be permitted to issue at the expense of the company forms of proxy only to a limited number of members (page 85, (5))

133. **Qualifications of Proxies.** - The articles of most companies provide, contrary to the model articles in Table A, that a shareholder can appoint as his proxy only a fellow-shareholder and not any member of the public. It is often difficult for a shareholder in the short period available to him to find among his fellow-shareholders a suitable proxy who shares his views on the resolutions to be considered at the meeting and who is prepared to attend the meeting. He may not know even the names of his, fellow-shareholders; he may be far from either the registered office of the company or the office of the Registrar of Companies, the only two places at which the information contained in the register of members is available; and even if he has time to consult the register, he may owing to the existence of nominee holdings learn little about the identity of his fellow-shareholders. In any event he may feel that a professional adviser who may not be a fellow-shareholder, would be the most suitable person to represent him. To help the shareholder in these difficulties we recommend that it should be laid down by statute, so as to override any contrary provision in articles of association, that a shareholder of any company other than a company limited by guarantee and having no share capital, may appoint as his proxy anyone whom he chooses, whether a shareholder in the company or not. We think that such proxy should be entitled to speak as well as vote; if not, the right loses a great deal of its value; moreover, in the absence of such a provision the chairman would experience great difficulty in the conduct of the meeting (page 85, (3)). It is important that shareholders should be aware of their rights in this respect. We accordingly suggest that companies should be required to include in notices convening meetings a clear statement that shareholders may appoint proxies (whether members of the company or not) to attend the meetings on their behalf (page 85, (4)).

134. **Validity of instruments appointing proxies.** - We have already referred in paragraph 126 to the common provision that instruments appointing proxies must be handed in at least 48 hours before the meeting. We think that it should be illegal to impose a longer time limit than 48 hours before the holding of the meeting or adjourned meeting (Page 84, III (2)).

135. **Voting by nominees.** - Where a nominee holds shares in a company on behalf of more than one beneficial owner, he normally consults the persons on whose behalf he holds

the shares before voting on any resolution put before the shareholders. The beneficial owners of the shares may have divergent views on the proposals put before them. Some will instruct the nominee to vote for the proposals, some will instruct him to vote against. Nominees usually carry out these instructions. It is, however, doubtful whether it is legal for a shareholder to use some of his voting power in support of a resolution and some of it against the same resolution; though, in practice, it is obviously desirable that a nominee should express as faithfully as possible the views of the persons on whose behalf he acts. We accordingly suggest that it should be expressly laid down that a shareholder may, if he wishes, either in completing a proxy form. or in voting himself on a poll at a meeting, direct that some of his votes shall be cast for the resolution, and some against, or use only part of the votes to which he is entitled (page 85, (6)).

136. **Polls.** - The only provisions in the t Act regarding the right to demand a poll are those in section 117 (4) relate to extraordinary and special resolutions. We think that it should be laid down that except in the case of a company limited by guarantee and having no share capital a poll may be demanded on any resolution, other than a resolution for the adjournment of a meeting, by or on behalf of any five members, or by or on

behalf of any member or members holding in the aggregate not less than one-tenth of the Paid-up share capital of the company carrying the right to vote at the meeting or by any member or members representing not less than one-tenth of the total voting rights of all the members having a right to vote at the meeting. It should be made clear ' that a proxy has the right to join in demanding a poll (page 87, 14

137. Rights of preference shareholders and debenture-holders in winding-up. - Our attention has been drawn to cases where the voting control of a company lies not with the general body of shareholders but in the holders of a limited class of shares, e.g. where the capital consists of preference and ordinary shares and only the ordinary shares carry votes. It has been suggested that in such cases the holders of the ordinary shares could, while the company is a going concern, infringe the rights of the preference shareholders without the consent of the latter. We have had no evidence of any such case having occurred and we doubt whether preferential rights could be varied except under section 153, unless the memorandum or the articles of association contained a provision defining how such modification was to be effected.

Our attention has been drawn specifically to allegations that the process of voluntary liquidation has been used to effect repayment of high yielding preference shares at less than the market price or the replacement of such preference shares by ordinary shares. The latter Course could not be adopted without the consent of the preference shareholders given by a class meeting, either under the articles of association or as part of a scheme of arrangement sanctioned by the Court, and if the requisite majority of preference shareholders are in favour of such replacement, we see no reason for intervening by statute to upset the decision of the prescribed majority. It is clearly undesirable as a matter of common fairness that a company should take advantage of the possibility of going into voluntary liquidation primarily for the purpose of causing high-yielding debentures or preference shares to become repayable at less than the market price. It has been suggested to us that in the case of ' quoted preference shares and securities protection should be given by a statutory provision that no resolution for voluntary winding-up should be valid unless approved by a separate meeting of the holders of such shares or securities and that to prevent any one class of share or security

holders unreasonably withholding its consent to such a resolution, the company should have the right to apply to the Court for power to override the dissentient class, the Court having power to determine what would be 'fair' as towards the dissentient class, i.e., in the case of shares, to increase their participation in the assets in the winding-up or, in the case of securities, to determine what premium should be paid on redemption. We do not consider such proposals workable. The evidence before us shows that there have been very few cases of companies taking unfair advantage of the possibilities of voluntary liquidation to repay shares or securities at less than the market price and we deprecate introducing statutory provisions to prevent rare abuses when such statutory provisions will lead to entirely unpredictable results in the majority of honest and well conducted companies.

138. **Section 61. Variation of shareholders' rights.** - section 61 provides that where the rights attached to any class of shares are varied, as a result of the required consent of any specified proportion of the holders of the shares of that class being given, or of a resolution being passed at a separate meeting of the holders of those shares, the holders of not less than 15 per cents of the Issued shares of that class (being persons who did not assent)

may apply to the Court to have the variation cancelled. The application must be made within seven days after the date on which the consent was given or the resolution was passed. This section provides some safeguard for minority shareholders but they are given very little time in which to organize the percentage of shareholders necessary for an application. We therefore suggest that the period from the date of giving consent or of the passing of the resolution within which the application must be made, should be increased from 7 to 21 days (page 86, V).

Recommendations

We recommend that:-

I. There be a new section to the following effect-

(1) Where any persons are proposed for election as directors the proposal for the election of each person shall be the subject of a separate resolution unless the meeting shall otherwise resolve without dissent.

(2) Notwithstanding anything in the articles of a company, any director of a company, whether or not there is a contract between him and the company relating to his services, shall be removable by an ordinary resolution of the company without prejudice to any contractual right to damages:

Provided, however, that this shall not apply to a permanent director holding office in a private company at the prescribed date* (para. 130)

II There be a new section to the following effect-

The articles of association of every company, not being a private company, shall fix the age at which every director shall retire from office, provided that in default of any such provision every director shall retire at the annual general meeting next after he attains the age of 70 and shall not be eligible for re-election.

Provided also that-

(i) no director holding office at the coming into force of this Act shall vacate office under this section until he first becomes liable to retire from office in

accordance with the articles of association of the company;

(ii) a company may by special resolution re-elect a director notwithstanding that he has reached the retiring age.

Provided, further, that any contract entered into after the prescribed date* and having the effect of retaining any director. in office as director after the date on which he would vacate office under this section, shall have effect as if it provided for his retirement on that date unless the company by special resolution otherwise determines (para. 131).

III. There be a new section to the following effect-

(i) Every member of a company, except a company limited by guarantee and having no share capital, entitled to vote at any meeting or separate meeting of holders of shares of a class, shall be entitled to vote on a poll by proxy, provided that unless the articles otherwise provide no member shall appoint more than one proxy.

(2) An instrument appointing a proxy shall not be invalid by reason only of its being lodged with the company after the time limit laid down in the articles provided that it is lodged at least 48 hours before the time for holding the meeting or adjourned meeting to which it relates, as the case may be (para. 134).

* The prescribed date should correspond to the date of publication of our report.

(3) A member of a company, except a company limited by guarantee and having no share capital, shall have the right to appoint as his proxy any person, whether a member of the company or not, and such proxy shall have the right to speak as well as vote on behalf of his principal (para. 133).

(4) Every notice convening a meeting of a company, except a company limited by guarantee and having no share capital, shall state legibly that a member of the company has the right to appoint as his proxy to attend the meeting any person, whether a member of the company or not.

If a company fails to comply with this subsection the company and every officer of the company who is knowingly party to the default shall be liable to a fine not exceeding £50 in respect of the notices of any one meeting (para. 133).

(5) It shall not be lawful for the directors or other officers of a company to issue, at the expense of the company, to the members forms of proxy or other communications inviting them to appoint any named persons as their proxies at any meeting, unless the said forms or communications are issued to all the members of the company entitled to receive notice of the meeting. Any director or other officer of a company who is knowingly party to the issue of any such invitation in breach of this subsection shall be liable to a fine not exceeding £100 (para. 132).

(6) A member shall have the right to cast, or to direct a proxy to cast, some of his votes against and others for a resolution or to abstain as regards others (para. 135).

IV. There be a new section to the following effect-

(i) One hundred members holding on the average not less than £100 of the paid-up capital of a company per member or a member or members entitled to not less than five per cent. of the votes capable of being cast at a general meeting, on giving the company notice not less than thirty-five days before the date of the annual general meeting next succeeding such notice, shall be entitled to require it to make and send with the notice convening such meeting to all members entitled to receive such notice a copy of any resolution which they propose to introduce at the meeting together with a statement

relating to the resolution and not exceeding one thousand words and any such resolution of which due notice shall be given -as aforesaid of the intention to introduce the same shall for all purposes be deemed to be within the scope of the business of such meeting.

The accidental omission by the company to send a copy of any such resolution or such statement to any member shall not be deemed to be a breach of duty or to invalidate the proceedings at the meeting (para. i28).

(2) One hundred members holding on the average not less than L100 of the paid-up capital of a company per member or a member or members entitled to not less than five per cent. of the votes capable of being cast at a general meeting, shall be entitled to require the company to make and send to the members entitled to receive notice of any such meeting a copy of a communication not exceeding one thousand words, and supplied by such member or members to the company, relative to the matters referred to in the notice convening such meeting or to any resolution such as is referred to in subsection (i), and the company shall make and send the same within three days of the receipt of the original communication.

Provided that-

(i) if the communication is delivered to the company more than seven days after the date of service of the notice convening the meeting, the company shall not be required to take any action;

(ii) the accidental omission by the company to send the communication to a member shall not be deemed to be a breach of duty or to invalidate the proceedings at the meeting (para. 128).

(3) The company shall not be required to take action under subsections (i) or (2) unless the members requiring action shall have tendered to the company a sum sufficient to meet the reasonable expense of making copies of the resolution or communication to be sent to the members.

Provided that, if the company in general meeting so resolves, the sum tendered may be refunded to the members by the company (para. :r28).

(4) If the company shall make default in complying with any requisition made pursuant to subsections (1) or (2) the company and every officer who is knowingly party to the default shall be liable to a fine not exceeding £500.

V. Section 61 be amended b substituting the words 'twenty-one days for the words' seven days in subsection (2) (para. 138)-

VI. Section in be amended by-

(a) substituting for the existing subsection (i) the following:-

(i) A general meeting of every company shall be held within fifteen months of the incorporation of the company and once at least thereafter in every subsequent calendar year, and not more than fifteen months after the holding of the last preceding general meeting; (b) substituting in subsection (3) for the word 'Court' the words Board of Trade ' (para. 129).

VII Section 113 be amended by substituting in subsection (2) the words 'fourteen days' for the words 'seven days' (para. 126).

VIII. Section 115 be amended-

(a) so as to provide that notwithstanding anything in the memorandum

or articles of association of the company, a general meeting of a company convened pursuant to section 112, shall be called by not less than twenty-one days' notice in writing, and save as provided by section 117 any other meeting of a company shall be called by not less than fourteen days' notice in writing:

Provided that-

(i) if all the members entitled to attend and vote at a general meeting, of a company convened pursuant to section 112, so agree, a resolution may be proposed and passed at such meeting of which less than twenty-one days' notice has been given;

(ii) if a majority in number of the members holding 95 per cent. of the share capital giving a right to attend and vote at any meeting other than a general meeting of a company convened pursuant to section 112, so agree, a resolution may be proposed and passed at such meeting of which less than fourteen days' notice has been given (para. 126).

(b) by adding a new subsection so as to provide that for the purposes of subsection (2) the Court may direct that one member shall be a quorum (para. 129).

IX. A new section on the following lines be added-

(1) Notwithstanding anything in the memorandum or articles of association to the contrary, a poll may be demanded on any question other than the adjournment of the meeting, but this provision shall not apply to a company limited by guarantee and having no share capital (para. 136).

(2) A proxy shall have the same right as regards the demanding of a poll as a member of the company (para. 136).

(3) At any meeting of a company, not being a company limited by guarantee and having no share capital, a poll shall be taken to be effectively demanded, if demanded-

(a) by or on behalf of such number of members for the time being entitled under the articles to vote at the meeting as may be specified in the articles, so, however, that it shall not in any case be necessary for more than five members or their proxies to make the demand; or

(b) by or on behalf of any member or members being entitled under the articles to vote at the meeting and holding in the aggregate not less than 10 per cent. of the paid-up share capital of the company, carrying the right to vote at the meeting or by any member or members representing not less than one-tenth of -the total voting rights of all the members having a right to vote at the meeting, or such less proportion as may be provided for in the articles (para. 136).

(4) Where a poll is demanded in accordance with this section, in computing the majority on the poll, reference shall be had to the number of votes to which each member is entitled by virtue of this Act or the articles of the company.

X. Section 117 be amended by-

(a) modifying subsections (4) and (5) so that they apply only to companies limited by guarantee and having no share capital (para. 136);

(b) adding at the end of the section a new subsection-

(7) A resolution expressed to be a special or extraordinary resolution and approved in writing by all the members entitled to vote thereon before the date specified therein as the date on which the resolution is to come into operation shall have the same effect as a special or extraordinary resolution (para 129).

**LIABILITY OF COMPANIES IN CONNECTION WITH CERTIFICATION
OF TRANSFERS**

139. A transfer of a holding of registered stock or shares in a company involves delivery of a duly executed transfer, together with the relative stock or share certificate, and is completed by registration. It is, however, not always possible for a certificate to be provided for every transfer; for example, 500 shares may be bought on the Stock Exchange, and, when delivery to the buyer's brokers comes to be made, it may be that the seller is a holder of one certificate for 1,000 shares and is naturally not prepared to hand this certificate to the buyer. To get over the difficulty, the certificate for 1,000 shares is lodged with the company with a transfer executed by

the holder covering 500 shares. The company certifies on the transfer that a certificate covering the number of shares represented by the transfer has been lodged with it, and this certified transfer is accepted by the buyer's brokers. The buyer in due course receives a certificate for 500 shares, and the seller one for the balance of his holding. The wording of the certification differs in practice. For instance, the amount of the stock or the number of shares to which the definitive certificate which has been lodged, relates, may or may not be specified, but it is in practice accepted as a sufficient indication that the relative certificate has been deposited with and is held by the company. The practice regarding the signature of the certification also differs widely. Sometimes it is signed by the secretary or the registrar himself, but more often by an official or clerk of the company (may be a secretarial services company) who or the registrar, as the case may be, without position or title, and sometimes the certification a rubber stamp is used and its affixing is not even initialed; facsimile signatures are quite common, but printed names are usually initialed. It is impracticable to verify such signatures. The effect of certification was considered by the Court of Appeal in the case of *Bishop v. Balkis Consolidated* the Master of the Rolls (25 Q.B.D. 512 at p. 519) where the Master of the Rolls said 'The certification--must amount to a representation that the transferor has produced to the person certifying either what purports to be a certificate of the title of the transferor to the share mentioned in the transfer--or the equivalent of such document, in other words what purports to be a certificate of the title of someone else to the shares and one or more documents purporting to transfer those shares from such person to the transferor.' The value of this decision was, however, negated by two decisions of the House of Lords (*Whitechurch v. Cavanagh* (1902, A.C. 117) and *Klemwort Sons & Company v. Associated Automatic Machine Corporation Limited* ((1934) 151 T.L.R. I: 50 T.L.R 244)) which held, that where an agent with authority to certify transfers does so without the share certificates having been lodged, he is not acting within the scope of his authority and his statement is not the statement of the company.

We consider that the company should be responsible for the statements of its authorised agent even though no certificate has been lodged and that the law should be as laid down in *Bishop v. Balkis Consolidated Company*. We

do not think that the company should be held by certification to warrant the genuineness of the documents. Speed is of the essence of certification; as was said in the case last cited, the person certifying has no means of ascertaining and no time to enquire whether the documents produced to him are genuine or not, nor whether the transfers are valid or invalid in point of law . If the company were made to warrant the genuineness of the documents, certification would inevitably be held up and the procedure would lose its value.

Recommendation

We recommend that a new section be added providing that if-

(a) a transfer be endorsed with the words 'certificate lodged' or other words to the like effect, and

(b) such certification bear the signature or initials or printed or facsimile signature or initials of any director, official, agent or employee of the company or of any director, official or employee of any company authorised by the first-named company to make such certification, and

(c) such transfer so certified be issued by the company or by any person authorised by the company to issue the same, the company shall be deemed to represent to any person acting on the faith thereof that the transferor named therein has produced to the person certifying the same such documents as on the face of them show a prima facie title in the transferor to transfer the shares mentioned in the transfer.

ARRANGEMENTS, RECONSTRUCTIONS AND AMALGAMATIONS

140. **Procedure under section 153.** - Section 153 provides that 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 application sanction the arrangement. It has been suggested to us that under the existing procedure the sanction of the Court may be obtained to a scheme without the Court being informed on two material points, (a) whether the requisite majority at a class meeting has been obtained only by the votes of members of the class whose interest as holders of shares of another class or as creditors outweighs their interest as members of the class and (b) what are the personal interests of the directors or trustees for debenture-holders who recommend the scheme. Having regard to the practice of registration in the names of nominees, full information on the first point may not be obtainable, but we think that the best information available should be before the Court. It is, however, a matter of procedure and does not require statutory action. Our suggestions as to the second point appear in our recommendations (page 90, I).

141. **Power to acquire shares of minorities.** - Section 155 provides that where a scheme or contract involves the transfer of shares or any class of shares in a company to another company and the scheme has been approved by the holders of 75 per cent. of the shares or class of shares affected, the transferee company may, subject to various conditions, acquire the shares of any dissenting shareholders on the terms on which the other shares have been acquired.

The procedure under this section is not available to a company where it already holds more than 10 per cent. of the shares or class of shares which it is desired to acquire. We think that it might usefully be extended to cover that case, provided that the offer is made to all

the holders concerned other than the company itself and is accepted by not less than 75 per cent. in number of the holders holding between them not less than 90 per cent. in value of the shares or class of shares sought to be acquired (page 90, II (a)).

Another defect in the existing section is that while a company, if it obtains 90 per cent. of the shares or class of shares comprised in a scheme or contract, can compel the dissentient minority to sell their shares, the dissentient minority have no power to compel the company to acquire the shares held by them although their position as a small minority in a subsidiary company may be anything but satisfactory. We consider that it would be reasonable to allow any of the minority to require the company to purchase the shares held by them at a price to be agreed or in default of agreement settled by the Court (page 90, II (b)).

Where under section 155 the transferee company gives notice to a dissenting shareholder of its desire to acquire his shares, failing an Order by the Court to the contrary, the transferor company becomes bound under subsection (2) to register the transferee company as the holder of the shares. This amounts to the shares of the dissenting shareholder being transferred to the transferee company without an instrument of transfer being executed

and is inconsistent with section 63 which provides that it shall not be lawful for a company to register a transfer of shares unless a proper instrument of transfer has been delivered to the company. We consider that subsection (2) should be amended so as to provide that the shares of the dissenting share-holder shall be transferred to the transferee company, power being given to the transferor company to execute a transfer on behalf of the dissenting shareholder (page 90, II (c)).

Recommendations

We recommend that:-

I. Section 153 be amended by the addition of two new subsections to the following effect-

(4A) The company shall issue with the notice convening any meeting convened pursuant to subsection (i) a - circular explaining the compromise or arrangement and shall state in such circular any material interest of the directors of the company in the compromise or arrangement. If debentures are affected by the scheme, the circular shall give the like information as to any material interest of the trustee, if any, for the holders of such debentures.

(4B) Where a company makes default in complying, with subsection (4A), every director or trustee for debenture-holders who was knowingly a party to the default, shall be liable to a fine not exceeding 1500 (para. 140)-

II. Section 155 be amended-

(a) by adding a new subsection (1A) to the following effect -

(1A) The provisions of section 155 shall apply notwithstanding that the transferee company is already the holder of one-tenth or more in value of the shares affected provided that-

(1) the scheme or contract in question confers upon every holder of the shares or, as the case may be, of the class of shares affected other than the transferee company, the right to sell those shares to the transferee company on the same terms, and

(2) the approval is by the holders of not less than 75 per cent. in number of the holder, holding between them

not less than nine tenths in value of the shares or class of shares sought to be acquired by the transferee company.

(b) by adding provisions to the following effect - Where, as the result of a scheme or contract within the ambit of the section, the aggregate holding of the transferee company becomes not less than nine-tenths in value of the shares of the transferor company, or of any class of shares in the transferor company, it shall be the duty of the transferee company within one month thereafter to - notify that fact to all holders of shares, or of any class of shares, as the case may be, in the transferor company, and every such holder shall, within three months of such notification, be entitled, if he so desires, to require the transferee company, to acquire his shares at a value to be agreed, or in default of agreement to be settled by the Court.

(c) by amending subsection (2) by inserting before the words ' the transferor company shall thereupon register the transferee company as the holder of those shares ' the words ' thereupon the transferor company shall be at liberty in the name of the dissenting shareholder to

execute a transfer of those shares in favour of the transferee company and subject to the execution of such transfer by the transferee company (para. 141)

WINDING-UP

142. **Methods of winding-up.** - A company may be wound up either compulsorily by the Court or voluntarily or subject to the supervision of the Court. The last of these three methods is now rarely used. Voluntary liquidations fall into two classes, members' voluntary winding-up and creditors' voluntary winding-up.

143. **Declarations of solvency.** - In the case of a voluntary liquidation, if the directors and shareholders of the company wish to retain control of the liquidation or, in other words, to ensure that the winding-up is a members' winding-up, the directors under section 230 have to make a statutory declaration to the effect that they have made a full enquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding twelve months, from the commencement of the winding-up. It has been said that this provision, which was introduced into the Companies Act by the Act of 1928, has been widely abused and that directors have recklessly or even fraudulently made declarations of solvency in order to retain control of the liquidations which have resulted in heavy losses to the creditors. In fact, the extent to which the provision has been abused, appears to have been exaggerated. According to figures supplied to us, 1,846 members' voluntary liquidations were completed during the period from July 1, 1938, to October 31, 1939, and in 68 cases, that is, roughly one in twenty-seven, the creditors were not paid in full; in addition, in a few cases the creditors after the directors had made a declaration of solvency, exercised their right to apply to the Court for a compulsory winding-up order; in these cases it can be generally assumed that the declarations of solvency were not justified.

On balance we have come to the conclusion that the system of declarations of solvency has served a useful purpose and should be retained, subject to the precautions indicated below.

144. **Proposed remedies in connection with declarations of solvency.** - Section 230 provides that the directors may

make a statutory declaration at a meeting Of the directors held before the date on which the notices of the meeting at which the resolution for the winding-up of the company is to be proposed, are sent out. There is, however, no obligation to commence the winding-up within any definite period of the date on which the statutory declaration is made. The declaration accordingly retains validity though the finances of the company may have greatly deteriorated between the date on which the declaration is made and the date when the resolution to wind up the company is passed. We think that the declaration of solvency should be made at a meeting of the directors held before, but within 35 days of the date of, the meeting at which the resolution for the winding-up of the company is passed (page 95, III (a)). The declaration should be accompanied, in our view, by a statement of affairs in the form set out in Appendix C, estimating the assets and liabilities (pages 95-6, III (b)). The liquidator in a members' voluntary winding-up should be bound at any time when he thinks the declaration unlikely to be fulfilled and, in any event, at the expiration of one year from the date of the commencement of the winding-up if the debts of the company have not been -paid within that period, to summon a meeting of the creditors (page 96, IV). The creditors would thus be

informed of the progress of the winding-up and, if dissatisfied, could avail themselves of the remedy already provided for them, namely, an application to the Court for a compulsory winding-up order.

145. Criminal liability in relation to declarations of solvency. - Where declarations of solvency have been made without apparent justification, it has been difficult to convict the directors of perjury. As already stated, the declaration is to the effect that, having made a full inquiry into the affairs the company, the directors have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding twelve months, from the commencement of the winding-up. It is almost impossible to prove that the directors did not form the opinion that the company would be able to pay its debts within the period specified. We suggest that there should be added a provision that if the debts of the company are not paid within the period of twelve months, the directors making the declaration should be liable on a criminal charge unless they can establish that they had reasonable grounds for making the declaration (page 96 (d)).

146. Fraudulent preference. - Section 265 of the Companies Act provides that any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly - Section 44 Of the English Bankruptcy Act provides that every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money, in favour of any creditor, or of any person in trust for any creditor, with a view to giving such creditor, or any surety or guarantor for the debt due to such creditor, a preference over the other creditors, shall, if the person making, taking, paying or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making, taking, paying or suffering the same, be deemed fraudulent and void as against the trustee in bankruptcy. The question of fraudulent preference in relation to companies in liquidation cannot, therefore, be considered independently of the

bankruptcy law. The judgment in 1934 in the case of Peat v. Gresham Trust Ltd. ((1934) A.C. 252) made it difficult to establish that a preference was fraudulent, but its effect was somewhat modified in 1943 by the decision of the Court of Appeal in re M. Kushler Ltd. ((1943) Ch. 248). We have examined several suggestions designed to make it less difficult for the liquidator to establish that a payment to a particular creditor constituted a fraudulent preference. But the only recommendation which we feel that we can usefully make, is that transactions which took place within six months before the date of commencement of the winding-up, instead of the present period of three months, should be impeachable. We doubt, however, whether it is desirable to give effect to this recommendation without making a corresponding alteration in the English Bankruptcy Act which is outside our terms of reference.

147. Fraudulent preference in relation to banks and sureties.-Cases arise where a company wishes to prefer a surety or guarantor who has guaranteed the company's overdraft with the bank, the surety or guarantor being often a director of the company, or one of his relatives. The company accordingly pays cheques into its account at the bank. If these payments are made within three months of the commencement of the winding-up, the liquidator of the company, if the company is being wound up in England, may try

to establish that the payments into the account constituted a fraudulent preference in the interests of the surety. If the liquidator succeeds, the bank as the person to whom the payments were actually made though not the person whom it was intended to prefer, has to refund to the liquidator and is left to such right (if any) as We consider that the principle that the is made should be obliged to refund to the sound. We do, however, recommend that as to give the person making the refund a right to recover from the surety within the Emit of his guarantee or of the security he had provide the sum which such per-son has been compelled to repay to. the liquidator. It seems desirable that any such amendment should apply to bankruptcy as well as to winding-up.

148. Avoidance of debentures.-In England, where floating charge's are legal, frauds are sometimes perpetrated at the expense of creditors by a device whereby the promoters of a fraudulent company arrange for the company tot issue to them or their nominees a debenture containing a floating charge on the assets of the company and then obtain a large quantity Of goods by credit and before paying for them go into liquidation, so that all the assets of the company are absorbed in paying the debenture-holders who have priority over the unsecured creditors other than preferential creditors. Section 266 of the Companies Act provides that, where a company is being wound up, a floating charge on the undertaking or property of the company created within six months of the commencement of the winding-up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount. We do not consider that section 266 affords sufficient protection to creditors. There is evidence that fraudulent promoters of companies are able without much difficulty to stave off the creditors for six months from the date of charging the property of the company in favour of themselves or of their nominees. We suggest that floating charges created within twelve months of the commencement of the winding-up, instead of the period of six months at present laid down, should be made voidable (page 96, VI).

149. Liability for debts of companies in, cases of fraud.
- Section 275 (1) provides that if in the course of the winding-up of a company it appears that any business of

the company has been carried on for any fraudulent purpose, the Court may declare that any of the directors, whether past or present, of the company who were knowingly parties to the frauds shall be personally responsible for the debts of the company as the Court may direct; and subsection (3) provides that such directors shall also be liable on conviction on indictment to imprisonment for a term not exceeding one year. We think that the subsections should be extended so as to apply not only to directors but also to other persons who were knowingly parties to the frauds and that the penalty under subsection (3) should be increased to a period not exceeding two years (page 97, X).

150. Power to restrain fraudulent persons from managing companies - Section 275 also provides that the Court may order that any director, past or present, who was knowingly party to the fraudulent management of the business, shall not, without the leave of the Court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in

the management of a company for such period, not exceeding five years, as may be specified in the order. We think that, in the interests of creditors, this power might be extended so as to empower the Court to disqualify any director or other officer who commits misfeasance in the discharge of his duty (page 97, XI). In addition, we think that there should be a new connection with company for a period to be laid down by the Court (Page 97, XII).

151. Prosecution of delinquent officers and members of a company. - Section 277 provides that, if it appears to the Court, in the case of a compulsory liquidation, or to the liquidator, in the case of a voluntary liquidation, that any past or present director, manager or other officer, or any member, of the company has been guilty of any criminal offence in relation to the company:, the liquidator shall report the matter, in the case of a winding-up and, to the Director of Public Prosecutions, and, in the case of a winding-up in Scotland, to the Lord Advocate, the report, in the case of a compulsory liquidation, being made only at the direction of the Court, which, in the case of a winding-up in England, may direct the liquidator himself to prosecute the offender. Section 277 (6) provides that if, where any matter is reported to the Director of Public Prosecutions or the Lord Advocate, he considers that the case is one in which a prosecution ought to be instituted and, further, ' that it is desirable in the public interest that the proceedings should be conducted by him, he shall institute proceedings accordingly. In Scotland there are no private prosecutions and where a case is reported to the Lord Advocate and he considers that the case is one in which a prosecution ought to be instituted, he institutes the prosecution. In England, however, the Director of Public Prosecutions has to consider not only whether there is sufficient evidence to make a conviction reasonably probable, but also whether the case is of sufficient public importance to justify him in bringing proceedings instead of leaving it to the liquidator or other private persons to undertake the trouble and expense of a private prosecution. As a result of this system persons who appear on the liquidation of a company to have committed offences, sometimes escape prosecution; for instance, the Director of Public Prosecutions may not consider the matter of sufficient public importance to justify a prosecution at the public expense and the private persons who have been defrauded may be reluctant to throw good money after bad. From the beginning of

1938 to August, 1943, 32 cases were reported to the Director under section 277 to in only three cases were prosecutions undertaken by him. We deal in paragraphs 161-8 with the general question of prosecutions at greater length. At this juncture, with only section 277 under consideration, we confine , ourselves to recommending the omission from section 277 (6) of the words and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him' (page 97, XIII).

152. **Power of Court to make winding-up order** - We have already referred in paragraph 60 to our view that the Court should be empowered to make a winding-up order notwithstanding the existence of an alternative remedy if the Court considers it just and equitable so to do or, instead of making a winding-up order, to impose a settlement of the matter in dispute between the shareholders of the company. To give effect to these suggestions it will be necessary to amend section 168 which sets out the circumstances in which a company may be wound up by the Court, and to enact a new section on the lines suggested in recommendation 11 below (page 95, I and II).

153. **Miscellaneous winding-up matters.** - The following matters also require -attention.

(a) In section 264 the differentiation between clerks or servants, on the one hand, and workmen or labourers, on the other hand, as regards rights as preferential creditors in winding-up, should be removed and in the case of both clerks or servants and workmen or labourers, all wages or salaries not exceeding £100, whether payable for time or for piecework, in respect of services rendered to the company during four months next before the relevant date as defined in subsection (7), should rank as preferential debts (page 96, V).

(b) We think that section 271 (I) which sets out a list of acts which, if committed by officers of companies in liquidation, constitute misdemeanours, should be strengthened so as to establish that it is an offence to fail to account for any moneys received (page 96, VII).

(c) We consider it desirable that it should be specifically laid down that it is an offence for anyone to pay or offer any inducement to any creditor or shareholder to vote for the nomination of a particular liquidator (page 96, VIII) -

(d) Under Section 274 there is some doubt as to whether the officers of a company which is wound up within two years of its incorporation, can be prosecuted for failure to keep proper books. This doubt should be removed (Page 96, IX)-

Recommendations

We recommend that: -

1. Section 168 be amended by-

(a) substituting for the words 'A company may be wound up by the Court if' a provision to the following effect-

'Notwithstanding the existence of an alternative remedy available to the petitioner, a company may be wound up by the Court if the Court is of opinion that it is just and equitable that the company should be wound up; without prejudice to the generality of these words, the Court may wind-up a company on any of the following grounds, namely, if;

(b) omitting the existing subsection (6) (Paras. 60 and 152).

II. There be a new section under which, on a shareholder's petition, the Court, if satisfied that a minority of the shareholders is being oppressed and that a winding-up order would not do justice to the minority, should be empowered, instead of making a winding-up order, to make such other order, including an order for the purchase by the majority of the shares of the minority at a price to be fixed by the Court, as to the Court may seem just (paras. 60 and 152).

III. Section 230 be amended by-

(a) substituting in subsection (I) for the words 'before the date on which the notices of the meeting at which the resolution for the winding-up of the company is to be proposed are sent out ' the following words, ' before, and within fifty-five days of, the meeting at which the resolution for the winding-up of the company is passed ' (Para. 144);

(b) inserting a new subsection on the following lines-

(1A) The declaration shall be accompanied by a statement of affairs, drawn up and signed by the directors of the company who

make the declaration, and showing its assets and liabilities as at a date as near as practicable to the date of the declaration, the statement to be in the form prescribed in Schedule* (para. 144); W inserting in subsection (2) after the word ' delivered ' the words together with the statement of affairs ' and after the word ' before the words ' and within thirty-five days of ' (para. 144);

(d) inserting a new subsection on the following lines-

(2A) If the debts axe not paid or provided for in full within the said period of twelve months, then each of the directors making the declaration shall be liable on summary conviction to imprisonment for a period not exceeding six months or to a fine not exceeding £500, or to both such imprisonment and fine, unless he establishes that he had reasonable grounds for making the declaration (para. 145).

IV. There be added to the Act a new section on the following lines-

235A (i) If the liquidator is at any time of the opinion that the company will not be able to pay its debts in full within the said period, or if the winding -up continues for more than one year, and the debts of the company have not been paid or provided for in full within one yea he shall forthwith summon a meeting of the creditors and shall lay before them a statement of the assets and liabilities of the company-

(2) If any liquidator fails to comply with subsection (i), he shall be liable to a fine not exceeding £50 (Para 144) -

V. Section 264 be amended by substituting for paragraphs (b) and (c) of subsection (i) a paragraph to the following effect-

(b) All wages or salary (whether or not earned wholly or in part by way of commission) of any clerk, servant, workman or Labourer, whether payable for time or for piecework, in respect of services rendered to the company during four months next before the relevant date, not exceeding one hundred pounds:

Provided that, where any Labourer in husbandry has entered into a contract for the payment of a portion of

his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the relevant date (para. 153 (a)).

VI. Section 266 be amended by substituting the words ' twelve months for the words 'six months' (para. 148) -

VII. Section 27i be amended by adding to subsection (i) a new paragraph to the following effect-

(q) fails to account to the liquidator for any moneys received from or on behalf of the company in liquidation (para. 153 (b)).

VIII . A new section be added making it an offence to pay or offer to any member or creditor any sum of money or other consideration if he will vote in favour of or abstain from voting against the appointment of a specified person, as liquidator, such offence to be punishable by a fine not exceeding £100, (para. 153 (0)

IX. Section 274 be amended by inserting in subsection (i) after the words ' winding-up ' the words ' or since the incorporation of the company, whichever period is the shorter (para. 153 (d)).

See Appendix C.

X. Section 275 be amended by-

(a) inserting in subsection (i) after the words ' directors, whether past or present, of the company ' the words ' or any other persons

(b) making consequential amendments in subsection (-2);

(c) inserting in subsection (3) after the words ' director of the company the words 'or other person' and substituting the words ' two years for the words ' one year ' (para. 149).

XI. There be added a new section 275A on the following lines-

(i) If in the course of a winding-up it appears that any director or other officer of the company, past or present, has committed any breach of duty in respect of the management of the affairs of the company, the Court, on the application of the official receiver or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that that person shall not, without the leave of the Court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years, from the date of the declaration, as may be specified in the declaration, and if any person acts in contravention of a declaration made under this subsection he shall, in respect of each offence, be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine.

(2) For the purposes of this section, the expression 'director' shall include any person in accordance with whose directions or instructions the directors of the company have 'been accustomed to act.

(3) The person against whom such order is sought shall be made respondent to such application.

(4) It shall be the duty of the official receiver or of the liquidator if he is not the applicant, to appear on the hearing of an application for leave under subsection (i) of this section and on the hearing of such

application the official receiver or the liquidator, as the case may be, may himself give evidence or call witnesses (para. 150).

XII. There be inserted in the Act a new section on the following lines.-

Where any person is convicted on indictment of any offence in connection with the affairs of a company the Court before which such person is convicted or the Court having jurisdiction to wind up companies, shall have power to order that the person shall not, without the leave of such last mentioned Court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years, from the date of the conviction, as may be specified in the order, and if any person acts in contravention of an order made under this section he shall, in respect of each offence, be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine (para. 150).

XIII. Section 277 be amended by omitting from subsection (6) the -words ' and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him ' (para. 151).

INVESTIGATION OF AFFAIRS Or, COMPANIES

154. **Powers of Board of Trade under section 135** - Section 135 empowers the Board of Trade to appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Board direct, subject to the conditions laid down in the section. These are, in short,

(a) that action can be taken by the Board only where the application is made by persons having a sufficient share interest in the company; in the case of a banking company having a share capital, on the application of members holding not less than one-third of the shares issued, in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued, and in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members;

(b) that the application must be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have

good reason for, and are not actuated by malicious motives in, requiring the investigation;

(c) that the Board may require the applicants to give security to an amount not exceeding £100 for payment of the costs of the enquiry

The inspector can enquire into the affairs only of the company to which, the application relates, and not into those of subsidiary companies' After the inspector has reported, the Board of Trade are bound to send a copy of the report to the company and to furnish a copy on request to the applicants. In addition, they are required, if in their opinion a criminal offence is disclosed, to refer the matter to the Director of Public Prosecutions or, in the case of an offence in Scotland, to the Lord Advocate. If a prosecution follows, the costs of the investigation fall on the Board of Trade: otherwise they fall on the company unless the Board of Trade direct that they shall be borne in whole or in part by the applicants. This machine not often used. In the period 1930-44, 70 applications for the appointment of inspectors were made; in one case where enquiry was desired into the affairs of a group of companies there

were technically 8 applications; if these applications are regarded as one, the total number of applications is 63. Of these 63 applications, 9 resulted in the appointment of inspectors, 34 in refusals to appoint inspectors, 19 were withdrawn or not proceeded with, Find one is still the subject of negotiation; one case in which an inspector was appointed, resulted in a prosecution.

155. **Principal defects of section 135.** - We have considered why so little effective action has resulted from this section. While we recognise that one reason is; that the vast majority of businesses are honestly conducted, we, think that contributory causes are as follows: -

(a) The basis of the application (one-tenth of the shares issued in the normal case of a. company having a share capital, other than a banking company) is unduly restrictive, especially in the case of a large company with many thousands of small shareholders. There are cases in which a -substantial minority has a genuine grievance but cannot between them muster ten per cent. or can do so only with the greatest difficulty and with an inordinate expenditure of time, trouble and publicity.

(b) The requirement that the applicants must show that they are not actuated by malicious motives has proved troublesome in practice, and

makes it easy for the directors to question the validity of the application. If the Board of Trade are satisfied that there is a proper case for investigation, it seems difficult to see why the motives of the applicants should affect the Board's decision.

(c) The present inability of, the inspector to enquire into the affairs of subsidiary companies where it is necessary to do so in pursuance of the investigation which he has been appointed to undertake, is liable to make an investigation abortive.

156. Suggested widening of powers of Board of Trade. -

We think that the requirement that the applicants should have to establish that they are not actuated by malicious motives, should be abolished. We consider that, as regards the percentage required to join in the application, the differentiation between banking and other companies. should be removed, and that, to meet the difficulties arising in the case of a large company, in addition to the: existing provision as respects holding one-tenth of the shares issued, it should be provided that the Board, of Trade may appoint an inspector on the application of 200 members. of the company (page 101, I (i) (c)). The Board of Trade should also have power to appoint an, inspector irrespective of the number or share holding of the applicants and, indeed, on its. own initiative if it appears to the Board in the case of any company that:

(a) there is reasonable ground for suspecting that there has been, fraud in the promotion or formation of the company or that there has been fraud, misfeasance or breach of duty in the management of the business or affairs of the-company or that the company has been party to fraud, misfeasance or breach of duty; or that a minority of the shareholders or of a class of the shareholders has been oppressed by 'the majority or that information has been withheld from shareholders which ought reasonably to have been given to them (page 101, I (i) (a) (i)),, and . Ron) it is in the public interest that an inspector should be appointee; (Page 101 I (i) (a) (i) and

(b) it is in the public interest that an inspector should be appointed (page 101, I (I) (a) (ii)).

The Board of Trade should also be empowered to appoint an inspector if requested by the Court so to do (page 101, I (i) (b))

In many cases the appointment of an inspector would, we hope, prove unnecessary as the knowledge of the wide powers possessed by the Board of Trade might cause the directors, on representations from the Board of Trade, to meet the grievance of the shareholders. An inspector appointed by the Board of Trade should have power to apply to the Court for an examination before the Court on oath of anyone capable of giving information regarding the subject of his investigation (page 102 (7)). He should also have power to extend his investigation to any subsidiary of the first-mentioned company or to a holding company of which the first-mentioned company is a subsidiary and to any other subsidiary of such holding company (page 101, 1 (4))-

157. Action on report of inspector. - The Board of Trade should have power to make the report of the inspector, whether a final or an interim report, available to any of the shareholders of the company and where the interests of creditors of the company are affected, to the creditors (page 102 (8)). Communications between shareholders and other interested persons about the report would, we are advised, be protected, as regards the law of libel, in the absence of malice, by a plea of qualified privilege. Where the report indicates a Prima facie case of fraud or misfeasance, the Board of Trade should have power where they consider it necessary, to apply to the Court for an order to wind up the company or, where they consider

it in the public interest, to bring proceedings in the name of the company to recover money for the benefit of the company from those involved in acts prejudicial to the company (page 102, II, I (1)); the Court should have power to order not only the costs of the proceedings but also the costs of the investigation to be paid by any unsuccessful defendant (page 103, II, I (2)); in any event the costs of We investigation should be a first charge on the amounts recovered (page 103, II. I (3)). Where an application to wind up a company is dismissed or the persons against whom the Board of Trade bring proceedings, succeed in their defence, the Board of Trade should be liable to pay the costs (page 103, II, I (4)).

158. Costs of investigation. - Subject to the above, the Board of Trade should pay the costs of an investigation initiated by them without an application from members entitled to apply under the section; where the investigation results from such an application, the costs should be borne by the company unless the Board of Trade direct that the costs shall be paid wholly or in part by the applicants or unless the Board decide themselves to bear all or part of such costs (page 103, 2 (4)); in any case where as a result of the investigation a prosecution is instituted by the Director of Public Prosecutions or the Lord Advocate, the expenses of the investigation should be defrayed by the Board of Trade unless they are borne by the persons successfully prosecuted, in accordance with a direction of the Court (page 103 2 (3)). Section 135 (2) provides that the Board of Trade may before appointing an inspector, require the applicants to give security, to an amount not exceeding £100, for payment of the costs of the inquiry. We do not suggest that this provision should be repealed as it is desirable to discourage frivolous or unsubstantial applications, but the power should be used sparingly so that it should not become an obstacle to genuine applicants (page 101, I (3)).

159. Minor amendment to section 135. - The following matter also requires attention. The powers of an inspector are limited to demanding the production of books and documents and examining officers and agents on oath. It has been suggested that the wording of section 135 entitles the inspector to demand any information which the parties questioned have within their recollection, but does not entitle him to demand that the parties refer to books and records to refresh their memories or obtain information which the inspector

requires. We do not think that section 135 should be so interpreted and in order that all doubts may be removed, we recommend that there should be imported into section 135 the wording of section 136 (2) which provides that where, as a result of a report by an inspector, proceedings are instituted by the Director of Public Prosecutions, it shall be the duty of all officers and agents of the company, past and present, to give the Director all assistance which they are reasonably able to give (page 101-2, 1 (,5)).

160. **Inspector appointed by the company.** - Under section 137 a company may by special resolution appoint inspectors to investigate its affairs and inspectors so appointed have the same powers and duties as inspectors appointed by the Board of Trade, except that, instead of reporting to the Board of Trade, they report in such manner and to such persons, as the company in general meeting may direct. We do not think it desirable that the wider powers which we have suggested in paragraph 156 should be conferred on inspectors other than those appointed by the Board of Trade. We consider that the proper course would be to repeal section 137 (page 104, III), and provide that the Board of Trade shall appoint an inspector if a company by special resolution resolves that it is desirable that an inspector should be appointed (page 101, 1 (2)).

Recommendations

We recommend that: -

I. The existing section I35 be replaced by a section on the following lines-

(i) The Board of Trade may appoint one or more inspectors to investigate the affairs of a company and to report thereon in such manner as the Board direct-

(a) if it appears to the Board in the case of any company that-

(i) there is reasonable ground for suspecting that there has been fraud in the promotion or formation of the company or that there has been fraud or misfeasance or breach of duty in the management of the business or affairs of the company or that the company has been party. to fraud or misfeasance or breach of duty or that a minority of the members or of a class of the members has been oppressed by the majority, or that information has been withheld from members which ought reasonably to have been given to them; and

(ii) it is in the public interest. that an inspector should be appointed (Para. 156);

(b) if it is requested by the Court so to do (para. 156);

(c) in the case of a company having a share capital, on the application -Of 200 members or of members holding not less than one-tenth of the shares issued, or, in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members (para. 156).

(2) If a company by special resolution resolves that it is desirable that the Board of Trade shall appoint an inspector to investigate its affairs, the Board of Trade shall appoint an inspector (para. 160).

(3) Where an application is made under subsection (i) (c), the application shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for requiring the investigation, and the Board may, before appointing an inspector, require the applicants to give

security, to an amount not exceeding one hundred pounds, for payment of the costs of the inquiry (para. 158).

(4) Where an inspector is appointed to investigate the affairs of a company which is a holding company within the meaning of section* he shall be deemed to have been appointed to investigate the affairs of its subsidiary companies as far as he considers it necessary so to do, in order to conduct his investigation of the affairs of the holding company, and where an inspector is appointed to investigate the affairs of a subsidiary company within the meaning of the said section he shall be deemed to have been appointed to investigate the affairs of the holding company to which such subsidiary company is subsidiary and of any other subsidiary company of such holding company so far as he considers it necessary so to do, in order to conduct the investigation of the affairs of such first-mentioned subsidiary (para. 156).

(5) It shall be the duty of all officers and agents (past and present) of the company and of its subsidiary companies, if any, and of any holding company in relation to which it is a subsidiary company and of any other subsidiary company of such holding company having information regarding the affairs of the company under investigation to produce

* See recommendation at pages 7-3.

to the inspector all books and documents in their custody or power and to give to the Board of Trade or to any inspector appointed by them or to any persons whom the inspector may authorise to act on his behalf, all assistance and information in connection with the investigation which they are reasonably able to give.

For the purposes of this subsection, the expression 'agents' in relation to a company shall be deemed to include bankers and solicitors and any persons employed by the company as auditors, whether officers of the company or not.

Provided that nothing in this subsection shall require a solicitor acting for a company the affairs of which are being investigated to disclose without his client's consent any matters which first came to his knowledge after he was first instructed in connection with the investigation or the proposal to appoint an inspector (para. 159).

(6) If any person fails to comply with subsection (5), or, in particular, refuses to produce any book or document in his custody or power, or refuses to answer any question which is put to, him with respect to the affairs of the companies under investigation, the inspector may certify the refusal under his hand to the Court, and the Court may thereupon enquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the Court.

(7) An inspector may apply to the Court for an examination before the Court on oath of anyone whom the Court deems capable of giving information regarding the promotion or formation or affairs of the companies under investigation (para. 156).

(8) The inspector shall, if he thinks fit or the Board of Trade so require, furnish interim reports to the Board of Trade, in the course of his investigation, and on the conclusion of the investigation shall make a final report to the Board of Trade; the Board shall send a copy of any such report to the company and at the request of the applicants (if any) also to them and may, if the Board think fit, supply copies of the reports to all or any of the members of the companies of which the affairs are

being or have been investigated, and to the creditors of those companies if it appears to the Board that their interests are affected. The report shall be written or printed as the Board direct. If the inspector was appointed at ' the request of the Court, the Board of Trade shall send a copy of the report to the Court (para. 157).

II The existing section 136 be replaced by two sections on the following lines-

I. (i) If from any report made under the last foregoing section it appears to the Board of Trade that any person has been guilty of any fraud or misfeasance, the Board of Trade shall have power-

(a) to apply to the Court for an order for the winding-up of any of the companies of which the affairs are being or have been investigated;

(b) if they consider it in the public interest, to bring in the name of any of such companies any civil proceedings which such company could bring (para. 157).

(2) Where proceedings are brought in accordance with subsection (I) (b), the Court shall have power to order that all or any part of the expense of and incidental to the investigation of the affairs of the companies which are the subject of the report referred to in subsection (i), shall be paid by any person who is ordered by the Court to pay damages or to refund any money to any of the companies (para. 157).

(3) Whether or not the Court exercises the power conferred upon it by the last preceding subsection, the expenses -referred to in that subsection shall be a first charge on the amounts recovered by the company as a result of the proceedings (para. 157).

(4) The Court may order that the Board of Trade do pay the costs of an unsuccessful application under subsection (i) (a) or of any defendant successfully resisting proceedings referred to in subsection

(i) (b) (para. 157).

2. (i) If from any report made under section 135 it appears to the Board of Trade that any person has committed an offence for which he may be criminally liable, the Board shall, in the case of an offence in England, refer the matter to the Director of Public Prosecutions, and, in the case of an offence in Scotland, to the Lord Advocate.

(2) If where any matter is referred to the Director of Public Prosecutions under this section he considers that the case is one in which a prosecution ought to be instituted, proceedings shall be instituted accordingly, and it shall be the duty of all officers and agents of the company, past and present, other than the accused in the proceedings, to give all assistance and information in connection with the prosecution which they are reasonably able to give.

For the purposes of this sub-section the expression 'agents' in relation to a company shall be deemed to include bankers and solicitors and any persons employed by the company as auditors, whether officers of the company or not.

(3) Where as a result of action taken under subsection (i) proceedings are brought and any person is convicted as a result of the proceedings, the Court before which

the proceedings are brought, shall have power to order that all or any part of the expenses of and incidental to the investigation of the affairs of the companies in relation to which the person convicted has been found guilty of an offence, shall be borne by that person (para. 158).

(4) Subject to subsections (2) and (3) of the preceding section and to the preceding subsection of this section, the expenses Of and incidental to an investigation under section 135 (in this subsection referred to as the expenses) shall be defrayed as follows-

(a) Where as a result of the investigation a prosecution is instituted and in any case falling within subsection (i) (a) of section 135, the expenses shall be defrayed by the Board of Trade.

(b) In any other case the expenses shall be defrayed by the company unless the Board of Trade think proper to direct, as the Board are hereby authorised to do, that they shall be paid wholly or in part by the applicants.

Provided that any balance of the expenses not defrayed either by the company or the applicants shall be defrayed by the Board of Trade.

Provided, further, that the Board of Trade, if they think fit, may themselves defray all or part of the expenses (para. 158).

(5) Subsection (3) Of section 13 of the Economy (Miscellaneous Provisions) Act, 1926 (which provides for the issue out of the Bankruptcy and Companies Winding-up (Fees) Account of sums towards meeting the charges estimated by the Board of Trade in respect of salaries and expenses under this Act in relation to the winding-up of companies in England) shall have effect as if expenses to be defrayed by the Board under this section were expenses incurred by the Board under this Act in relation to the winding up of companies in England.

III. Section 137 be repealed (para. 160).

PROSECUTIONS

161. Prosecutions by the Director of Public Prosecutions.

- We have already referred in paragraph 151 to prosecutions under section 277 and the desirability of prosecutions being undertaken by the Director of Public Prosecutions wherever there is a reasonable chance of securing a conviction. The subject of prosecutions in general is outside the scope of our enquiry; we, therefore, comment on the existing system of prosecutions only in so far as it relates to company offences, though we realise that some of our suggestions if carried into effect could not appropriately be limited in their application to company offences. To begin with, we could stress that in all company offences involving fraud the knowledge on the part of the fraudulent that the risk of prosecution was real, would be a valuable deterrent to crime. We are not satisfied that sufficient weight has been given to this consideration in the past; in part, no doubt, this is because the Director is required to consider not only whether a prosecution is likely to succeed but also whether it is in the public interest that the Director should prosecute or whether, on the contrary, he should leave the matter to any private individuals who may be prepared to undertake the expense involved. In Scotland the Lord Advocate is responsible for all prosecutions and has not to take into consideration the question whether the proceedings should be instituted by him. We have no hesitation in recommending that, at least, as regards offences under the Companies Act, the English system should be assimilated to the Scottish and that, accordingly, it should be laid down that in any case in which the Director considers that a prosecution ought to be instituted, he should institute it himself.

162. **Cost of prosecutions.** - The cost of prosecutions undertaken by the Director is met only partly by the Treasury; a proportion is recovered by the Director from the local authority of the area in which the trial takes place. The venue of the trial is a matter of chance depending often upon the place in which some part of the offence is committed; a long, complicated and expensive trial may result in an appreciable increase in the local rates. Although we were assured by the Director when he gave oral evidence before us that expense was not a factor which he had to take into account in deciding whether to prosecute, we feel that the present system must hinder the undertaking of prosecutions where there is likely to be considerable expense and success is not regarded as practically certain. In our view the whole cost of prosecutions undertaken by the Director should be a national charge.

163. **Juries in trials in England for company offences.** - To institute reforms to ensure that prosecutions were more readily undertaken by the Director, might do more harm than good unless a fair proportion of the prosecutions were successful. Prosecutions for the more serious company fraud' usually involve proceedings lasting many days and necessitate the explanation to the Court by the prosecuting counsel of the most intricate transactions. We

were informed by the Director that such cases come on in the normal course for trial at the Old Bailey or at assizes and that experience had shown that it was often difficult to get an ordinary jury to appreciate the complex technical questions of accounting involved in this class of case. He also pointed out that such cases were likely to involve a prolonged hearing with the result that the ordinary course of business of the Court is thrown out of gear. It seems to us that cases of this kind are analogous to commercial cases and should be heard by a specially selected jury such as a City of London Special jury. We accordingly recommend that as regards offences involving fraud in connection with the formation or the conduct of the affairs of companies, it should be open, on the application of the prosecuting authority, to the High Court if satisfied that the interests of justice so require, to direct that the case be tried at a place designated by the Court, by a judge of the High Court and a City of London Special jury.

164. Right to inspect books of companies. - The existing powers to inspect the books of traders seem to us inadequate, To strengthen them might assist to reduce long-firm frauds. In view of our terms of reference, our recommendation is limited to the inspection of the books of companies registered under the Companies Act (page 106, I).

165. Penalty for conspiracy. - The ordinary practice of the Director of Public Prosecutions in the case of a fraud practised by more than one person is to indict for conspiracy to cheat and defraud though the indictment may contain a number of counts alleging the specific obtaining of goods by false pretences contrary to section 32 of the Larceny Act, 1916., The conspiracy count carries with it, as being a common law misdemeanour, a maximum sentence of only two years' imprisonment. Though the matter is only partly within our terms of reference, we should like to suggest that the maximum penalty for conspiracy should be increased.

166. Indictment of a company in Scotland. - Under the present law in Scotland there is difficulty in indicting a company. This difficulty has been temporarily surmounted by Defence Regulation 93A. We suggest that a similar provision should be inserted in the Companies Act, with the incorporation of a power to search, as provided for in Defence Regulation 88A (page 106, II).

167. Prosecutions by Board of Trade in England. -

Prosecutions for the smaller offences under the Companies Act are undertaken in England by the Board of Trade. We understand that shortly before the war energetic steps were being taken by the Board of Trade to enforce the filing of the annual returns and accounts required by the Act. We think it desirable that these activities should be resumed as soon as normal conditions return.

168. Summary Jurisdiction Act. - Section ii of the Summary jurisdiction Act, 1848, imposes a limitation of six months from the date of commission of the Offence after which proceedings cannot be brought. This provision has led to no prosecution being instituted in many cases, for example, where the offence does not come to light until the company has been wound up and where prosecution by indictment is not suitable Owing to the relative smallness of the offence. As regards bankruptcy offences, section 164 (a) Of the Bankruptcy Act provides that summary proceedings shall not be instituted after one year from the first discovery thereof either by the official receiver or by the trustee in the bankruptcy, or, in the case of proceedings instituted by a creditor, by the creditor, nor in any case shall they be instituted after three years from the commission of the offence. We recommend

that a similar provision should be inserted in the Companies Act so that summary proceedings would be capable of being instituted within one year of discovery by the Registrar of Companies, or, if the company is in liquidation, by the liquidator, provided that not more than three years has elapsed from the commission of the offence (page 106, III).

Recommendations

We recommend that: -

1. There be inserted in the Act a new section on the following lines-If it is made to appear by information on oath before a judge of the High Court (sitting in chambers), or in Scotland before one of the Lords Commissioners of Justiciary, that there is reasonable cause to believe that in relation to the affairs of a company registered under this or any previous Companies Act, an indictable offence has been committed by any director or officer of the said company, past or present, the judge or the Lord Commissioner, as the case may be, may make an Order (which shall not be subject to appeal)-

(a) requiring the secretary or other appropriate officer of the said company to produce to the person named in the Order such books and documents of the said company as are required to investigate the complaint; and

(b) authorising the person named in the Order to inspect and take copies of any entries in a banker's book relating to the affairs of the said company:

Provided, that no application for such an Order may be made other than by a person on behalf of and authorised in writing by the Board of Trade, the Director of Public Prosecutions or a Chief Officer of Police in England or the Lord Advocate in Scotland (para. i64).

II. As regards Scotland a section be inserted in the Act on the lines of Defence Regulation 93A, incorporating a power of search, as provided for in Defence Regulation 88A (para. i66).

III. There be added to section 366 a subsection to the following effect-

(2) Where a company is being wound up, summary proceedings in respect of any such offences shall not be

instituted after one year from the first discovery thereof by the Registrar of Companies or, if the company is in liquidation, by the liquidator, nor in any case shall they be instituted after three years from the commission of the offence (para. i68).

EXECUTION OF DEEDS IN SCOTLAND

169. Section 29 (4) provides that a deed to which a company is a party shall be held to be validly executed in Scotland on behalf of the company if it is executed in accordance with the provisions of the Companies Act or is sealed with the common seal of the company and subscribed on behalf of the company by two of the directors and the secretary of the company, and that such subscription on behalf of the company shall be binding whether attested by witnesses or not. In cases where execution is effected by the affixing of the company's seal and the subscription of two directors and the secretary, no difficulty arises. The articles of most companies, however, provide for subscription by two directors or one director and the secretary and, except in the case of Stock Exchange transfers, it is the general practice to have deeds executed in this form attested by two witnesses. Stock

Exchange transfers executed in this manner are generally accepted without being attested, but there are important exceptions where the signature of one witness is insisted upon. In *Clydesdale Bank (Moor Place) Nominees Ltd. v. Snodgrass* (1940 S.L.T. 46), where it was contended that the execution of a transfer was invalid through not being subscribed by two directors and the secretary in the terms of section 29 (4), the Court took the view that the signature of a company is the adhibition of its common seal in the manner prescribed by the articles and that the person authorised to sign are truly the witnesses to the affixing of the seal. We suggest that the position might be established beyond doubt by a suitable amendment of the Act.

Recommendation

We recommend that section 29 be amended by substituting for subsection (4) the following:-

Any deed to which a company is a party and any other document requiring to be sealed by a company shall be held to be validly executed in Scotland on behalf of the company if it is sealed with the common seal of the company and subscribed on behalf of the company-

(a) by any two of the directors; or

(b) by any one of the directors and the secretary;

and such subscription on behalf of the company shall be equally binding whether attested or not.

PROHIBITION OF PROVISION OF FINANCIAL ASSISTANCE BY COMPANY FOR PURCHASE OF ITS OWN SHARES

170. Section 45 prohibits a company from providing financial assistance for the purchase of its shares, with an exception in favour of employees. We think that the section should be extended so as to prohibit a company from providing money to assist a subscription of its own shares or of those of its holding company and so as to prohibit a company from buying, or from providing financial assistance for the purchase of, the shares of its holding company. Where a subsidiary company already holds shares in its parent, before the amendment which we recommend becomes law, or where a company becomes a subsidiary of another company in which it is already a shareholder, it would be impracticable to rescind the

purchases of shares which have already been completed. As regards these cases, we have already suggested under the heading of accounts' that where any of the share or loan capital of a holding company is held by one or more of its subsidiary companies, the extent of the aggregate holdings should be required to be disclosed in the balance sheet of the holding company. We suggest further that the shares held by the subsidiary companies should have no voting rights; there should be an exception for a company holding shares in its holding company as trustee for or on behalf of other persons, not being the holding company or subsidiary companies of the holding company.

Recommendation

We recommend that section 45 be amended by:-

(i) deleting in the first paragraph of subsection (i) the words 'made or to be made by any person of any shares in the company' and substituting 'or subscription made or to be made by any person of or for any shares in the company or in any company in relation to which the first-mentioned company is a subsidiary company';

* See recommendation I (5) (h) at page 61.

(2) extending the exemptions in provisos (b) and (c) of subsection (i) to subscriptions for shares;

(3) adding two new subsections-

(2A) It shall not be lawful after the coming into force of the new Act for any company to purchase or subscribe for any shares in a company in relation to which it is a subsidiary company;

(2B) No voting rights shall be exercisable in respect of any shares held by a company in another company in relation to which the first-mentioned company is a subsidiary company:

Provided that these restrictions shall not apply to the purchase of, subscription for or holding of shares by the first-mentioned company as trustee for some other person not being the second-mentioned company or a subsidiary company of the second-mentioned company.

REDEEMABLE PREFERENCE SHARES

171. Section 46 gives companies power to issue redeemable preference shares. Subsection (4) has given rise to difficulty because it has been held that, where shares are redeemed, the shares redeemed cease to be part of the authorised capital of the company although there is power to issue shares in their place. As a consequence the balance sheet and the annual return do not indicate to what extent the company can issue capital without reference to the shareholders. We accordingly suggest an amendment to subsection (4); we also suggest some small amendments shown in our recommendation below.

Recommendation

We recommend that section 46 be amended by: -

(i) substituting in proviso (c) to subsection (i) for the words 'amount applied in redeeming the shares' the words normal amount of the shares redeemed ;

(2) deleting from provision (d) to subsection (i) the words 'out of the proceeds of a fresh issue';

(3) substituting in subsection (2) for the words 'and the date on or before which those shares are, or are to be

liable, to be redeemed' the words 'and the earliest date on which those shares are liable to be redeemed';

(4) adding an additional proviso at the end of subsection (4) on the following lines, Provided, further, that shares redeemed in pursuance of this section shall be deemed to be part of the authorised share capital of the company unless and until new shares are issued in their place;

(5) omitting from subsection (5) the opening words 'Where new shares have been issued in pursuance of the last foregoing subsection' and the words 'up to an amount equal to the nominal amount of the shares so issued.'

PUBLICATION OF NAME BY COMPANY

172. Section 93 lays down, among other things, that every company shall have its name mentioned in legible characters in all notices, advertisements and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company. Cases have arisen where companies which were not allowed to be registered with certain

names nevertheless traded in those names (without the word ' Limited but did not reveal in their business letters the names with which they had been registered. This could not be prevented as it is at least doubtful whether the term ' official publications ' covers business letters. This doubt should be removed. We also think that the requirement that the name of the company should be mentioned in legible characters in advertisements, should be removed. It is in practice disregarded and we (to not think that any harm would ensue from ifs deletion.

Recommendation

We recommend that section 93 be amended by: -

(a) substituting in subsection (i) (c) the words business letters word 'for the advertisements ';

(b) substituting in subsection (4) (b) the words business letter word for the' advertisement.'

LOOSE-LEAF REGISTERS AND BOOKS AND ACCOUNTING RECORDS NOT KEPT IN BOOKS

173. Section 95 requires every company to keep in one or more books a register of its members. Section 120 lays down that every company shall cause minutes of all proceedings of general meetings, and where there are directors or managers, of all proceedings at meetings of its directors or of its managers, to be entered in books kept for that purpose. Section 122 requires every company to keep proper books of account. It is doubtful whether the use of loose-leaf registers and books and accounting records, mechanical or otherwise, not kept in books, constitutes a sufficient compliance with these sections. On the other hand, there is no penalty-and it would be difficult to enforce one for keeping books in this form except that owing to the possibility of substitution they might not constitute evidence in a Court of Law; this applies particularly to minutes of meetings which are often the only record of the proceedings. On the whole, we think that the use of these modern labour-saving methods is desirable if accompanied by reasonable safeguards, e.g. arrangements for the proper custody of the loose-leaves and of the keys of loose-leaf registers and other important books. We do not consider that it would be possible to enumerate in an Act a comprehensive list of the safeguards which

are necessary in a variety of circumstances, but we think there should be a provision that loose-leaf registers and books and accounting records not kept in books are deemed to be registers and books for the purposes of the Act provided that the company takes reasonable precautions against their misuse; it would be for the Court to decide in any case which came before it whether the precautions taken were reasonable.

Recommendation

We recommend that there be added to Section 380, a subsection to the following effect:-

For the purposes of this Act registers and books shall be deemed to include loose-leaf registers and books and accounting records not kept in books where reasonable precautions are taken against their misuse.

DIRECTORS AND SECRETARIES OF COMPANIES

174. Although section 139 requires every public company registered after 1929 to have at least two directors, there is not, as there should be, explicit provision in the Act that a private company must have a director or that any company must have a secretary.

Recommendation

We recommend that section I39 be amended so as to provide that every company shall have at least one secretary, - and that every private company shall have at least one director. As a corollary to this recommendation we recommend that a definition of 'secretary' analogous to that of 'director' be added to section 380.

DIVIDEND ANNOUNCEMENTS AND STATEMENT'S OF PROFITS

175. We have been asked to consider specifically the question whether companies should be required to issue at the same time as any declaration of dividend a statement of their profits for the period to which the proposed dividend relates, in order to prevent the creation of a false market in the shares. In 1938 the London Stock Exchange Committee requested companies of which the shares are dealt in on the London Stock Exchange, when declaring their final dividend to make a concise statement of the profits of the year supplemented by a statement of the corresponding figure for the previous year and to give information in any case where such profits had not been arrived at on a comparable basis. A large number of companies have complied with this request. The London Stock Exchange Committee have recently passed a new rule to the effect that in future the board of a company applying for permission to deal must give an undertaking to supply this information. They are also required to give any other information necessary to enable the shareholders to appraise the position of the company and to avoid the establishment of a false market in the shares. We welcome this development, but we do not consider that it would be practicable for legislation to lay down rules applicable in all cases. Difficulty would arise in connection with interim dividends which are often based upon estimated profits after making a conservative allowance for unknown factors, and figures of the results of a part of a year might give a misleading impression as to the results of the year as a whole: further, some companies which have businesses abroad experience delay in ascertaining the final figures of profits although they have sufficient information to decide upon the final dividend; moreover, direct sometimes announce final dividends before the audit has taken place, partly in order to prevent the abuse of advance information. Our recommendations as to the contents of accounts and the publication of consolidated accounts will assist directors in furnishing

the information required by -the London Stock Exchange Committee. We think that the matter is one which is better left to the elastic control of that Committee, having regard to the circumstances of each case: we regard it as most important that companies should co-operate with them in this matter by complying with their wishes as far as is practicable and we hope that the London Stock Exchange Committee may find it possible to bring into line companies which have already obtained permission to deal.

STANDING ADVISORY COMMITTEE

176. We have been asked to consider specifically a suggestion that there might be set up a standing body to review the Companies Act and to keep all matters relative to limited companies under continuous review, the standing body to have power to initiate action when it seem necessary y with the concurrence of the Government Departments concerned. We doubt the wisdom of delegating the initial responsibility for legislation on major matters to a Standing Committee. We think, however, that a committee

(which should not be a statutory body) to advise the Board of Trade on matters arising in the administration of the Companies Act, would probably be useful.

COMPANIES NOT REGISTERED UNDER THE COMPANIES ACT

177. Matters relating to chartered companies, statutory companies and companies incorporated under deed of settlement, are Outside our terms of reference. We think, however, that consideration might be given to the advisability of applying to them many of the provisions of the Company Act, as amended in accordance with our suggestions, in particular, the provisions regarding prospectuses and accounts, This applies with special force to our recommendations regarding consolidated accounts; it from time to time occurs that a holding company not itself registered under the Companies Act owns one or more subsidiary companies registered under that Act.

PENSION FUNDS

178- It has been represented to us that companies should be required by law to invest pension funds outside the business. While this appears to us sound in principle, our attention was called to a number of complications, particularly as regards existing schemes. It seems to us that the principle is not really a question of company law, affecting as it does schemes of employers who are not companies incorporated under the Companies Act, and that it is really outside our terms of reference.

CONCLUSION

179. We wish to express our appreciation of the work done by Mr. C. W. Jardine and Mr. F. M. Collins, the Secretary and Assistant Secretary of the Committee. We are greatly indebted to them for their assistance, not only in collecting information and preparing memoranda, but also in the preparation of this report.

LIONEL L. COHEN (Chairman).

B. G. CATTERNS.

ARTHUR F. B. FFORDE.

MONTAGU L. GEDGE.

ARTHUR L. GOODHART.

GEOFFREY HEYWORTH.

E. H. HODGSON.

R. KETTLE.

HAROLD P. MITCHELL.
GEO. W. THOMSON.
LAURENCE HILL WATSON.
R. P. WILKINSON.
JOHN WILMOT.

C. W. JARDINE,
Secretary.

11th June, 1945.

APPENDIX A

MEMORANDUM ISSUED TO CERTAIN ORGANISATIONS AND INDIVIDUALS

A Committee has been appointed by the President of the Board of Trade with the following term of reference:-

"To consider and report what major amendments are desirable in the Companies Act, 1929, and, in particular, to review the requirements prescribed in regard to the formation and affair of companies and the safeguards afforded for investor and for the public interest ".

The Committee would be glad to have your views (which may be published in due course) as to what, if any amendments in the Companies Act, 1929, are desirable, having regard to the terms of reference, in relation to the matters mentioned under head, 1 to 16 below. It is not necessary for you to give your views under every head if you have no comments to make. Should you refer to abuses of the existing company law, it would be useful if you would state how widespread you consider the abuses to be.

- 1. Restrictions on use of names.**
- 2. Shares of no par value.**
- 3. Prospectuses and offers for sale.**

(a) Content. of and authentication of information in

(i) prospectuses,

(ii) offers for sale,

(iii) statement. in lieu of prospectuses,

(iv) Stock Exchange, requirements;

(b) Underwriting ;

(c) Minimum subscription.

4. Private Companies.

(a) Restrictions and requirements on formation;

(b) Issue of share capital and loan capital;

(c) Restrictions on transfer of shares

(d) Disclosure of accounts.

5. Debentures.

(a) Power to create and issue debenture.;

(b) Powers, duties and position of:-

(i) Trustees,

(ii) Receivers.

6. Register of members and debenture-holders; shares and debentures held by nominees.

7. Financial relations between Companies (including subsidiary Companies) and Directors and former Directors.

(a) Share dealings ;

(b) Remuneration and other- emolument. or advantages;

(c) Voting on matters in which they are interested.

8. Accounts.

(a) Form and contents of balance sheets and profit and loss accounts;

(b) Circulation and inspection.

9. Appointment and functions of Auditors,

10. Relations of Holding and Subsidiary Companies.

- (a) Definition of subsidiary company;
- (b) Disclosure of information a. to subsidiary companies
- (c) Consolidated accounts.

11. Shareholders control.

- (a) Meetings and voting ;
- (b) Rights and protection of classes and minorities.

12. Liability of Companies for acts of their officers with particular reference to certification of transfers.

13. Reconstruction and amalgamation.

14. Winding-up.

- (a) Declaration of solvency;
- (b) Fraudulent preference;
- (c) Avoidance of debentures.

15. Investigation of affairs of Companies.

If there are any other matters in relation to which you consider some major amendment to the existing company law is desirable and to which you think the attention of the Committee should be directed, you are invited to do so under

16. Miscellaneous.

APPENDIX B

**ORGANIZATIONS AND INDIVIDUALS WHO GAVE ORAL EVIDENCE
BEFORE THE COMMITTEE**

THE ACCEPTING HOUSES' COMMITTEE (represented by Mr. G. Tyser).

THE ASSOCIATION OF BRITISH CHAMBERS OF COMMERCE (represented by Mr. A. D. Dean and Mr. W. B. Nelson).

THE ASSOCIATION OF CERTIFIED AND CORPORATE ACCOUNTANTS (represented by M, H. K. Fairbrother, M.B.E., Mr. F. G. Stone, Mr. F. G. Wiseman and Mr. J. C. Latham).

THE ASSOCIATION OF INVESTMENT TRUSTS (represented by Mr. Harold Brown, Mr. J. Ivan Spens and Mr. A. Simon).

THE AUCTIONEERS' AND ESTATE AGENTS' INSTITUTE OF THE UNITED KINGDOM (represented by Colonel C. C. O. Whiteley, O.B.E., Mr. W. W. Withers, Mr. E. G. Bigwood and Mr. F. C. Hawkes).

THE BRITISH INSURANCE ASSOCIATION (represented by Mr. Thomas Frazer and Mr. H. E. Melville).

THE CHARTERED INSTITUTE OF PATENT AGENTS (represented by Mr. E. W. Moss, Mr. W. P. Williams and Mr. A. Abbey).

THE CHARTERED INSTITUTE OF SECRETARIES OF JOINT STOCK COMPANIES AND OTHER PUBLIC BODIES (represented by M, Hildred Carlisle and Mr. Percy Lloyd Tanner).

THE CHARTERED SURVEYORS' INSTITUTION (represented by Mr. A. G. Harfield, Mr. C. Gerald Eve and Mr. W. E. A. Bull).

THE COMMITTEE FOR GENERAL PURPOSES OF THE STOCK EXCHANGE, LONDON (represented by Mr. H. B. Turle, Mr. A. G. Ashby and Mr. A. F. B. Cook. with Mr. J. B. Braithwaite).

THE COMMITTEE OF LONDON CLEARING BANKERS (represented by Sir Charles Lidbury and Mr. H. B. Lawson).

THE COUNCIL OF ASSOCIATED STOCK EXCHANGES represented by Mr. A. A. Fisk).

THE COUNCIL OF THE LAW SOCIETY (represented by Sir Stanley Pott and Mr. L. E. Peppiatt, M.C.).

'THE ECONOMIST' (represented by Mr. Geoffrey Crowther, Mr. R. E. Bird and Mr. F. W. Forge).

THE FEDERATION OF BRITISH INDUSTRIES (represented by Mr. S. E. Cash, Mr. C. B. L. Tennyson, C.M.G., and Mr. D. L. Walk).

THE GENERAL COUNCIL OF SOLICITORS IN SCOTLAND (represented by Mr. R. F. Shepherd).

THE GENERAL FEDERATION OF TRADE UNIONS (represented by Mr. A. Taylor, Mr. H. M. Moulden, Mr. J. Lee,, O.B.E., Mr. A. Knowles and Mr. G. Bell).

THE GENERAL MANAGERS OF THE SCOTTISH BANKS (represented by Mr. N. L. Hird and Mr. G Mackenzie),

IMPERIAL CHEMICAL INDUSTRIES LTD. (represented by Mr. J. E. James, Mr. J. L. Armstrong, Mr. E. A. Bingen and Mr. R. F. Pennell).

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES (represented by Sir Harold Howitt, D.S.O., M.C., and Mr. T. B. Robson, M.B.E.).

THE INSTITUTE OF INDUSTRIAL ADMINISTRATION (represented by Lieutenant-Colonel A. Vaughan Cowell).

THE JOINT COMMITTEE OF COUNCILS OF CHARTERED ACCOUNTANTS OF SCOTLAND (represented by Professor William Anna. and Sir David Allan Hay, K.B.E.).

THE LONDON CHAMBER OF COMMERCE (represented by Mr. S. R. Hogg, D.S.O., M.C.).

THE NATIONAL ASSOCIATION OF TRADE PROTECTION SOCIETIES (represented by Mr. T. F. Birch, Mr. A. T. Eaves and Mr. C. Greig, M.B.E.).

THE NATIONAL CHAMBER OF TRADE (represented by Mr. D. B. Morgan and Mr. F. Gratwicik).

THE NATIONAL UNION OF MANUFACTURERS (represented by Sir Charles Hipwood, K.B.E., C.B., Mr. C. S. Garland and Mr. R. S. Wright).

SHELL TRANSPORT AND TRADING COMPANY LIMITED (represented by Sir Robert Waley Cohen, K.B.E., and Mr. G. S. Engle).

THE SOCIETY OF INCORPORATED ACCOUNTANTS AND AUDITORS (represented by Mr. E. C. Elliott and Mr. A. S. Allen.).

THE TRADES UNION CONGRESS (represented by Sir Walter Citrine, K.B.E., Mr. George Isaacs, M.P., and Mr. E. Fletcher).

THE CHIEF REGISTRAR IN COMPANIES (WINDING-UP) (Sir Arthur Stiebel).

THE CHIEF REGISTRAR OF FRIENDLY SOCIETIES (Sir Job Fox O.B.E.).

THE DIRECTOR OF PUBLIC PROSECUTIONS (Sir Edward Tindal Atkinson, K.C.B., O.B.E.).

THE SENIOR OFFICIAL RECEIVER IN BANKRUPTCY (Mr. L. A. West).

THE OFFICIAL RECEIVER IN COMPANIES LIQUIDATION (Mr. H. P. Naunton, D.S.O.).

THE REGISTRAR OF COMPANIES (EDINBURGH) (Mr. P. J. Rose, C.B.).

THE REGISTRAR OF COMPANIES (LONDON) (Mr. P. Martin.).

Mr. A. W. ACWORTH.

MR. HAROLD BROWN.

DR. E. J. COHN.

MR. F. R. M. DE PAULA, O.B.E.

CAPTAIN H. N. HUME, M.C.

SIR DOUGAL MALCOLM, K.C.M.G.

MR. CHARLES NORDON.

MR. HERBERT OPPENHEIMER.

MR. HARGREAVES PARKINSON, Editor of The Financial News

MR. STANLEY PASSMORE.

MR. HORACE B. SAMUEL.

MR. CECIL W. TURNER.

MR. ARTHUR WHITWORTH.

DR. ERNST WOLFF.

APPENDIX C

..... LIMITED

STATEMENT OF AFFAIRS ON THE 19 TO BE ANNEXED TO
 STATUTORY DECLARATION OF SOLVENCY, SHOWING ASSETS AT
 ESTIMATED REALISABLE VALUES AND LIABILITIES EXPECTED TO
 RANK

ASSETS

										£
Balance at Bank	...	...	...	...	...	...	...	...	...	...
Cash in Hand	...	...	...	...	...	...	...	...	...	...
Marketable securities	...	...	...	...	...	...	...	...	...	...
Bills Receivable	...	...	...	...	...	...	...	...	...	...
Trade Debtor.	...	...	...	...	...	...	...	...	...	...
Other Debtors	...	...	...	...	...	...	...	...	...	...
Loans and Advances	...	...	...	...	...	...	...	...	...	...
Stock in Trade	...	...	...	...	...	...	...	...	...	...
Work in Progress	...	...	...	...	...	...	...	...	...	...
.....
.....
Freehold Property	...	...	...	...	...	...	...	...	...	...
Leasehold Property	...	...	...	...	...	...	...	...	...	...
Plant and Machinery	...	...	...	...	...	...	...	...	...	...
Furniture, Fitting., Utensils, etc	...	...	...	...	...	...	...	...	...	...
Patents, Trade Mark., etc. ...	...	...	...	...	...	...	...	...	...	...
Investments other than marketable securities	...	...	...	...	...	...	...	...	...	...
Estimated realisable value of Asset.	...	...	...	...	...	...	...	...	...	...

LIABILITIES

£ £ £

Secured on specific assets, viz:-

Secured by Floating Charge

Unsecured Creditors

Trade Account

Bills Payable

Accrued Expenses

Other Liabilities:-

Contingent Liabilities :-

Estimated sum, payable in respect of Contingent Liabilities

ESTIMATED SURPLUS AT19.....

Deduct: Estimated Cost of Liquidation and other expenses including interest accruing until payment of debts in full

ESTIMATED SURPLUS AFTER PAYING DEBTS IN FULL

£

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