CHAPTER 24:03

COMPANIES ACT

Acts 47/1951, 46/1953, 20/1959 (*Federal*), *29/1959* (*s. 144*), *38/1963* (*Federal*), *22/1964* (*s. 54*), *38/1964* (*s. 25*), *28/1970, 33/1972, 27/1973* (*s. 98*), *39/1973* (*ss. 17 and 52*), *21/1975; 41/1977, 41/1978* (*s. 16*), *17/1979* (*s. 11*), *15/1981, 20/1981, 29/1981, 31/1983* (*s. 13*), *11/1991* (*s. 15*), *23/1991, 6/1993, 15/1993* (*s. 63*), *23/1994, 12/1997* (*s. 16*);*16/1998* (*s. 70*); *22/1998* (*s. 6*), *9/1999* (*s.*), *22/2001, 14/2002, 17/2004;5/2006, 9/2011 (s. 15), 5/2014 (s. 33).*

R.G.N.s 198/1959, 403/1959, 153/1963, 386/1964, 217/1970, 141/1971, 298/1974, 1119/1975, 1135/1975.
S.I.s 26/1986, 127/1986, 219/1986, 333/1992, 416/1992, 15/1993, 123/1996, 219/1996, 112/2007, 23/2009

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AN ACT to consolidate and amend the laws in force in Zimbabwe relating to the constitution, incorporation, registration, management, administration and winding up of companies and other associations, and for other purposes incidental thereto.

[Date of commencement: 1st April, 1952.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Companies Act [*Chapter 24:03*].

2 Interpretation

In this Act—

"accounts" includes a company's group accounts, whether prepared in the form of accounts or not;

"articles" means the articles of association of a company as originally framed, or as altered by special resolution, and includes, so far as they apply to a company, the regulations set out in Table A in the First Schedule to the Companies Ordinance, 1895, or Table A in the First Schedule;

"body corporate" has the meaning given to it by subsection (2) of section *six*;

"books or papers" and "books and papers" include accounts, deeds, writings and other documents;

"certified", in relation to a copy or translation of any document, means certified in the prescribed manner to be a true copy or a correct translation;

"company" means a company limited by shares or a company limited by guarantee as in section *seven* described, or an existing company;

"contributory" has the meaning given to it by section *two hundred and two*;

"co-operative company" has the meaning given it by section *thirty-six*;

"court", in relation to any company, means the High Court, and in relation to any offence against this Act, includes a magistrates court having jurisdiction in respect of that offence;

"creditors' voluntary winding up" has the meaning given to it by subsection (2) of section *two hundred and forty-six*;

"debenture" includes debenture stock or bonds;

"default fine" has the meaning given to it by subsection (1) of section *three hundred and forty*;

"director" includes any person occupying the position of director or alternate director of a company, by whatever name he may be called;

"equity share capital" has the meaning given to it by subsection (6) of section *one hundred and forty-three*;

"existing company" has the meaning given to it by subsection (1) of section *four*;

"expert" means any person whose professional or technical training gives authority to a statement made by him;

"financial year", in relation to any body corporate, means the period in respect of which any profit and loss account of the body corporate laid before it in general meeting is made up, whether that period is a year or not;

"foreign company" means a company or other association of persons incorporated outside Zimbabwe which has established a place of business in Zimbabwe;

"foreign country" means any state or territory other than Zimbabwe;

"foreign language" means any language other than English;

"group accounts" has the meaning given to it by subsection (1) of section *one hundred and forty-four*; "holding company" means a holding company as defined by section *one hundred and forty-three*;

"issued generally", in relation to a prospectus, means issued to persons who are not existing members or debenture holders of the company;

"judicial manager" includes a provisional judicial manager and a final judicial manager;

"manager", in relation to a company, means any person who is the principal executive officer of the company, by whatever title he may be designated and whether or not he is a director;

"Master" means the Master of the High Court or any person acting in that capacity;

"members' voluntary winding up" has the meaning given to it by subsection (2) of section *two hundred and forty-six*;

"memorandum" means the memorandum of association of a company as originally framed or as altered in pursuance of any law hitherto in force or of this Act;

"minimum subscription" has the meaning given to it by subsection (2) of section *sixty-five*;

"Minister" means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act; "officer",
in relation to a company, includes a director, manager or secretary;

"officer who is in default" has the meaning given to it by subsection (2) of section *three hundred and forty*;

"ordinary resolution" has the meaning given to it by subsection (4) of section *one hundred and thirty-three*;

"petition" means an application to the court made in the appropriate form prescribed in rules of court;

"prescribed" means prescribed by rules or regulations made under section *three hundred and fifty-nine* or *three hundred and sixty*, as the case may be;

"prescribed form" means a form set out in the First, Third, Fifth or Sixth Schedule or any form added to or altered in the said Schedule by this Act or any form prescribed by rules or regulations made under section *three hundred and fifty-nine* or *three hundred and sixty*, as the case may be;

"printed" includes typed, handwritten in ink, lithographed, cyclostyled or any other mode of representing words, figures or symbols in a permanent visible form, but unless prescribed does not include any carbon copy of a document;

"private company" has the meaning given to it by section *thirty-three*;

"promoter", in relation to a prospectus, means any person who is a party to the preparation of the prospectus but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of a company;

"prospectus" means any prospectus, notice, circular, advertisement or other printed invitation offering to the public for subscription or purchase any shares or debentures of a company;

"public company" means any company, including a co-operative company, which is not a private company or a company licensed under section *twenty-six*;

"quoted", in relation to any share, debenture or other security, means an investment for which a quotation or permission to deal has been granted in respect of a securities exchange registered under the Securities Act [*Chapter 24:25*] or in respect of a securities exchange of good repute outside Zimbabwe, and "unquoted" shall be construed accordingly;

[Definition as amended by section 120 of Act No. 17 of 2004]

"Registrar" means the Chief Registrar of Companies or a registrar of companies appointed in terms of section *five*;

"repealed laws" means the laws specified in the Second Schedule;

"secretary" includes any official of a company, by whatever name called, who is performing the duties normally performed by a secretary of a company;

"share" means a share in the share capital of a company and includes stock, except where a distinction between stock and shares is expressed or implied;

"special notice" has the meaning given to it by section *one hundred and thirty-five*;

"special resolution" means a resolution passed at a general meeting of a company in manner provided by subsections (1), (2) and (3) of section *one hundred and thirty-three*;

"subsidiary" and "wholly owned subsidiary" have the meanings given to them by section *one hundred and forty-three*;

"unable to pay its debts", in relation to a company, has the meaning given to it by section *two hundred and five* and, in relation to an unregistered association, has the meaning given to it by paragraph (*d*) of section *three hundred and twenty-three*;

"unregistered association" has the meaning given to it by section *three hundred and twenty-two*;

"winding-up order" means any order whereby a company is placed under liquidation or under provisional liquidation when such order for provisional liquidation has not been set aside; "Zimbabwe Stock Exchange" ….

[Definition repealed by section 120 of Act No. 17 of 2004]

3 Non-application of Act to certain institutions

(1) Nothing in this Act contained shall apply to any building societies, co-operative societies or private business corporations, the formation, registration and management whereof are governed by any other enactment, save as may be otherwise provided in any such enactment.

(2) This Act shall not be construed as applying to—

(a) a trade union or an employers' organization; or

(b) a friendly society, other than a friendly society which was at the 1st April, 1952, registered under any of the repealed laws.

(3) In this section—

"employers' organization" and "trade union" have the meanings given to them respectively by section 2 of the Labour Relations Act [*Chapter 28:01*];

"friendly society" has the meaning given to it by section 2 of the Friendly Societies Act [*Chapter 195 of 1974*];

"private business corporation" has the meaning given to it by section 2 of the Private Business Corporations Act [*Chapter 24:11*].

4 Application of Act to existing companies and savings

(1) This Act shall apply to every company which, having been formed and registered under any of the repealed laws, is in Zimbabwe registered as a company at the 1st April, 1952, in the same manner as if the company had been formed and registered under this Act as a company; and every company to which this Act is so applicable shall be deemed to be duly incorporated and registered under this Act and is in this Act referred to as "an existing company":

Provided that—

(i) nothing in this Act shall affect the validity of the incorporation of any existing company;

(ii) reference in this Act, expressed or implied, to the date of registration shall be construed as a reference to the date at which an existing company was registered under any of the repealed laws;

(iii) nothing in this Act contained shall affect any right or privilege acquired, or liability incurred, whether by agreement or otherwise, before the 1st April, 1952, by an existing company, or affect the validity of an existing company's articles, which, being in force at such date, are not in conflict with this Act, save in so far as those articles may be affected by subsection (2).

(2) Those articles of any existing company which should have been contained in a memorandum of association if the company had been formed under this Act shall, for the purpose of this Act, he deemed to be the memorandum of association or part of the memorandum of association of the company, and shall be subject in all respects to the provisions of this Act relating to a memorandum of association.

(3) Any new or supplementary deed or articles of association registered prior to the 1st April, 1952, under any of the repealed laws and embodying any alteration, consolidation, subdivision, conversion, increase or reduction of its registered capital, shall be of the same legal force and effect as if such alteration, consolidation, subdivision, conversion, increase or reduction had been fully effected under this Act.

5 Registrar and offices for registration of companies

(1) There shall be an office in Harare and an office in Bulawayo called the Companies Registration Offices, for the registration of companies under this Act.

(2) There shall be—

(a) a Chief Registrar of Companies, who shall exercise general supervision and direction of the Companies Registration Offices; and

(b) such numbers of registrars of companies, assistant registrars of companies and other officers as may be necessary for the purposes of this Act; and whose offices shall be public offices and form part of the Public Service.

(3) An assistant registrar of companies or other officer referred to in paragraph (*b*) of subsection (2) shall, if the Minister so directs, have the power to do any act or thing which may lawfully be done by a registrar of companies under this Act or any other enactment.

(4) As from the 1st April, 1952, all registers of companies and other documents pertaining to companies filed of record under the repealed laws shall be incorporated in and form part of the register of companies and files kept in the offices established under this section.

PART II

INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO

Prohibition of Partnership Exceeding Twenty Members

6 Prohibition of association or partnership exceeding twenty persons

(1) No company, association, syndicate or partnership consisting of more than twenty persons shall be formed in Zimbabwe for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association, syndicate or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other law, Letters Patent or Royal Charter:

Provided that an association, syndicate or partnership which—

(a) consists solely of persons who are members of a designated profession or calling; and

(b) is formed for the purpose of practising or carrying on in Zimbabwe that designated profession or calling; may consist of more than twenty persons.

(2) No association of persons formed after the 1st April, 1952, for the purpose of carrying on any business that has for its object the acquisition of gain by the association or by the individual members thereof shall be a body corporate, unless it is registered as a company under this Act or is formed in pursuance of some other law, Letters Patent or Royal Charter.

(3) The President may, by proclamation in the *Gazette*, declare any profession or calling which is controlled and regulated by a council or other body established by or under any Act in force in Zimbabwe to be a designated profession or calling for the purposes of the proviso to subsection (1).

Memorandum of Association

7 Mode of forming company

Any one or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company either—

(a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them, in this Act termed a company limited by shares; or

(b) if a licence is granted in terms of section *twenty-six*, a company having no share capital but having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up, in this Act termed a company limited by guarantee.

8 Memorandum of company

(1) In the case of a company limited—

(*a*) by shares, the memorandum shall be in the English language and must state—

(i) the name of the company which shall, unless a licence has been granted under section *twentysix*, have "Limited" as the last word and shall also have included therein—

A. in the case of a private company, the term "(Private)" as the penultimate word; B. in the case of a co-operative company, the word "Co-operative" or the abbreviation "Coop";

(ii) the objects of the company;

(iii) that the liability of the members is limited;

(iv) the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(*b*) by guarantee, the memorandum shall be in the English language and must state— (i) the name of the company;

(ii) the objects of the company;

(iii) that the liability of the members is limited;

(iv) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member for payment of the debts and liabilities of the company contracted before he ceases to be a member and of the costs, charges and expenses of the winding up and for the adjustment of the rights of the

contributories among themselves such amount as may be required, not exceeding a specified amount.

(2) No subscriber to the memorandum of a company limited by shares may take less than one share.

(3) Each subscriber to the memorandum of a company limited by shares must in his own handwriting state in words opposite to his name the number of shares he takes:

Provided that where the subscriber is—

(a) a company, association, syndicate or other corporate body, a director of the company or the authorised representative of any other corporate body; or

(b) a partnership, one of the partners; or

(c) a minor, the guardian; as the case may be, shall indicate in their handwriting the number of shares taken.

[Proviso inserted by Act 5 of 2006]

(4) A public company which converts itself into a private company in terms of section *thirty-three* shall, within one month after the conversion, insert the term "(Private)" before the word "Limited" in its name and, notwithstanding anything to the contrary contained—

(a) in the Deeds Registries Act [*Chapter 20:05*], the Registrar of Deeds shall, upon lodgement with him of the amended certificate of incorporation and the registered deed wherein the name of the company appears, amend without charge the registered deed and the relevant registers;

(b) in any other enactment, any person keeping a register in terms of any enactment shall, upon lodgement with him of the amended certificate of incorporation, amend without charge such register.

(5) The insertion of the term "(Private)" in the name of a company in compliance with subsection (4) shall not be regarded as a change of name for the purposes of subsection (1) of section *twenty-five*.

9 Capacity and powers of company

A company shall have the capacity and powers of a natural person of full capacity in so far as a body corporate is capable of exercising such powers.

10 Effect of statement of objects

(1) The effect of a statement of the objects of a company, whether in its memorandum or elsewhere, shall not be to invalidate any transaction which exceeds those objects and which was made by the company or entered into by the company with any other person, notwithstanding that the other person was aware of the statement of the objects.

(2) Without derogation from any remedy that may be available to the person concerned—

(a) any member or debenture holder of a company may, prior to the event, apply to court for and may obtain an interdict restraining the company from making or entering into any transaction which exceeds its objects, whether stated in its memorandum or elsewhere;

(b) where any transaction which exceeds a company's objects, whether stated in its memorandum or elsewhere, has been made or entered into and has resulted in loss to the company, any member or debenture holder may claim on behalf of the company compensation for such loss from any officer of the company who took part in the transaction concerned:

Provided that, where it appears to the court that the officer against whom the claim is made acted honestly and reasonably and that, having regard to all the circumstances of the case, it would be just and fair to do so, the court may decline to award compensation against him or may make an award for part only of the compensation or may make any other order or award that the court thinks fit.

11 No constructive notice of company's documents

No person shall be deemed to have notice or knowledge of the contents of a company's memorandum, articles or other document by reason only of the fact that the memorandum, articles or document has been registered by the Registrar or is available for inspection at the company's registered office.

12 Presumption of regularity

Any person having dealings with a company or with someone deriving title from a company shall be entitled to make the following assumptions, and the company and anyone deriving title from it shall be estopped from denying their truth—

(a) that the company's internal regulations have been duly complied with;

(b) that every person described in the company's register of directors and secretaries, or in any return delivered to the Registrar by the company in terms of section *one hundred and eighty-seven*, as a director, manager or secretary of the company, has been duly appointed and has authority to exercise the functions

customarily exercised by a director, manager or secretary, as the case may be, of a company carrying on business of the kind carried on by the company;

(c) that every person whom the company, acting through its members in general meeting or through its board of directors or its manager or secretary, represents to be an officer or agent of the company, has been duly appointed and has authority to exercise the functions customarily exercised by an officer or agent of the kind concerned;

(d) that the secretary of the company, and every other officer or agent of the company having authority to issue documents or certified copies of documents on behalf of the company, has authority to warrant the genuineness of the documents or the accuracy of the copies so issued;

(e) that a document has been sealed by the company if it bears what purports to be the seal of the company attested by what purports to be the signature of a person who, in accordance with paragraph (*b*), can be assumed to be a director of the company:

Provided that—

(i) a person shall not be entitled to make such assumptions if he has actual knowledge to the contrary or if he ought reasonably to know the contrary;

(ii) a person shall not be entitled to assume that any one or more of the directors of the company have been appointed to act as a committee of the board of directors or that an officer or agent of the company has the company's authority merely because the company's articles provide that the authority to act in the matter may be delegated to a committee or to an officer or agent.

13 Liability not affected by fraud

A company shall be bound in terms of section *twelve*, notwithstanding that the officer or agent concerned acted fraudulently or forged a document purporting to be sealed or signed on behalf of the company.

14 Signing of memorandum

The memorandum shall be printed and shall be signed and dated, in the presence of at least one attesting witness, by each subscriber and opposite every such signature of a subscriber or a witness there shall be written in legible characters his full name, occupation, and full residential or business address:

Provided that where the subscriber is—

(a) a company, association, syndicate or other corporate body, a director of the company or the authorised representative of any other corporate body; or

(b) a partnership, one of the partners; or

(c) a minor, the guardian; as the case may be, shall sign the memorandum.

[Proviso inserted by Act 5 of 2006]

15 Restriction on alteration of memorandum

A company may not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act.

16 Alteration of conditions in memorandum which could have been contained in articles and alteration of objects of company

(1) A company may by special resolution—

(a) subject to section *one hundred and ninety-five*, alter any condition contained in its memorandum which could lawfully have been contained in articles of association:

Provided that this paragraph shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the said conditions, and shall not authorize any variation or abrogation of the special rights of any class of members;

(b) alter its memorandum with respect to the objects of the company:

Provided that, if the name of the company describes the main objects of that company and such objects are to be altered so that the name of the company would no longer describe its main objects, the memorandum shall not be so altered unless the name of the company is changed accordingly in terms of section *twenty-five*.

(2) Notwithstanding subsection (1), if an application is made to the court in accordance with this section for an alteration in terms of paragraph (*a*) or (*b*) of subsection (1) to be cancelled, the alteration shall not have effect except in so far as it is confirmed by the court.

(3) An application made under this section may be made—

(a) in respect of an alteration in terms of paragraph (*a*) or (*b*) of subsection (1), by the holders of not less in the aggregate than fifteen *per centum* in nominal value of the company's issued share capital or any class thereof;

(b) in respect of an alteration in terms of paragraph (*b*) of subsection (1), by the holders of not less than fifteen *per centum* of the company's debentures entitling the holders to object to alterations of its objects:

Provided that an application shall not be made by any person who has consented to or voted in favour of the alteration. (4) An application under this section shall be made within one month after the date on which the resolution altering the condition contained in the memorandum or the company's objects, as the case may be, was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(5) On an application under this section the court may make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company shall be expended in any such purchase.

(6) The debentures entitling the holders to object to alterations of a company's objects shall be any debentures secured by notarial bond which were issued or first issued before the 1st April, 1952, or form part of the same series as any debentures so issued, and a special resolution altering the company's objects shall require the same notice to the holders of any such debentures as to members of the company. In default of any provisions regulating the giving of notice to any such debenture holders, the company's articles regulating the giving of notice to members shall apply. (7) In the case of a company which is, by virtue of a licence from the Minister, exempt from the obligation to use the word "Limited" as part of its name, a resolution altering the company's objects shall require the same notice to the Minister as to members of the company, and where such a company alters its objects the Minister, unless he sees fit to revoke the licence, may vary the licence by making it subject to such conditions and regulations as he thinks fit, in place of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.

(8) Where a company passes a resolution altering its objects—

(a) if no application is made with respect thereto under this section, it shall within one month from the end of the period for making such an application deliver to the Registrar a copy of its memorandum as altered; and

(b) if such an application is made, it shall—

(i) forthwith give notice of that fact to the Registrar; and

(ii) within one month from the date of any order cancelling or confirming the alteration, deliver to the Registrar a certified copy of its memorandum as altered.

The court may by order at any time extend the time for the delivery of documents to the Registrar under paragraph (*b*) for such period as the court may think proper.

(9) If a company makes default in giving notice or delivering any document to the Registrar as required by subsection (8), the company shall be guilty of an offence and liable to a default fine not exceeding level one.

(10) The validity of an alteration of a company's memorandum with respect to the objects of the company shall not be questioned on the ground that it was not authorized by subsection (1) except in proceedings taken for the purpose, whether under this section or otherwise, before the expiration of one month after the date of the resolution in that behalf; and where any such proceedings are taken otherwise than under this section, subsections (8) and (9) shall apply in relation thereto as if they had been taken under this section and as if an order declaring the alteration invalid were an order cancelling it and as if an order dismissing the proceedings were an order confirming the alteration.

[Section as amended by Act No. 22 of 2001]

Articles of Association

17 Articles prescribing regulations for companies

Articles of association signed by the subscribers to the memorandum of a company and prescribing its regulations may be registered with such memorandum.

18 Application of Table A and void provisions

(1) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule.

(2) In the case of a company limited—

(a) by shares, if articles of association are not registered, or if articles of association are registered in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles;

(b) by guarantee, articles of association prescribing regulations for the company shall be registered with the memorandum of association.

(3) Any provision contained in a company's articles shall be void in so far as it would have the effect either—

(a) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or

(b) of making ineffective a demand for a poll on any such question which is made—

(i) by not less than five members having the right to vote at the meeting; or

(ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

19 Form and signature of articles

Articles shall be in the English language, shall be printed and shall— (*a*) be divided into paragraphs numbered consecutively; and

(*b*) be signed and dated by each subscriber to the memorandum in the presence of at least one attesting witness and opposite every such signature of a subscriber or a witness there shall be written in legible characters his full name, occupation and full residential or business address.

20 Alteration of articles

Subject to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles and any alteration or addition so made in the articles shall be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

Registration

21 Registration of memorandum and articles

(1) The memorandum and the articles, if any, together with either a duplicate original or a printed notarial copy, shall be delivered to the Registrar:

Provided that in the case of a company to be registered in Bulawayo there shall be delivered in addition either a further duplicate original or a further printed notarial copy.

(2) Subject to due compliance with section *one hundred and seventy-one*, whenever that section is applicable and upon payment of the prescribed fees, the Registrar shall, if the memorandum and the articles, if any, are in accordance with this Act, register the same, and shall return to the company a duplicate original or one notarial copy of the memorandum and of the articles, if any, with the date of the registration endorsed thereon.

22 Effect of registration and use of seal

(1) On registering the memorandum of a company the Registrar shall certify under his hand that the company is incorporated, and the date of such incorporation.

(2) From the date of incorporation, the subscribers to the memorandum, together with such other persons as may from time to time also become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company, and having perpetual succession, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

(3) A company may have a seal and, if it has, such seal shall be affixed to instruments in the manner prescribed in its articles.

23 Conclusiveness of certificate of incorporation

A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act, in respect of registration and of matters precedent and incidental thereto, have been complied with, and that the association is a company authorized to be registered under this Act.

Provisions with Respect to Names of Companies

24 Prohibition of undesirable name

(1) The Registrar may on written application reserve a name pending registration of a company or a change of name by a registered company. Such reservation shall be for a period of one month or such longer period, not exceeding in all two months, as the Registrar may, for special reasons, allow:

Provided that a name shall not be reserved in terms of this subsection unless it has first been ascertained by search and examination that the name is available for registration and the appropriate fee for such search has been paid.

(2) No name shall be reserved and no company shall be registered by a name which is identical with that for which a reservation is current or with that of a registered company or a registered foreign company or a private business corporation registered under the Private Business Corporations Act [*Chapter 24:11*]or which so nearly resembles any such name as to be likely to deceive unless the registered company or registered foreign company or private business corporation, as the case may be, is in liquidation and signifies its consent to the registration in such manner as the Registrar may require.

(3) The Registrar may, unless otherwise ordered by the Minister, refuse to register a company by a name which in his opinion is likely to mislead the public or to cause offence to any person or class of persons or is suggestive of blasphemy or indecency or which he considers to be undesirable for any other reason.

(4) Where, by any enactment, a person—

(a) is prohibited from using in his name or in the description or title under which he may carry on business any word or combination of letters, the Registrar shall refuse to register a company by a name which contains such word or combination of letters;

(b) is prohibited from using in his name or in the description or title under which he may carry on business any word or combination of letters unless he has the permission of an authority specified in that enactment, the Registrar shall refuse to register a company by a name which contains such word or combination of letters unless that authority has indicated that the necessary permission would be given.

(5) The Registrar shall refuse to register a company under a name in which the word "Co-operative" or any contraction or imitation thereof forms a part unless the memorandum and articles of the company complies with section *thirty-six*.

(6) The Minister may make regulations in terms of section *three hundred and sixty* prohibiting a company from being registered by a name which includes specified words or words which import or suggest that it enjoys the patronage of a particular person, government or authority and no company shall be registered by a name which includes any such words unless the Minister has consented in writing thereto:

Provided that nothing in this subsection contained shall be construed as preventing the name by which a company is registered under any law in force prior to the date on which that name is so prescribed from being retained on the register as the name of that company.

(7) If the Registrar, after due inquiry and considering any evidence that may be placed before him, considers that a company is registered, whether originally or by reason of a change of name, by a name which—

(a) in his opinion, is likely to mislead the public or to cause offence to any person or class of persons or is suggestive of blasphemy or indecency; or

(b) he considers to be in conflict with the provisions of this section or undesirable for any other reason; he may order the company in writing to change its name, and the company shall thereupon do so within a period of six weeks from the date of the written order or such longer period as the Registrar may see fit to allow:

Provided that the Registrar may not make such an order if a period of more than twelve months has elapsed since the date of the registration of the company or the change of name of the company, as the case may be.

(8) If a company makes default in complying with an order under subsection (7), the company shall be guilty of an offence and liable to a default fine not exceeding level one.

(9) Before making any order in terms of subsection (7) the Registrar shall comply with such procedure as may be prescribed for the purpose of ensuring that the company concerned is given an opportunity of being heard.

(10) For the purposes of any proceedings before the Registrar in terms of subsections (7) and (9), the Registrar shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply, *mutatis mutandis*, in relation to the hearing and determination

before the Registrar under subsections (7) and (9) and to any person summoned to give evidence or giving evidence before him.

(11) Any person who is aggrieved by an order of the Registrar in terms of subsection (5) may appeal to a judge of the court who may refer the matter to the court for argument.

(12) On any appeal in terms of subsection (9) a judge of the court or the court, as the case may be, may—

(a) confirm the order of the Registrar; or

(b) direct the Registrar to vary or revoke his order.

(13) The court may at any time, on application by any person, order a company to change its name within such period as may be specified by the court on the grounds that the name of the company—

(a) is likely to mislead the public or gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public; or

(b) is likely to cause damage to any other person.

[Section as amended by Act No. 22 of 2001]

25 Change of name

(1) A company may, by special resolution and with the written approval of the Registrar, change its name.

The Registrar shall not give such approval unless there has been published in the *Gazette* and in a daily newspaper circulating in the district in which the registered office of the company is situated an advertisement stating that application will be made to the Registrar for his approval not less than fourteen days after the last publication of the advertisement.

(2) Where the name of a company is changed in terms of this section, the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case, or a certificate that the new name is entered on the register in place of the former name.

(3) Upon the production by a company to the Registrar of Deeds or a mining commissioner or other officer proper for the registration of deeds or mining titles of a certificate by the Registrar in terms of subsection (2), together with the relevant documents and application in writing, and on payment of the prescribed fees, such Registrar of Deeds, mining commissioner or other officer shall make in his registers all such alterations as are necessary by reason of the changed name and shall endorse the change of name on the said documents.

(4) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced by or against it by its former name may be continued or commenced under its new name.

26 Power to dispense with "Limited" in certain cases

(1) Where the Minister is satisfied that an association exists for any lawful purpose, the pursuit of which is calculated to be in the interests of the public, or any section of the public, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, and that it is desirable that such association should be incorporated, the Minister may, if the association submits to him a memorandum complying with section *eight*, by licence under his hand direct that the association be registered as a company without the addition of the word "Limited" to its name, and the association may thereupon be registered accordingly. (2) The association, upon such registration, shall enjoy all the privileges of a company and be subject to all

the obligations thereof, except those of using the word "Limited" as any part of its name and of complying with sections *sixty-five*, *sixty-six*, *seventy-one*, *one hundred and fourteen*, *one hundred and twenty-three*, *one hundred and twenty-four*, *one hundred and forty-nine* and *one hundred and seventy-one*.

(3) A licence under this section may at any time be revoked by the Minister and upon revocation the Registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall thereupon cease to enjoy the exemptions and privileges granted by this section.

Before a licence is so revoked the Minister shall give to the association notice in writing of his intention, and shall afford it an opportunity of submitting in writing arguments in opposition to revocation.

An association whose licence has been revoked may appeal to the court within such period and in accordance with such rules as may be prescribed under section *three hundred and fifty-nine* and on any such appeal the court may make such order as it deems fit.

(4) Whenever it is proved to the satisfaction of the Minister that the objects of a company are those defined in subsection (1) and objects incidental or conducive thereto, and that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its

members, the Minister may by licence authorize the company to change its name by special resolution by the omission therefrom of the word "Limited", and as from the date of the receipt of the certificate of the Registrar recording the registration of such special resolution passed pursuant to such licence the company shall be deemed to be a company licensed under this section.

(5) Section *twenty-five* shall apply to a change of name under this section.

(6) A licence by the Minister under this section may be granted on such conditions and subject to such regulations as he may think fit, and those conditions and regulations shall be binding upon the association or company and shall, if the Minister so directs, be inserted in the memorandum and articles, or in one of those documents.

(7) No alteration of the memorandum or articles of association in respect of which a licence under this section is in force shall take effect until such alteration is approved by the Minister, and if the Minister approves the alteration he may vary the licence by making it subject to such conditions and regulations as he thinks fit, in lieu of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.

General Provisions with Respect to Memorandum and Articles

27 Effect of memorandum and articles

(1) Subject to this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by each member and contained undertakings on the part of each member to observe all the provisions of the memorandum and of the articles.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

28 Copies of memorandum and articles to be given to members

(1) Every company shall send to every member at his request, on payment of one United States dollar or such less sum as the company may prescribe, a copy of the memorandum and of the articles, if any, or shall afford to every member or to his duly authorized agent reasonable facilities for making a copy of the memorandum and of the articles, if any.

[Subsection amended by Act 9 of 2011]

(2) If a company makes default in complying with subsection (1) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level one for each default.

[Subsection amended by Act No. 22 of 2001]

29 Copies of memorandum and articles to embody alterations

(1) Where an alteration is made in the memorandum or articles of a company every copy of the memorandum or articles issued after the date of the alteration shall be in accordance therewith.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copy of the memorandum or articles which is not in accordance with the alteration, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level one for each copy so issued.

[Section as amended by Act No. 22 of 2001]

Membership of Company

30 Definition of member

(1) The subscribers to the memorandum of a company shall be deemed to have agreed to become members of the company and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees to become a member of a company and whose name is entered in its register of members shall be a member of the company.

31 Membership of holding company

(1) Except in the cases hereafter in this section mentioned, a body corporate cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.

(2) Nothing in this section shall apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(3) This section shall not prevent a subsidiary which is, at the 1st April, 1952, a member of its holding company, from continuing to be a member but, subject to subsection (2), the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof.

(4) Subject to subsection (2), subsections (1) and (3) shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references in subsections (1) and (3) to such a body corporate included references to a nominee for it.

32 Personal liability or member where business carried on with no members

If a company has no members and carries on business for more than six months without members, any person who knowingly causes it to do so shall be liable, jointly and severally with the company, for all debts incurred by it after the six months have elapsed.

Private Companies

33 Definition of private company

(1) The expression "private company" means a company other than a co-operative 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.

(2) Where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this section, be treated as a single member.

(3) With the sanction of a special resolution and subject to confirmation by the court, a public company may convert itself into a private company.

34 Consequences of default in complying with conditions for private company

Where the articles of a company include the provisions which, under section *thirty-three*, are required to be included in the articles of a company in order to constitute it a private company but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies by this Act and the provisions thereof shall in all respects apply to the company as if it were not a private company:

Provided that the court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the court just and expedient, order that the company be relieved from such consequences as aforesaid.

35 Statement in lieu of prospectus on ceasing to be private company

(1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section *thirty-three*, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of one month after the said date, remove the term "(Private)" from its name and deliver to the Registrar for registration a statement in lieu of prospectus in the form and containing the particulars set out in Part I of the Third Schedule and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule:

Provided that a statement in lieu of prospectus need not be delivered if within the said period a prospectus relating to the company which complies with the Fourth Schedule is issued and is lodged with the Registrar as required by section *fifty-six*.

(2) Every statement in lieu of prospectus delivered under subsection (1) shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 in Part III of the said Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving reasons therefor.

(3) If default is made in complying with subsection (1) or (2) the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine of not exceeding level two.

(4) Subsections (5) and (6) of section *sixty-six* shall apply, *mutatis mutandis*, to every statement in lieu of prospectus lodged under this section as they apply to a statement in lieu of prospectus lodged under that section.

(5) The removal of the term "(Private)" from the name of a company in compliance with subsection (1) shall not be regarded as a change of name for the purposes of subsection (1) of section *thirty-three*.

[Section as amended by Act No. 22 of 2001]

Co-operative Companies

36 Definition of co-operative company

(1) A co-operative company is a company, other than a private company, which—

(*a*) in its memorandum states that its main object is one or other or both of the following—

(i) the provision for its members of a service facilitating the production or marketing of agricultural produce or livestock;

(ii) the sale of goods to its members; and

(*b*) by its articles—

(i) restricts the right to transfer its shares; and

(ii) provides that its ordinary shares shall be of one class only; and

(iii) subject to section *thirty-nine*, fixes a limit to the number of shares which may be held by any one member; and

(iv) regulates the voting rights of its members in accordance with section *thirty-nine*; and

(v) limits the dividend which may be paid on its shares to a rate not exceeding ten *per centum* per annum on the amounts paid up thereon; and

(vi) provides for the distribution of a part or the whole of its profits amongst its members on the basis of certain or all of their business transactions with the company.

(2) With the sanction of a special resolution and subject to confirmation by the court, a public company, which is not a co-operative company, may convert itself into a co-operative company.

(3) For the purposes of paragraph (*a*) of subsection (1)—

"member", in relation to a co-operative company, includes any person who is a member of a co-operative company which is a member of the first-mentioned co-operative company.

37 Co-operative company to maintain reserve fund

(1) Every co-operative company shall maintain a reserve fund which may be used for any purpose for which the share capital of the co-operative company may be used but which shall not be available for distribution to members except in the event of the winding-up of the co-operative company.

(2) The articles of the co-operative company shall provide for the creation and operation of its reserve fund and for the method of determining the amount to be appropriated thereto from the annual surplus of the cooperative company.

38 Consequences of default in complying with conditions for co-operative company

Where the memorandum and articles of a company include the provisions which under section *thirty-six* are required to be included in the memorandum and articles of a company in order to constitute it a co-operative company but default is made in complying with any of those provisions the company shall cease to be entitled to the privileges and exemptions conferred on co-operative companies by this Act and the provisions thereof shall in all respects apply to the company as if it were not a co-operative company:

Provided that the court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertency or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as to the court seem just and expedient, order that the company be relieved from such consequences as aforesaid.

39 Voting rights of members of co-operative company

(1) Subject to subsection (2), every member of a co-operative company shall have at least one vote in respect of the conduct of the affairs of the co-operative company but, save in the case where the membership of the cooperative company is less than one hundred members or is restricted solely to other co-operative companies, no member may exercise more than one *per centum* of the total votes in respect of the conduct of the affairs of the co-operative company which are accorded to all the members thereof:

Provided that—

(i) the articles of a co-operative company may provide that votes shall be accorded to the members thereof in relation to their shareholding in the co-operative company or their transactions with the co-operative company during a specified period or to both such factors but in no case shall a member be entitled to be accorded more than six votes in respect of either such factor or twelve votes in respect of both;

(ii) if a co-operative company has been permitted by the Minister, in terms of section *forty-one* to form a subsidiary co-operative company or to acquire another co-operative company as its subsidiary the firstmentioned co-operative company shall be entitled to exercise in respect of the conduct of the affairs of the subsidiary such number or percentage of the total votes accorded to all members of the subsidiary which does not exceed such number or percentage as may be specified by the Minister from time to time;

(iii) in the case of a co-operative company, where the membership is less than one hundred members and is not restricted solely to other co-operative companies, no member thereof shall have more than one vote in the conduct of the affairs of the co-operative company unless provision has been made in the articles of the co-operative company as envisaged by proviso (i).

(2) The holder of a preference share in a co-operative company shall have no vote in respect of the conduct of the affairs of the co-operative company:

Provided that the articles of the co-operative company may provide that such a holder may have a vote, subject to the provisions of subsection (1), in respect of matters affecting the rights of any such holder of any such preference shares or the dissolution of the co-operative company.

40 Application of surplus assets on liquidation of co-operative company

If in any winding up of a co-operative company after the application of the assets thereof in terms of section *two hundred and ninety-one*, there remains any surplus of assets the liquidator shall distribute such surplus, including the capital reserve and any other reserves of the co-operative company, in the following order—

(a) amongst the holders of the preference shares of the co-operative company which are preferent as to capital, if any, in repayment of the amounts paid up by them on such preference shares;

(b) amongst the holders of shares of the co-operative company, not referred to in paragraph (*a*), in repayment of the amounts paid up by them on such shares;

(c) if the articles of the co-operative company so provide, in payment to the holders of the preference shares of the co-operative company, if any, of a dividend, which shall not in any case exceed a rate of ten *per centum* per annum on the amounts paid up thereon, for any period for which no disposal of profits was made;

(d) if the articles of the co-operative company so provide, in payment to the holders of the ordinary shares of the co-operative company of a dividend, which shall not in any case exceed a rate of ten *per centum* per annum on the amounts paid up thereon, for any period for which no disposal of profits was made;

(e) any remaining surplus shall be paid to existing members in proportion to the number of ordinary shares in the co-operative company held by each of them multiplied by the number of completed months which has elapsed since—

(i) the date of the issue of such shares; or

(ii) the date of registration of such shares in the name of the present holders; whichever of such cases may be provided for in relation to any particular circumstances in the articles of the co-operative:

Provided that, where there are different amounts paid up on the shares in question, the proportion payable shall be adjusted accordingly.

41 Subsidiary co-operative company

A co-operative company may, with the permission of the Minister, and subject to such conditions as he may from time to time impose, form one or more subsidiary co-operative companies or acquire one or more cooperative companies as its subsidiary co-operative companies.

42 Special method for reduction of share capital

Notwithstanding, but without derogation from, this Act a share in a co-operative company may be cancelled and the amount paid up thereon refunded in such circumstances relating to the termination of membership or otherwise as are authorized in its articles:

Provided that no such cancellation of a share or refund of the amount paid up thereon shall—

(a) affect the liability of a contributory in terms of this Act; or

(b) be made;

unless there is appropriated from the free reserves, surplus or profit of the co-operative company and added to its capital reserve an amount equal to the nominal value of such cancelled share.

43 Disposal of produce of members to or through co-operative company

(1) A co-operative company which has as one of its objects the disposal of any produce or livestock of its members may provide in its articles or may otherwise contract with its members—

(a) that no member shall dispose of any such produce or livestock or any part of such produce or livestock by sale or barter other than by sale to or through the co-operative company;

(b) that any member who contravenes any such articles or commits a breach of any such contract shall pay to the co-operative company as liquidated damages a sum ascertained or assessed in such manner as is provided in the articles or contract.

(2) Whenever any produce or livestock or any part thereof is delivered to a co-operative company by a member thereof in accordance with its articles or a contract referred to in subsection (1) for the purpose of disposal to or

through the co-operative company or its agents, whether statutory bodies or otherwise, no creditor of the member delivering the same may attach or charge such produce or livestock or part thereof or the proceeds of the sale thereof that remain under the control of the co-operative company.

44 Shares or interest of members: charge and set-off, and immunity from attachment or sale in execution

(1) A co-operative company shall have a charge upon the shares, interest in the capital and deposits of a member, past member or deceased member and upon any dividend, bonus or profits payable to a member, past member or estate of a deceased member in respect of any debt due to the co-operative company from such member, past member or estate and may set-off any sum credited or payable to a member, past member or estate of a deceased member in or towards payment of any such debt.

(2) Subject to subsection (1), the share or interest of a member in the capital of a co-operative company shall not be liable to attachment or sale under an order of any court in respect of any debt or liability incurred by such member:

Provided that nothing in this subsection contained shall prohibit the cancellation of the share or the transfer or sale of the share or interest of a member in accordance with the articles of such co-operative company.

45 Company ceasing to be a co-operative company

(1) If a company being a co-operative company alters its memorandum or articles in such a manner that they no longer include the provisions which, under section *thirty-six* are required to be included in the memorandum and articles of a company in order to constitute it a co-operative company, the co-operative company shall as on the date of the alteration cease to be a co-operative company and shall within a period of one month after the said date remove the term "Co-operative" or any contraction or imitation thereof from its name.

(2) The removal of the term "Co-operative" or any contraction or imitation thereof from the name of a company in terms of subsection (1) shall not be regarded as a change of name for the purposes of subsection (1) of section *twenty-five*.

(3) If default is made in complying with subsection (1) the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine of not exceeding level two.

[Section as amended by Act No. 22 of 2001]

Private business corporations

46 Conversion of private business corporation into company

(1) In this section—

"private business corporation" means a private business corporation incorporated under the Private Business Corporations Act [*Chapter 24:11*].

(2) A private business corporation that wishes to convert to a company shall deliver to the Registrar— (*a*) an application in the prescribed form signed by all its members; and (*b*) all documents necessary for the formation of a company under this Act.

(3) If the Registrar is satisfied that the private business corporation has complied with subsection (2) and is not in default under the Private Business Corporations Act [*Chapter 24:11*], he shall proceed in accordance with sections *twenty-one* and *twenty-two*.

(4) A company registered in accordance with this section shall be a company for all purposes under this Act and shall be the same body corporate as the private business corporation from which it was converted.

Contracts, etc.

47 Ratification of contracts

Any contract made in writing by a person professing to act as agent or trustee for a company not yet formed, incorporated or registered shall be capable of being ratified or adopted by or otherwise made binding upon and enforceable by such company after it has been duly registered as if it had been duly formed, incorporated and registered at the time when the contract was made, if—

(a) the memorandum on its registration contains as one of the objects of such company the adoption or ratification of or the acquisition of rights and obligations in respect of such contract; and

(b) the contract or a certified copy thereof is delivered to the Registrar simultaneously with the delivery of the memorandum in terms of section *twenty-one*.

48 Form of contracts

(1) Contracts on behalf of a company may be made in the following manner—

(a) any contract which, if made between private persons, would be by law required to be in writing and signed by the parties, may be made on behalf of the company in writing and signed by any person acting under its authority, expressed or implied, and may in the same manner be varied or discharged;

(b) any contract which, if made between private persons, would by law be valid though made verbally only and not reduced to writing, may be made verbally on behalf of the company by any person acting under its authority, expressed or implied, and may in the same manner be varied or discharged.

(2) All contracts made in accordance with subsection (1) shall be effectual in law and shall bind the company and its successors and all other parties thereto.

49 Promissory notes and bills of exchange

(1) A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

(2) All documents, other than the documents mentioned in subsection (1) and section *forty-eight*, shall, if executed on behalf of a company, be signed as prescribed in section *forty-eight* by any person acting under its authority, expressed or implied, unless the articles otherwise provide.

50 Execution of deeds in external countries

A company may, by writing, which if it has a seal shall be under its seal and the hand of one of its directors or, if it has not a seal, shall be under the hands of two of its directors or of one director and of the secretary, empower any person, either generally or in respect of any specified matters, as its agent, to execute deeds on its behalf in any foreign country; and every deed signed by such agent, on behalf of the company, shall bind the company, if valid in other respects.

51 Official seal for use in foreign countries

(1) Any company whose objects require or comprise the transaction of business in foreign countries may, if authorized by its articles, have for use in any foreign country an official seal, which shall be a facsimile of the seal of the company, if any, with the addition on its face of the name of the foreign country where it is to be used.

(2) A company having such an official seal may, by writing, which if it has a seal for use in Zimbabwe shall be under that seal and the hand of one of its directors or, if it has not such a seal, shall be under the hands of two of its directors or of one director and of the secretary, empower any person appointed for the purpose in any foreign country to affix the said official seal to any deed or other document to which the company is party.

(3) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and the place of affixing the same.

(5) A deed or other document to which such an official seal is duly affixed shall bind the company, if valid in other respects.

52 Authentication of documents

A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorized officer of the company, and need not be under its seal.

PART III

SHARE CAPITAL AND DEBENTURES

Prospectus

53 Dating of prospectus

A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

54 Matters to be stated and reports to be set out in prospectus

(1) Every prospectus issued by or on behalf of a company or on behalf of any person who is or has been engaged or interested in the formation of the company shall be in the English language and must state the matters specified in Parts I and II of the Fourth Schedule and set out—

(a) the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule;

(b) the report of any expert who is mentioned in the prospectus or an abstract from such report certified by the expert as truly conveying the substance of his report and of his opinions and conclusions.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful to issue, distribute or deliver or cause to be issued, distributed or delivered any form of application for shares in or debentures of a company unless the form is issued with and attached to a prospectus which complies with the requirements of this section:

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

(a) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(b) in relation to shares or debentures which were not offered to the public.

If any person contravenes this subsection he shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention if—

(a) as regards any matter not disclosed, he proves that he was not cognizant thereof; or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(c) the non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 15 of the Fourth Schedule, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) Any person who becomes a director of a company after the issue of any prospectus by or on behalf of that company and prior to the first general meeting of the company at which directors are elected or appointed shall be deemed to be a person responsible for the prospectus and to have incurred liability in the same manner as a director or a proposed director who has signed the prospectus or on whose behalf the prospectus was signed by an agent.

(6) This section shall not apply to—

(a) the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; or

(b) the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a securities exchange registered under the Securities Act [*Chapter 24:25*] or on a stock exchange of good repute outside Zimbabwe;

[Paragraph as amended by section 120 of Act No. 17 of 2004]

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

(7) Nothing in this section shall limit or diminish any liability which any person may incur under the common law or this Act apart from this section.

(8) Every newspaper or other advertisement whatsoever offering or calling attention to an offer or intended offer of shares in or debentures of a company to the public for subscription or purchase shall be deemed to be a prospectus issued by the person responsible for publishing or disseminating the advertisement (and all enactments and rules of law as to the contents of prospectuses and as to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly), unless it contains a statement as to the places at and times during which copies of the prospectuses may be obtained and no more than the following—

(a) the number and description of the shares or debentures concerned;

(b) the name and date of registration of the company;

(c) the general nature of the main business or proposed main business of the company; (*d*) the names of the directors or proposed directors.

No statement that or to the effect that the advertisement is not a prospectus shall avail to prevent the operation of this subsection.

[Section as amended by Act No. 22 of 2001]

55 Expert's consent to issue of prospectus containing statement by him

(1) A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by an expert shall not be issued unless—

(a) he has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included; and

(b) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

(2) If any prospectus is issued in contravention of subsection (1), the company and every person who is knowingly a party to the issue thereof shall be guilty of an offence and liable, in the case of the company, to a fine not exceeding level ten and, in the case of any such person, to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

56 Registration of prospectus

(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, a copy thereof has been filed with and registered by the Registrar. Such copy shall be signed by every person who is named therein as a director or proposed director of the company, or by his agent authorized in writing, and shall have endorsed thereon or attached thereto—

(*a*) any consent to the issue of the prospectus required by section *fifty-five* from any person as an expert; and

(*b*) in the case of a prospectus issued generally, also—

(i) a copy of any contract required by paragraph 14 of the Fourth Schedule to be stated in the prospectus or, in the case of a contract not reduced to writing, a memorandum giving full particulars thereof; and

(ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 26 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

The references in subparagraph (i) of paragraph (*b*) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a foreign language, be taken as references to a copy of a certified translation of the contract or a copy embodying a certified translation of the parts in a foreign language, as the case may be.

(2) Every prospectus shall, on the face of it—

(a) specify the date of its registration under subsection (1); and

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

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

(4) If a prospectus states that the whole or portion of the share capital or debentures offered for subscription has been underwritten the prospectus shall not be registered until there is lodged with the Registrar the documents required by section *sixty*.

(5) The Registrar shall not register any prospectus which names any person as the auditor, legal practitioner, banker or broker of the company or proposed company unless it is accompanied by the consent in writing of the person so named to act in the capacity stated, but such person shall not be deemed thereby to have authorized the issue of the prospectus.

(6) No prospectus shall be issued more than three months after the date of its registration by the Registrar and if a prospectus is so issued it shall be deemed to be a prospectus a copy of which has not been registered.

(7) If a prospectus is issued—

(a) without a copy thereof being filed with and registered by the Registrar; or

(b) without the copy so filed and registered having endorsed thereon or attached thereto the required documents;

the company and every person who is knowingly a party to the issue of the prospectus shall be guilty of an offence and liable, in the case of the company, to a fine not exceeding level ten and, in the case of any such person, to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

57 Restriction on alteration of terms mentioned in prospectus or in statement in lieu of prospectus

A company not being a private company shall not previously to the statutory meeting vary in any material respect the terms of a contract referred to in the prospectus, or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

58 Civil liability for mis-statements in prospectus

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

(a) every person who is a director of the company at the time of the issue of the prospectus; and

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

(*d*) every person who has authorized the issue of the prospectus:

Provided that—

(i) where, under section *fifty-five*, the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not by reason of his having given it be liable under this subsection as a person who has authorized the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert;

(ii) no person whose ordinary business or part of whose ordinary business it is to do secretarial or administrative work, shall be liable under this subsection as a person who has authorized the issue of the prospectus by reason only that he is employed by the company to perform on its behalf the secretarial and administrative work of the issue of shares or debentures to which the prospectus relates and is named in the prospectus as secretary or manager for the issue.

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

(a) that, having consented to become a director of the company, he withdrew his consent in writing before the issue of the prospectus and that it was issued without his authority or consent; or

(b) that the prospectus was issued without his knowledge or consent and that, on becoming aware of its issue, he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(c) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of the untrue statement, made an immediate written withdrawal of his consent thereto and gave reasonable public notice of such withdrawal and of the reason therefor; or

(d) that—

(i) as regards every untrue statement, not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable grounds to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true; and

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable grounds to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and had given the consent required by section *fifty-five* to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder; and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

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

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

(a) that, having given his consent under section *fifty-five* to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration; or

(b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, made an immediate written withdrawal of his consent and gave reasonable public notice of such withdrawal and of the reason therefor; or

(c) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true.

(4) Where—

(a) the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented in writing to become a director or has in writing withdrawn his consent before the issue of the prospectus and has not authorized or consented to the issue thereof; or

(b) the consent of a person is required under section *fifty-five* to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus;

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

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

59 Criminal liability for mis-statements in prospectus

(1) Where a prospectus issued after the 1st April, 1952, includes any untrue statement, any person who authorized the issue of the prospectus shall be guilty of an offence and liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment unless he proves either that the statement was immaterial or that he had reasonable grounds to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

(2) A person shall not be deemed for the purposes of subsection (1) to have authorized the issue of a prospectus by reason only of his having given the consent required by section *fifty-five* to the inclusion therein of a statement purporting to be made by him as an expert.

[Section as amended by Act No. 22 of 2001]

60 Underwriting contract and affidavit to be delivered to Registrar

(1) If the whole or portion of the share capital or debentures of a company being offered for subscription has been or is being underwritten, the company shall deliver to the Registrar, not later than the date of the proposed offer of shares or debentures, a copy of the underwriting contract and an affidavit sworn by the person named as underwriter or, if such underwriter be a company, by two directors of such company, stating that to the best of the deponent's knowledge and belief the underwriter is and will be in a position to carry out his obligations even if no shares or debentures, as the case may be, are applied for.

(2) The underwriter shall furnish the company within seven days of a written request by the company with the affidavit required by subsection (1).

(3) If the underwriter fails to comply with subsection (2), he shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(4) In the event of any underwriter, if such an affidavit is sworn, being unable, when duly called upon, to carry out his obligations under the underwriting contract, the affidavit shall be deemed to have been sworn without reasonable ground for belief that the person named as underwriter was or would be in a position to carry out his obligations under that contract; and the person swearing such affidavit, unless he proves that he did so believe and had reasonable ground for the belief, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(5) If default is made in complying with subsection (1) the company shall be guilty of an offence and liable to a fine not exceeding level three.

[Section as amended by Act No. 22 of 2001]

61 Document containing offer of shares or debentures for sale to be deemed prospectus

(1) 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, and this Act shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) In this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—

(a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section *fifty-four* as applied by this section shall have effect as if it required a prospectus to state, in addition to the matters required by that section to be stated in a prospectus—

(a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and

(b) the place and time at which the contract under the said shares or debentures have been or are to be allotted may be inspected;

and section *fifty-six* as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company.

(4) Where an offer to which this section relates is made by a company or a partnership it shall be sufficient if the document aforesaid is signed on behalf of the company or partnership by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorized in writing.

62 Interpretation of provisions relating to prospectus

In this Act—

(a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included;

(b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith;

(c) if any matter which ought, under sections *fifty-four* and *fifty-five* and the Fourth Schedule or under subsection (3) of section *sixty-one*, to be inserted in a prospectus is omitted therefrom and if such omission is calculated to mislead then the prospectus shall be deemed, in respect of such omission, to be a prospectus in which an untrue statement is included.

63 Construction of references to offering shares or debentures to public

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

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

(*a*) a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded as aforesaid; and (*b*) provisions of this Act relating to private companies shall be construed accordingly.

64 Restrictions on offering shares for subscription or sale

(1) It shall not be lawful for any person to go from house to house, or from farm to farm, offering shares or debentures for subscription or purchase to the public or any member of the public.

In this subsection, "house" shall include any office, shop or business premises, save the office or business premises of a person whose ordinary business or part of whose ordinary business it is to deal in shares or debentures, whether as principal or agent.

(2) No person shall either verbally or in writing, including any newspaper advertisement—

(a) make an offer of shares for sale to the public or any member of the public; or

(b) invite offers from the public or any member of the public to purchase any shares; and no person shall issue, distribute or publish any material which in its form and context is calculated to be understood as an offer or invitation as aforesaid unless the offer, invitation or material is accompanied either by a prospectus complying with this Act or by a written statement containing the particulars required by this section to be included therein.

The said statement shall be dated and signed by the person or persons making the offer or invitation or issuing, distributing or publishing the said material and, if such person is a company, by every director thereof:

Provided that this subsection shall not apply—

(a) if the shares to which the offer or invitation or material relates are shares which are quoted on, or in respect of which permission to deal has been granted by, a securities exchange registered under the Securities Act [*Chapter 24:25*] or a stock exchange of good repute outside Zimbabwe, and the person making the offer or invitation or publishing the material so states in writing specifying the stock exchange; or

[Paragraph as amended by section 120 of Act No. 17 of 2004]

(b) if the shares in question are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public; or

(c) if the offer or invitation is made or the material is published only to persons whose ordinary business or part of whose ordinary business it is to deal in shares or debentures whether as principals or agents; or

(d) to an offer for sale to the public of or an invitation to the public to tender for unquoted shares made in the course of winding up a company in liquidation or in a deceased, insolvent or assigned estate or in an estate held under curatorship or in execution of a judgment of any competent court; or

(e) to an offer or invitation made in respect of unquoted shares by a person who is at the time of the offer or invitation the *bona fide* registered beneficial owner of them.

(3) The said statement shall contain particulars with respect to the following matters—

(a) whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in Zimbabwe where that principal can be served with process and the nature and extent of the remuneration received or receivable by the agent for his services;

(b) the date on which and the country in which the company was incorporated and the address of its registered or principal office in Zimbabwe or, if none, the address of its principal office outside Zimbabwe;

(c) the authorized share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of members in respect of capital, dividends and voting and the number and amount of shares issued for cash and the number and amount thereof issued for a consideration other than cash, giving the dates on which and the prices at which or the consideration for which such shares were issued;

(d) the dividends, if any, paid by the company on each class of shares during each of the five financial years immediately preceding the offer or such lesser period as the company may have operated and, with respect to the rates of such dividends, particulars of each such class of shares on which such dividends have been paid, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;

(e) the total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon;

(f) the names and addresses of the directors of the company;

(g) whether or not the shares offered are fully paid up and, if not, to what extent they are paid up;

(h) whether or not the shares are quoted on, or permission to deal therein has been granted by, a securities exchange registered under the Securities Act [*Chapter* 24:25]or any stock exchange outside Zimbabwe, and, if so, which, and, if not, a statement that they are not so quoted or that no such permission has been granted;

(i) if the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held and an address in Zimbabwe where that document or a copy thereof can be inspected;

(j) particulars of the dates on which and the prices at which the shares offered were—

(i) originally issued by the company; and

(ii) acquired by the person making the offer, or by his principal, giving the reasons for any difference between such prices and the prices at which the shares are being offered.

In this subsection the expression "company" means the company by which shares to which a statement relates were or are to be issued.

(4) If any person contravenes this section he shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(5) If a person convicted of an offence under this section is a company, whether a company within the meaning of this Act or not, every director of the company shall be guilty of the like offence and subject to the like penalties unless he proves that the act constituting the offence took place without his knowledge or consent.

(6) In this section, unless the context otherwise requires, the expression "offer" includes an invitation to make an offer, the expression "shares" means the shares of a company, whether a company within the meaning of this Act or not, and includes debentures and units, and the expression "unit" means any right or interest, by whatever name called, in a share, and for the purposes of this section a person shall not, in relation to a company, be regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company.

(7) If any person is convicted of having made an offer in contravention of this section the court before which he is convicted may order that any contract made as a result of the offer shall be void and, where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares.

[Section as amended by Act No. 22 of 2001]

Allotment

65 Prohibition of allotment unless minimum subscription received

(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 4 of the Fourth Schedule has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company. For the purposes of this subsection an amount stated in any cheque received by the company in payment shall be deemed not to have been paid to and received by the company—

(a) until the amount of the cheque has been credited to the account of the company with its bankers;

(b) if the company has at any time delivered to the payer and has not been repaid the amount or value of any money, bill, promissory note, cheque or other valuable consideration otherwise than in discharge of a debt *bona fide* due by the company to such payer, then to the extent of the amount or value of such money, bill, promissory note, cheque or other valuable consideration.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as "the minimum subscription".

(3) The amount payable on application on each share shall be the same in respect of all shares of the same class in any one issue and shall not be less than ten *per centum* of the nominal amount of the share.

(4) The amount paid on application shall be set apart by the directors in a separate bank account and shall not be available for the purposes of the company or for the satisfaction of its debts until the minimum subscription has been made up.

(5) If the conditions aforesaid have not been complied with on the expiration of sixty days after the first issue of the prospectus, all money received from applicants for shares shall forthwith be repaid to them without interest and, if any such money is not so repaid within seventy days after the issue of the prospectus. the directors of the company shall be guilty of an offence and liable to a fine not exceeding level ten and, further, shall be jointly and severally liable to repay that money with interest at the rate prescribed in the Prescribed Rate of Interest Act [*Chapter 8:10*] from the expiration of the seventieth day:

Provided that a director shall not be guilty of an offence nor personally liable to repay the money if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

[Subsection as amended by section 16 of Act No. 12 of 1997]

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

[Section as amended by Act No. 22 of 2001]

66 Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar

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

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

(3) Every statement in lieu of prospectus delivered under subsection (2) shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the Fifth Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(4) If a company contravenes subsection (2) or (3) the company and every director of the company who knowingly and wilfully authorizes or permits the contravention shall be guilty of an offence and liable to a fine not exceeding level five

(5) Where a statement in lieu of prospectus delivered to the Registrar under subsection (2) includes any untrue statement, any person who authorized the delivery of the statement in lieu of prospectus for registration shall be guilty of an offence and liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment, unless he proves either that the untrue statement was immaterial or that he had reasonable grounds to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

(6) For the purposes of this section—

(a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

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

(c) if any matter which ought, under the provisions of the Fifth Schedule, to be inserted in a statement in lieu of prospectus is omitted therefrom and if such omission is calculated to mislead then the statement in lieu of prospectus shall be deemed, in respect of such omission, to be a statement in lieu of prospectus in which an untrue statement is included.

[Section as amended by Act No. 22 of 2001]

67 Effect of irregular allotment

(1) An allotment made by a company in contravention of section *sixty-five* or *sixty-six* shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting and not later; or in any case, where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes, or permits or authorizes the contravention of section *sixty-five* or *sixty-six* he shall be liable to compensate the company and the allottee, respectively, for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby:

Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

68 Allotment voidable if application form not attached to prospectus

Where an application form is required by section *fifty-four* to be attached to a prospectus, every allotment of shares or debentures made otherwise than in pursuance of an application form which was attached to a prospectus as required by subsection (3) of section *fifty-four* shall be voidable at the instance of the allottee within one month after allotment, unless it is shown that the allottee at the time of his application was in fact possessed of a copy of the prospectus or was aware of its contents.

69 Application for and allotment of shares

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

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

(2) In subsection (1) the reference to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first issued as a newspaper advertisement:

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

(3) The validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section but, in the event of any such contravention, the company and every officer of the company who is knowingly a party to the default shall be guilty of an offence and liable to a fine not exceeding level seven

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

(5) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the third day after the time of the opening of the subscription lists, or the giving before the expiration of the said third day, by some person responsible under section *fifty-eight* for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

(6) In reckoning for the purposes of this section and of section *seventy* the third day after another day, any intervening day which is a Saturday or Sunday or which is a public holiday in Zimbabwe shall be disregarded and if the third day, as so reckoned, is itself a Saturday or Sunday or a public holiday there shall for the said purposes be substituted the first day thereafter which is none of them.

[Section as amended by Act No. 22 of 2001]

70 Allotment of shares and debentures to be dealt in on stock exchange

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

(2) Where the permission has not been applied for as aforesaid, or has been refused as aforesaid, the company shall forthwith repay without interest all money received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate prescribed in the Prescribed Rate of Interest Act [*Chapter 8:10*] from the expiration of the eighth day:

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

[Subsection as amended by section 16 of Act No. 12 of 1997]

(3) All money received as aforesaid shall be kept in a separate bank account and shall not be available for the purposes of the company or for the satisfaction of its debts so long as the company may become liable to repay it under subsection (2) and, if default is made in complying with this subsection, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

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

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

(6) This section shall have effect—

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

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

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

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

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

[Section as amended by Act No. 22 of 2001]

71 Register and return as to allotments

(1) Every company shall keep a register of allotments at his registered office.

(2) A company, whenever it makes any allotment of its shares, shall, within one month thereafter, lodge with the Registrar—

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

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing and signed by the parties thereto, constituting the title of the allottee to the allotment, together with any contract of sale or for services or other consideration in respect of which that allotment was made, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up and the consideration for which they have been allotted:

Provided that it shall not be necessary for a return referred to in paragraph (*a*) to state the names and addresses of the allottees in the case of an allotment of a class which has been prescribed as being one in relation to which the names and addresses of the allottees shall not be stated in the return.

(3) Where a contract such as is referred to in paragraph (*b*) of subsection (2) has not been reduced to writing, the company shall, within one month after the allotment of its shares, lodge with the Registrar such particulars of the contract as may be prescribed.

(4) If default is made in complying with the requirements of this section the company and every officer of the company who is knowingly a party to the default shall be guilty of an offence and liable to a default fine not exceeding level two:

Provided that in case of default in lodging with the Registrar within one month after the allotment any document required to be lodged by this section, the company, or any person liable for the default, may apply to the court for relief and the court, if satisfied that the omission to lodge the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the lodging of the documents for such period as the court may think proper.

[Section as amended by Act No. 22 of 2001]

Commissions and Discounts

72 Power to pay certain commissions and prohibition of payment of all other commissions, discounts

(1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company if—

(a) the payment of the commission is authorized by the articles; and

(b) the commission paid or agreed to be paid does not exceed five *per centum* of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less; and

(c) the amount or rate *per centum* of the commission paid or agreed to be paid is—

(i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or

(ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered, before payment of the commission, to the Registrar for registration, and where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice;

and

(*d*) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

(2) Save as aforesaid, no company shall apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing

to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

(4) A vendor to, promoter of or other person who receives payment in money or shares from a company, shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

(5) If default is made in complying with the provisions of this section relating to the delivery to the Registrar of the statement in the prescribed form the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

[Section as amended by Act No. 22 of 2001]

73 Financial assistance by company for purchase of its own or its holding company's shares

(1) It shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or, where the company is a subsidiary company, in its holding company unless—

(a) such assistance is given in accordance with a special resolution of the company; and

(b) immediately after such assistance is given, on a fair valuation the company's assets, excluding any asset resulting from the giving of the assistance, exceed its liabilities and it is able to pay its debts as they become due in ordinary course of its business.

(2) If a company gives financial assistance in contravention of subsection (1)—

(a) any transaction relating to such assistance and any transfer or allotment of shares arising therefrom may be set aside by the court at the suit of the company or its liquidator or any member or creditor of the company or of any party to the transaction; and

(b) whether or not the court makes an order in terms of paragraph (*a*), every officer of the company who made or took part in the decision that the company should enter into the transaction may be ordered by the court at the suit of the company or its liquidator or any member or creditor of the company or of any party to the transaction, to compensate the company and any other party to the transaction who entered into it in good faith for any loss resulting from the contravention of subsection (1):

Provided that no compensation for loss of anticipated profits shall be awarded to the company.

Issue of Shares at Premium or Discount and Redeemable Preference Shares

74 Application of share premiums

(1) If a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account called "the share premium account" and provisions of this Act relating to the reduction of a company's share capital shall apply, except as provided in this section, as if the share premium account were part of its paid-up share capital.

(2) A company may apply its share premium account—

(a) in paying up unissued shares to be allotted to its members, directors or employees, or to a trustee for such persons, as fully paid bonus shares; or

(b) in writing off—

(i) the company's preliminary expenses; or

(ii) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company; or

(*c*) in providing for the premium payable, if any, on redemption of any redeemable preference shares or of any debentures of the company.

75 Power to issue shares at a discount

(1) Subject to this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued: Provided that—

(i) the issue of the shares at a discount must be authorized by special resolution of the company and must be sanctioned by the court;

(ii) the special resolution must specify the maximum rate of discount at which the shares are to be issued;

(iii) not less than one year must, at the date of the issue, have elapsed since the date on which the company was entitled to commence business;

(iv) the shares to be issued at a discount must be issued within thirty days after the date on which the issue is sanctioned by the court or within such extended time as the court may allow.

(2) Where a company has passed a special resolution authorizing the issue of shares at a discount, it may apply to the court for an order sanctioning the issue, and on any such application the court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(3) Every prospectus relating to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus.

If default is made in complying with this subsection the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

[Section as amended by Act No. 22 of 2001]

76 Power to issue redeemable shares

(1) Subject to this section and sections *seventy-seven*, *seventy-eight*, *eighty-three* and *eighty-four*, a company may, if authorized by its articles, issue shares which are to be redeemed or which are liable to be redeemed at the option of the company or the shareholder concerned.

(2) No redeemable shares shall be issued at a time when there are no issued shares of the company which are not redeemable.

(3) Redeemable shares may not be redeemed unless they are fully paid, and the terms of redemption shall provide for payment on redemption.

77 Financing at redemption

(1) Subject to subsection (2) and subsection (4) of section *eighty-four*—

(a) redeemable shares shall be redeemed only out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and

(b) any premium payable for redemption shall be paid out of profits of the company which would otherwise be available for dividend.

(2) If redeemed shares were issued at a premium, any premium payable on their redemption may be paid out of the proceeds of a fresh issue of shares made for the purposes of the redemption, up to an amount equal to—

(a) the aggregate of the premiums received by the company on the issue of the shares redeemed; or

(b) the current amount of the company's share premium account, including any sum transferred to that account in respect of the premiums on the new shares; whichever is the lesser, and in that event the amount of the company's share premium account shall be reduced by a sum corresponding, or by sums in the aggregate corresponding, to the amount of any payment made by virtue of this subsection out of the proceeds of the issue of the new shares.

(3) Subject to this section and to sections *seventy-eight*, *eighty-three* and *eighty-four*, redemption of shares may be effected on such terms and in such manner as may be provided by the company's articles.

(4) Shares redeemed under this section shall be treated as cancelled on redemption and the amount of the company's share capital shall be diminished by the nominal value of those shares, but the redemption of shares by a company shall not be taken as reducing the amount of the company's authorized share capital.

(5) Without prejudice to subsection (4), where a company is about to redeem shares, it shall have power to issue shares up to the nominal value of the shares to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not, for the purposes of any law relating to stamp duty, be deemed to be increased by the issue of shares in pursuance of this subsection:

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

78 Power of company to purchase own shares

(1) Subject to this section and to sections *seventy-nine* to *eighty-four*, a company may, if authorized by its articles, purchase its own shares, including any redeemable shares.

(2) Sections *seventy-six* and *seventy-seven* shall apply, *mutatis mutandis*, to the purchase by a company of its own shares save that the terms and manner of purchase need not be determined by the articles as required by subsection (3) of section *seventy-seven*.

(3) A company shall not purchase its own shares if as a result of the purchase there would no longer be any member holding shares other than redeemable shares.

79 Authority required by company to purchase its own shares

(1) A company shall not purchase its own shares unless the purchase has been authorized in advance by the company in general meeting.

(2) An authority granted by the company in general meeting shall not be valid for the purposes of subsection (1)—

(*a*) unless it specifies—

(i) the price, or the maximum and minimum prices, at which the shares may be acquired; and

(ii) the maximum number of shares which may be acquired and the class thereof; and (iii) the date on which the authority will expire;

(*b*) where the shares are to be purchased otherwise than on a securities exchange registered under the Securities Act [*Chapter 24:25*] if any person holding shares to which the authority relates has voted for the resolution conferring the authority:

Provided that this paragraph shall not apply in the case of a private company or in the case of a public company when a class of shares are all to be purchased or are to be purchased *pro rata* from all the shareholders who hold shares of the class concerned.

80 Cession or renunciation of rights

(1) Where a company has obtained rights to purchase shares pursuant to an authority obtained in terms of section *seventy-nine*—

(a) such rights shall not be capable of being ceded;

(b) any agreement to renounce such rights shall not be valid unless the renunciation has been authorized in advance by the company in general meeting.

(2) An authority granted by the company in general meeting shall not be valid for the purposes of paragraph (*b*) of subsection (*l*)—

(a) unless it specifies the shares or the number of shares concerned; or

(b) where the purchase is to be effected otherwise than on the a securities exchange registered under the Securities Act [*Chapter 24:25*], if any person holding shares to which the authority relates has voted for the resolution conferring the authority:

Provided that this paragraph shall not apply in the case of a private company or in the case of a public company when a class of shares are all to be purchased or are to be purchased *pro rata* from all the shareholders who hold shares of the class concerned.

[Paragraph as amended by section 120 of Act No. 17 of 2004]

81 Payments for rights to purchase or for release thereof

(1) A payment made by a company in consideration of—

(a) acquiring any right to purchase its shares pursuant to an authority granted in terms of section *seventynine*; or

(b) the release of any obligation to purchase shares in pursuance of an authority granted in terms of section *seventy-nine*;

shall be made out of the profits that would otherwise be available for dividend.

(2) If the requirements of subsection (1) are not complied with, the purchase or release concerned, as the case may be, shall be void.

82 Disclosure by company of purchase of own shares

(1) Within the period of twenty-eight days next following the date of delivery of any of its own shares purchased by it, a company shall deliver to the Registrar a return in the prescribed form showing, with respect to each class of shares purchased—

(a) the number and nominal value of the shares; and

(b) the date on which the shares were delivered to the company; and

(c) the aggregate amount paid by the company for the shares; and

(d) the maximum and minimum prices paid in respect of shares of each class purchased.

(2) Particulars of shares delivered to the company on different dates and under different authorities to purchase may be included in a single return to the Registrar and, when this is done, the amount to be stated in terms of paragraph (*c*) of subsection (1) shall be the aggregate amount paid by the company for all the shares to which the return relates.

(3) Where a company has purchased its own shares it shall keep a copy of the contract of purchase or, if the purchase is not in terms of any written contract, a memorandum of the terms of the purchase at its registered office for a period of ten years reckoned from the date of completion of the purchase of all the shares concerned or, as the case may be, from the date of termination of the contract.

(4) The copy of the contract or memorandum, as the case may be, required to be kept in terms of subsection (3) shall be available for inspection, at all reasonable times, free of charge by any person.

(5) Every officer of a company who is in default in complying with subsection (3) or (4) shall be guilty of an offence and liable to a default fine not exceeding level two.

(6) The obligation to keep and to allow inspection of a copy of any contract or a memorandum in terms of subsections (3) and (4) shall apply, *mutatis mutandis*, to any variation of the contract.

[Section as amended by Act No. 22 of 2001]

83 Capital redemption reserve

(1) Where shares of a company are redeemed or purchased wholly out of the company's profits, the amount by which the company's issued share capital is diminished in accordance with subsection (4) of section *seventyseven* on cancellation of the shares concerned shall be transferred to a reserve, to be called "the capital redemption reserve".

(2) If shares are redeemed or purchased by a company wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the nominal value of the shares redeemed or purchased, the amount of the difference shall be transferred to the capital redemption reserve.

(3) The provisions of this Act relating to the reduction of a company's share capital shall apply to any reduction of the capital redemption reserve as if the capital redemption reserve were paid-up share capital of the company:

Provided that the reserve may be applied by the company in paying up its unissued shares to be allotted to its members, directors or employees, or to a trustee for such persons, as fully paid bonus shares.

84 Effect of failure by company to redeem or purchase shares

(1) Where a company has, on or after the 22nd October, 1993—

(a) issued shares on terms that they are or are liable to be redeemed; or

(b) agreed to purchase any of its own shares; the company shall not be liable in damages in respect of any failure on its part to redeem or purchase any of the shares, and no order for specific performance of the terms of redemption or purchase shall be made by any court if the company shows that it is unable to meet the costs of redeeming or purchasing, as the case may be, the shares in question out of profits of the company that would otherwise be available for dividend.

(2) Subject to subsection (3), if a company is wound up and at the commencement of the winding up any shares referred to in subsection (1) have not been redeemed or purchased by the company, the terms of redemption or purchase may be enforced against the company, and when shares are redeemed or purchased under this subsection they shall be treated as cancelled.

(3) Subsection (2) shall not apply if—

(a) the terms under which the shares were to be redeemed or purchased provided for the redemption or purchase to take place at a date later than that of the commencement of the winding up; or

(b) during the period commencing with the date on which the redemption or purchase was to have taken place and ending with the commencement of the winding up, the company could not at any time have lawfully paid a dividend to shareholders equal in value to the price at which the shares were to have been redeemed or purchased.

(4) There shall be paid in priority to any amount which the company is liable in terms of subsection (2) to pay in respect of any shares—

(a) all other debts and liabilities of the company, other than any due to members in their capacity as such; and

(b) if other shares carry rights, whether as to capital or as to income, which are preferent to the rights as to capital attaching to the first-mentioned shares, any amount due in satisfaction of those preferred rights;

and, thereafter, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights, whether as to capital or income, as members.

(5) Where by virtue of section 109 of the Insolvency Act [*Chapter 6:04*] as applied by subsection (1) of section *two hundred and ninety-one* a creditor of a company is entitled to the payment of any interest only after payment of all other debts of the company, the company's debts and liabilities shall, for the purpose of subsection

(4), include the liability to pay that interest. *Miscellaneous Provisions as to Share Capital*

85 Power of company to arrange for different amounts being paid on shares

A company, if so authorized by its articles, may do any one or more of the following things—

(a) make arrangements on the issue of shares for a difference between members in the amounts and times of payment of calls on their shares;

(b) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up, and, if the whole amount unpaid on any shares be paid, issue those shares as fully paid up;

(c) where a larger amount is paid up on some shares than on others, pay dividends in proportion to the amount paid up on each share.

86 Reserve liability of company

A company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up or, in respect of a company placed under judicial management, with the sanction of the court, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

87 Power of company to alter its share capital

(1) A company may by special resolution alter the conditions of its memorandum so as to— (*a*) increase its share capital by new shares of such amount as it thinks expedient;

(b) consolidate and divide all or any part of its share capital into shares of larger amount than its existing shares;

(c) convert all or any of its paid-up shares into stock and reconvert such stock into paid-up shares of any denomination;

(d) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(e) cancel shares which at the time of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person and diminish the amount of its share capital by the amount of the shares so cancelled;

(f) convert any of its shares, whether issued or not, into shares of another class.

(2) A cancellation of shares in pursuance of subsection (1) shall not be deemed to be a reduction of share capital within the meaning of this Act.

88 Notice to Registrar of consolidation of share capital, conversion of shares into stock

(1) If the company has—

(a) consolidated and divided its share capital into shares of larger amount than its existing shares; or

(b) converted any shares into stock; or (*c*) reconverted stock into shares; or

(d) subdivided its shares or any of them; or

(e) redeemed any redeemable preference shares; or

(f) cancelled any shares, otherwise than in connection with a reduction of share capital under section *ninety-two*;

it shall, within one month after so doing, give notice thereof to the Registrar specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled or the stock reconverted.

(2) If default is made in complying with the requirements of subsection (1) the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

[Section as amended by Act No. 22 of 2001]

89 Notice of increase of share capital

(1) Where a company, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered share capital, it shall give to the Registrar notice thereof within one month after the passing of the special resolution authorizing such increase and the Registrar shall register the increase.

(2) If default is made in complying with the requirements of subsection (1) the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

[Section as amended by Act No. 22 of 2001]

90 Payment of interest out of capital

Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of works or buildings or the provision of any plant which cannot be made profitable for a lengthy period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and may charge the sum to capital as part of the cost of construction of the works or buildings or the provision of plant, as the case may be, subject to the following conditions—

(a) no such payment shall be made unless it is authorized by the articles or by special resolution; and

(b) whether authorized by the articles or by special resolution, no such payment shall be made without the prior approval of the Minister; and

(c) before approving any such payment the Minister may at the expense of the company appoint a person to inquire and report to him as to the circumstances of the case and before making such appointment may require the company to give satisfactory security for the payment of the costs of the inquiry; and

(d) the payment shall be made only for such period as may be determined by the Minister and such period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been completed or the plant provided, as the case may be; and

(e) the rate of interest shall in no case exceed six *per centum* per annum or such other rate as may for the time being be prescribed; and

(f) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

91 Variation of rights attaching to shares

(1) If, in the case of a company the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorizing the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen *per centum* of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the court.

(2) An application under this section must be made within one month after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the members entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the members of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the court on any such application shall be final.

(5) The company shall, within one month after the making of an order by the court on any such application, forward a copy of the order to the Registrar and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

(6) The expression "variation" in this section includes abrogation and the expression "varied" shall be construed accordingly.

[Section as amended by Act No. 22 of 2001]

Reduction of Share Capital

92 Special resolution for reduction of share capital

(1) Subject to confirmation by the court, a company may, if so authorized by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may—

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company;

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under subsection (1) is in this Act referred to as "a resolution for reducing share capital".

93 Application to court to confirm order, objections by creditors

(1) Where a company has passed a resolution for reducing share capital it may apply to the court for an order confirming the reduction.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any member of any paid-up share capital, and in any other case if the court so directs, the following provisions shall have effect, subject nevertheless to subsection (3)—

(a) every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;

(b) the court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;

(c) where a creditor entered on the list whose debt or claim is not discharged or has not been determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount—

(i) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any member of any paid-up share capital, the court may, if having regard to any special circumstances of the case it thinks proper so to do, direct that subsection (2) shall not apply as regards any class or any classes of creditors.

94 Order confirming reduction

The court, if satisfied, with respect to every creditor of the company who under section *ninety-three* is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

95 Registration of order and minute of reduction

(1) The Registrar, on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute approved by the court, showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided and the amount of each share and the amount, if any, at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the court may direct.

(4) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with and that the share capital of the company is such as is stated in the minute.

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum and shall be valid and alterable as if it had been originally contained therein.

(6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section *twenty-nine*.

96 Liability of members in respect of reduced shares

(1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be:

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, through no default on his part, ignorant of the proceedings for reduction and is in consequence not entered on the list of creditors and if at any time within twelve months after the reduction the company is unable within the meaning of section *two hundred and five* to pay the amount of his debt or claim then—

(a) every person who was a member of the company at the date of the registration of the order for reduction and minute shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and

(b) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up. (2) Nothing in subsection (1) shall affect the rights of the contributories among themselves.

97 Penalty for concealing name of creditor

If any officer of the company—

(a) wilfully conceals the name of any creditor entitled to object to the reduction; or

(b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

(c) aids, abets or is privy to any such concealment or misrepresentation as aforesaid; he shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001] *Transfer of*

Shares and Debentures, Evidence of Titles, etc.

98 Nature and numbering of shares

(1) The shares or other interest of any member in a company shall be movable property, transferable in manner provided by the articles of the company.

(2) Each share in a company shall be distinguished by its appropriate number:

Provided that if at any time all the issued shares in a company, or all the issued shares therein of a particular class, are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

(3) Where in terms of the proviso to subsection (2) shares are not distinguished by appropriate numbers, the certificates of such shares shall be so distinguished, and upon the registration of transfer of any such shares the certificate relating thereto shall, in addition to the distinguishing number, bear on its face such an endorsement, in the form of a reference number or otherwise, as will enable the immediately preceding holder of the shares to be identified.

99 Transfer not to be registered except on production of instrument of transfer

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

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

100 Registration of transfer at request of transferor

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

101 Notice of refusal to register transfer

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

(2) If default is made in complying with the requirements of subsection (1) the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

[Section as amended by Act No. 22 of 2001]

102 Transfer by executor

A transfer of the share or other interest of a deceased member of a company made by his executor shall, although the executor is not himself a member, be as valid as if he had been a member at the date of the execution of the instrument of transfer subject always to the law relating to stamp duty.

103 Duties of company with respect to issue of certificates

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

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

(2) If default is made in complying with the requirements of subsection (1) the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

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

[Section as amended by Act No. 22 of 2001]

104 Certificate to be evidence of title

(1) A certificate under the seal of the company if it has a seal, and signed by one of its directors or, if it does not have a seal, signed by two of its directors or by one director and the secretary, specifying any shares or stock held by any member in that company shall be *prima facie* evidence of the title of the member to such shares or stock.

(2) The signature of a director or secretary for the purposes of subsection (1) may be affixed to the certificate by autographic or mechanical means.

105 Unlawful personation

If any person falsely and deceitfully personates any owner of any share or interest in any company and thereby obtains or endeavours to obtain any such share or interest or receives or endeavours to receive any money due to any such owner as if the impersonator were the true and lawful owner, he shall be guilty of an offence and liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

Special Provisions as to Mortgages and Debentures

106 Creation and registration of debentures

(1) A company, if so authorized by its memorandum or articles, may, subject to this section, create and issue debentures and as security for the fulfilment of the obligation undertaken by the company thereunder may in the manner hereinafter described bind so much of the movable or immovable property of the company as is described therein.

(2) If such debentures purport to bind only movable property, they may, if executed in favour of one or more debenture holders before a notary public, be registered as a notarial bond.

(3) If such debentures purport to bind immovable property, registration in respect thereof may be effected in the Deeds Registry by means of a mortgage bond or bonds executed on behalf of the company.

(4) If such debentures purport to bind both movable and immovable property, registration in respect thereof may be effected in the Deeds Registry by means of a mortgage bond or bonds executed on behalf of the company and hypothecating the immovable property concerned and of a collateral notarial bond or bonds executed on behalf of the company and hypothecating the movable property concerned or by a notarial bond or bonds or notarial debenture or debentures executed on behalf of the company and hypothecating the movable property and a collateral mortgage bond or bonds executed on behalf of the company and hypothecating the immovable property concerned.

Whenever it is desired to hypothecate movable or immovable property as additional security to any mortgage bond, notarial bond or notarial debenture, such movable or immovable property shall be hypothecated by collateral notarial bond in the case of the movable property and by collateral mortgage bond in the case of immovable property. If the bond is in favour of one or more debenture holders, the original debenture shall be annexed to one copy of the bond, and duplicate or certified copies of the debenture shall be annexed to the other copies. If the bond is in favour of trustees for debenture holders, a certified copy of the trust deed by which the trustees are appointed and in which their rights and duties are defined, together with a specimen form of the debenture, shall be annexed to each copy of the bond.

(5) Registration of such notarial bonds or mortgage bonds and cancellation or cession thereof in whole or in part shall be effected in accordance with the regulations and practice of the Deeds Registry relating to notarial bonds or mortgage bonds, respectively. When so registered such notarial bonds or mortgage bonds shall, as from the date of registration, subject to any prior rights arising out of any bond or debenture previously registered or out of any legal hypothec, pledge or right of retention, operate as a first or preferential charge in respect of so much of the movable or immovable property of the company as is mentioned and described therein as bound by way of security for the fulfilment of the obligation undertaken by the company thereunder.

(6) In any bond executed in favour of trustees for debenture holders generally provision may be made that the debentures thereby secured, or to be secured, may be issued from time to time and at different dates, as the company may determine, but all such debentures, whenever issued, shall rank for preference concurrently with one another as from the date of registration of the bond.

(7) Every holder of a debenture secured by a bond executed in favour of trustees for debenture holders generally shall, unless it is otherwise provided by the terms of the bond or of the trust deed and form of debenture annexed thereto, be entitled to enforce his rights under such debenture as soon as it has been issued to him in the same manner as if he were himself the holder of such bond. No notice of the cession of any such debenture shall be necessary in order to confer upon any cessionary thereof the rights of the cedent.

107 Register of mortgages and debentures and register of debenture holder

(1) Every company shall keep—

(a) a register of mortgages, notarial bonds and debentures and enter therein within fourteen days of the date of any hypothecation full particulars thereof, giving in each case the date of the hypothecation, a short description of the property mortgaged, the amount of the debt secured, the rate of interest payable thereon and the names and addresses of the mortgagees and debenture holders;

(b) a register of debenture holders showing the number of debentures issued, and outstanding, specifying whether issued to bearer or not, and, in the case of those not issued to bearer, specifying further the names and addresses of the holders thereof.

(2) The registers referred to in subsection (1) shall be kept at the registered office of the company:

Provided that if—

(a) the work of making them up is done at another office of the company, they may be kept at that other office;

(b) the company arranges with some other person for the making up of the registers to be undertaken on behalf of the company by that other person, they may be kept at the office of that other person at which the work is done;

so, however, that they shall not be kept at a place outside Zimbabwe.

(3) If a company keeps the registers referred to in subsection (1) at an office other than its registered office, the company shall give notice in writing to the Registrar of the office at which the registers are kept and of any change of that office and any such notice shall be given within one month of the date on which the registers are first kept at the office or of the change of that office, as the case may be.

(4) If default is made in complying with subsection (1), (2) or (3) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level four.

(5) The register of mortgages, notarial bonds and debentures shall be open at all reasonable times to the inspection of the Registrar or any person authorized by him or any creditor or member of the company without fee, and any other person on payment of such fee, not exceeding twenty cents per hour or part of an hour, for such inspection as the company may prescribe.

(6) The register of debenture holders shall, except when closed during such period or periods, not exceeding in the whole sixty days in any year, as may be specified in the articles, be open to the inspection of any creditor or member of the company but subject to such reasonable restrictions as the company may in general meeting impose so that at least two hours in each business day are appointed for inspection and the company shall furnish to any

creditor or member at his request extracts from the register on payment of fifteen cents for every one hundred words or fractional part thereof required to be extracted.

(7) A copy of any trust deed for securing any issue of debentures shall be transmitted to any holder of such debentures at his request on payment of the sum of seventy-five cents or such less sum as may be prescribed by the company.

(8) If any inspection, copy, extract or other facility prescribed by subsection (5), (6) or (7) is refused or not transmitted the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level three, and the court, including the court convicting, may by order direct that an immediate inspection be granted of the register concerned or that copies required shall, subject to payment of the prescribed sum, be delivered to the person requiring them.

[Section as amended by Act No. 22 of 2001]

108 Power to keep branch register of debenture holders

(1) A company issuing debentures may, if so authorized by its articles, cause to be kept in any foreign country a branch register of debenture holders (in this Act called "a branch register of debenture holders").

(2) The company shall give to the Registrar notice of the situation of the office where any branch register of debenture holders is kept and of any change in its situation, and if it is discontinued of its discontinuance, and any such notice shall be given within one month of the opening of the office or of the change or discontinuance, as the case may be.

(3) If default is made in complying with the requirements of subsection (2) the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

[Section as amended by Act No. 22 of 2001]

109 Regulations as to branch register of debenture holders

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

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept.

(3) The company shall—

(a) transmit to the office at which the principal register is kept a copy of every entry in its branch register of debenture holders as soon as may be after the entry is made; and

(b) cause to be kept at the place where the company's principal register is kept a duplicate of its branch register of debenture holders duly entered up from time to time.

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

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

(5) A company may discontinue to keep a branch register of debenture holders, and thereupon all entries in that register shall be transferred to some other branch register of debenture holders or to the principal register.

(6) Subject to this Act and any law relating to stamp duty, any company may, by its articles, make such provisions as it may think fit respecting the keeping of branch registers of debenture holders.

(7) If default is made in complying with the requirements of subsection (3) the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

[Section as amended by Act No. 22 of 2001]

110 Power to re-issue redeemed debentures in certain cases

(1) Where a company has, whether before, on or after the 1st April, 1952, redeemed any debentures previously issued, then—

(a) unless any provision to the contrary, whether expressed or implied, is contained in the articles or in any contract entered into by the company; or

(b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled and not re-issued;

the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by reissuing the same debentures or by issuing other debentures in their place.

(2) On a re-issue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has, whether before, on or after the 1st April, 1952, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or numbers of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section, which appears to be duly stamped, may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

111 Specific performance of contract to subscribe for debentures

A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

PART IV

MANAGEMENT AND ADMINISTRATION

Registered Office and Name

112 Registered office of company

(1) Every company shall have a registered office in Zimbabwe, to which all communications and notices may be addressed and at which all process may be served.

(2) Upon the incorporation of a company notice of the situation and postal address of the registered office shall be given to the Registrar and notice of any change in such situation or postal address shall be given to the Registrar before such change is made.

(3) The Registrar shall register any notice given in terms of subsection (2).

(4) If default is made in complying with this section the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

[Section as amended by Act No. 22 of 2001]

113 Publication of name by company

(1) Every company—

(a) shall continuously display its name on the outside of every company, every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;

(b) shall have its name engraved in legible characters on its seal, if any;

(c) shall have its name mentioned in legible characters in all business letters, notices 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 delivery notes, invoices, receipts and letters of credit of the company:

Provided that, for the purposes of this subsection, the abbreviations “Ltd.”, “Pvt.” and “Co-op” may be used for the words “Limited”, “Private” and “Co-operative” and the abbreviation “Co.” and the symbol “&” may be used for the words “Company” and “and”.

(2) If default is made in complying with paragraph (*a*) of subsection (1) the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

(3) If default is made in complying with paragraph (*b*) or (*c*) of subsection (1) the company shall be liable to a fine not exceeding level three.

(4) If any officer of a company or any person on its behalf—

(a) uses or permits the use of any seal purporting to be a seal of the company whereon its name is not so engraved as aforesaid; or

(b) issues or permits the issue of any business letter, notice or other official publication of the company, or signs or permits to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods wherein its name is not mentioned in manner aforesaid; or

(c) issues or permits the issue of any delivery note, invoice, receipt or letter of credit of the company wherein its name is not mentioned in manner aforesaid;

he shall be guilty of an offence and liable to a fine not exceeding level three and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount thereof, unless it is duly paid by the company.

[Section as amended by Act No. 22 of 2001]

Restrictions on Commencement of Business

114 Restrictions on commencement of business

(1) Nothing in this section shall apply to a private company or to an existing company or to an association licensed under section *twenty-six*.

(2) If a company has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless—

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to a total amount of not less than the minimum subscription; and

(b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and

(c) there has been delivered to the Registrar for registration an affidavit by the secretary or one of the directors in the prescribed form that the aforesaid conditions have been complied with; and (*d*) the Registrar has certified that the company is entitled to commence business.

(3) If a company has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless—

(a) there has been delivered to the Registrar for registration a statement in lieu of prospectus; and

(b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and

(c) there has been delivered to the Registrar for registration an affidavit by the secretary or one of the directors in the prescribed form that paragraph (*b*) has been complied with; and (*d*) the Registrar has certified that the company is entitled to commence business.

(4) The Registrar shall, on the delivery to him of the affidavit and, in the case of a company which is required by this section to deliver a statement in lieu of prospectus, of such statement, certify that the company is entitled to commence business and that certificate shall be conclusive evidence that the company is so entitled.

(5) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only and shall not be binding on the company until that date, and on that date it shall become binding.

(6) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(7) If any company commences business or exercises borrowing powers in contravention of this section every person who is responsible for the contravention shall, without prejudice to any other liability, be guilty of an offence and liable to a default fine not exceeding level two.

[Section as amended by Act No. 22 of 2001]

Register and Index of Members

115 Register and index of members

(1) Every company shall keep a register of its members and punctually enter therein the following particulars—

(a) the names and addresses of the members, a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(b) the date at which each person was entered in the register as a member; (*c*) the date at which any person ceased to be a member:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (*a*).

(2) The register of members shall be kept at the registered office of the company:

Provided that if—

(a) the work of making it up is done at another office of the company, it may be kept at that other office; or

(b) the company arranges with some other person for the making up of the register to be undertaken on behalf of the company by that other person, it may be kept at the office of that other person;

however, that it shall not be kept at a place outside Zimbabwe.

(3) Every company shall send notice in writing to the Registrar of the place where its register of members is kept and of any change in that place within one month of the date of its incorporation or change of place:

Provided that a company shall not be required to send any notice in terms of this subsection where the register is kept at the registered office of the company.

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

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

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

(7) If default is made in complying with this section the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one and for the purposes of this section any person with whom the company makes an arrangement in terms of paragraph (*b*) of the proviso to subsection (2) shall be deemed to be an officer of the company and liable accordingly.

[Section as amended by Act No. 22 of 2001]

116 Inspection of register and index

(1) Except where the register of members is closed under this Act, the register and index of the names of the members of a company shall during business hours, subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection, be open to the inspection of any member without charge and of any other person on payment of twenty-five cents per hour or part of an hour, or such less sum as the company may prescribe, for each inspection.

(2) Any member may require a copy of the register, or of any part thereof, on payment of twenty cents or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied.

The company shall cause any copy so required by any member to be sent to such member within a period of twenty-one days commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall be guilty of an offence and liable in respect of each offence to a default fine not exceeding level two and the court, including the court so convicting, may by order compel an immediate inspection of the register and index or direct that the copies required shall, subject to payment of the appropriate sum, be sent to persons requiring them.

[Section as amended by Act No. 22 of 2001]

117 Power to close register

(1) A company may by resolution of its directors close the register of members at any time for a period not exceeding thirty days, so, however, that the number of days on which the register is closed shall not exceed sixty in any year

(2) Every person to whom inspection of the register of members is refused on the ground that the register is closed under subsection (1) shall be entitled to require a written certificate from the company stating the period during which the register is so closed.

(3) If default is made in complying with the request for a certificate referred to in subsection (2) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level three.

[Section as amended by Act No. 22 of 2001]

118 Power of court to rectify register

(1) If—

(a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member;

the person aggrieved or any member of the company or the company may apply to the court for rectification of the register.

(2) Where an application is made under this section, the court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application under this section the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) The court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the Registrar.

119 Trusts in respect of shares

(1) A company may in its discretion enter in its register the fact that any share is held in trust.

(2) There shall be no obligation on any company—

(a) to verify the legal status of any trust or of any trustee who is registered as a member;

(b) to see to the due and proper carrying out of any trust, whether express, implied or constructive, in respect of any share.

120 Register to be evidence

The register of members shall be *prima facie* evidence of any matters by this Act directed or authorized to be inserted therein.

Branch Register

121 Power to keep branch register in foreign countries

(1) A company may, if so authorized by its articles, cause to be kept in any foreign country a register (in this Act called a "branch register") of members resident in that foreign country.

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

(3) If default is made in complying with subsection (2) the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

[Section as amended by Act No. 22 of 2001]

122 Regulations as to branch register

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

(2) A branch register shall be kept in the same manner in which the principal register is required by this Act to be kept.

(3) The company shall transmit to its registered office a copy of every entry in its branch register as soon as may be after the entry is made; and shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its branch register, and the duplicate shall, for all purposes of this Act, be deemed to be part of the principal register.

(4) The company may discontinue any branch register, and thereupon all entries in that register shall be transferred to some other branch register kept by the company, or to the principal register.

(5) Subject to this Act and any law relating to stamp duty, any company may, by its articles, make such provisions as it may think fit respecting the keeping of branch registers.

(6) If default is made in complying with subsection (3) the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

[Section as amended by Act No. 22 of 2001]

Annual Return

123 Annual return to be made by company

(1) Subject to subsection (2), every company shall make and file with the Registrar an annual return consisting of a summary, in the form contained in the Sixth Schedule or as near thereto as circumstances admit, specifying the following particulars—

(a) all such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is secretary of the company as are by this Act required to be contained with respect to directors and the secretary, respectively, in the register of directors and secretaries of a company and the name and address of every person appointed as an auditor of the company;

(b) the situation of the registered office of the company;

(c) the place where the register of members is kept if, under the provisions of this Act, it is not kept at the registered office of the company;

(d) the amount of the share capital of the company, and the number of the shares into which it is divided;

(e) the number of shares taken from the date of incorporation of the company up to the date of the return; (*f*) the number of shares issued for cash;

(g) the number of shares issued as fully or partly paid up otherwise than in cash and the nature of the consideration given for such shares;

(h) the amount called up on each share; (*i*) the total amount of calls unpaid;

(j) the total amount of the sums, if any, paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return;

(k) the total number of shares forfeited;

(l) the discount allowed on the issue of any shares issued at a discount or so much of that discount as has not been written off at the date on which the return is made.

(2) The annual return required by subsection (1) shall be filed with the Registrar within one month after the last date on which, in accordance with subsection (1) of section *one hundred and twenty-five*, the annual general meeting of the company should have been held:

Provided that—

(i) if the annual general meeting of the company commenced earlier than the last date on which the annual general meeting is required by subsection (1) of section *one hundred and twenty-five* to have been held, the annual return shall be filed with the Registrar within one month after the date on which the annual general meeting of the company commenced;

(ii) a company shall not be required to make and file an annual return in any year in which the company need not, under the proviso to subsection (1) of section *one hundred and twenty-five*, hold an annual general meeting.

(3) There shall be annexed to the annual summary—

(a) a copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which the summary relates, including every document required by law to be annexed to the balance sheet; and

(b) a copy, certified as aforesaid, of the report of the auditors on, and of the report of the directors accompanying, any such balance sheet:

Provided that this subsection shall not apply to a private company unless one or more members of that private company is—

(a) a public company whether incorporated under this Act or the law of a foreign country; or

(b) a private company which is a subsidiary, as determined in terms of section *one hundred and forty-three*, of a public company referred to in paragraph (*a*).

(4) Every private company shall send with the annual return a certificate signed by a director and the secretary stating—

(a) that the company has not since the date of the last return or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares, stock or debentures of the company; and

(b) the number of members of the company at the date of the certificate; and

(c) if the number exceeds fifty, that such excess consists only of persons who, under section *thirty-three*, are to be excluded in reckoning the number of fifty.

(5) Every annual return filed by a company with the Registrar shall be certified under the hands of a director and the secretary of the company in the manner prescribed in the Sixth Schedule and a duplicate copy so signed shall be kept at the registered office of the company and shall be open for inspection by any person whenever the register of members is open for inspection by such person.

(6) In the case of a company keeping a branch register, where an annual return is made between the date when any entries are made in the branch register and the date when copies of those entries are received at the registered office of the company, the particulars contained in those entries so far as relevant to an annual return shall be included in the next or a subsequent annual return as may be appropriate, having regard to the particulars included in that return with respect to the company's register of members.

(7) The Registrar may from time to time require a company to transmit to him particulars of the transfer of any fully paid up share or shares and a list of the persons for the time being members of the company and of all persons who have ceased to be members since the date of the last return or, if no return has been made, since the date of the incorporation of the company.

(8) If the company makes default in complying with any of the requirements of this section the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

[Section as amended by Act No. 22 of 2001]

Meetings and Proceedings

124 Statutory meeting and statutory report

(1) Save in the case of a private company, every company shall, within a period of not less than one month nor more than three months from the date at which it is entitled to commence business, hold a general meeting of its members which shall be called "the statutory meeting".

(2) The directors shall, at least fourteen days before the day on which the meeting is held, forward a certified report, in this Act referred to as "the statutory report", to every member of the company:

Provided that if the statutory report is forwarded later than is required by this subsection it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed by all the members entitled to attend and vote at the meeting.

(3) The statutory report shall be certified by not less than two directors of the company and shall state—

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up or paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted; and

(b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid; and

(c) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company; and

(d) the names, addresses and descriptions of the directors, auditors, if any, managers, if any, and secretary of the company; and

(e) if the modification or proposed modification of any contract is to be submitted to the meeting for its information or approval, full particulars thereof.

(4) The statutory report shall, so far as it relates to the shares allotted by the company and to the cash received in respect of such shares and to the receipts and payments of the company, be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be filed with the Registrar within one month of the date on which it is so certified.

(6) The directors shall cause a list showing the names, descriptions and addresses of the members of the company and the number of shares held by them, respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, whether before, at or subsequently to the former meeting, may be passed and the adjourned meeting shall have the same power as an original meeting.

(9) If default by any director is made in complying with any provisions of this section which expressly impose a duty on the directors he shall be guilty of an offence and liable to a fine not exceeding level four.

[Section as amended by Act No. 22 of 2001]

125 Annual general meeting

(1) Subject to this section, every company shall, within the periods specified in subsection (2), hold general meetings to be known and described in the notices calling such meetings as annual general meetings of that company.

(2) Annual general meetings of a company shall be held—

(a) in the case of the first such meeting, within a period of eighteen months after the date of the incorporation of the company concerned; and

(b) thereafter, within not more than six months after the end of every ensuing financial year of that company; and

(c) within not more than fifteen months after the date of the last preceding such meeting of that company.

(3) The annual general meeting of a company shall deal with and dispose of all matters required in terms of this Act to be dealt with and disposed of at an annual general meeting and may deal with and dispose of such further matters as are provided for in the articles of the company and, subject to this Act, any matters capable of being dealt with by any general meeting of the company.

(4) The Registrar may, upon payment of the prescribed fee and upon application being made to him before the expiration of the period within which an annual general meeting of a company is required to be held and on good cause shown, extend that period by a period not exceeding six months:

Provided that, notwithstanding any such extension, the date for the holding of the first annual general meeting following the meeting in respect of which the extension is granted shall be determined as if such meeting had been held on the last day on which it should have been held if the extension had not been granted.

(5) If for any reason an annual general meeting of a company is not or cannot be held as specified in this section or any matter required in terms of this Act to be dealt with and disposed of at such meeting is not dealt with thereat, the Registrar may, upon payment of the prescribed fee and upon application being made to him by the company or any member or its or his legal representative—

(a) call or direct the calling of a general meeting of the company which shall be deemed to be an annual general meeting; and

(b) give such ancillary or consequential directions as he may think expedient, including directions modifying or supplementing in relation to the calling, holding and conduct of the meeting. the operation of the company's articles, and directions providing for one member or the legal representative of a member or any specified number of members present in person or by proxy to be deemed to constitute a meeting;

and any meeting called, held or conducted in accordance with any such call or direction shall for all purposes be deemed to be an annual general meeting of the company duly called, held and conducted.

(6) For the purpose of determining the date for the holding of the next succeeding annual general meeting of a company after a meeting held in pursuance of subsection (5), the proviso to subsection (4) shall apply, *mutatis mutandis*.

(7) Any company which fails to comply with any provision of subsection (1) or with any call or direction given by the Registrar in terms of subsection (5), and every director or officer of the company who knowingly is a party to the failure, shall be guilty of an offence and liable to a fine not exceeding level three..

(8) A company which has failed to hold an annual general meeting within the period specified in terms of subsection (2) or within any extension of such period granted in terms of subsection (4) or as may be called or directed by the Registrar in terms of subsection (5), shall, in addition to any penalty to which it may be liable in terms of subsection (7), be liable to pay to the Registrar such fees as may be prescribed for every day during which the default continues but not exceeding a maximum of ten United States dollars, and the decision of the Registrar as to the number of days during which the company is in default shall be final.

[Section amended by Act No. 22 of 2001 and Act 9 of 2011]

126 Convening of extraordinary general meeting on requisition

(1) On the requisition of members of a company holding at the date of the deposit of the requisition not less than one-twentieth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company the directors of the company, notwithstanding anything in its articles, shall, within twenty-one days of the deposit of the requisition, issue a notice to members convening an extraordinary general meeting of the company for a date not less than fourteen nor more than twenty-eight days from the date of the notice:

Provided that if a special resolution is to be submitted the period of the notice shall not be less than twentyone days.

(2) The requisition shall state the objects of the meeting and shall be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not within twenty-one days from the date of the deposit of the requisition issue a notice as required by subsection (1) the requisitionists, or any of them numbering more than fifty or representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, stating the objects thereof, on twenty-one days' notice, but no meeting so convened shall be held after the expiration of three months

from the said date.

(4) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(5) Any reasonable expense incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were knowingly party to the default.

(6) Any officer of the company who is knowingly a party to a default in convening a meeting as required by subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

127 Length of notice for calling meetings

(1) A company's annual general meeting may be called by twenty-one days' notice in writing, and a meeting of a company, other than an annual general meeting or a meeting for the passing of a special resolution, may be called by fourteen days' notice in writing or, in the case of a private company, by seven days' notice in writing; and any provision of a company's articles shall be void so far as it provides for the calling of a meeting of the company, other than an adjourned meeting, by shorter notice than that specified in this subsection.

(2) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in subsection (1) or in the company's articles, as the case may be, be deemed to have been duly called if it is so agreed—

(a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat;

(b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority holding not less than ninety-five *per centum* in nominal value of the shares giving a right to attend and vote at the meeting.

128 General provisions as to meetings and votes and power of court to order meeting

(1) The following provisions shall have effect in so far as the articles of a company do not make other provision in that behalf—

(a) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A;

(b) two or more members holding not less than one-tenth of the issued share capital may call a meeting;

(c) two members personally present at a meeting shall be a quorum;

(d) any member elected by the members present at a meeting may be chairman thereof;

(e) every member shall have one vote in respect of each share or each twenty dollars of stock held by him.

(2) 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 manner prescribed by the articles or this Act, or if for any other reason the court sees fit, 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, and where any such order is made may give such ancillary or consequential directions as it thinks expedient, including a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(3) Any meeting called, held and conducted in accordance with an order under subsection (2) shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

129 Proxies and voting on poll

(1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint one or more persons, whether members or not, to act in the alternative as his proxy to attend and vote instead of him, and a proxy appointed to attend and vote instead of a member shall also have the same right as the member to speak at the meeting.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll.

(3) In every notice calling a meeting of a company and on the face of every proxy form issued at the company's expense shall appear, with reasonable prominence, a statement that a member entitled to attend and vote is entitled to appoint one or more proxies to act in the alternative, to attend and vote and speak instead of him, and that a proxy need not also be a member; and if default is made in complying with this subsection as respects any meeting every

officer of the company who authorizes, knowingly permits or is party to the default shall be guilty of an offence and liable to a fine not exceeding level two.

(4) Any provision contained in a company's articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than forty-eight hours before a meeting in order that the appointment may be effective thereat.

(5) If, for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer of the company who authorizes or knowingly permits or is a party to the issue as aforesaid shall be guilty of an offence and liable to a fine not exceeding level three:

Provided that an officer shall not be liable under this subsection by reason only of the issue to a member at his written request of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(6) On a poll taken at a meeting of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

(7) This section shall apply to meetings of any class of members of a company as it applies to general meetings of the company.

[Section as amended by Act No. 22 of 2001]

130 Procedure for compulsory adjournment

(1) If, at any meeting of a company, any member of the company who is present and entitled to vote at that meeting demands an adjournment of the meeting upon any grounds stated by him, the chairman shall put the demand to the vote of the meeting, and if a majority of the members present personally or by proxy and entitled to vote at the meeting or if such members representing either personally or by proxy more than half of the share capital of the company represented at the meeting vote in favour of an adjournment, the chairman shall adjourn the meeting to a day seven days after the date of the meeting or, if that day is a public holiday, to the next succeeding day, other than a public holiday.

(2) When a meeting has been adjourned as aforesaid the secretary of the company shall, upon a date not later than four days after the adjournment, publish in a newspaper circulating in the district where the registered office of the company is situated, a notice stating—

(*a*) the time and place to which the meeting was adjourned; and (*b*) the matter before the meeting at the time when it was adjourned; and (*c*) the ground for adjournment.

This subsection shall not apply to a private company.

(3) Any person acting as chairman of a meeting of a company who fails to comply with the requirements of subsection (1) and any secretary of a company other than a private company who fails to comply with the requirements of subsection (2) shall be guilty of an offence and liable to a fine not exceeding level three.

[Section as amended by Act No. 22 of 2001]

131 Representation of corporations at meeting of company and of creditors

(1) A corporation whether a company within the meaning of this Act or not, may—

(a) if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;

(b) if it is a creditor, including a holder of debentures, of another corporation, being a company within the meaning of this Act, authorize, by resolution of its directors or other governing body, such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorized as aforesaid shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member, creditor or holder of debentures of that other company.

132 Circulation of members' resolutions

(1) Subject to the following provisions, it shall be the duty of a company, on the requisition in writing of such number of members as is hereinafter specified and, unless the company otherwise resolves, at the expense of the requisitionists—

(a) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting;

(b) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under subsection (1) shall be—

(a) any number of members representing not less than one-twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

(b) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than two hundred United States dollars.

[Paragraph amended by Act 9 of 2011]

(3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting and notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company:

Provided that the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

(4) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

(*a*) a copy of the requisition signed by the requisitionists, or two or more copies which between them contain the signatures of all the requisitionists, is deposited at the registered office of the company—

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting;

(ii) in the case of any other requisition, not less than twenty-one days before the meeting; and

(*b*) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall also not be bound under this section to circulate any resolution or statement if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(6) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section, and for the purposes of this subsection notice shall be deemed to have been so given notwithstanding the accidental omission, in giving it, of one or more members.

(7) In the event of any default in complying with this section every officer of the company who authorizes, or knowingly permits or is party to, the default shall be guilty of an offence and liable to a fine not exceeding level five.

[Section as amended by Act No. 22 of 2001]

133 Definition of special resolution

(1) A resolution shall be a special resolution when it has been passed by a majority of not less than threefourths of such members entitled to vote as are present in person or by proxy at a general meeting of which not less than twenty-one days' notice has been given, specifying the intention to propose the resolution as a special resolution and the terms of the resolution and at which members holding in the aggregate not less than one-fourth of the total votes of the company are present in person or by proxy.

(2) If the members present at the meeting hold less than one-fourth of the total votes of all members entitled to vote, the meeting shall stand adjourned to the same day in the following week or, if that is a public holiday, to the next succeeding day other than a public holiday. At the adjourned meeting the members present in person or by proxy may deal with the business for which the original meeting was convened and a resolution passed by not less than three-fourths of such members shall be deemed to be a special resolution, notwithstanding that less than one-fourth of the total votes of the company are represented at such adjourned meeting.

(3) If it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than ninety-five *per centum* in nominal value of the shares giving that right, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given, and subsection (7) shall not apply for the purposes of this subsection.

(4) All other resolutions at a general meeting shall be called ordinary resolutions.

(5) At any meeting at which a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(6) When a poll is demanded regard shall be had in computing the majority on the poll to the number of votes cast for and against the resolution.

(7) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting shall be deemed to be duly held when the notice is given and meeting held in manner provided by the articles but subject always to the provisions of this Act.

134 Written resolutions

(1) In the case of a private company, a resolution in writing signed by all the members for the time being entitled to attend and vote on such resolution at a general meeting, or, being bodies corporate, by their duly authorized representatives, shall be as valid and effective for all purposes as if the same had been passed at a general meeting of the company duly convened and held, and if described as a special resolution shall be deemed to be a special resolution. Such resolution shall be deemed to have been passed on the date on which the same was signed by the last member to sign, and where the resolution states a date as being the date of his signature thereof by any member such statement shall be *prima facie* evidence that it was signed by that member on that date. (2) Subsection (1) shall not apply to a resolution to remove an auditor or to remove a director.

135 Resolutions requiring special notice

(1) Where, in this Act or of the articles of association of a company, special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than twenty-one days before the meeting:

Provided that if, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice though not given within the time required by this subsection shall be deemed to have been properly given for the purposes thereof.

(2) If the status of any person in relation to a company will be affected by the terms of a resolution of which special notice has been given the company shall send to, or serve upon, such person a copy of such resolution and of the notice of the meeting at which it will be moved at the time when similar notice is given to the members of the company, and such person shall be entitled to speak on the resolution at the meeting before any vote is taken upon it.

(3) If default is made by a company in giving notice to its members or to any person whose status is affected as aforesaid the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level three.

[Section as amended by Act No. 22 of 2001]

136 Registration and copies of special resolution

(1) Within one month after the passing of any special resolution a copy of that resolution shall be transmitted to the Registrar who shall, subject to subsection (2), register that resolution and that resolution shall be of no force or effect until it is so registered:

Provided that on the registration of the special resolution that resolution shall be of force or effect from the date it was passed.

(2) The registrar may, except upon the order of the court, refuse to register any special resolution so transmitted to him if such resolution appears to him to be contrary to this Act or of the memorandum or articles of the company.

(3) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the registration of the resolution.

(4) Where articles have not been registered, a copy of every special resolution shall be transmitted to any member of the company at his request on payment of one United States dollar or such less sum as the company may direct.

[Subsection amended by Act 9 of 2011]

(5) If default is made in transmitting the copy of a special resolution to the Registrar the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

(6) If default is made in complying with subsection (3) or (4) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level three.

[Section as amended by Act No. 22 of 2001]

137 Resolutions passed at adjourned meetings

If a resolution is passed at an adjourned meeting of—

(a) a company; or

(b) the holders of any class of shares in a company; or

(c) the directors of a company; the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date.

138 Minutes of proceedings of meetings of company or directors or managers

(1) Every company shall cause minutes of all proceedings of general meetings, all proceedings at meetings of its directors and, where there are managers, all proceedings at meetings of its managers, to be entered in books kept for that purpose.

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes have been made in accordance with this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers, secretaries or liquidators shall be deemed to be valid.

(4) If default is made in complying with subsection (1) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level six.

[Section as amended by Act No. 22 of 2001]

139 Inspection of minute books

(1) The books or copies of the books certified by a director or secretary containing the minutes of proceedings of any general meeting of a company held after the 1st April, 1952, shall be kept at the registered office of the company and shall, during business hours, subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection, be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished, within fourteen days after he has made a request in that behalf to the company, with a copy of such minutes as aforesaid certified by the secretary or a director as correct, at a charge not exceeding twenty cents for every hundred words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time the company and every officer of the company who is in default shall be guilty of an offence and liable, to a fine not exceeding level three.

jbzowa@justice.gov.zw

(4)

In the case of any such refusal or default the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall, subject to the payment of the appropriate sum, be sent to the persons requiring them.

[Section as amended by Act No. 22 of 2001]

Accounts and Audit

140 Keeping of books of account

(1) Every company shall cause to be kept in the English language 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 takes place;

(b) all sales and purchases of goods by the company; (*c*) the assets and liabilities of the company.

(2) For the purposes of subsection (1), proper books of account shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain transactions.

(3) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit and shall at all times be open to inspection by the directors:

Provided that if books of account are kept at a place outside Zimbabwe there shall be sent to, and kept at a place in, Zimbabwe and be at all times open to inspection by the directors such accounts and returns with respect to the business dealt with in the books of account so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding twelve months and will enable to be prepared in accordance with this Act the company's balance sheet, its profit and loss account or income and expenditure account, and any document annexed to any of those documents giving information which is required by this Act and is thereby allowed to be so given.

(4) The books of account kept in terms of this section may be destroyed after eight years from the completion of the transactions or operations to which they relate.

(5) If any director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section or has by his own wilful act been the cause of any default by the company thereunder he shall, in respect of each default and subject to section *one hundred and forty-eight*, be guilty of an offence and liable to a fine not exceeding level six.

(6) Subsection (3) shall not exempt a person from compliance with the Customs and Excise Act [*Chapter 23:02*] or any other law.

(7) A person who retains, in terms of subsection (2) of section 81 of the Income Tax Act [*Chapter 23:06*], a photographic reproduction of any books of account shall be deemed for the purposes of this section to have kept such books of account.

[Section as amended by Act No. 22 of 2001]

141 Profit and loss account and balance sheet and financial year of holding company and subsidiary

(1) The directors of a company shall cause to be made out in respect of every financial year of the company, and to be laid before the company at each annual general meeting required to be held in terms of section *one hundred and twenty-four*, a profit and loss account and a balance sheet as at the end of the financial year, which shall comply with section *one hundred and forty-two.*

(2) A holding company's directors shall ensure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiaries shall coincide with the company's own financial year.

(3) Subject to section one hundred and forty-eight, if any director of a company fails to take all reasonable steps to comply with the requirements of this section he shall be guilty of an offence and liable to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment

[Section as amended by Act No. 22 of 2001]

142 General provisions as to contents and form of accounts

(1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year and every profit and loss account of a company, shall give a true and fair view of the profit or loss of the company for the financial year.

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(4)

(2) Subject to subsection (1), a company's balance sheet and profit and loss or income and expenditure account shall comply with any requirements that may be prescribed in regulations in regard to their form and content and any additional information to be provided by way of notes.

(3) The requirements of subsection (2) shall be without prejudice either to the general requirements of subsection (1) or to any other requirements of this Act.

The Minister may, on the application or with the consent of a company's directors, modify in relation to that company any of the requirements of this Act as to the matters to be stated in a company's balance sheet or profit and loss account, except the requirements of subsection (1), for the purpose of adapting them to the circumstances of the company.

(5) Subsections (1) and (2) shall not apply to a company's profit and loss account if—

(a) the company has subsidiaries; and

(b) the profit and loss account is framed as a consolidated profit and loss account dealing with all or any of the company's subsidiaries as well as the company and—

(i) complies with the requirements of this Act relating to consolidated profit and loss accounts; and

(ii) shows how much of the consolidated profit or loss for the financial year is dealt with in the accounts of the company.

(6) If a director of a company fails to take all reasonable steps to secure compliance by the company as respects any accounts required to be laid before the company in general meeting with the provisions of this section and with the other requirements of this Act as to the matters to be stated in accounts he shall, subject to section *one hundred and forty-eight*, be guilty of an offence and liable, to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

(7) For the purposes of this Act, except where the context otherwise requires, any reference to—

(a) a balance sheet or profit and loss account shall include any note thereon or document annexed thereto giving information which is required by this Act and is thereby allowed to be so given;

(b) a profit and loss account shall be taken as including an income and expenditure account or any similar account where such form of account is appropriate and references to profit or to loss and, if the company has subsidiaries, references to a consolidated profit and loss account shall be construed accordingly.

[Section as amended by Act No. 22 of 2001]

143 Meaning of holding company, subsidiary and wholly owned subsidiary

(1) A company shall, subject to subsection (3), be deemed to be a subsidiary of another if, but only if—

(*a*) that other either—

(i) is a member of it and controls the composition of its board of directors; or

(ii) holds more than half in nominal value of its equity share capital; or

(*b*) the first-mentioned company is a subsidiary of any company which is that other's subsidiary:

Provided that the first-mentioned company shall be deemed to be a subsidiary of that other if subsidiaries of that other between them hold more than one-half in nominal value of the equity share capital of the firstmentioned company or if that other and one or more of its subsidiaries between them hold more than one-half of such capital.

(2) For the purposes of subsection (1), the composition of a company's board of directors shall be deemed to be controlled by another company if that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say—

(a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such power as aforesaid; or

(b) that a person's appointment thereto follows necessarily from his appointment as director of that other company.

(3) In determining whether one company is a subsidiary of another—

(a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to paragraphs (*c*) and (*d*), any shares held or power exercisable—

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(4)

(i) by any person as a nominee for that other except where that other is concerned only in a fiduciary capacity; or

(ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity; shall be treated as held or exercisable by that other;

(c) any shares held or power exercisable by any person by virtue of any debenture of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;

(d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary, not being held or exercisable as mentioned in paragraph (*c*), shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

A company shall be deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.

(5) A company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

(6) In this section, the expression "company" includes any body corporate, including a body corporate formed under the law of a foreign country, and the expression "equity share capital" means, in relation to a company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

144 Obligation to lay group accounts before holding company

(1) Where at the end of its financial year a company has subsidiaries, accounts or statements, in this Act referred to as "group accounts", dealing as hereinafter mentioned with the state of affairs and profit or loss of the company and the subsidiaries shall, subject to subsection (2), be laid before the company in general meeting when the company's own balance sheet and profit and loss account are so laid.

(2) Notwithstanding anything in subsection (1)—

(a) group accounts shall not be required where the company is, at the end of its financial year, the wholly owned subsidiary of another company incorporated in Zimbabwe;

(b) group accounts need not deal with a subsidiary of the company if the company's directors are of the opinion that—

(i) it is impracticable, or would be of no real value to members of the company, in view of the insignificant amounts involved, or would entail expense or delay out of proportion to the value to members of the company; or

(ii) the result would be misleading or harmful to the business of the company or any of its subsidiaries; or

(iii) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking;

(*c*) group accounts shall not be required if the directors are of an opinion described in paragraph (*b*) about each of the company's subsidiaries:

Provided that—

(i) the auditor of the holding company shall in every case report on the decision of directors not to deal in group accounts with any subsidiary;

(ii) the approval of the Minister shall be required for not dealing in group accounts with a subsidiary on the ground that the result would be harmful or on the ground of the difference between the business of the holding company and that of the subsidiary.

(3) If any director of a company fails to take all reasonable steps to secure compliance as respects the company with the requirements of this section he shall, subject to section *one hundred and forty-eight*, be guilty of an offence and liable to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment:

Provided that he shall not be sentenced to imprisonment unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

[Section as amended by Act No. 22 of 2001]

145 Form and contents of group accounts

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(4)

(1) The group accounts laid before a holding company shall be consolidated accounts comprising—

(a) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in the group accounts;

(b) a consolidated profit and loss account dealing with the profit or loss of the company and those subsidiaries.

(2) If the company's directors are of opinion that it is better for the purpose—

(a) of presenting the same or equivalent information about the state of affairs and profit or loss of the company and those subsidiaries; and

(b) of so presenting it that it may be readily appreciated by the company's members;

the group accounts may be prepared in a form other than that required by subsection (1) and in particular may consist of more than one set of consolidated accounts, that is to say, one set dealing with the company and one group of subsidiaries and one or more sets dealing with other groups of subsidiaries, or of separate accounts dealing with each of the subsidiaries, or of statements expanding the information about the subsidiaries in the company's own accounts, or any combination of these forms.

(3) The group accounts may be wholly or partly incorporated in the company's own balance sheet and profit and loss accounts.

(4) The group accounts laid before a company shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with thereby as a whole, so far as concerns members of the company; and in particular shall exclude inter-group balances and any profit or loss arising from transactions

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within the group in so far as those profits or losses may not have been realized or incurred so far as concerns members of the company.

(5) Where the financial year of a subsidiary does not coincide with that of the holding company the group accounts shall, unless the Minister on the application or with the consent of the holding company's directors otherwise directs, deal with the subsidiary's state of affairs as at the end of its financial year ending last before that of the holding company and with the subsidiary's profit or loss for that financial year.

(6) Without prejudice to subsection (4), the group accounts, if prepared as consolidated accounts, shall comply with the requirements of the regulations referred to in subsection (2) of section *three hundred and sixty* so far as applicable thereto and if not so prepared, shall give the same or equivalent information:

Provided that the Minister may, on the application or with the consent of a company's directors, modify the said requirements in relation to that company for the purpose of adapting them to the circumstances of the company.

146 Accounts and auditor's report to be annexed to signed balance sheet

(1) The profit and loss account and, so far as not incorporated in the balance sheet or profit and loss account, any group accounts laid before a company in general meeting shall be annexed to the balance sheet and approved by the board of directors before the balance sheet is signed on its behalf and the auditor's report shall be attached thereto, except in the case of a private company which in terms of subsection (7) of section *one hundred and fifty* is not required to appoint an auditor.

(2) If any copy of a balance sheet is issued, circulated or published without having a copy annexed thereto of the profit and loss account or any group accounts required by this section to be so annexed or without having attached thereto a copy of the auditor's report as required by this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level two.

(3) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company.

(4) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level two.

[Section as amended by Act No. 22 of 2001]

147 Directors' report to be attached to balance sheet

(1) There shall be attached to every balance sheet laid before a company in general meeting a report by the directors with respect to the state of the company's affairs, the amount, if any, already paid or declared or which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to reserves within the meaning of the regulations referred to in subsection (2) of section *three hundred and sixty* and, if directors' remuneration is to be determined at the meeting, the amount of remuneration recommended: Provided that this subsection shall not apply to a private company unless one or more members of that private company is—

(a) a public company, whether incorporated under this Act or the law of a foreign country; or

(b) a private company which is a subsidiary, as determined in terms of section *one hundred and forty-three*, of a public company referred to in paragraph (*a*).

(2) The said report shall deal, so far as is material for the appreciation of the state of the company's affairs by its members and will not in the directors' opinion be harmful to the business of the company or of any of its subsidiaries, with any change during the financial year in the nature of the company's business or in the company's subsidiaries or in the classes of business in which the company has an interest, whether as member of another company or otherwise.

(3) If any director of a company fails to take all reasonable steps to comply with subsection (1) he shall, subject to section *one hundred and forty-eight*, be guilty of an offence and liable to a fine not exceeding level two:

Provided that he shall not be sentenced to imprisonment unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

[Section as amended by Act No. 22 of 2001]

148 Defence to certain charges

In any proceedings against a person under subsection (5) of section *one hundred and forty*, subsection (3) of section *one hundred and forty-one*, subsection (6) of section *one hundred and forty-two*, subsection (3) of section *one hundred and forty-four* or subsection (3) of section *one hundred and forty-seven* for failing to take all reasonable steps to comply or secure compliance by a company with the requirements referred to in the subsection under which he is so charged, it shall be a defence for him to prove that he had reasonable grounds to believe, and did believe,

jbzowa@justice.gov.zw

that a competent and reliable person was charged with the duty of seeing that the requirements or provisions referred to in that subsection were complied with and was in a position to discharge that duty.

149 Right to receive copy of balance sheet and auditor's report

(1) A copy of every balance sheet, including every document required by this Act to be annexed thereto, which is to be laid before the company in general meeting, together with group accounts, if any, prepared under sections *one hundred and forty-four* and *one hundred and forty-five* and a copy of the auditor's report, shall, not less than fourteen days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company:

Provided that this subsection shall not apply to a private company unless one or more members of that private company is—

(a) a public company, whether incorporated under this Act or the law of a foreign country; or

(b) a private company which is a subsidiary, as determined in terms of section *one hundred and forty-three*, of a public company referred to in paragraph (*a*).

(2) Any member and any debenture holder of the company shall be entitled to be furnished on demand, without charge, with a copy of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy of the auditor's report on the balance sheet unless he shall previously have been supplied therewith.

(3) If default is made in complying with subsection (1) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level two , and if, where any person makes a demand for a document to which he is by virtue of subsection (2) entitled, default is made in complying with the demand within fourteen days after the making thereof, the company and any officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level two.

[Section as amended by Act No. 22 of 2001]

150 Appointment and remuneration of auditors

(1) The first auditor of a company shall be appointed by the directors within one month of the issue of the certificate that the company is entitled to commence business in the case of a company to which section *one hundred and fourteen* applies and, in the case of other companies, within one month of the issue of the certificate of incorporation; and an auditor so appointed shall hold office until the conclusion of the first annual general meeting:

Provided that—

(i) the company may at a general meeting remove any such auditor and appoint in his place any other person who has by special notice been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting;

(ii) if the directors fail to exercise their powers under this subsection the company in general meeting may appoint the first auditor and thereupon the said powers of the directors shall cease;

(iii) if neither the directors nor the company appoint an auditor under this subsection the Minister may on the application of any member do so.

(2) Every company shall, at each annual general meeting, appoint an auditor to hold office from the conclusion of that until the conclusion of the next annual general meeting.

(3) Where at an annual general meeting no auditor is appointed or reappointed, the Minister may appoint a person to fill the vacancy.

(4) The company shall, within one week of the Minister's power under subsection (3) becoming exercisable, give him notice of that fact and, if a company fails to give notice as required by this subsection, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level two.

(5) The directors may fill any casual vacancy in the office of auditor but while any such vacancy continues the surviving or continuing auditor, if any, may act.

(6) The remuneration of the auditor of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

For the purposes of this subsection, any sums paid by the company in respect of the auditor's expenses shall be deemed to be included in the expression "remuneration".

(7) A private company shall not be required to appoint an auditor if— (*a*) the number of members in such company does not exceed ten; and

(*b*) none of the members of such company is—

(i) a public company, whether incorporated under this Act or the law of a foreign country; or

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(ii) a private company which is a subsidiary, as determined in terms of section *one hundred and forty-three*, of a public company referred to in subparagraph (i);

and

(*c*) such company is not a subsidiary of a holding company which has itself appointed auditors; and (*d*) all the members in such company agree that an auditor shall not be appointed.

[Section as amended by Act No. 22 of 2001]

151 Special notice required of resolution to appoint or remove auditor

Special notice shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be reappointed.

152 Disqualifications for appointment as auditor

(1) None of the following persons shall be qualified for appointment as auditors of a company—

(a) an officer or servant of the company;

(b) a person who is a partner of an officer or servant of the company;

(c) a person who is an employer or an employee of an officer or servant of the company;

(d) a body corporate;

(e) a person who is an officer or servant of a body corporate which is an officer of the company;

(f) a person who by himself, or his partner or his employee, regularly performs the duties of secretary or bookkeeper to the company.

Reference in this subsection to an officer or servant shall be construed as not including reference to an auditor.

(2) A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of subsection (1), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company, or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(3) Any person who acts as auditor of a company when disqualified as aforesaid shall be guilty of an offence and liable to a fine not exceeding level five.

[Section as amended by Act No. 22 of 2001]

153 Auditor's report

(1) The auditor shall make a report to the members on the accounts examined by him and on every balance sheet, every profit and loss account and all group accounts laid before the company in general meeting during his tenure of office and the report shall contain statements as to the following matters—

(a) whether, in his opinion, the balance sheet and profit and loss account of the company, or in the case of a holding company submitting group accounts, the said accounts of the company and the group accounts are properly drawn up in accordance with this Act so as to give a true and fair view of the state of the company's affairs at the date of its balance sheet and of its profit or loss for its financial year ended on that date; or

(b) in the case of a company registered as a commercial bank, an accepting house or a finance house in terms of the Banking Act [*Chapter 24:20*], whether, in his opinion, the balance sheet and profit and loss account of the company or, in the case of a holding company submitting group accounts, the said accounts of the company and the group accounts are properly drawn up so as to disclose the state of the company's affairs at the date of its balance sheet and its profit or loss for its financial year ended on that date, so far as is required by the provisions of this Act applicable to the class of company concerned.

[Paragraph as amended by section 82 of Act No. 9 of 1999]

(2) The auditor shall include in his report statements which, in his opinion, are necessary if—

(a) he has not obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit;

(b) so far as appears from his examination, proper books of account have not been kept by the company;

(c) proper returns adequate for the purpose of his audit have not been received from branches not visited by him;

(d) the company's balance sheet and profit and loss account are not in agreement with the books of account and returns from branches.

(3) In the event of the auditor being unable to make such report or to make it without further qualification he shall inscribe upon or attach to the balance sheet a statement of that fact or of the nature of the qualification, as the

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case may be, and he shall set forth therein the facts or circumstances which prevent him from making the report or from making it without qualification.

(4) The auditor's report or any statement under subsection (3) shall, unless all the members present agree to the contrary, be read before the company in general meeting and shall, in any event, be open to inspection by any member.

154 Auditor's right of access to books and to attend general meetings

(1) Every auditor of a company shall have a right of access at all times to the books, accounts, vouchers and securities of the company and shall be entitled to require from the officers of the company such information and explanation as he thinks necessary.

(2) Every auditor of a holding company shall have a right of access to all current and former accounts of any company subsidiary thereto and shall be entitled to require from the officers of the holding or subsidiary company all such information and explanations in connection therewith as he may deem necessary.

(3) Every auditor of a company shall be entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which any member of the company is entitled to receive and to be heard at any general meeting which he attends on any part of the business of the meeting which concerns him as auditor.

155 Construction of references to documents annexed to accounts

References in this Act to a document annexed or required to be annexed to a company's accounts or any of them shall not include the directors' report or the auditor's report:

Provided that any information which is required by this Act to be given in accounts, and is thereby allowed to be given in a statement annexed, may be given in the directors' report instead of the accounts and, if any such information is so given, the report shall be annexed to the accounts and this Act shall apply in relation thereto accordingly, except that the auditor shall report thereon only so far as it gives the said information.

Inspection

156 Investigation by Registrar

(1) Where the Registrar has reasonable cause to believe that provisions of this Act relating to the submission to him of any document are not being complied with, or where he is of the opinion that any document submitted to him under this Act does not disclose the true facts or a full and fair statement of the matters to which it purports to relate, he may, by written order, call on the company concerned to produce all or any of the books of the company or to furnish in writing such information or explanation as he may specify in his order. Such books shall be produced and such information or explanation shall be furnished within such time as may be specified in the order.

(2) On receipt of an order under subsection (1) it shall be the duty of all persons who are or have been officers of the company to produce such books or to furnish such information or explanation so far as lies within their power.

(3) Any person who fails to comply with subsection (2) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment and the court may order any such person to comply with the said provisions.

[Section as amended by Act No. 22 of 2001]

157 Investigation of company's affairs on application of members

(1) The Minister may appoint one or more inspectors to investigate the affairs of a company and to report thereon in such manner as he may direct on the application either of not less than one hundred members or of members holding not less than one-twentieth of the issued shares of such company.

(2) The application shall be supported by such evidence as the Minister may require for the purpose of showing that the applicants have good reason for requiring the investigation and the Minister may, before appointing an inspector, require the applicants to give satisfactory security in an amount not exceeding four hundred United States dollars for payment of the costs of the investigation.

[Subsection amended by Act 9 of 2011]

158 Investigation of company's affairs in other cases

Without prejudice to his powers under section *one hundred and fifty-seven*, the Minister—

(*a*) shall appoint one or more inspectors to investigate the affairs of a company and to report thereon in such manner as he directs if—

(i) the company by special resolution; or

(ii) the court by order; declares that its affairs ought to be investigated by an inspector appointed by him; and

(*b*) may do so, if it appears to him that there are circumstances suggesting—

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(i) that its business is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members or that it was formed for any fraudulent or unlawful purpose; or

(ii) that persons concerned with its formation or the management of its affairs have in connection therewith been guilty of fraud or other misconduct towards it or towards its members; or

(iii) that its members have not been given all the information with respect to its affairs which they might reasonably expect.

159 Power of inspectors to investigate related companies

If an inspector appointed under section *one hundred and fifty-seven* or *one hundred and fifty-eight* to investigate the affairs of a company thinks it necessary for that purpose to investigate also the affairs of any other body corporate which is or has at any relevant time been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary, he shall, with the sanction of the Minister, have power so to do and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.

160 Production of documents and evidence on investigation

(1) It shall be the duty of all officers and agents of the company and of all officers and agents of any other body corporate whose affairs are investigated by virtue of section *one hundred and fifty-seven*, *one hundred and fifty-eight*, *one hundred and fifty-nine* or *one hundred and sixty-four*, as the case may be, to produce to the inspector all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power and otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

(2) The inspector may examine on oath the officers and agents of the company or other body corporate in relation to its business and may administer an oath accordingly.

(3) If any officer or agent of the company or other body corporate refuses to produce to the inspector any book or document which it is his duty under this section so to produce, or refuses on any ground, other than that the answer may tend to incriminate him, to answer any question which is put to him by the inspector with respect to the affairs of the company or other body corporate, as the case may be, the inspector may certify the refusal under his hand to the court and the court may thereupon inquire 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, sentence the offender summarily to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(4) If an inspector thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath should be so examined, he may apply to the court and the court may, if it sees fit, order that person to attend and be examined on oath before it on any matter relevant to the investigation and on any such examination—

(a) the inspector may take part therein either personally or represented by a legal practitioner;

(b) the court may put such questions to the person examined as the court thinks fit;

(c) the person examined may at his own cost employ a legal practitioner, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that the court may allow the person examined such costs as in its discretion it may think fit and any costs so allowed shall be paid as part of the expense of the investigation.

(5) Notes of any examination made in terms of this section shall be taken down in writing, shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against him.

(6) In this section, any reference to officers or to agents shall include past as well as present officers or agents, as the case may be, and for the purpose of this section the expression "agents", in relation to a company or other body corporate, shall include the bankers and legal practitioners representing the company or other body corporate and any persons employed by the company or other body corporate as auditors, whether those persons are or are not officers of the company or other body corporate.

[Section as amended by Act No. 22 of 2001]

161 Inspector's report

(1) The inspector may, and if so directed by the Minister shall, make interim reports to the Minister and on the conclusion of the investigation shall make a final report to the Minister.

(2) The Minister shall—

(a) send a copy of any report made by the inspector to the registered office of the company; and

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(b) where the inspector is appointed under section *one hundred and fifty-seven*, furnish each applicant for the investigation, on request, with a copy of the report; and

(c) where the inspector is appointed under section *one hundred and fifty-eight* in pursuance of an order of court, furnish a copy to the court;

and may—

(i) furnish a copy thereof, on request and on payment of the prescribed fee, to any person who is a member of the company or of any other body corporate dealt with in the report by virtue of section *one hundred and fifty-nine* or whose interests as a creditor of the company or of any such other body corporate as aforesaid appear to the Minister to be affected; (ii) cause the report to be printed and published.

162 Proceedings on inspector's report

(1) If, from any report made under section *one hundred and sixty-one*, it appears to the Minister that any person has, in relation to the company or any other body corporate whose affairs have been investigated by virtue of section *one hundred and fifty-nine*, been guilty of an offence for which he is criminally liable, the Minister shall refer the matter to the Prosecutor-General.

(2) If, in the case of any body corporate liable to be wound up under this Act, it appears to the Minister from any such report as aforesaid that it is expedient so to do by reason of any such circumstances as are referred to in subparagraph (i) or (ii) of paragraph (*b*) of section *one hundred and fifty-eight*, the Minister may, unless the body corporate is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable that it should be wound up or a petition for an order under section *one hundred and ninety-six* or both.

(3) If, from any such report as aforesaid, it appears to the Minister that proceedings ought in the public interest to be brought by any body corporate dealt with by the report for the recovery of damages in respect of any fraud or other misconduct in connection with the promotion or formation of that body corporate or the management of its affairs, or for the recovery of any property of the body corporate which has been misapplied or wrongfully retained, the Minister may himself bring the proceedings for that purpose in the name of the body corporate.

(4) The Minister shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with any proceedings brought by virtue of subsection (3).

(5) The Minister may, on receiving any interim or final report as aforesaid, direct that the company shall not pay dividends on, or 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 the Minister may revoke, vary or suspend any such direction, and any officer of the company who fails to comply with any such direction shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

163 Expenses of investigation of company's affairs

(1) The expenses of and incidental to an investigation by an inspector appointed by the Minister under this Act shall be defrayed in the first instance by the Minister, but the following persons shall, to the extent mentioned, be liable to repay the Minister—

(a) any person who is convicted on a prosecution instituted as a result of the investigation or who is ordered to pay damages or restore any property in proceedings brought by virtue of subsection (3) of section *one hundred and sixty-two* may, in the same proceedings, be ordered to pay the said expenses to such extent as may be specified in the order;

(b) any body corporate in whose name proceedings are brought as aforesaid shall be liable to the amount or value of any sums of property recoverable by it as a result of those proceedings;

(c) unless as a result of the investigation a prosecution is instituted—

(i) any body corporate dealt with by the report, where the inspector was appointed otherwise than of the Minister's own motion, shall be liable, except so far as the Minister may otherwise direct; and

(ii) the applicants for the investigation, where the inspector was appointed under section *one hundred and fifty-seven*, shall be liable to such extent, if any, as the Minister may direct;

and any amount for which a body corporate is liable by virtue of paragraph (*b*) shall be a first charge on the sums or property mentioned in that paragraph.

(2) The report of an inspector appointed otherwise than of the Minister's own motion may, if he thinks fit, and shall, if the Minister so directs, include a recommendation as to the directions, if any, which he thinks appropriate, in the light of his investigation, to be given under paragraph (*c*) of subsection (1).

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(3) For the purpose of this section, any costs or expenses incurred by the Minister in or in connection with proceedings brought by virtue of subsection (3) of section *one hundred and sixty-two*, including expenses incurred by virtue of subsection (4) thereof, shall be treated as expenses of the investigation giving rise to the proceedings.

(4) Any liability to repay the Minister imposed by paragraphs (*a*) and (*b*) of subsection (1) shall, subject to satisfaction of the Minister's right to repayment, be a liability also to indemnify all persons against liability under paragraph (*c*) thereof, and any such liability imposed by the said paragraph (*a*) shall, subject as aforesaid, be a liability also to indemnify all persons against liability under the said paragraph (*b*); and any person liable under the said paragraph (*a*) or (*b*) or either subparagraph of the said paragraph (*c*) shall be entitled to contribution from any other person liable under the same paragraph or subparagraph, as the case may be, according to the amount of their respective liabilities thereunder.

(5) The expenses to be defrayed by the Minister under this section shall, so far as not recovered thereunder, be paid out of moneys appropriated for the purpose by Act of Parliament.

164 Appointment and powers of inspectors to investigate ownership of company

(1) The Minister may, with or without an application by members of the company, appoint one or more inspectors to investigate and report on the membership of any company and otherwise with respect to the company for the purpose of determining the true persons who are or have been financially interested in the success or failure of the company or able to control or materially to influence the policy of the company and may determine the limits, conditions and methods of such investigation.

(2) The expenses of any investigation under subsection (1) shall be defrayed by the Minister out of moneys appropriated for the purpose by Act of Parliament.

165 Power to require information as to persons interested in shares or debentures

(1) Where it appears to the Minister that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, he may require any person whom he has reasonable cause to believe—

(a) to be or to have been interested in those shares or debentures; or

(b) to act or to have acted in relation to those shares or debentures as the agent of someone interested therein; to give him any information which he has or can reasonably be expected to obtain as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture if he has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.

(3) Any person who fails to give any information required of him under this section or who, in giving any such information, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

166 Power to impose restrictions on shares and debentures

(1) Where, in connection with an investigation under section *one hundred and sixty-four* or *one hundred and sixty-five*, it appears to the Minister that there is difficulty in finding out the relevant facts about any shares, whether issued or to be issued, and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Act, he may, by order, direct that the shares shall until further ordered be subject to the restrictions imposed by this section.

(2) So long as any shares are directed to be subject to the restrictions imposed by this section—

(a) any transfer of those shares or, in the case of unissued shares, any transfer of the right to be issued therewith and any issue thereof, shall be void;

(b) no voting rights shall be exercisable in respect of those shares,

(c) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof;

(d) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(3) Where the Minister makes an order directing that shares shall be subject to the said restrictions or refuses to make an order directing that shares shall cease to be subject thereto, any person aggrieved thereby may apply to

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the court and the court may, if it sees fit, direct that the shares shall cease to be subject to the said restrictions and may make such order as to costs as it deems fit.

(4) Any order, whether of the Minister or of the court, directing that shares shall cease to be subject to the said restrictions which is expressed to be made with a view to permitting a transfer of those shares may continue the restrictions mentioned in paragraphs (*c*) and (*d*) of subsection (2) either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

(5) Any person who—

(a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to the said restrictions or of any right to be issued with any such shares; or

(b) votes in respect of any such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or

(c) being the holder of any such shares, fails to notify of their being subject to the said restrictions any person whom he does not know to be aware of that fact but does know to be entitled, apart from the said restrictions, to vote in respect of those shares whether as holder or proxy;

shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(6) Where shares in any company are issued in contravention of the said restrictions the company shall be guilty of an offence and liable to a fine not exceeding level ten.

(7) This section shall apply in relation to debentures as it applies in relation to shares.

[Section as amended by Act No. 22 of 2001]

167 Saving for legal practitioners and bankers

Nothing in this Act shall require disclosure to the Minister or to an inspector appointed by him—

(a) by a legal practitioner of any privileged communication made to him in that capacity, except as respects the name and address of his client; or

(b) by a company's bankers as such of any information as to the affairs of any of their customers other than the company.

168 Inspector's report to be evidence

A copy of any report of any inspector appointed under this Act shall be admissible in any legal proceeding as evidence of the opinion of the inspector in relation to any matter contained in the report.

Directors and Other Officers

169 Directors and secretary

(1) Every company shall have not less than two directors, other than alternate directors, at least one of whom shall be ordinarily resident in Zimbabwe.

(2) Every company shall have at least one secretary ordinarily resident in Zimbabwe.

(3) Every person signing the memorandum of a company shall, until other directors are appointed, be deemed to be a director of the company and be liable for all the duties and obligations of a director:

Provided that where a person signs the memorandum, whether as agent or otherwise, on behalf of some other person who is not qualified to be a director of the company, the first-mentioned person shall be deemed to be a director.

(4) Where subsection (1) or (2) are not complied with in relation to any company, each director of that company shall, unless he satisfies the court that he took all reasonable steps that were available to him to secure compliance with the relevant provisions, be guilty of an offence and liable to a fine not exceeding level three.

[Section as amended by Act No. 22 of 2001]

170 Validity of acts of directors

The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

171 Restrictions on appointment or advertisement of director

(1) This section shall not apply to—

(a) an association licensed under section *twenty-six*; or

(b) a private company; or

(c) a company which was a private company before becoming a public company; or

(d) a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company was entitled to commence business.

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(2) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in the list to be lodged in terms of subsection (4) or in any prospectus issued by or on behalf of the company, or in relation to an intended company or in any statement in lieu of prospectus lodged by or on behalf of the company, unless, before the lodging of the list or registration of the articles or the publication of the prospectus, or the lodging of the statement in lieu of prospectus, as the case may be, he has himself or by his agent authorized in writing—

(a) signed and lodged with the Registrar a consent in writing to act as such director; and

(b) either signed the memorandum of association for a number of shares not less than his qualification, if any, or signed and lodged with the Registrar a contract in writing to take from the company and pay for his qualification shares, if any.

(3) The share qualification mentioned in subsection (2) means a share qualification required on appointment to the office of director or within a period determined by reference to the time of appointment and the words "qualification shares" shall be construed accordingly.

(4) When application is made under section *twenty-one* for registration of the memorandum and of the articles, if any, of a company the applicant shall lodge with the Registrar a list, in the prescribed form, of the persons, if any, not being less than two, with their full names, addresses and occupations, who have consented to be directors of the company and, upon such registration, the persons who have so consented shall, until other directors are appointed, be deemed to be the directors of the company and liable for all the duties and obligations of a director.

(5) For the purposes of subsection (4), a person who, having consented to be a director, has before the lodging of the list with the Registrar withdrawn his consent by notice in writing lodged with the Registrar, shall be deemed to be a person who has not so consented.

172 Share qualifications of directors

(1) Without prejudice to the restrictions imposed by section *one hundred and seventy-one*, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification and who is not already qualified, to obtain his qualification within two months after his appointment or such shorter time as may be fixed by the articles.

(2) The office of director of a company shall be vacated if the director does not, within two months from the date of his appointment or within such shorter time as may be fixed by the articles, obtain his qualification or if, after the expiration of the said period or shorter time, he ceases at any time to hold his qualification.

(3) A person vacating office under this section shall be incapable of being reappointed director of the company until he has obtained his qualification.

(4) If, after the expiration of the said period or shorter time, any unqualified person acts as a director of the company he shall be guilty of an offence and liable to a fine not exceeding level seven or imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

173 Disqualification for appointment as director

(1) Any of the following persons shall be disqualified from being appointed a director of a company—

(a) a body corporate;

(b) a minor or any other person under legal disability:

[Paragraph as amended by section 32 of Act No. 14 of 2004]

(c) except with the leave of the court, any person who has at any time been adjudged or otherwise declared insolvent or bankrupt under a law in force in Zimbabwe or any other country, and has not been rehabilitated or discharged;

[Paragraph as substituted by section 32 of Act No. 14 of 2004]

(d) save with the leave of the court, any person who has at any time been convicted, whether in Zimbabwe or elsewhere, of theft, fraud, forgery or uttering a forged document or perjury and has been sentenced therefor to serve a term of imprisonment without the option of a fine or to a fine exceeding level five;

(e) any person who is the subject of any order under this Act disqualifying him as a director;

(f) save with the leave of the court, any person removed by a competent court from an office of trust on account of misconduct.

(2) A director of any company shall cease to hold office as such if—

(a) he has at any time been or is adjudged or otherwise declared insolvent or bankrupt under a law in force in Zimbabwe or any other country, whether before or after the date of commencement of the General Laws Amendment (No. 2) Act, 2002; or

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(b) he is convicted, whether in Zimbabwe or elsewhere, of theft, fraud, forgery or uttering a forged document or perjury and has been sentenced therefor to serve a term of imprisonment without the option of a fine or to a fine exceeding level five; or

(c) he is removed by the court from any office of trust on account of misconduct.

[Subsection as amended by Act No. 14 of 2002]

(3) If any person who is disqualified under this section from being or continuing to be a director of any company directly or indirectly takes part in or is concerned in the management of any company he shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) Nothing in this section shall be deemed to prevent a company from applying under its regulations any further disqualification for the appointment of, or the retention of office by, a director.

[Section as amended by Act No. 22 of 2001]

173A Qualifications for appointment as secretary of public company

(1) The directors of every public company shall take reasonable steps to ensure that the company's secretary is a person who is qualified in terms of subsection (2) and has the requisite knowledge and experience to discharge the functions of secretary of the company.

(2) Subject to section *one hundred and seventy-three B*, a person shall be qualified to hold office as secretary of a public company if—

(a) immediately before the date of commencement of the General Laws Amendment (No. 2) Act, 2002, he held office as secretary or deputy or assistant secretary of the company; or

(b) for at least three of the five years immediately before his appointment as secretary, he held office as secretary of a public company; or

(c) he is registered or entitled to be registered as a chartered accountant under the Chartered Accountants Act [*Chapter 27:02*]; or

(d) he is registered or entitled to be registered as a chartered secretary under the Chartered Secretaries (Private) Act [*Chapter 27:03*]; or

(e) he is registered or entitled to be registered as a legal practitioner under the Legal Practitioners Act [*Chapter 27:07*]; or

(f) he is registered or entitled to be registered as a public accountant or public auditor under the Public Accountants and Auditors Act [*Chapter 27:12*]; or

(g) he holds such other qualification as may be prescribed in regulations.

[Section inserted by section 32 of Act No. 14 of 2002]

173B Disqualification for appointment as secretary of any company

(1) The following persons shall be disqualified from being appointed as secretary of a company— (*a*) a minor or any other person under legal disability;

(b) except with the leave of the court, any person who has at any time been adjudged or otherwise declared insolvent or bankrupt under a law in force in Zimbabwe or any other country, and has not been rehabilitated or discharged;

(c) except with the leave of the court, any person who has at any time been convicted, whether in Zimbabwe or elsewhere, of theft, fraud, forgery or uttering a forged document or perjury and has been sentenced for that offence to imprisonment without the option of a fine or to a fine exceeding level five;

(d) except with the leave of the court, any person who has been removed by a competent court from an office of trust on account of misconduct.

(2) A secretary of a company shall cease to hold office as such if—

(a) he has at any time been or is adjudged or otherwise declared insolvent or bankrupt under a law in force in Zimbabwe or any other country, whether before or after the date of commencement of the General Laws Amendment (No. 2) Act, 2002; or

(b) he is convicted, whether in Zimbabwe or elsewhere, of theft, fraud, forgery or uttering a forged document or perjury and has been sentenced therefor to serve a term of imprisonment without the option of a fine or to a fine exceeding level five; or

(c) he is removed by a competent court from any office of trust on account of misconduct.

(3) If a person who is disqualified under this section from being or continuing to be a secretary of any company directly or indirectly takes part in or is concerned in the management of any company, he shall be guilty of an

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offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) Nothing in this section shall be deemed to prevent a company from applying under its regulations any further disqualification for the appointment of, or the retention of office by, a secretary.

[Section inserted by section 32 of Act No. 14 of 2002

174 Appointment of directors to be voted on individually

(1) At a general meeting of a company other than a private company a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution moved in contravention of subsection (1) shall be void, whether or not its being so moved was objected to at the time: Provided that—

(i) this subsection shall not be taken as excluding the operation of section *one hundred and seventy*;

(ii) where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment shall apply.

(3) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

175 Removal of directors

(1) A company may, by resolution of which special notice has been given, remove a director before the expiration of his period of office notwithstanding anything in its articles or in any agreement between it and him:

Provided that this subsection shall not, in the case of a private company, authorize the removal of a director holding office for life on the 1st January, 1952, whether or not subject to retirement under an age limit by virtue of the articles or otherwise.

(2) Where the director concerned makes, with respect to the intended resolution, representations in writing to the company, not exceeding one thousand words, and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so—

(a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent;

and if a copy of the representations is not sent as aforesaid because it was received too late or because of the company's default, the director may, without prejudice to his right to be heard orally, require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole
or in part by the director, notwithstanding that he is not a party to the application.

(3) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(4) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.

(5) Nothing in this section shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

176 Prohibition of tax-free payments to directors

(1) It shall not be lawful for a company to pay a director remuneration, whether as director or otherwise, free of any taxation in respect of income, or otherwise calculated by reference to or varying with the amount of such taxation or with the rate of taxation on incomes, except under a contract which was in force on the 1st January, 1952, and provides expressly, and not by reference to the articles, for payment of remuneration as aforesaid.

(2) Any provision contained in a company's articles or in any contract other than such a contract as aforesaid, or in any resolution of a company or a company's directors, for payment to a director of remuneration as aforesaid shall have effect as if it provided for payment, as a gross sum subject to taxation, of the net sum for which it actually provides.

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177 Prohibition of loans to directors

(1) It shall not be lawful for a company to make a loan to any person who is its director or a director of its holding company or to enter into any guarantee or provide any security in connection with a loan made to such a person as aforesaid by any other person:

Provided that nothing in this section shall apply—

(a) subject to subsection (2), to anything done to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or

(b) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business; or

(c) to anything done by a private company, which is not a subsidiary company, with the consent of members holding at least nine-tenths of the issued share capital; or

(d) to the making of a loan to a director with a view to enabling him to purchase or subscribe for fully paid shares in the company to be held by him or in trust for him, if the loan is made in accordance with section *seventy-three*.

(2) Paragraph (*a*) of the proviso to subsection (1) shall not authorize the making of any loan or the entering into any guarantee or the provision of any security, except—

(a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or

(b) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.

(3) Where the approval of the company is not given as required by any such condition, the directors authorizing the making of the loan or the entering into the guarantee or the provision of the security shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

(4) In the event of any default in complying with subsection (1) every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

178 Approval of company requisite for payment by it to director for loss of office

It shall not be lawful for a company to make to any director of the company any payment by way of compensation for loss of office or as consideration for or in connection with his retirement from office, without full particulars with respect to the proposed payment, including the amount thereof, being disclosed to members of the company and the proposal being approved by the company in general meeting.

179 Approval of company requisite for payment in connection with transfer of its property to director for loss of office

(1) It shall not 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 by any person 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 in general meeting.

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

180 Duty of director to disclose payments for loss of office, made in connection with transfer of shares in company

(1) Where, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from—

(a) an offer made to the general body of shareholders; or

(b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company; or

(c) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the company; or

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(d) any other offer which is conditional on acceptance to a given extent; a payment is to be made to a director of the company by way of compensation for loss of office or as consideration for or in connection with his retirement from office, it shall be the duty of 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.

(2) If—

(a) any such director fails to take reasonable steps as aforesaid; or

(b) any person who has been properly required by any such director to include the said particulars in or send them with any such notice as aforesaid fails so to do;

such director or such person, as the case may be, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(3) If—

(a) the requirements of subsection (1) are not complied with in relation to any such payment as is therein mentioned; or

(b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of the said shares;

any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

(4) Where the shareholders referred to in paragraph (*b*) of subsection (3) are not all the members of the company and no provision is made by the articles for summoning or regulating such a meeting as is mentioned in that paragraph, this Act and of the company's articles relating to general meetings of the company shall, for that purpose, apply to the meeting either without modification or with such modifications as the Minister on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

(5) If at a meeting summoned for the purpose of approving any payment as required by paragraph (*b*) of subsection (3) a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall be deemed for the purposes of that subsection to have been approved.

181 Provisions supplementary to sections 178, 179 and 180

(1) Where in proceedings for the recovery of any payment as having, by virtue of subsections (1) and (2) of section *one hundred and seventy-nine* or subsections (1) and (3) of section *one hundred and eighty*, been received by any person in trust it is shown that—

(a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question or within one year before or two years after that agreement or the offer leading thereto; and

(b) the company or any person to whom the transfer was made was privy to that arrangement; the payment shall be deemed, except in so far as the contrary is shown, to be one to which the subsections apply.

(2) If, in connection with any such transfer as is mentioned in section *one hundred and seventy-nine* or *one hundred and eighty*—

(a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares; or

(b) any valuable consideration is given to any such director; the excess or the money value of the consideration, as the case may be, shall, for the purposes of that section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(3) References in section *one hundred and seventy-eight*, *one hundred and seventy-nine* or *one hundred and eighty* to payments made to any director of a company by way of compensation for loss of office or as consideration for or in connection with his retirement from office do not include any *bona fide* payment by way of damages for breach of contract or by way of pension in respect of past services and for the purposes of this subsection the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in section *one hundred and seventy-nine* or *one hundred and eighty* shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are therein mentioned or with respect to any other like payments made or to be made to the directors of a company.

182 Register of directors' share holdings

jbzowa@justice.gov.zw

(1) Every company, other than a private company, shall keep a register showing as respects each director of the company the number, description and amount of any shares in or debentures of the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company, which are held by or in trust for him or of which he has any right to become the holder, whether on payment or not:

Provided that the register need not include shares in any body corporate which is the wholly owned subsidiary of another body corporate.

(2) Where any shares or debentures fail to be or cease to be recorded in the said register in relation to any director by reason of a transaction entered into after the 1st April, 1952, and while he is a director, the register shall also show the date of, and price or other consideration for, the transaction:

Provided that where there is an interval between the agreement for any such transaction and the completion thereof, the date shall be that of the agreement.

(3) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him in the said register shall, if he so requires, be indicated in the register.

(4) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of or put upon inquiry as to, the rights of any person in relation to any shares or debentures.

(5) The said register shall, subject to this section, be kept at the company's registered office and shall be open to inspection during business hours, subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection, as follows—

(a) during the period beginning fourteen days before the date of the company's annual general meeting and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company; and

(b) during that or any other period it shall be open to the inspection of any person acting on behalf of the Minister.

In computing the fourteen days and the three days mentioned in this subsection any day which is a Saturday or Sunday or public holiday shall be disregarded.

(6) The Registrar may at any time require a copy of the said register or any part thereof.

(7) The said register shall be produced at the commencement of the company's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.

(8) If default is made in complying with subsection (1) or (2) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level ten.

(9) If default is made in complying with subsection (5) or (7) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level three, and the court, including the court convicting, may by order compel an immediate inspection of the register.

(10) In this section—

(a) any person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director of the company; and

(b) a director of a company shall be deemed to hold, or to have an interest or right in or over, any shares or debentures if a body corporate other than the company holds them or has that interest or right in or over them, and—

(i) that body corporate or its directors are accustomed to act in accordance with his directions or instructions; or

(ii) he is entitled to exercise or control the exercise of one-third or more of the voting power at any general meeting of that body corporate.

(11) It shall be the duty of every director of a company and of every person deemed to be a director under paragraph (*a*) of subsection (10) to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section. Any such notice shall be in writing and if it is not given at a meeting of directors the person giving it shall take reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given. Any person who makes default in complying with this subsection shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

jbzowa@justice.gov.zw

183 Prohibition of allotment of shares to directors save on same terms as to all members, and restriction on sale of undertakings by directors

(1) Notwithstanding anything in the articles, the directors of a company shall not be empowered, without the approval of the company in general meeting—

(a) to issue or allot reserve shares or new shares to any director or his nominee save in so far as they are issued or allotted to him or to such nominee as a member on the same terms and conditions as have been simultaneously offered in respect of the said issue or allotment of shares to all the members of the company in proportion to their existing holdings;

(b) to dispose of the undertaking of the company or of the whole or the greater part of the assets of the company.

(2) No resolution of the company shall be effective as approving of the differential issue or allotment of shares to a director or of a disposal in terms of paragraph (*b*) of subsection (1) unless it authorizes, in terms, the specific transaction proposed by the directors.

184 Particulars in accounts of directors' salaries and pensions

(1) In any accounts of a company laid before it in general meeting or in a statement annexed thereto there shall, subject to and in accordance with this section, be shown so far as the information is contained in the company's books and papers or the company has the right to obtain it from the persons concerned— (*a*) the aggregate amount of the directors' emoluments; and

(b) the aggregate amount of directors' or past directors' pensions; and

(c) the aggregate amount of any compensation to directors or past directors in respect of loss of office.

(2) The amount to be shown under paragraph (*a*) of subsection (1)—

(a) shall include any emoluments paid to or receivable by any person in respect of his services as director of the company or in respect of his services, while director of the company, as director of any subsidiary thereof or otherwise in connection with the management of the affairs of the company or any subsidiary thereof; and

(b) shall distinguish between emoluments in respect of services as director, whether of the company or its subsidiary, and other emoluments; and for the purposes of this section the expression "emoluments", in relation to a director, includes fees and

percentages, any sums paid by way of expenses allowance in so far as those sums are deemed under any law to be taxable income of the recipient, any contribution paid in respect of him under any pension scheme and the estimated money value of any other benefits received by him otherwise than in cash.

(3) The amount to be shown under paragraph (*b*) of subsection (1)—

(a) shall not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions thereunder are substantially adequate for the maintenance of the scheme, but save as aforesaid shall include any pension paid or receivable in respect of any such services of a director or past director of the company as are mentioned in subsection (2), whether to or by him or, on his nomination or by virtue of dependence on or other connection with him, to or by any other person; and

(b) shall distinguish between pensions in respect of services as director, whether of the company or its subsidiary, and other pensions;

and for the purposes of this section the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment and the expression "pension scheme" means a scheme for the provision of pensions in respect of services as director or otherwise which is maintained in whole or in part by means of contributions, and the expression "contribution", in relation to a pension scheme, means any payment, including

an insurance premium, paid for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions will or may become payable under the scheme, except that it does not include any payment in respect of two or more persons if the amount paid in respect of each of them is not ascertainable.

(4) The amount to be shown under paragraph (*c*) of subsection (1)—

(a) shall include any sums paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while director of the company or on or in connection with his ceasing to be a director of the company, of any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary thereof; and

(b) shall distinguish between compensation in respect of the office of director, whether of the company or its subsidiary, and compensation in respect of other offices;

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and for the purposes of this section references to compensation for loss of office shall include sums paid as consideration for or in connection with a person's retirement from office.

(5) The amounts to be shown under each paragraph of subsection (1)—

(*a*) shall include all relevant sums paid by or receivable from—

(i) the company; and

(ii) the company's subsidiaries; and

(iii) any other person; except sums to be accounted for to the company or any of its subsidiaries or, by virtue of section *one hundred and eighty*, to past or present members of the company or any of its subsidiaries or any class of those members; and (*b*) shall distinguish, in the case of the amount to be shown under paragraph (*c*) of subsection (1), between the sums respectively paid by or receivable from the company, the company's subsidiaries and persons

other than the company and its subsidiaries.

(6) The amounts to be shown under this section for any financial year shall be the sums receivable in respect of that year, whenever paid, or, in the case of sums not receivable in respect of a period, the sums paid during that year so, however, that where—

(a) any sums are not shown in the accounts for the relevant financial year on the ground that the person receiving them is liable to account therefor as mentioned in paragraph (*a*) of subsection (5), but the liability is thereafter wholly or partly released or is not enforced within a period of two years; or

(b) any sums paid by way of expenses allowance are included in the recipient's taxable income after the end of the relevant financial year;

those sums shall, to the extent to which the liability is released or not enforced or they are included as aforesaid, as the case may be, be shown in the first accounts in which it is practicable to show them or in a statement annexed thereto and shall be distinguished from the amounts to be shown therein apart from this provision.

(7) Where it is necessary so to do for the purpose of making any distinction required by this section in any amount to be shown thereunder, the directors may apportion any payments between the matters in respect of which they have been paid or are receivable in such manner as they think appropriate.

(8) If in the case of any accounts the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report thereon, so far as they are reasonably able to do so, a statement giving the required particulars.

(9) In this section any reference to a company's subsidiary—

(a) in relation to a person who is or was, while a director of the company, a director also, by virtue of the company's nomination, direct or indirect, of any other body corporate, shall, subject to paragraph (*b*), include that body corporate, whether or not it is or was in fact the company's subsidiary; and

(b) shall, for the purposes of subsections (2) and (3), be taken as referring to a subsidiary at the time the services were rendered and, for the purposes of subsection (4), be taken as referring to a subsidiary immediately before the loss of office as director of the company.

(10) It shall be the duty of every director of a company and of every person who has at any time during the preceding two years been a director to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section; and if he makes default in complying with such duty he shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment..

[Section as amended by Act No. 22 of 2001]

185 Particulars in accounts of loans to officers

(1) Save in the case of private companies, the accounts which, in pursuance of this Act, are to be laid before every company in general meeting shall, subject to this section, contain particulars showing—

(a) the amount of any loans which during the period to which the accounts relate have been made by the company or by any subsidiary company or by any other person under a guarantee from or on a security provided by the company or such subsidiary to any director or other officer of the company, including any such loans which were repaid during the said period;

(b) the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof.

(2) With respect to loans subsection (1) shall not apply—

(a) in the case of a company or a subsidiary thereof the ordinary business of which includes the lending of money, to a loan made by the company or the subsidiary in the ordinary course of its business; or

jbzowa@justice.gov.zw

(b) to a loan made by the company or the subsidiary to any employee of the company if the loan does not exceed four thousand United States dollars and is certified by the directors of the company or the subsidiary, as the case may be, to have been made in accordance with any scheme adopted by the company or the subsidiary with respect to loans to its employees.

[Paragraph amended by Act 9 of 2011]

(3) With respect to loans subsection (1) shall apply to a loan to any person who has, during the company's financial year, been a director or other officer of the company made before he became a director or officer, as it applies to a loan to a director or officer of the company.

(4) If in the case of any such accounts as aforesaid provisions of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(5) References in this section to a subsidiary shall be taken as referring to a subsidiary at the end of the company's financial year, whether or not a subsidiary at the date of the loan.

(6) It shall be the duty of every director and of every other officer of a company and of every person who had, at any time within the previous two years, been a director or officer to give notice to the company of any such matters relating to himself as may be necessary for the purposes of this section; and if he makes default in complying with such duty he shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

186 Disclosure by directors of interests in contracts

(1) Subject to this section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature and full extent of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract, the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration or, if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(3) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made:

Provided that—

(i) there is stated in the said notice the nature and extent of the interest of the said director in such company or firm;

(ii) at the time the question of confirming or entering into any such contract is first taken into consideration, the extent of his interest in such company or firm is not greater than is stated in the notice;

(iii) no such general notice shall be of any effect unless either it is given at a meeting of the directors or the director giving the notice takes all reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given;

(iv) such a general notice shall not be effective beyond the date of the annual general meeting next after the date of the notice, but may from time to time be renewed.

(4) Any director who fails to comply with this section shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

[Section as amended by Act No. 22 of 2001]

187 Register of directors and secretaries

(a1) In this section—

"identity document" means-

(i) a document issued to a person in terms of section 7(1) or (2) of the National Registration Act [*Chapter 10:17*] or a passport or drivers' licence issued by the Government of Zimbabwe; or (ii) any passport, identity document or driver's licence issued by a foreign government.

jbzowa@justice.gov.zw

[Subsection inserted by Act 5 of 2006]

(1) Every company shall keep at the office at which the register of members of the company is kept a register of its directors and secretaries.

(2) The said register shall contain with respect to each director his or her present first name and surname, any former first name and surname, an identification reference number appearing in his or her identity document, his or her full residential or business address and postal address, his or her nationality and particulars of any other directorships held by him or her:

Provided that it shall not be necessary for the register to contain particulars of directorships held by a director in companies of which the company is the wholly owned subsidiary or which are the wholly owned subsidiaries either of the company or another company of which the company is the wholly owned subsidiary, and for the purposes of this proviso the expression "company" shall include any body corporate incorporated in Zimbabwe.

[Subsection substituted by Act 5 of 2006]

(3) The said register shall contain the following particulars with respect to the secretary, that is to say—

(a) in the case of an individual, his or her present first name and surname, any former first name and surname, an identification reference number appearing in his or her identity document and his or her full residential address or business and postal addresses; and

[Subparagraph substituted by Act 5 of 2006]

(b) in the case of a corporation, partnership or other association, its name and registered or principal office.

(4) The company shall, within the periods respectively mentioned in subsection (5), deliver to the Registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register and of the date of any such change:

Provided that, except when making its annual return in terms of section *one hundred and twenty-three*, it shall not be necessary for a company to deliver to the Registrar a notification of any change in the particulars of directorships held by any of its directors in any other company.

(5) The period within which the return or notification referred to in subsection (4) is to be delivered to the Registrar shall be one month after the incorporation of the company or the date on which the change is notified to the company, as the case may be.

(6) It shall be the duty of every director and secretary of a company to furnish the company with all particulars required for inclusion in the said register, including any addition to or alteration or other change in any such particulars, and any director or secretary who neglects or fails without reasonable excuse to furnish the company with any particulars so required within seven days after demand made by the company, or who furnishes the company with any particular which is incorrect in any respect, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

(7) The resignation of a director or a secretary shall not relieve him of his duties as director or secretary, as the case may be, under this Act or under the articles of the company unless the director or secretary, having notified the Registrar and the company of his resignation, had reasonable ground to believe that the company would comply with subsection (4).

(8) The register to be kept under this section shall, during business hours, subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection, be open to the inspection of any member of the company without charge, and of any other person on payment of twenty cents or such less sum as the company may prescribe for each inspection.

(9) The company shall, on application, furnish any person with a copy or extract from such register on payment of twenty-five cents or such less sum as the company may prescribe for every hundred words or part thereof of the required copy or extract or afford to such person adequate facilities for making such copy or extract.

The company shall cause any copy or extract so required by any person to be sent to that person within a period of twenty-one days commencing on the day next after the day on which the requirement is received by the company.

(10) Subject to subsection (11), if default is made in complying with subsection (1), (2), (3) or (4) the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

(11) If any inspection under this section is refused the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level three and the court may, by order, compel an immediate inspection of the register subject to the payment of the proper sum.

(12) For the purposes of this section—

jbzowa@justice.gov.zw

(a) a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company;

(b) in the case of a peer or person usually known by a title different from his surname the expression "surname" means that title;

(c) references to a former first name or surname do not include-

(i) in the case of a peer or a person usually known by a British title different from his or her surname, the name by which he or she was known previous to the adoption of or succession to the title; or

(ii) in the case of any person, a former first name or surname where the name or surname was changed or disused before the person bearing the name attained the age of eighteen years;

(iii) in the case of a married woman, the name or surname by which she was known previous to the marriage.

[Subparagraph substituted by Act 5 of 2006]

188 Particulars of directors in trade catalogues and circulars

(1) Every company shall, in all business letters on or in which the company's name appears and which are issued or sent by the company to any person, state in legible characters with respect to every director his present Christian names or the initials thereof and present surname.

(2) If default is made in complying with subsection (1) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level five.

(3) For the purposes of subsection (l)—

"business letter" includes any quotation or order form but does not include any invoice, statement, delivery note, packing note or similar document.

[Section as amended by Act No. 22 of 2001]

189 Directors may have regard to interests of employees

In the exercise of their functions, the directors of a company may have regard to the interests and welfare of the company's employees and the dependants of those employees, as well as the interests of the company's members.

Avoidance of Provisions in Articles or Contract Relieving Officers from Liability

190 Provisions as to liability of officers and auditors

Subject as hereinafter provided, any provisions, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any officer of the company or any person employed by the company as auditor from, or indemnifying him against, any liability which by 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: Provided that—

(i) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force;

(ii) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section *three hundred and forty-nine* in which relief is granted to him by the court.

Arrangements and Reconstruction

191 Power to compromise with creditors and members

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

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

(3) An order made under subsection (2) shall have no effect until a copy of the order certified by the registrar of the court, together with a copy of the deed of compromise or arrangement, as the case may be, has been delivered

jbzowa@justice.gov.zw

to the Registrar for registration and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made.

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

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

[Section as amended by Act No. 22 of 2001]

192 Information as to compromise with creditors and members

(1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section *one hundred and ninety-one*, there shall—

(a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and

(b) in every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain one copy each of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(4) Where a company makes default in complying with any requirement of this section every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment, and for the purpose of this subsection any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company:

Provided that a person shall not be liable under this subsection if that person shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

(5) It shall be the duty of any director of the company and of any trustee for debenture holders of the company to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section and any person who makes default in complying with this subsection shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

193 Provisions for facilitating reconstruction and amalgamation of companies

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

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

jbzowa@justice.gov.zw

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

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

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

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

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

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

The transfer under this subsection of any immovable property or mining claims shall be made in accordance with any law governing the transfer thereof.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a copy thereof certified by the registrar of the court, together with a copy of the deed of compromise or arrangement, as the case may be, to be delivered to the Registrar for registration within one month after the making of the order, and if default is made in complying with this subsection the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

(4) In this section the expression "property" includes property, rights and powers of every description and the expression "liabilities" includes duties.

(5) Notwithstanding subsection (5) of section *one hundred and ninety-one*, the expression "company" in this section does not include any company other than a company within the meaning of this Act.

[Section as amended by Act No. 22 of 2001]

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

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

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

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

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

(a) the transferee company shall within one month from the date of the transfer, unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement, give notice of that

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fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and

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

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

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

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

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

Minorities

195 Meaning of "member" and "company" in sections 196 to 198

(1) In sections *one hundred and ninety-six*, *one hundred and ninety-seven* and *one hundred and ninety-eight*—

"member" includes a person who is not a member of the company but to whom shares in the company have been transferred or transmitted by operation of law.

(2) In sections *one hundred and ninety-seven* and *one hundred and ninety-eight*—

"company" includes a body corporate referred to in section *one hundred and fifty-nine*.

196 Order on application of member

(1) A member of a company may apply to the court for an order in terms of section *one hundred and ninetyeight* on the ground that the company's affairs are being or have been conducted in a manner which is oppressive or unfairly prejudicial to the interests of some part of the members, including himself, or that any actual or proposed act or omission of the company, including an act or omission on its behalf, is or would be so oppressive or prejudicial.

197 Order on application of Minister

(1) If in the case of any company—

(a) the Minister has received a report under section *one hundred and sixty-one*; and

(b) it appears to him that the company's affairs are being or have been conducted in a manner which is oppressive or unfairly prejudicial to the interests of some part of the members, or that any actual or proposed act or omission the company, including an act or of omission on its behalf, is or would be so oppressive or prejudicial; he may, in addition to or instead of applying under subsection (2) of section *one hundred and sixty-two* for the winding up of the company, apply to the court for an order in terms of section *one hundred and ninety-eight*.

198 Powers of court in applications under sections 196 and 197

(1) If the court is satisfied that an application under section *one hundred and ninety-six* or *one hundred and ninety-seven* is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2) Without prejudice to the generality of subsection (1), the court's order may—

(a) regulate the conduct of the company's affairs in the future;

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(b) require the company to refrain from doing or continuing an act complained of by the applicant or to do an act which the applicant has complained it has omitted to do;

(c) authorize civil proceedings to be brought in the name and on behalf of the company by such person or persons as the court may direct;

(d) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.

(3) If an order under this section prohibits a company from altering its memorandum or articles, the company shall not have power without leave of the court to make any such alteration.

(4) Any alteration in the company's memorandum or articles made by virtue of an order under this section shall be of the same effect as if duly made by resolution of the company.

(5) A copy of an order under this section altering or giving leave to alter a company's memorandum or articles, certified by the registrar of the court shall, within fourteen days from the making of the order or such longer period as the court may allow, be delivered by the company to the Registrar for registration.

(6) If a company makes default in complying with subsection (5), the company and every officer of it who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

[Section as amended by Act No. 22 of 2001]

PART V

WINDING UP AND JUDICIAL MANAGEMENT

Preliminary

199 Modes of winding up

(1) The winding up of a company may be either— (*a*) by the court; or (*b*) voluntary.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company by either of those modes.

200 Jurisdiction of Master

(1) For the purposes of the winding up or judicial management of companies, the Master shall have the jurisdiction conferred on him by this Part.

(2) Where in terms of any provision of this Act any account, statement of affairs, notice, receipt, book or other document is required to be filed or lodged with, or submitted to, the Master or the Master's office, such account, statement of affairs, notice, receipt, book or other document shall be so filed or lodged with, or submitted to, the office of the Master in Harare or the office of the Assistant Master in Bulawayo:

Provided that the Master may direct in a particular case that such account, statement of affairs, notice, receipt, book or other document be so filed or lodged with, or submitted to, one or other of such offices.

Contributories

201 Liability as contributories of present and past members

In the event of a company being wound up, every present and past member shall, subject to this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up and for the adjustment of the rights of the contributories among themselves, subject to the following qualifications—

(a) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;

(b) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(c) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;

(d) a past member shall not be liable to contribute unless at the commencement of the winding up there is unsatisfied debt or liability of the company contracted before he ceased to be a member;

(e) a past member shall not be liable to contribute unless it appears to the court that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(f) a past member shall not be liable to contribute in respect of any debt or liability of the company other than a debt or liability contracted before he ceased to be a member and unsatisfied at the commencement of the

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winding up or in respect of the costs, charges and expenses of the winding up, except in so far as these have been occasioned by the necessity of recovering a contribution from him under this section;

(g) a past member shall not be liable to contribute in respect of the adjustment of the rights of the contributories among themselves;

(h) anything in this section to the contrary notwithstanding, no transfer of shares improperly issued as fully or partly paid up shall relieve the transferor of any liability which he would have had to contribute in respect of the amount improperly credited as paid on the shares had he not transferred them; but in so far as the present member is liable to contribute in respect of the amount improperly credited, such liability shall be a joint and several liability of such transferor and the present member;

(i) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted or whereby the funds of the company are alone made liable in respect of the policy or contract;

(j) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories amongst themselves.

202 Definition of "contributory"

The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up and, for the purposes of all proceedings for determining and all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

203 Nature of liability of contributory

The liability of a contributory shall constitute a debt accruing from him at the time when his liability commenced but payable at the times when calls are made for enforcing the liability.

204 Contributories in case of death or insolvency

(1) If a contributory dies before or after he has been placed on the list of contributories then—

(a) his executors shall, as such, be placed on the list of contributories in his stead and be liable accordingly; or

(b) if his estate has passed into the hands of his heirs or legatees they shall be liable for his contribution to such extent and in such proportions as they would, by law, respectively be liable for debts of the estate payable but unprovided for at the time of distribution thereof and shall be placed on the list of contributories accordingly.

(2) If a contributory becomes insolvent or assigns his estate under the law relating to insolvent estates, either before or after he has been placed on the list of contributories, then—

(a) his trustee in insolvency or his assignee, as the case may be, shall represent him for all the purposes of the winding up and shall be a contributory accordingly; and

(b) there may be proved against the estate of the insolvent or of the debtor who has assigned his estate the estimated value of his liability to future calls, as well as calls already made.

Definition of Inability to Pay Debts

205 When company deemed unable to pay its debts

A company shall be deemed to be unable to pay its debts—

(a) if a creditor, by cession or otherwise, to whom the company is indebted in a sum exceeding one hundred United States dollars then due, has served on the company a demand requiring it to pay the sum so due by leaving the demand at its registered office and if the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or

(b) if the execution or other process issued, on a judgment, decree or order of any competent court in favour of a creditor, against the company is returned by the Sheriff or messenger with the endorsement that no assets could be found to satisfy the debt or that the assets found were insufficient to do so; or

(c) if it is proved to the satisfaction of the court that the company is unable to pay its debts and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

[Section amended by Act 9 of 2011]

Winding Up by the Court

206 Circumstances in which company may be wound up by court

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A company may be wound up by the court—

(a) if the company has by special resolution resolved that the company be wound up by the court;

(b) if default is made in lodging the statutory report or in holding the statutory meeting;

(c) if the company does not commence its business within a year from its incorporation or suspends its business for a whole year;

(d) if the company ceases to have any members;

(e) if seventy-five *per centum* of the paid-up share capital of the company has been lost or has become useless for the business of the company;

(f) if the company is unable to pay its debts; (*g*) if the court is of opinion that it is just and equitable that the company should be wound up.

207 Petition for winding up company

(1) An application to the court for the winding up of a company shall be by petition presented, subject to this section, by the company or by any creditor or creditors, including any contingent or prospective creditor or creditors, contributory or contributories or by all or any of those parties together or separately or, in a case falling within subsection (2) of section *one hundred and sixty-two*, by the Minister accompanied, save in the case of a petition by the Minister, by a certificate of the Master, Assistant Master or a magistrate that due security has been found for payment of all fees and charges necessary for the prosecution of all proceedings until the appointment of a liquidator:

Provided that—

(i) a contributory shall not be entitled to present a petition for winding up a company unless— (*a*) the number of members of the company is reduced below two; or

(*b*) the shares in respect of which he is a contributory, or some of them, were originally allotted to him or have been held by him and registered in his name for at least six months during the eighteen months before the commencement of the winding up or have devolved upon him through the death of a former holder;

(ii) a petition for winding up a company on the ground of default in lodging the statutory report or in holding the statutory meeting shall not be presented by any person except a member, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held;

(iii) the court shall not grant a petition for winding up a company by a contingent or prospective creditor until a *prima facie* case for winding up has been established to the satisfaction of the court.

(2) Where a company is being wound up voluntarily, a petition may be presented by the Master or by any other person authorized in that behalf under subsection (1) but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

208 Powers of court on hearing petitions

(1) On hearing the petition the court may dismiss it with or without costs or adjourn the hearing conditionally or unconditionally or make any interim order or any other order that it deems just, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.

(2) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it is of the opinion—

(a) that the petitioners are entitled to relief either by winding up the company or by some other means; or

(b) that in the absence of any other remedy it would be just and equitable that the company should be wound up;

shall make a winding-up order, unless it is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3) Where the petition is presented on the ground of default in delivering the statutory report to the Registrar or in holding the statutory meeting, the court may—

(*a*) instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held; and (*b*) order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

209 Court may stay or restrain proceedings against company

At any time after the presentation of a petition for winding up and before a winding-up order has been made, the company or any creditor or contributory may—

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(a) where any action or proceeding by or against the company is pending in any court of law in Zimbabwe, apply to such court for a stay of proceedings therein;

(b) where any other action or proceeding is being or about to be instituted against the company, apply to the court to which the petition for winding up has been presented for an order restraining further proceedings in the action or proceeding;

and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

210 Commencement of winding up by court

(1) Where, before the presentation of a petition for the winding up of a company by the court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution.

(2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

(3) Where the court adjourns the hearing of an application for the winding up of a company by the court, the applicant shall, unless the court orders to the contrary, advertise the application and the adjournment in the *Gazette*.

211 Court may adopt proceedings of voluntary winding up

Where a company is being wound up voluntarily and an order is made for its winding up by the court, the court may, if it thinks fit, by the same or any subsequent order, confirm all or any of the proceedings in the voluntary winding up.

Consequences of Winding-Up Order

212 Effect of winding-up order

An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if the petition had been presented by all creditors and contributories jointly.

213 Action stayed and avoidance of certain attachments, executions and dispositions and alteration of status In a winding up by the court—

(a) no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose;

(b) any attachment or execution put in force against the assets of the company after the commencement of the winding up shall be void;

(c) every disposition of the property, including rights of action, of the company and every transfer of shares or alteration in the status of its members, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

214 Transmission of winding-up order to certain officers

(1) The registrar of the court shall forthwith transmit a copy of every provisional and final winding-up order and of every order amending or setting aside the same to the Registrar, Master and Sheriff and—

(a) in respect of any immovable property within Zimbabwe which appears to be an asset of the company, to the Registrar of Deeds; and

(b) in respect of any interest in minerals within Zimbabwe which appears to be an asset of the company, to the Secretary of the Ministry responsible for mines; and

(c) to the messenger of every magistrates court by the order whereof it appears that property of the company is under attachment:

Provided that when the assets of the company are under four hundred United States dollars in value, and the court so orders, the movable assets may remain in the custody of such person as the court may order upon such terms as to security as the court may direct and in that case it shall not be necessary to transmit a copy of any order to the Sheriff or any messenger.

[Section amended by Act 9 of 2011]

(2) Upon receipt by the Registrar of Deeds of a winding-up order he shall enter a caveat against the transfer of any immovable property or the cancellation or cession of any bond registered in the name of or belonging to the company.

(3) Upon the receipt by the Secretary of the Ministry responsible for mines of a winding-up order he shall cause a caveat to be entered against the transfer of any interest whatsoever in minerals or the cancellation or cession of any bond registered in the name of or belonging to the company.

(4) Every such public officer concerned shall register every copy of an order transmitted to him and note thereon the day and hour when it is received. (5) Upon receipt of a copy of any winding-up order the Master shall give notice thereof in the *Gazette*.

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215 Statement of company's affairs to Master

(1) Where the court has made a winding-up order there shall be made and submitted to the Master a statement in duplicate as to the affairs of the company in the prescribed form, if any, showing, as at the date of the winding-up order or such other convenient date as the Master shall allow, the particulars of its assets, debts and liabilities, the names, addresses and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as the Master may require. The Master shall transmit the duplicate of such statement to the liquidator on his appointment.

(2) The statement shall be submitted and verified by affidavit by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary of the company or by such of the persons hereinafter in this subsection mentioned as the Master may require to submit and verify the statement, that is to say, persons—

(a) who are or have been officers of the company;

(b) who have taken part in the formation of the company at any time within one year before the relevant date;

(c) who are in the employment of the company or have been in the employment of the company within the said year and are in the opinion of the Master capable of giving the information required;

(d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the date of the order or within such extended time as the Master or the court may for special reasons allow.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed and shall be paid out of the assets of the company such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Master may consider reasonable.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section he shall be guilty of an offence and liable to a default fine not exceeding level two.

(6) Any person shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section and to a copy thereof or extract therefrom.

[Section as amended by Act No. 22 of 2001]

216 Report by Master

Where the court has made a winding-up order the Master may, if he thinks fit, make a report to the court, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any director or other officer of the company in relation to the company or its creditors since the formation thereof and any other matters which in his opinion it is desirable to bring to the notice of the court.

Provisions Specially Applicable in Winding Up by Court

217 Application of sections

Sections *two hundred and eighteen* to *two hundred and forty-one* shall apply in relation to the winding up of a company by the court.

218 Custody of property and appointment of liquidator

(1) In conducting the proceedings in a winding up by the court the Master shall, subject to sections *two hundred and nineteen* and *two hundred and seventy-four*, appoint a liquidator or liquidators.

(2) On a winding-up order being made or thereafter when, for whatever cause, there is no person acting as liquidator of the company—

(a) all the property of the company shall be deemed to be in the custody or control of the Master until a liquidator or provisional liquidator is appointed and is capable of acting as such;

(b) subject to section *two hundred and seventy-four*, the Master may appoint any fit person or shall appoint any person whom the court has directed to be appointed as a provisional liquidator of the company to hold office until the appointment of a liquidator, and may, or shall, as so ordered by the court, restrict his powers by the terms of his letter of appointment.

(3) When a vacancy occurs in the office of liquidator the Master shall fill the vacancy by making an appointment under section *two hundred and nineteen* and *two hundred and seventy-four*.

(4) Where no name of any person has been submitted to the Master for appointment as liquidator as a result of the summoning of a meeting of creditors or contributories in terms of section *two hundred and twenty-one* the Master may—

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(a) appoint any fit person as the liquidator of the company and may authorize such liquidator to exercise such of the powers set out in subsection (2) of section *two hundred and twenty-one* as the Master may think fit; or

(b) authorize the provisional liquidator of the company to sell the assets of the company and, after paying the costs of liquidation, to lodge any surplus in the Guardian's Fund.

219 Meetings of creditors and contributories

(1) When a final winding-up order has been made by the court, the Master shall summon separate meetings—

(a) of the creditors of the company for the proof of claims against the company and for the purpose of determining the person or persons whose names shall be submitted for appointment as liquidator or liquidators; and

(b) of the contributories of the company for the purpose of determining the person or persons whose names shall be submitted for appointment as liquidator or liquidators.

(2) Where in regard to the said appointment there is no difference between the determinations of the meetings of the creditors and contributories or where there is a determination of the meeting of the creditors only or of the meeting of the contributories only, the Master may make any appointment required to give effect to any such determination.

(3) Where there is a difference between the determinations of the meetings of the creditors and of the contributories, the Master shall call a joint meeting of the creditors and contributories with a view to reaching an agreement and, if no agreement is reached, the Master shall make such appointment as he may think fit. Any such appointment shall be subject to an appeal within fourteen days to a judge in chambers, made by the creditors or contributories or both. On any such appeal the judge may make such order thereon and as to costs as he may think fit.

(4) Meetings of creditors and contributories shall, unless otherwise in this Act specially provided, be convened and held in the manner prescribed in the rules framed under section *three hundred and fifty-nine*.

(5) Where the provisional liquidator of a company has been authorized in terms of paragraph (*b*) of subsection (4) of section *two hundred and eighteen* to sell the assets of the company any creditor of the company may, upon tendering to the provisional liquidator such sum as the Master may fix to cover the costs of calling a meeting of creditors and the fee of the provisional liquidator, request the provisional liquidator to summon a meeting of creditors for the purpose of proving his claim against the company and submitting the name of some person to the Master for appointment as liquidator of the company.

(6) Where a request has been made to him in terms of subsection (5) and the sum referred to in that subsection has been tendered to him, the provisional liquidator shall summon a meeting of creditors which shall be deemed to be summoned in terms of paragraph (*a*) of subsection (1).

220 Proof of claim

(1) All claims against a company being wound up by the court shall be proved at a meeting of creditors called and held as nearly as possible in the manner provided by the law relating to insolvent estates for the proof of claims against an insolvent estate and subject to section *two hundred and eighty-nine*.

(2) The Master, on the application of the liquidator, may fix a time or times within which creditors of the company are to prove their claims or to be excluded from the benefit of any distribution under any account lodged with the Master before those debts are proved.

221 Powers of liquidator

(1) The liquidator in a winding up by the court shall have the following powers— (*a*) to execute in the name and on behalf of the company all deeds, receipts and other documents and for that purpose to use the company's seal;

(b) to prove a claim in the estate of any contributory or debtor and receive payment in full or a dividend in respect thereof;

(c) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, but so as not, except with the leave of the court or the authority mentioned in subsection (4) or for the purpose of carrying on the business of the company in terms of paragraph (*e*) of subsection (2), to impose any additional liability upon the company.

(2) The liquidator shall have power, with the leave of the court or with the authority mentioned in subsection (4) or in paragraph (*a*) of subsection (4) of section *two hundred and eighteen*—

(a) to bring or defend in the name and on behalf of the company any action or other legal proceeding of a civil nature and, subject to any law relating to criminal procedure, any criminal proceeding:

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Provided that immediately upon the appointment of a liquidator or a provisional liquidator the Master may authorize upon such terms as he thinks fit legal proceedings for the recovery of any outstanding accounts, the collection of which appears to him to be urgent;

(b) to agree to any offer of composition made to the company by any debtor or contributory and take any reasonable part of the debt in discharge of the whole or give reasonable time, regard being had to section *two hundred and seventy-nine*;

(c) to compromise or admit any claim or demand against the company, including an unliquidated claim;

(d) to submit to the determination of arbitrators any dispute concerning the company or any claim or demand by or upon the company;

(e) to carry on or discontinue any part of the business of the company in so far as may be necessary for the beneficial winding up thereof:

Provided that if necessary the liquidator may carry on or discontinue the same before he has obtained the leave of the court or the authority aforesaid, but it shall not then be competent for him as between himself and the creditors or contributories to charge the winding up with the cost of any goods purchased by him unless the same have been necessary for the immediate purpose of carrying on the business and there are funds available for payment of the same after providing for the cost of winding up or unless the court otherwise orders;

(f) in the case of a company unable to pay its debts, to elect to adopt or to abandon any contract entered into by the company before the commencement of the winding up to buy or receive in exchange any immovable property, transfer of which has not been effected in favour of the company: Provided that—

(i) if the liquidator does not make his election within six weeks after being required in writing to do so, the person entitled under the contract may apply by motion to the court for cancellation of the contract and delivery of possession of the immovable property and the court may make such order as it thinks fit;

(ii) nothing in this paragraph contained shall affect any concurrent claim against the company for damages for non-fulfilment of the contract;

(*g*) to terminate any lease entered into by the company as lessee by notice in writing to the lessor, subject however to the following terms and conditions—

(i) nothing in this paragraph contained shall affect any claim by the lessor against the company for damages he may have sustained by reason of the non-performance of the terms of the lease;

(ii) if the liquidator does not, within three months of his appointment, notify the lessor that he is prepared to continue the lease on behalf of the company he shall be deemed to have terminated the lease at the end of such three months;

(iii) the rent due under any lease so terminated from the date of the commencement of the winding up to the termination of the lease by the liquidator shall be included in the costs of administration;

(iv) the fact that a lease has been terminated by the liquidator shall deprive him of any right to compensation for improvements made during the period of the lease;

(*h*) to sell, by public auction or otherwise, deliver or transfer the movable and immovable property of the company.

(3) He shall have power, with the leave of the court, to raise money on the security of the assets of the company or to do any other thing which the court may consider necessary for winding up the affairs of the company and distributing its assets.

(4) He may, with the authority of a resolution of creditors and contributories, duly passed at a joint meeting thereof, do any act or exercise any power for which he is not by this Act expressly required to obtain leave of the court.

222 Exercise of liquidator's powers

(1) The liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company, take into account any directions that may be given by resolution of the creditors or resolution of the contributories at any general meeting.

(2) In regard to any matter which has been submitted by the liquidator for the directions of creditors and contributories in general meeting, but as to which no directions have been given or as to which there is a difference between the directions of creditors and contributories, the liquidator may apply to the court for directions and the court shall decide the matter and may make such order therein as it shall think fit.

(3) Any person aggrieved by any act or decision of the liquidator may apply to the court after notice of motion to the liquidator and therein the court may make such order as it thinks

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223 Control by Master over liquidator

(1) The Master shall take cognizance of the conduct of liquidators of companies which are being wound up by the court and if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by law or otherwise with respect to the performance of his duties, or if any complaint is made to the Master by any creditor or contributory in regard thereto, the Master shall inquire into the matter and take such action thereon as he may think expedient.

(2) The Master may at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding up in which such liquidator is engaged and may, if he thinks fit, examine such liquidator or any other person on oath concerning the winding up.

(3) The Master may also direct an investigation to be made of the books and vouchers of the liquidator.

(4) Any expenses incurred by the Master in carrying out any provisions of this section shall be part of the costs of the winding up, but the court may order the liquidator to pay such expenses to the company *de bonis propriis*.

224 Banking account

(1) Immediately after his appointment the liquidator of a company which is being wound up by the court shall open an account, in the name of the company in liquidation, with a bank within Zimbabwe and shall deposit therein to the credit of the company from time to time all moneys received by him on its behalf. All cheques or orders which may be drawn upon the account shall contain the name of the payee and the cause of payment and shall be drawn to order and signed by the liquidator or by his agent.

(2) Immediately after opening the account the liquidator shall give the Master written particulars of the bank and the branch of the bank with which the account has been opened and he shall not, without the written permission of the Master, transfer the account from that branch.

(3) The Master and any surety for the liquidator or any person authorized by such surety shall have the same right to information in regard to the account as the liquidator himself possesses and may examine all vouchers in relation thereto whether in the hands of the bank or of the liquidator.

(4) The Master may, after notice to the liquidator, direct the manager of the said branch of the bank in writing to pay into the Guardian's Fund all moneys standing to the credit of the account at the time of the receipt, by the said manager, of that direction and all moneys which may thereafter be paid into the account and the said manager shall carry out such direction.

(5) If any liquidator, without lawful excuse, retains any sum of money belonging to the company exceeding forty United States dollars or knowingly permits his co-liquidator to retain such a sum of money longer than the earliest day after its receipt on which it was reasonable for him or his co-liquidator to pay the money into the bank or uses or knowingly permits his co-liquidator to use any assets of the company except for the benefit thereof he shall, in addition to any other penalty to which he may be liable, be liable to pay to the company an amount not exceeding double the sum so retained or double the sum of the assets so used.

The amount which the liquidator is so liable to pay may be recovered by action in any competent court at the instance of his co-liquidator, the Master or any creditor or contributory.

[Subsection amended by Act 9 of 2011]

225 Release of liquidator

(1) When the liquidator of a company which is being wound up by the court has realized all the assets of the company and has distributed a final dividend, if any, to the creditors and adjusted the rights of the contributories among themselves and made a final return, if any, to the contributories, he may apply to the Master for his release and upon such liquidator giving, by advertisement in the *Gazette*, not less than three weeks' prior notice of his application, the Master shall take into consideration any objection to the release of the liquidator lodged by any creditor, contributory or other person interested and upon consideration of the objections, if any, the Master may either grant or withhold the release.

(2) The release of the liquidator by the Master shall discharge the liquidator from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such release may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(3) Where the liquidator has not previously resigned or been removed his release shall operate as a removal of him from his office.

226 Remuneration of liquidator

(1) In a winding up by the court every liquidator shall be entitled to a reasonable remuneration for his services, to be taxed by the Master according to the table of fees mentioned in the Seventh Schedule:

Provided that—

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(i) the Master may for good cause reduce or increase his remuneration;

(ii) the Master may disallow his remuneration either wholly or in part on account of any failure or delay in the discharge of his duties.

(2) No person who employs or is a fellow employee of or is in the ordinary employment of the liquidator shall be entitled to receive any remuneration out of the assets of the company for services rendered in the winding up, and no liquidator shall be entitled, either by himself or by his partner, to receive out of the assets of the company any remuneration for his services except the remuneration to which under this Act he is entitled.

General Powers of Court in Case of Winding Up by Court

227 Court may stay or set aside winding up

The court may at any time after the making of an order for winding up, on the application of the liquidator or of any creditor or contributory and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed or set aside, make an order staying or setting aside the proceedings on such terms and conditions as the court deems fit.

228 Settlement of list of contributories

(1) As soon as may be after making a winding-up order, the court shall settle a list of contributories with power to rectify the register of members in all cases where such rectification is required in pursuance of this Act:

Provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories directly and persons who are contributories as being representatives of or liable for the debts of others.

229 Requiring delivery of property

The court may, at any time after making a winding-up order, require any contributory for the time being settled on the list of contributories and any trustee, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any money, property or books and papers in his hands to which the company is *prima facie* entitled.

230 Ordering payment of debt by contributory

(1) The court may, at any time after making a winding-up order, make an order on any contributory settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any moneys payable by him or the estate by virtue of any call in pursuance of this Act.

(2) When all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

231 Making calls and ordering payment

(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

232 Ordering payment into bank

(1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into a bank, to be named by the court, to the account of the liquidator instead of to the liquidator and such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into a bank as aforesaid in the event of a winding up by the court shall be subject in all respects to the orders of the court.

233 Order on contributory conclusive evidence

(1) An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in such order shall be taken *prima facie* as truly stated as against all persons and in all proceedings whatsoever.

234 Court to adjust rights of contributories

The court shall adjust the rights of the contributories among themselves and apportion any surplus among the persons entitled thereto.

235 Inspection of books by creditors and contributories

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(1) The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

(2) Nothing in subsection (1) shall be taken to exclude or restrict any statutory rights of a department of the State or of a person acting under the authority of a department of the State.

236 Dissolution of company

(1) When the affairs of a company have been completely wound up, the court shall, upon the application of the Master, make an order that the company be dissolved from the date of the order and the company shall be dissolved accordingly.

(2) A copy of the order shall forthwith be transmitted by the registrar of the court—

(*a*) to the Registrar who shall forthwith enter in his register a note of the dissolution of the company and shall publish notice thereof in the *Gazette;* and (*b*) to the Master.

(3) An application made by the Master under subsection (1) may be by way of a report submitted to the court through the registrar thereof.

(4) Notwithstanding any dissolution in terms of this section, in the event of any property thereafter becoming available which would have accrued to the company if not dissolved the Master shall give instructions for the realization thereof and for the distribution of the proceeds, less the cost of realization and distribution, to such persons as would have been entitled thereto in the winding up; and the same shall apply to any moneys becoming so available.

237 Summoning persons suspected of having property of company

(1) The court may, after it has made a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(2) The court may examine him on oath, either orally or by written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company; but where he claims any lien on books or papers produced by him, the production shall be without prejudice to such lien and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, fails to come before the court at the time appointed without reasonable excuse, made known to the court at the time of its sitting and allowed by it, the court may cause him to be apprehended and brought before the court for examination.

238 Ordering public examination of promoters and directors

(1) When an order has been made for winding up a company by the court and the Master has made a report under this Act, showing that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by a director or officer of the company in relation to the company or any creditor thereof since its formation, the court may direct that any person who has taken part in the promotion or formation of the company or has been a director or officer of the company shall attend before the court on a day appointed by the court for that purpose and be publicly examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as director or officer thereof.

(2) The Master may take part in the examination and for that purpose may employ a legal practitioner.

(3) The liquidator and any creditor or contributory may also take part in the examination, either personally or represented by a legal practitioner.

(4) The person examined shall be examined on oath and shall answer all such questions as the court may put or allow to be put to him, notwithstanding that any answer may tend to incriminate him.

(5) A person ordered to be examined under this section shall, before his examination, be furnished at his request with a copy of the Master's report and may at his own cost employ a legal practitioner, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that if he is, in the opinion of the court, exculpated from any charges made or suggested against him the court may allow him such costs as in its discretion it may think fit.

(6) Notes of the examination shall be taken down in writing and shall be read over to or by and signed by the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

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239 Arrest of absconding contributory

The court, at any time before or after making a winding-up order, on proof that there is reason to believe that a contributory is about to quit Zimbabwe or otherwise to abscond or to remove or conceal any property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and movable property to be seized, and him and them to be safely kept until such time as the court may order.

240 Powers to be cumulative

Any powers by this Act conferred on the court shall be deemed to be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company or the estate of any contributory or debtor for the recovery of any call or other sums.

Appeal from Orders

241 Appeal from any order

An appeal from any order or decision made or given for or in the winding up of a company by the court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court in cases within its ordinary jurisdiction.

Voluntary Winding Up of Company

242 Circumstances in which company may be wound up voluntarily

A company may be wound up voluntarily—

(*a*) when the period, if any, fixed for the duration of the company by the articles expires or the event, if any, occurs on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily; (*b*) if the company resolves by special resolution that the company be wound up voluntarily.

243 Notice of resolution for voluntary winding up

(1) In this section—

"workers' committee" means a workers' committee appointed or elected in terms of Part VI of the Labour Relations Act [*Chapter 28:01*].

(2) A resolution for the voluntary winding up of a company shall not be deemed to have been passed unless the company has given not less than four weeks' notice of the resolution—

(a) to the Registrar of Labour Relations referred to in section 121 of the Labour Relations Act [*Chapter 28:01*]; and

(b) to the company's workers' committee or, where the company has no workers' committee, to the company's employees:

Provided that this subsection shall not apply in relation to a company all of whose employees are officers or members of the company.

(3) Where a company has passed a resolution for its voluntary winding up it shall—

(a) within two weeks after passing the resolution, give written notice of it to the Master and the Registrar; and

(b) within one month after passing the resolution—

(i) publish notice of it in the *Gazette*; and

(ii) where the company holds a registered interest in immovable property in Zimbabwe, give written notice of the resolution to the Registrar of Deeds; and

(iii) where the company holds a right to minerals which is registered in terms of the Mines and Minerals Act [*Chapter 21:05*], give written notice of the resolution to the officer responsible for registering the right in terms of that Act.

(4) If a company defaults in complying with the requirements of this section the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level two.

[Subsection amended by Act 22 of 2001]

(5) For the purposes of subsection (4), the liquidator of a company shall be deemed to be an officer of the company.

[Section as substituted by Act 22 of 1998]

244 Investigation into winding up of company

(1) In this section—

"investigator" means a person appointed to conduct an investigation in terms of subsection (2).

(2) If the Minister has reason to believe that—

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(a) a resolution for the voluntary winding up of a company has been passed primarily for the purpose of avoiding any provision of the Labour Relations Act [*Chapter 28:01*] regarding the termination of employees' contracts of service or the payment of benefits to employees on the termination of their service; or

(b) the voluntary winding up of a company will deprive any of the company's employees unfairly of the benefits they would otherwise receive on the termination of their employment with the company; the

Minister may, within four weeks after the passing of the resolution for the company's voluntary winding up, appoint a person to—

(i) conduct an investigation into the affairs of the company; and

(ii) report to him in regard to the matters referred to in paragraphs (*a*) and (*b*); and

(iii) mediate in any dispute between the company and any of its employees regarding the termination of their employment; and

(iv) examine the possibility of a take over of the company by the company's employees and the possible financial arrangements to facilitate the take over.

(3) Section *one hundred and sixty* shall apply, *mutatis mutandis*, in relation to an investigation carried out by an investigator in terms of this section.

(4) An investigator shall report to the Minister his findings and, where appropriate, the result of his mediation in any dispute, within six weeks after his appointment.

(5) If, on receipt of an investigator's report, the Minister considers that—

(a) the resolution for the voluntary winding up of the company concerned was passed for a purpose referred to in paragraph (*a*) of subsection (2), he may, within two weeks after the report was submitted to him, refer it to the Registrar of Labour Relations referred to in section 121 of the Labour Relations Act [*Chapter 28:01*];

(b) any settlement which the investigator has negotiated between the company concerned and its employees, including a take over by the employees, should be made binding, he may, within two weeks after the report was submitted to him, direct the company to take all necessary steps, subject to this Act, to ensure that the settlement is implemented by the company's liquidator;

(c) any dispute between the company and its employees regarding the termination of their employment should be submitted to arbitration, he may, within two weeks after the report was submitted to him, refer the parties to the dispute to arbitration in terms of the Arbitration Act [*Chapter 7:15*];

and the company shall comply with any directions the Minister may give it in this regard.

[Section substituted by Act 22 of 1998]

244A Commencement of voluntary winding up

The voluntary winding up of a company shall be deemed to commence—

(a) four weeks after the resolution for the company's voluntary winding up was passed, unless the Minister has appointed a person to investigate the company's affairs in terms of section *two hundred and forty-four*;

(b) where the Minister has appointed a person to investigate the company's affairs in terms of section *two hundred and forty-four*—

(i) eight weeks after the person's appointment, unless the Minister has referred parties to arbitration in terms of paragraph (*c*) of subsection (5) of section *two hundred and forty-four*; or

(ii) upon the final conclusion of the arbitration, where the Minister has referred parties to arbitration in terms of paragraph (*c*) of subsection (5) of section *two hundred and forty-four*.

[Section inserted by Act 22 of 1998]

245 Effect of voluntary winding up on business and status of company

When a company is wound up voluntarily the company shall, from the commencement of the winding up, cease to carry on its business, except in so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything in its articles, continue until it is dissolved.

Provision and Effect of Security for Payment of Debts

246 Provision and effect of security

(1) If it is proposed to wind up a company voluntarily, the directors of the company may, prior to the date of the notices of the meeting at which the resolution for the winding up of the company is to be proposed, furnish security to the satisfaction of the Master for the payment of the debts of the company within a period not exceeding

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twelve months from the commencement of the winding up and may recover from the company any costs reasonably incurred by them in furnishing such security:

Provided that the Master may dispense with such security if—

(a) a majority of the directors of the company furnish him with a sworn statement supported by a certificate from the auditors of the company that the company has no liabilities; or

(b) each of the directors of the company furnishes him with a sworn statement that the company has no liabilities.

(2) A winding up in the case of which such security has been furnished or dispensed with in accordance with subsection (1) is in this Act referred to as a "members' voluntary winding up" and a winding up in the case of which security has neither been furnished nor dispensed with as aforesaid is in this Act referred to as "a creditors' voluntary winding up".

Provisions Specially Applicable to Members' Voluntary Winding Up

247 Application of sections

Sections *two hundred and forty-eight* to *two hundred and fifty* shall apply in relation to a members' voluntary winding up.

248 Appointment, powers and remuneration of liquidator

(1) The company in general meeting shall, subject to section *two hundred and seventy-four*, appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company and may fix the remuneration to be paid to him or them and if the company fails to fix the remuneration of the liquidator section *two hundred and twenty-six* shall apply.

(2) On the appointment of a liquidator in terms of subsection (1) all the powers of the directors shall cease except so far as the liquidator or the company in general meeting sanctions their continuance.

(3) The liquidator may, without the sanction of the court, exercise all the powers given by section *two hundred and twenty-one* in general meeting.

249 Power to fill vacancy in office of liquidator

(*l*) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to section *two hundred and forty-eight*, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or by the continuing liquidator or liquidators, if any.

(3) The meeting shall be held in the manner prescribed by the articles or in such manner as may, on application by any contributory or by the continuing liquidator or liquidators, be determined by the court.

250 Liquidator may accept shares as consideration for sale of property of company

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

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

(3) If any member of the transferor company, who did not vote in favour of the special resolution, expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration under the Arbitration Act [*Chapter 7:02*].

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

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

Provisions Specially Applicable to Creditors' Voluntary Winding Up

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251 Application of sections

Sections *two hundred and fifty-two* to *two hundred and fifty-four* shall apply in relation to a creditors' voluntary winding up.

252 Meeting of creditors and appointment of liquidator

(1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause not less than seven days' notice of the meeting of the creditors to be advertised once in the *Gazette* and once at least in a newspaper circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall—

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid; and

(b) appoint one of their number to preside at the said meeting and it shall be his duty to do so.

(4) If the meeting of the company, at which the resolution for voluntary winding up is to be proposed, is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(5) If default is made—

(a) by the company in complying with subsection (1) or (2);

(b) by any director of the company in complying with subsection (3); the company or director, as the case may be, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(6) The creditors and the company at their respective meetings mentioned in this section may nominate a person to be liquidator, subject to section *two hundred and seventy-four*, for the purpose of winding up the affairs and distributing the assets of the company and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, subject to the provisions of section *two hundred and seventy-four* as aforesaid, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator, subject to the provisions of section *two hundred and seventy-four* as aforesaid:

Provided that, in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors, and the court may thereupon make such order as it thinks fit.

(7) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the creditors in a creditors' voluntary winding up, the vacancy shall be filled in the same manner as is provided in subsection (6).

(8) Section *two hundred and twenty-six* shall apply to every liquidator appointed in a creditors' voluntary winding up.

[Section as amended by Act No. 22 of 2001]

253 Powers of liquidator

(1) All the powers of the directors shall cease except so far as the liquidator or the creditors of the company sanction their continuance.

(2) The liquidator may, without the sanction of the court and without requiring the authority of the contributories, exercise all powers given by section *two hundred and twenty-one* to the liquidator in a winding up by the court, subject to such directions as may be given by the creditors.

254 Application of section 250

Section *two hundred and fifty* shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up with the modification that the powers of the liquidator under the said section shall not be exercised save with the consent of three-fourths in number and according to the value of their claims, of the creditors present or represented at a meeting called by the liquidator for that purpose and of which at least fourteen days' notice has been given, or with the sanction of the court.

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255 Application of sections

Sections *two hundred and fifty-six* to *two hundred and sixty-five* shall apply in relation to both modes of voluntary winding up.

256 Consequences of voluntary winding up

The following consequences shall ensue on the voluntary winding up of a company—

(a) the property of the company shall, subject to section *two hundred and ninety-one* and unless the articles otherwise provide, be distributed amongst the members according to their rights and interests in the company;

(b) the liquidator may exercise the powers of the court under this Act of settling a list of contributories and of making calls and shall adjust the rights of the contributories among themselves;

(c) the list of the contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;

(d) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment or, in default of such determination, by any number not less than two;

(e) if from any cause whatever there is no liquidator acting, the Master may, on the application of a contributory or creditor, and subject to section *two hundred and seventy-four*, appoint a provisional liquidator.

257 Avoidance of transfers after commencement of winding up

In a voluntary winding up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.

258 Notice by liquidator of his appointment

Every person appointed liquidator, whether alone or jointly with any other person or persons, in a voluntary winding up shall, within seven days after his appointment, lodge with the Master a notice of his appointment in the prescribed form.

If he fails to comply with the requirements of this section he shall be guilty of an offence and liable to a default fine not exceeding level one.

[Section as amended by Act No. 22 of 2001]

259 Proof of claims

(1) In a voluntary winding up, all claims against the company shall be proved to the satisfaction of the liquidator, by affidavit, as nearly as may be in the form and containing the particulars prescribed by rules made under section *three hundred and fifty-nine* and, if the claim is rejected by the liquidator, the claimant may apply to the court by motion to set aside the rejection.

(2) The liquidator may, with the approval of the Master, fix a time or times within which creditors of the company are to prove their claims or to be excluded from any distribution under any account lodged with the Master before those claims are proved.

260 Arrangement, when binding on company and creditors

(1) Any arrangement entered into between a company about to be, or being, wound up voluntarily and its creditors shall, subject to any right of review under subsection (2), be binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by three-fourths in value of the creditors present or represented at a meeting duly called by the liquidator for that purpose.

(2) Any creditor or contributory may, within one month from the completion of the arrangement, bring it under review by the court and the court may thereupon, as it thinks fit, amend, set aside or confirm the arrangement.

261 Meetings of creditors and contributories

In a voluntary winding up, meetings of creditors and contributories shall, unless otherwise in this Act specially provided, be convened and held in the manner prescribed by rules made under section *three hundred and fiftynine*.

262 Power to apply to court

(1) Where a company is being wound up voluntarily, the liquidator or any contributory or creditor of the company may apply to the court to determine any question arising in the winding up or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

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(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the court thinks fit or may make such other order on the application as the court thinks fit.

263 Duty of liquidator to call meetings of company and creditors

(1) Where a company is being wound up voluntarily, the liquidator may summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or for any other purposes he may think fit.

(2) In the event of the winding up continuing for more than six months, the liquidator shall summon a general meeting of the company and a meeting of creditors each to be held within one month after the expiration of the first six months from the commencement of the winding up and within one month after the expiration of each succeeding period of six months and shall lay before the meetings an account of his acts and dealings and of the progress of the winding up during the preceding period of six months.

(3) If the liquidator fails to comply with subsection (2) he shall be guilty of an offence and liable to a default fine not exceeding level one.

[Section as amended by Act No. 22 of 2001]

264 Notice to Registrar of confirmation of final account

(1) Immediately after the confirmation of the final account the Master shall give notice thereof in writing to the Registrar, who shall forthwith register it, and on the expiration of three months from the registration of the notice the company shall be deemed to be dissolved, but without prejudice to the duties of the liquidator or the powers of the Master under sections *two hundred and eighty-four* and *two hundred and eighty-five*:

Provided that—

(i) the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit;

(ii) notwithstanding any dissolution as aforesaid, in the event of any property thereafter becoming available the Master shall give instructions for the realization thereof and the distribution of the proceeds, less the cost of realization and distribution, to such persons as would have been entitled thereto in the winding up; and the same shall apply to any moneys becoming so available.

(2) The Registrar shall from time to time cause to be published in the *Gazette* notice of the names of the companies which are deemed in terms of subsection (1) to be dissolved.

265 Savings of rights of creditors and contributories

The voluntary winding up of a company shall not bar the right of any creditor or contributory at any time before its dissolution to have it wound up by the court, but, in the case of an application by a contributory, the court shall be satisfied that the rights of the contributory will be prejudiced by a voluntary winding up.

Provisions Applicable to Every Mode of Winding Up Company Unable to Pay its Debts

266 Application of sections

Sections *two hundred and sixty-seven* to *two hundred and seventy* shall apply in relation to a company being wound up and unable to pay its debts.

267 Summoning directors and others to attend meetings of creditors

(1) In every winding up of a company unable to pay its debts, all the directors of the company, including, if the Master so directs, any person who has been a director within a period of six months preceding the date on which the winding up commenced, shall, if required so to do by the Master in writing, attend the first and second meetings of creditors and every adjourned first and second such meetings.

The directors shall also attend any subsequent meeting of creditors if required to do so by written notice from the liquidator.

(2) The Master or other officer in the Public Service who is to preside or presides at any meeting of creditors may summon any person who is known or, on reasonable grounds, believed to be in possession of any property which belongs or belonged to the company or to be indebted to the company or any person who, in the opinion of the Master or such other officer, may be able to give any material information concerning the company or its affairs, whether before or after the commencement of the winding up, to appear at such meeting or adjourned meeting for the purpose of being interrogated under section *two hundred and sixty-eight*.

(3) The Master or such other officer may also summon any person who is known or, upon reasonable grounds, believed to have in his possession or custody or under his control any book or document containing any such information as is mentioned in subsection (2) to produce that book or document or an extract therefrom at any such meeting of creditors.

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(4) Any person summoned by the Master or other officer in terms of subsection (2) or (3) who fails without valid excuse—

(a) to attend any meeting to which he has been so summoned; or

(b) to produce any book or document or extract from any book or document in his possession or custody or under his control;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

268 Examination of directors and others at meeting of creditors

(1) At any meeting of creditors of a company wound up and unable to pay its debts, the Master or other officer in the Public Service presiding thereat may call and administer the oath to any director and any other person present at the meeting who was or might have been summoned in terms of subsection (2) of section *two hundred and sixty-seven*, and the Master, such other officer, the liquidator and any creditor who has proved a claim against the company or the agent of any of them may interrogate a person so called and sworn concerning all matters relating to the company or its business or affairs, whether before or after the commencement of the winding up and concerning any property belonging to the company:

Provided that the presiding officer shall disallow any question which is irrelevant and may disallow any question which would prolong the interrogation unnecessarily.

(2) In connection with the production of any book or document in compliance with the summons issued under subsection (3) of section *two hundred and sixty-seven*, or at an interrogation of a person under subsection (1), the law relating to privilege as applicable to a witness summoned to produce a book or document or giving evidence in a court of law shall apply:

Provided that a banker at whose bank the company in question keeps or at any time kept an account shall be obliged to produce, if summoned to do so under subsection (3) of section *two hundred and sixty-seven*, any cheque, promissory note or bill of exchange in his possession which was drawn or accepted by the company within one year before the commencement of the winding up, or if any cheque, promissory note or bill of exchange so drawn is not available, then any record of the payment, date of payment and amount of that cheque, promissory note or bill of exchange which may be available to him or a copy of such a record and, if called upon to do so, to give any other information available to him in connection with such cheque, promissory note or bill of exchange or the account of the company.

(3) The presiding officer shall reduce to writing or cause to be reduced to writing the statement of any person giving evidence under this section.

(4) Any evidence given under this section shall be admissible in any proceedings instituted against the person who gave evidence.

(5) Any person called upon to give evidence under this section may be represented at his interrogation by an accountant or by a legal practitioner.

(6) Any person summoned to attend a meeting of creditors for the purpose of being interrogated under this section, other than the directors or other officers of the company, shall be entitled to such witness fees, to be paid out of the funds of the company, as he would be entitled to if he were a witness in any civil proceedings in a magistrates court.

(7) If any director or other officer of the company is called upon to attend any meeting of creditors he shall, if the Master so approves and subject to a right of appeal to the court, be entitled to an allowance out of the funds of the company to defray his necessary expenses in connection with such attendance.

(8) Any person interrogated under this section who refuses, on any ground other than that the answer may tend to incriminate him, to answer any question, save any question which the presiding officer may see fit to disallow, put to him shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

269 Voidable and undue preferences

(1) Every disposition of its property which, if made by an individual, could for any reason be set aside in the event of his insolvency may, if made by a company, be set aside in the event of the company being wound up and unable to pay its debts and the law relating to insolvent estates shall apply, *mutatis mutandis*, to any such disposition.

(2) For the purposes of subsection (1), the event which shall be deemed to correspond with the sequestration order in the case of an individual shall be—

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(a) in the case of a winding up by the court, the presentation of the petition, unless that winding up has superseded a voluntary winding up, when it shall he the passing of the resolution to wind up the company;

(b) in the case of a voluntary winding up, the passing of the resolution to wind up the company.

(3) Any cession or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

270 Application of certain provisions of the law relating to insolvent estates

In the case of every winding up of a company unable to pay its debts—

(a) the law relating to insolvent estates shall, in so far as they are applicable, apply, *mutatis mutandis*, with respect to any matter not specially provided for in this Act;

(b) a secured creditor and the liquidator shall have the same right respectively to take over such creditor's security as a secured creditor and a trustee would have under the law relating to insolvent estates;

(c) the cession of a book debt shall only be valid against a liquidator in the same circumstances in which it would, in terms of the provisions of the law relating to insolvent estates, be valid against a trustee.

Provisions Applicable to Every Mode of Winding Up

271 Application of sections

Sections *two hundred and seventy-two* to *two hundred and ninety-eight* shall apply in relation to every company being wound up by whatever mode.

272 Persons disqualified for appointment as liquidator

(1) No person shall be elected or appointed a liquidator of a company that is being wound up unless he is registered in terms of the Estate Administrators Act [*Chapter 27:20*]:

Provided that an unregistered person may be appointed a provisional liquidator by the court in terms of section *two hundred and eight*. (1a) The following persons shall be disqualified from being elected or appointed a liquidator of a company that is being wound up—

(a) a person who does not reside in Zimbabwe;

(b) a person declared under subsection (2) of section *two hundred and seventy-three* to be incapacitated for appointment as liquidator while such incapacity lasts;

(c) a person who is the subject of an order under this Act disqualifying him as a director of any company; (*d*) a person who has, by reason of misconduct, been removed by the court from an office of trust;

(*e*) a person who, in order to exercise any influence upon his election as liquidator of the company, has—

(i) procured or allowed the wrongful insertion or omission of the name of any person in or from any list or schedule required by this Act; or

(ii) procured or allowed the wrongful or inaccurate statement of the claim of any creditor or contributory; or

(iii) directly or indirectly given or agreed to give any person any consideration; or

(iv) offered or agreed with any person to abstain from investigating any transactions of or relating to the company or of any of its officers; or

(v) split any claim, or allowed the splitting of any claim, in such a manner as to increase the number or value of votes of the person whose claim has been so split;

(*f*) a person who at any time during the twelve months immediately preceding the date of sequestration acted as the bookkeeper, accountant or auditor of the company.

[Subsection substituted by section 70 of Act No. 16 of 1998]

(2) Any person who, in order to obtain or in return for the vote of any creditor or contributory or in order to exercise any influence upon his election as a liquidator of a company, does any of the acts mentioned in subparagraph (i), (ii), (iii), (iv) or (v) of paragraph (*e*) of subsection (1a) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 70 of Act No. 16 of 1998]

(3) Any person who procures or tries to procure the appointment as liquidator of any person, knowing that such person is disqualified for such appointment under the terms of subsection (1), shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

273 Power of court to declare person disqualified from being liquidator or to remove liquidator

(1) The court, on the application of the Master or person having an interest in the winding up—

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(a) may declare that any person proposed or appointed as liquidator is disqualified under section *two hundred and seventy-two* from holding the office and, if he has been appointed, may remove him therefrom;

(b) may remove any liquidator from his office upon any of the following grounds—

(i) absence from Zimbabwe, ill-health or any other factor tending to interfere with the performance of his duties as liquidator;

(ii) that he has accepted or offered or agreed to accept or has solicited from any auctioneer, agent or other person employed on behalf of the company any share of the commission or remuneration or of any other benefit whatever accruing to such auctioneer, agent or other person;

(iii) misconduct, including any failure to satisfy a lawful demand of the Master or of a commissioner appointed by the court;

(iv) failure to perform any of the duties imposed on him by this Act; (v) any other good cause.

(2) The court may, in respect of any person removed by it—

(a) under paragraph (*a*) of subsection (1) as a person disqualified for reasons set out in paragraph (*e*) of subsection (1a) of section *two hundred and seventy-two*; or

[Paragraph as amended by section 70 of Act No. 16 of 1998]

(b) under subparagraph (ii), (iii) or (iv) of paragraph (*b*) of subsection (1); declare such person to be incapable of being appointed a liquidator under this Act during his lifetime or any other period.

(3) The Master shall give notice in the *Gazette* of the removal of any liquidator from his office in terms of this section.

274 Liquidator to give security

(1) In every winding up of a company each liquidator, including a co-liquidator or a provisional liquidator, shall furnish security to the satisfaction of the Master for the due performance of his duties as such. Until he has furnished the Master with such security he shall not be capable of acting as liquidator, co-liquidator or provisional liquidator, as the case may be; and if the security is not furnished within a time to be fixed by the Master he shall be deemed to have resigned his office:

Provided that no security will be required in the case of a member's voluntary winding up if the company so resolves.

(2) The cost of giving the aforesaid security, provided it is furnished, in the prescribed form, if any, by a fidelity company or an association approved by the Master, shall be a cost in the winding up.

(3) When a liquidator has, in the course of winding up a company, accounted to the Master to his satisfaction for any property belonging to the company, the Master may consent to a reduction of the security mentioned in subsection (1) if he is satisfied that the reduced security will suffice to indemnify the company, its creditors and contributors against any maladministration by the liquidator of the remaining property belonging to the company.

275 Co-liquidator

(1) The Master may, whenever he considers it desirable, appoint a co-liquidator to act jointly with any other liquidator.

(2) When two or more liquidators have been appointed they shall act jointly in performing their functions as liquidators and each of them shall be jointly and severally liable for every act performed by them jointly.

276 Title and acts of liquidators

(1) A liquidator shall be described by the style of the liquidator of the particular company in respect of which he is appointed and not by his individual name.

(2) The liquidator shall proceed forthwith to recover and reduce into possession all the assets and property of the company, movable and immovable.

(3) Every liquidator shall give the Master such information and such access to and facilities for inspecting the books and documents of the company and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

(4) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

277 General meetings to hear liquidator's report

The liquidator shall, as soon as practicable, and, unless with the consent of the Master, not later than three months after the date of his appointment, submit to general meetings of creditors and contributories a report—

(a) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities; and

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(b) if the company has failed, as to the causes of the failure; and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of its business; and

(d) whether the company has kept the books and accounts required by section *one hundred and forty* and, if not, in what respect such requirement has not been complied with; and

(e) as to the progress and prospects of the liquidation; and

(f) as to any other matter which he may think fit or in regard to which he may desire the directions of the creditors or the contributories.

278 Books to be kept by liquidator and inspection thereof

(1) From the beginning of his appointment and during the whole period of his office the liquidator shall punctually keep proper books and records of all transactions of the liquidation.

(2) The Master may at any time in writing order the liquidator to produce the said books or records for inspection.

(3) Any creditor or contributory may, at all reasonable times, personally or by his agent, but subject to the control of the Master, inspect such books or records.

Liquidators' Accounts

279 Liquidator to lodge with Master accounts in winding up

(1) Every liquidator shall, unless he receives an extension of time as hereinafter provided, frame and lay before the Master, not later than six months after his appointment, an account of his receipts and payments and a plan of distribution or, if there is a liability among creditors to contribute towards the cost in the winding up, a plan of contribution apportioning their liability. If the account is not the final account, the liquidator shall from time to time, and as the Master may direct, but at least once in every six months, unless he receives an extension of time, frame and lay before the Master a further account and plan of distribution.

(2) The account shall be in the prescribed form, shall be made in duplicate, shall be fully supported by vouchers, including the liquidator's bank statement or a certified extract from his bank account and shall be verified by an affidavit in the prescribed form.

(3) Where the office of the Master and the registered office of the company are not situated in the same district the liquidator shall forward a duplicate of the account—

(a) to the Assistant Master in cases where the registered office of the company is situated in the Bulawayo district; and

(b) in other cases to the district administrator of the district in which the registered office of the company is situated.

280 Application to court to compel liquidator to lodge account

(1) The Master, at any time when he considers that the liquidator has funds in hand that ought to be distributed, and the Master or any person interested in the company when a full and true account has not been lodged within the periods prescribed for the lodging of such an account, may apply to the court for an order compelling the liquidator to lodge his account: Provided that—

(i) the Master or that other person shall, not later than fourteen days before making the application, require the defaulting liquidator by notice in writing to lodge his account in accordance with this Act;

(ii) any liquidator receiving such notice shall lay before the Master in writing his reasons for not having lodged his account and the grounds upon which he claims an extension of time within which to do so, and thereupon the Master may grant to the liquidator such extension of time as in the circumstances he may think necessary;

(iii) if the prescribed period for lodging an account has expired, or if it will expire within the time for which an extension is sought, the Master shall not grant an extension unless the liquidator has previously given, by advertisement in the *Gazette*, not less than fourteen days' notice of his intention to apply for an extension;

(iv) any liquidator who fails to satisfy the Master that he ought to receive an extension of time may, after notice to the Master and to the person referred to in proviso (i), apply by motion to the court for an order granting to him an extension of time within which to lodge his account.

(2) Upon an application by the Master under subsection (1) the court, although it may be of opinion that the reasons laid before the Master by the liquidator were such as would have justified the Master in granting an extension of time to lodge an account, shall order the liquidator to pay the costs of the Master if, before making his application, the Master allowed the liquidator sufficient time for an application to the court for an extension of the period for lodging his account.

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281 Inspection of accounts

(1) Every liquidator's account shall lie open for inspection by creditors, contributories or other persons interested for a period of not less than fourteen days in the following manner—

(a) if the office of the Master and the registered office of the company are situated in the same district, then at the office of the Master;

(b) if the registered office of the company is situated in the Bulawayo district, then at the offices of the Master and of the Assistant Master;

(c) in all other cases, at the office of the Master and at the office of the district administrator of the district in which the registered office of the company is situated.

(2) The liquidator shall give due notice thereof, by advertisement in the *Gazette*, and shall state in that notice the period during which and the place or places at which the account will lie open for inspection and shall post or deliver a similar notice to every creditor who has proved a claim against the company.

(3) The Assistant Master or district administrator shall cause to be affixed in a public place in or about his office a list of all such accounts as have been lodged in his office and the respective dates on which they will be transmitted to the Master; and upon the expiry of the period of inspection so advertised he shall endorse on each account his certificate that the account has been open in his office for inspection in terms of this section and shall transmit the account to the Master. No stamp duty shall be payable in respect of such certificate.

282 Objections to account by interested parties

(1) Any person interested in the winding up of the company may, at any time before the confirmation of an account, lay before the Master in writing any objection, with the reasons therefor, to the account.

(2) If the Master is of opinion that any such objection ought to be sustained he shall direct the liquidator to amend the account or may give such other directions as he may think fit.

(3) Notwithstanding that an objection to the account has not been lodged, if the Master is of opinion that any improper charge has been made against the assets or that the account is in any respect incorrect, he may direct the liquidator to amend the account or may give such other directions as he may think fit.

(4) The liquidator or any person aggrieved by any such direction of the Master under this section or by the refusal of the Master to sustain an objection lodged thereunder, may apply by motion to the court within fourteen days after the date of the Master's direction, after notice to the liquidator, for an order to set aside the Master's decision, and the court may confirm the account or make such other order as it thinks fit.

(5) When any such direction affects the interests of a person who has not lodged an objection with the Master, the account so amended shall again lie open for inspection in the manner and with the notice hereinbefore prescribed, unless the person affected as aforesaid consents in writing to the immediate confirmation of the account.

283 Confirmation of account

When an account has been open to inspection as hereinbefore prescribed and—

(a) no objection has been lodged; or

(b) an objection has been lodged and the account has been amended in accordance with the direction of the Master and has again been open for inspection, if necessary, as in subsection (5) of section *two hundred and eighty-two* prescribed, and no application has been made to the court within the prescribed time to set aside the Master's decision; or

(c) an objection has been lodged but withdrawn or not sustained and the objector has not applied to the court within the time prescribed in section *two hundred and eighty-two*;

the Master shall confirm the account and his confirmation shall have the effect of a final sentence, save as against such persons as may be permitted by the court to re-open the account before any dividend has been paid thereunder.

284 Distribution of estate

(1) Immediately after the confirmation of any account the liquidator shall proceed to distribute the assets in accordance therewith or to collect from the creditors liable to contribute thereunder the amounts for which they may be liable respectively.

(2) The liquidator shall give notice of the confirmation of the account in the *Gazette*, stating that a dividend is in course of payment or that a contribution is in course of collection and that every creditor liable to contribute is required to pay to the liquidator the amount for which he is so liable, and the address at which the payment of the contribution is to be made, as the case may be.

285 Liquidator to lodge receipts for dividends or pay dividends to Guardian's Fund

(1) The liquidator shall without delay lodge with the Master the receipts for dividends.

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(2) If any dividend remains unpaid for a period of three months after the confirmation of the account, the liquidator shall immediately pay it into the Guardian's Fund for account of the creditor or contributory.

(3) If the liquidator, at the expiry of the said period of three months, has failed to furnish the Master with a proper receipt for any dividend which has not been paid as aforesaid, his failure shall be *prima facie* evidence that such dividend has been received and has not lawfully been disposed of by him and the Master may institute proceedings against the liquidator to answer for his default. The court may order the liquidator to pay such dividend and, in addition, by way of penalty, such sum, not exceeding the amount of the dividend which has been unduly detained, as it may think fit, and such penalty shall be paid into the Consolidated Revenue Fund.

(4) If a liquidator delays payment of any dividend any creditor or contributory entitled thereto may, after notice to the liquidator, apply to the court for an order compelling the liquidator to pay that dividend.

Leave of Absence or Resignation of Liquidator

286 Leave of absence or resignation of liquidator

(1) At the request of any liquidator the Master may permit him to absent himself from Zimbabwe or may relieve him of his office, in either case upon such conditions as the Master may think fit to impose and subject to his giving such notice to absent himself from Zimbabwe or to resign as the Master may direct.

(2) Every liquidator who is permitted to absent himself from Zimbabwe or who is relieved of his office by the Master shall give notice thereof in the *Gazette*.

287 Power of company to provide for employees on cessation or transfer of business

(1) Subject to subsection (2), a company shall have power to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries, or for the dependants of any such persons, in the event of the cessation of or transfer of the whole or part of the business of the company or the subsidiary, as the case may be.

(2) The power conferred by subsection (1) shall not be exercised except in accordance with a special resolution of the company.

288 Power of liquidator to make over assets to employees

(1) Where prior to its winding up, whether by the court or voluntarily, a company has in terms of section *two hundred and eighty-seven* resolved to exercise the power conferred by that section, the liquidator of the company may, after the commencement of the winding up and subject to this section, give effect to that resolution.

(2) A payment made by a liquidator in terms of subsection (1)—

(a) shall be made only after the liabilities of the company have been fully satisfied and provision has been made for the costs of the winding up;

(b) may, subject to paragraph (*a*), be made out of assets which are available to the members on the winding up.

(3) In the case of a winding up by the court, the exercise of powers by a liquidator in terms of this section shall be subject to the control of the court, and any creditor or contributory may apply to the court in connection with the exercise or proposed exercise of the power.

Miscellaneous Provisions in Winding Up

289 Voting at meetings of creditors and contributories

(1) In every winding up of a company every creditor shall be entitled to vote at any meeting of creditors of the company as soon as his claim has been proved:

Provided that—

(i) he may not vote in respect of a claim that is dependent upon the fulfilment of a condition until he proves that the condition has been fulfilled or, on an application by the creditor to the court, the court otherwise orders;

(ii) he may not vote in respect of any claim acquired by him by cession or purchase from any person after—

(*a*) the passing of the resolution to wind up the company in the case of a voluntary winding up or of a voluntary winding up that is superseded by a winding up by the court; or

(*b*) the filing of the petition for winding up the company in the case of any other winding up by the court.

(2) The vote of a creditor shall be reckoned according to the value of his claim.

(3) Any creditor holding any security, other than a general notarial bond, shall put a value on his security when proving his claim and, except in the election of a liquidator and upon any question affecting his security, his vote shall be reckoned according to the value of the balance, if any, of his claim remaining after deduction therefrom of the said value of his security.

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(4) At every meeting of contributories in the winding up of a company the votes of each contributory shall be those to which he is entitled according to the articles of the company in force at the commencement of the winding up.

290 Books of company to be evidence

Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of a11 matters therein recorded.

291 Application of assets, and costs of winding up

(1) In every winding up of a company the assets shall be applied in payment of the costs, charges and expenses incurred in the winding up and of the claims of creditors as nearly as possible as they would be applied in payment of the costs of sequestration and the claims of creditors under the law relating to insolvent estates, and the provisions of the said law relating to contributions by creditors shall apply.

(2) All costs and charges incurred and all advances made by the Master on account of the company shall, subject to the order of the court, be costs in the winding up.

292 Payment of money deposited with Master

Any person claiming to be entitled to any money paid to the Master by a liquidator under this Act may apply to the Master for payment of the same, and the Master may, on a certificate by the liquidator or on other sufficient evidence that the person claiming is entitled thereto, pay to that person the sum due.

293 Disposal of books and papers of company

When any company has been wound up and is about and to be dissolved, the books and papers of the company and of the liquidators shall, unless the court otherwise directs, be delivered to the Master. Such books and papers shall not be destroyed for a period of five years from the date of dissolution of the company.

Miscellaneous Powers of the Court

294 Meetings to ascertain wishes of creditors and contributories

(1) The court may, as to all matters relating to a winding up, take into account the proved wishes of the creditors or contributories.

(2) The court may, if it thinks fit, for the purpose of ascertaining those wishes, order meetings of the creditors and contributories to be called, held and conducted in such manner as it directs and may appoint a person to act as chairman of any such meeting and to report the result thereof to it.

295 Power of court to declare dissolution of company void

When a company has been dissolved the court may, at any time within two years of the date of the dissolution, on an application by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

296 Review by court

(1) Any person aggrieved by any decision, ruling, order, appointment or taxation of the Master under this Act may bring the same under review by the court and to that end may apply to the court by motion, after due notice has been given to the Master and to any person whose interests are affected:

Provided that where the general body of creditors or contributors is affected notice to the liquidator shall be notice to them.

(2) Any person aggrieved by any decision, ruling or order of the officer presiding at any meeting of creditors or contributories may bring the same under review by the court in the same manner, *mutatis mutandis*, as is prescribed in subsection (1).

(3) Nothing in this section shall authorize the court to re-open any duly confirmed account or plan of distribution or of contribution otherwise than as is provided in section *two hundred and eighty-three*.

297 Special commissioners for taking evidence

(1) All magistrates and such other persons as the court may appoint shall be commissioners for the purpose of taking evidence or holding any inquiry under this Act in cases where a company is wound up in any part of Zimbabwe and the court may refer the whole or any part of the examination of any witnesses or of any inquiry under this Act to any person hereby appointed commissioner, although he is out of the jurisdiction of the court. The Master, the liquidator and any creditor or contributory may be represented at such inquiry by an attorney with or without counsel.

(2) Every commissioner within Zimbabwe shall, in addition to any powers which he might lawfully exercise as magistrate, have in the matter so referred to him the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaulting or recalcitrant witnesses, and of allowing

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costs and expenses to witnesses, as the court which made the winding-up order. (3) The examination so taken shall be returned or reported to the court in such manner as the court directs.

298 Orders to be sent to Master and Registrar

Whenever under this Act any order is made by the court in connection with the winding up, judicial management or dissolution of a company, a copy of such order certified by the registrar of the court shall be transmitted by him to the Master and the Registrar.

Judicial Management Instead of Winding Up

299 Circumstances in which provisional judicial management order may be obtained

(1) Subject to section *three hundred*, the court may—

(a) on an application being made to it for such an order by any person who would be entitled to apply for the winding up of the company, grant a provisional judicial management order; or

(b) on an application being made to it for the winding up of the company, grant instead a provisional judicial management order.

(2) Before an application referred to in paragraph (*a*) of subsection (1) is filed with the court, a copy of the application, including the supporting affidavits and other documents, shall be lodged with the Master who may report to the court on any circumstances which appear to him to justify the court in postponing or dismissing the application, and in such event the Master shall transmit a copy of his report to the applicant.

300 Requirements for provisional judicial management order

The court may grant a provisional judicial management order in respect of a company—

(*a*) on an application referred to in paragraph (*a*) of subsection (1) of section *two hundred and ninety-nine*, if it appears to the court—

(i) that by reason of mismanagement or for any other cause the company is unable to pay its debts or is probably unable to pay its debts and has not become or is prevented from becoming a successful concern; and

(ii) that there is a reasonable probability that if the company is placed under judicial management it will be enabled to pay its debts or meet its obligations and become a successful concern; and

(iii) that it would be just and equitable to do so; or

(*b*) on an application referred to in paragraph (*b*) of subsection (1) of section *two hundred and ninety-nine*, if it appears to the court that—

(i) if the company is placed under judicial management the grounds for its winding up may be removed and that it will become a successful concern; and (ii) that it would be just and equitable to do so. **301 Contents of provisional judicial management order**

(2) A provisional judicial management order shall contain—

(a) the date of the return day, which shall not be less than sixty days from the date of the grant of the provisional judicial management order; and

(b) directions that the company named therein shall be under the management, subject to the supervision of the court, of a provisional judicial manager appointed in terms of section *three hundred and two*, and that any other person vested with the management of the company's affairs shall from the date of the making of the order be divested thereof; and

(c) such other directions as to the management of the company, or any matter incidental thereto, including directions conferring upon the provisional judicial manager the power, subject to the rights of the creditors of the company, to raise money in any way without the authority of shareholders, as the court may consider necessary;

and may contain directions that while the company is under judicial management, all actions and proceedings and the execution of all writs, summonses and other processes against the company be stayed and be not proceeded with without the leave of the court.

(3) The court or a judge may at any time and in any manner, on the application of a creditor, a member, the provisional judicial manager, the Master or any person who would have been entitled to apply for the provisional judicial management order concerned, vary the terms of a provisional judicial management order, including the date of the return day, or discharge it.

302 Custody of property and appointment of provisional judicial manager

(1) Upon the granting of a provisional judicial management order—

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(a) all the property of the company concerned shall be in the custody of the Master until a provisional judicial manager has been appointed and has assumed office;

(b) the Master shall without delay—

(i) appoint a provisional judicial manager, subject to subsection (2), who shall give such security for the proper performance of his duties in his capacity as such as the Master may direct, and who shall hold office until discharged by the court as provided in paragraph (*a*) of subsection (2) of section *three hundred and five*; and

(ii) convene separate meetings of the creditors, the members and debenture-holders, if any, of the company for the purposes referred to in subsection (2) of section *three hundred and four*.

(2) A person shall not be appointed as the provisional judicial manager of a company if he is the auditor of the company or is disqualified under this Act from being appointed as liquidator in a winding up.

303 Duties of provisional judicial manager

A provisional judicial manager shall—

(a) assume the management of the company and recover and take possession of all the assets of the company; and

(b) within seven days after his appointment lodge with his Registrar, under cover of the prescribed form, a copy of his letter of appointment as provisional judicial manager; and

(c) prepare and lay before the meetings convened under subparagraph (ii) of paragraph (*b*) of section *three hundred and two* a report containing—

(i) an account of the general state of the affairs of the company; and

(ii) a statement of the reasons why the company is unable to pay its debts or is probably unable to meet its obligations or has not become or, is prevented from becoming a successful concern; and

(iii) a statement of the assets and liabilities of the company; and

(iv) a complete list of creditors of the company, including contingent and prospective creditors, and of the amount and the nature of the claim of each creditor; and

(v) particulars as to any source from which money has or is to be raised for the purposes of carrying on the business of the company; and

(vi) the considered opinion of the provisional judicial manager as to the prospects of the company becoming a successful concern and of the removal of the facts or circumstances which prevent the company from becoming a successful concern.

304 Meetings convened by Master during provisional judicial management

(1) A meeting convened in terms of subparagraph (ii) of paragraph (*b*) of subsection (1) of section *three hundred and two* shall be held as nearly as may be—

(a) in the case of a meeting of creditors, in the manner prescribed for creditors' meetings under the law relating to insolvency; or

(b) in the case of a meeting of members and debenture-holders, in the manner prescribed by rules made under section *three hundred and fifty-nine*.

(2) The purpose of a meeting referred to in subsection (1) shall be—

(a) to consider the report of the provisional judicial manager under paragraph (*c*) of section *three hundred and three* and the desirability or otherwise of placing the company finally under judicial management, taking into account the prospects of the company becoming a successful concern; and

(b) subject to subsection (3), to nominate the person or persons whose names shall be submitted to the Master for appointment as final judicial manager or managers; and

(c) in the case of a meeting of creditors, the proving of claims against the company; and

(d) to consider the passing of a resolution referred to in subsection (1) of section *three hundred and nine*.

(3) A person shall not be nominated for appointment as a final judicial manager of a company if he is the auditor of the company or is disqualified under this Act from being appointed as liquidator in a winding-up.

(4) The chairman of a meeting referred to in subsection (1) shall prepare and lay before the court a report of the proceedings of such meeting, including a summary of the reasons for any conclusion arrived at under paragraph (*a*) of subsection (2).

(5) The provisions of this Act relating to the proof of claims against a company which is being wound up and to the nomination and appointment of a liquidator of any such company shall apply, *mutatis mutandis*, to the proof

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of claims against a company which has been placed under judicial management and the nomination and appointment of a final judicial manager of such a company.

305 Return day of provisional judicial management order

(1) On the return day fixed in the provisional judicial management order, or on the day to which the court or a judge may have extended it, the court, after considering—

(a) the opinion and wishes of the creditors and members of the company; and

(b) the report of the provisional judicial manager prepared in terms of section *three hundred and three*; and

(c) the number of creditors who did not prove claims at the first meeting of creditors and the amounts and nature of their claims; and

(d) the report of the Master; and

(e) the report of the Registrar; may grant a final judicial management order if it appears to the court that there is a reasonable probability that the company concerned, if placed under judicial management, will be enabled to become a successful concern and that it is just and equitable to grant such an order, or it may discharge the provisional judicial management order or make any other order that it thinks just.

(2) A final judicial management order shall contain—

(a) directions for the vesting of the management of the company, subject to the supervision of the court, in the final judicial manager, the handing over of all matters and the accounting by the provisional judicial manager to the final judicial manager and the discharge of the provisional judicial manager, where necessary; and

(b) such other directions as to the management of the company, or any matter incidental thereto, including directions conferring upon the final judicial manager the power, subject to the rights of the creditors of the company, to raise money in any way without the authority of shareholders, as the court may consider necessary.

[Paragraph as amended by section 33 of Act No. 14 of 2004]

(3) The court may at any time and in any manner vary the terms of a final judicial management order on the application of the Master, the final judicial manager or a representative acting on behalf of the general body of creditors of the company concerned by virtue of a resolution passed by a majority in value and number of such creditors at a meeting of those creditors.

306 Duties of final judicial manager

A final judicial manager shall, subject to the memorandum and articles of the company in so far as they are consistent with any direction contained in the relevant judicial management order—

(a) take over from the provisional judicial manager and assume the management of the company; and

(b) manage the company, subject to any order of the court, in such manner as he may consider most economic and most likely to promote the interests of the members and creditors of the company; and

(c) comply with any direction of the court made in the final judicial management order or any variation thereof; and

(d) lodge with the Registrar—

(i) a copy of the final judicial management order and of the Master's letter of appointment under cover of the prescribed form; and

(ii) in the event of the final judicial management order being cancelled, a copy of the order cancelling it;

within seven days of his appointment or of the cancellation of the final judicial management order, as the case may be; and

(e) comply with any of the requirements of section *one hundred and twenty-three* with which the company would have been obliged to comply if it had not been placed under judicial management; and

(f) keep such accounting records and prepare such annual financial statements as the company or its directors would have been obliged to keep or prepare if it had not been placed under judicial management; and

(g) convene the annual general meeting and other meetings of members of the company provided for by this Act and, in that regard, comply with all the requirements with which the directors of the company would in terms of this Act have been obliged to comply with if the company had not been placed under judicial management; and

(h) convene meetings of the creditors of the company by notices issued separately on the dates on which the notices convening annual general meetings of the company are issued or on which any interim report is

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sent out to members and, in the case of a private company, not later than six months after the end of its financial year; and

(i) submit to meetings of creditors convened under paragraph (*h*) reports showing the assets and liabilities of the company and its debts and obligations as verified by the auditor of the company, and all such information as may be necessary to enable the creditors to become fully acquainted with the company's position as at the end of the financial year or the end of the period covered by any such interim report or, in the case of a private company, as at a date six months after the end of its financial year; and

(j) lodge with the Master copies of all the documents submitted to the meetings as provided in paragraphs (*g*) and (*i*); and

(k) examine the affairs and transactions of the company before the commencement of judicial management in order to ascertain whether any officer or past officer of the company has contravened or appears to have contravened any provision of this Act or has committed any other offence, and, within six months from the date of his appointment, shall submit to the Master a report on any such contravention or offence; and

(l) examine the affairs and transactions of the company before the commencement of judicial management in order to ascertain whether any officer or past officer of the company is or appears to be personally liable to pay damages or compensation to the company or is personally liable for any liabilities of the company, and, within six months from the date of his appointment, shall submit to the Master and to the next succeeding meeting of members and of creditors of the company, a report containing full particulars of any such liability; and

(m) if at any time he is of the opinion that the continuation of judicial management will not enable the company to become a successful concern, apply to the court, after not less than fourteen days' notice by registered post to all members and creditors of the company, for the cancellation of the relevant judicial management order and the issue of an order for the winding up of the company.

307 Application of assets during judicial management

(1) A provisional judicial manager or final judicial manager shall not, without the leave of the court, sell or otherwise dispose of any of the company's assets except in the ordinary course of the company's business.

(2) Any moneys of the company which become available to a provisional judicial manager or a final judicial manager shall be applied by him towards—

(a) paying the costs of judicial management; and

(b) conducting the company's business in accordance with the judicial management order; and

(c) so far as circumstances permit, paying the claims of creditors which arose before the date of the order.

(3) The costs of judicial management and the claims of creditors of the company shall be paid, *mutatis mutandis*, in accordance with the law relating to insolvency as if those costs were costs of the sequestration of an estate and those claims were claims against an insolvent estate.

308 Remuneration of judicial managers

(1) A provisional judicial manager and a final judicial manager shall be entitled to such reasonable remuneration for their services as may be fixed by the Master from time to time.

(2) In fixing the remuneration of a judicial manager, the Master shall take into account the manner in which the provisional judicial manager or the final judicial manager has performed his functions and any recommendation by the members or creditors of the company relating to such remuneration.

(3) Section 192 of the Insolvency Act [*Chapter 6:04*] shall apply, *mutatis mutandis*, with regard to any fixing of remuneration by the Master under this section.

309 Pre-judicial management creditors may consent to preference

(1) The creditors of a company whose claims arose before the granting of a provisional judicial management order in respect of the company may, at a meeting convened by the provisional judicial manager or final judicial manager for the purpose of this subsection or by the Master in terms of subparagraph (ii) of paragraph (*b*) of subsection (1) of section *three hundred and two*, resolve that all liabilities incurred or to be incurred by the provisional judicial manager or final judicial manager in the conduct of the company's business shall be paid in preference to all other liabilities not already discharged, exclusive of the costs of the judicial management, and thereupon all claims based upon such first-mentioned liabilities shall have preference in the order in which they were incurred over all unsecured claims against the company except claims arising out of the costs of the judicial management.

(2) If a judicial management order is superseded by a winding-up order—

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(a) the preference conferred in terms of subsection (1) shall remain in force except in so far as claims arising out of costs of the winding up are concerned; and

(b) all claims based on such liabilities incurred by the final judicial manager shall be taken to have been proved, and section *two hundred and twenty* shall not apply in respect thereof.

(3) A meeting convened by a provisional judicial manager or a final judicial manager in terms of subsection (1) shall be convened by him by written notice sent by registered post at least ten days before the date of the meeting, as specified in the notice, to every creditor of the company whose name and address is known to him, and also by notice in a newspaper circulating in the area where the company's main place of business is situated.

(4) The provisional judicial manager or the final judicial manager, as the case may be, shall preside over a meeting referred to in subsection (3), and the laws relating to insolvency shall apply, *mutatis mutandis*, in respect of the conduct of any such meeting, the right to vote thereat, the manner of voting and the calculation of the value of the votes, as if the meeting were a meeting of creditors in an insolvent estate:

Provided that, for the purposes of voting at any such meeting convened by a provisional judicial manager, the claims of creditors shall be determined to the satisfaction of the provisional judicial manager.

310 Voidable and undue preferences in judicial management

(1) Every disposition of its property which, if made by an individual, could for any reason be set aside in the event of his insolvency may, if made by a company unable to pay its debts, be set aside by the court at the suit of the final judicial manager in the event of the company being placed under judicial management, and the law relating to insolvency shall apply, *mutatis mutandis*, in respect of any such disposition.

(2) For the purposes of this section, the event which shall be deemed to correspond with a sequestration order in the case of an insolvent shall be the filing with the court of the application in pursuance of which a final judicial management order is granted.

311 Period of judicial management excluded in determining preference under mortgage bond

The time during which any company, which is a debtor under a mortgage bond, is subject to a judicial management order, shall be excluded from the calculation of any period for the purpose of determining whether the mortgage confers any preference in terms of subsection (3) of section 111 of the Insolvency Act [*Chapter 6:04*] as applied to the winding up of companies by this Act.

312 Position of auditor during judicial management

Notwithstanding the granting of a judicial management order in respect of any company and for so long as the order is in force, the provisions of this Act relating to the appointment and reappointment of an auditor and the rights and duties of an auditor shall continue to apply as if any reference in those provisions to the directors of the company were a reference to the judicial manager.

313 Application of certain provisions of winding up to judicial management

In every case in which a company is placed under judicial management, sections *two hundred and sixteen*, *two hundred and thirty-five*, *two hundred and thirty-seven*, *two hundred and thirty-eight*, *two hundred and seventy-two*, *two hundred and seventy-three*, *two hundred and seventy-four*, *two hundred and seventy-five*, *two hundred and eighty-nine*, *two hundred and ninety* and *two hundred and ninety-eight* and, where the court so orders, sections *two hundred and sixty-seven*, *two hundred and sixty-eight*, *two hundred and seventy*, *two hundred and eighty-six* and *two hundred and ninety-seven* shall apply in a judicial management as they apply in a winding up of a company which is unable to pay its debts, any reference to—

(a) the liquidator being taken as a reference to the judicial manager; and

(b) a winding-up order being taken as a reference to a judicial management order; and (*c*) a contributory being taken as a reference to a member of the company.

314 Cancellation of final judicial management order

(1) If at any time, on application by the final judicial manager or any person having an interest in a company under judicial management, it appears to the court that the purpose of the final judicial management order has been fulfilled or that for any reason it is undesirable that the order should remain in force, the court may cancel such order and thereupon the final judicial manager shall be divested of his functions.

(2) In cancelling any final judicial management order the court shall give such directions as may be necessary for the resumption of the management and control of the company by the officers thereof, including directions for the convening of a general meeting of members for the purpose of electing directors of the company.

Offences Antecedent to or in Course of Winding Up or Judicial Management

315 Power of court to assess damages against delinquent promoters and directors

(1) Where in the course of winding up or judicial management of a company it appears that any person who has taken part in the formation or promotion of the company or any past or present officer, liquidator or judicial

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manager of the company has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misconduct or breach of trust in relation to the company, the court may, on the application of the Master or of the liquidator or judicial manager or of any creditor or contributory, inquire into the conduct of the promoter, officer, liquidator or judicial manager and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retention, misconduct or breach of trust as the court thinks just.

(2) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

316 Penalty for failure by directors and others to attend meetings

Every person shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment who, being or having been a director of a company unable to pay its debts, has been required in writing—

(a) by the Master to attend the first and second meetings of creditors in the winding up or judicial management of the company; or

(b) by the liquidator or judicial manager to attend any subsequent meeting of creditors of the company; and absents himself without valid excuse therefrom without the written permission of the Master or the presiding public officer.

[Section as amended by Act No. 22 of 2001]

317 Offences consequent upon a winding up or judicial management

(1) Where a company is being or has been wound up or is or has been under judicial management and is a company unable to pay its debts, every person shall be guilty of an offence and liable to imprisonment for a period not exceeding three years who, at any time within the six months next preceding the commencement of the winding up or of the judicial management of the company, and while being an officer of the company, does any of the following acts, unless he satisfies the court, in each case, that he had no intention to defraud, namely, every person who—

(a) conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification, of any book or document relating to the property or affairs of the company or makes or is privy to the making of any false entry in any such book or document; or

(b) conceals any part of the property of the company to the value of twenty United States dollars or upwards which ought by law to be divided amongst the creditors of the company; or

(c) causes or permits any property of the company, which it has obtained on credit and has not paid for, to be pledged, mortgaged or disposed of otherwise than in the ordinary course of the company's business.

(2) Every person shall be guilty of an offence and liable to imprisonment for a period not exceeding three years who, while being an officer of a company and with intent to defraud the creditors of the company in the event of its being wound up or being placed under judicial management and being a company unable to pay its debts—

(a) does any act specified in subsection (1); or

(b) removes or disposes of any part of the property of the company to the value of twenty United States dollars or upwards; or

(c) parts with or is privy to the removal or disappearance of any books or documents relating to the property or affairs of the company.

(3) Where a company is being or has been wound up or is or has been under judicial management and is a company unable to pay its debts, every person shall be guilty of an offence and liable to imprisonment for a period not exceeding three years who, within the twelve months next preceding the commencement of the winding up or of the judicial management of the company and while being an officer of the company, acts as follows, unless he satisfies the court that he had no intention to defraud, namely every such person who, when making any statement either verbally or in writing in regard to the business or affairs of the company and for the information of its creditors or of any person who became its creditor on the faith of such a statement, conceals any liability, present or future, certain or contingent, which the company may then have contracted or mentions, as if it were an asset of the company, any right or property which, at the time, is not an asset or in any way conceals or disguises or attempts to conceal or disguise any loss which the company has sustained or gives any incorrect account thereof, unless he satisfies the court that he had no intent to defraud. For the purposes of this subsection an auditor of the company shall be deemed to be an officer of the company.

(4) Every person shall be guilty of an offence and liable to imprisonment for a period not exceeding two years who, while being an officer of the company—

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(a) causes or knowingly permits an undue preference as defined by the Insolvency Act [*Chapter 6:04*] to be given by the company; or

(b) causes or knowingly permits any debt or debts to the aggregate amount of one hundred United States dollars or upwards to be contracted by the company without any reasonable expectation that the company will be able to discharge the same and the company thereafter, being still a debtor for the said debt or debts, is wound up or placed under judicial management and is a company unable to pay its debts.

(5) Every person shall be guilty of an offence and liable to imprisonment for a period not exceeding two years who, while being a director, secretary or manager of a company and at any time during the winding up or judicial management of the company—

(a) knowing or suspecting that a false debt has been or is about to be proved against the company, fails for a period of seven days to inform the Master or the liquidator or the judicial manager thereof in writing; or

(b) fails to disclose to the liquidator or judicial manager to the best of his knowledge all the property of the company of any kind and the manner in which, the person to whom, the consideration for which and the time when any part thereof was disposed of unless he satisfies the court that he had some lawful excuse for such failure; or

(c) fails to deliver to the Master or liquidator or judicial manager as any one of them may direct, all books, documents, papers and writings in his custody or under his control relating to the property or affairs of the company, unless he satisfies the court that he had some lawful excuse for such failure; or

(d) prevents the production or delivery to the Master or liquidator or judicial manager of any books, documents or papers relating to the property or affairs of the company.

(6) Every person shall be guilty of an offence and liable to imprisonment for a period not exceeding two years who, while being a director, manager or secretary of a company and at any time during the winding up or judicial management of the company, grants, promises or offers any consideration in order to induce any person to refrain from the investigation of the affairs of the company or from the prosecution on a criminal charge of any officer of the company or of any person with whom the company may have had business relations.

(7) Where a company is being or has been wound up or is or has been under judicial management and is a company unable to pay its debts, every person shall be guilty of an offence and liable to imprisonment for a period not exceeding six months who, while being a director, manager or secretary of the company and being under examination at a meeting and being thereto required by the presiding officer, the liquidator, the judicial manager or any creditor or contributory or their respective agents, fails to account for or to disclose what has become of any of the property of the company which is proved to have been in his possession or, to his knowledge, in the possession of the company so recently before the commencement of the winding up or of the judicial management that in the ordinary course he ought to be able to account for the same.

(8) For the purposes of paragraph (*a*) of subsection (1) and paragraph (*a*) of subsection (2), an auditor of a company shall be deemed to be an officer of the company. For the purposes of subsections (5), (6) and (7), a person who is a director, manager or secretary of a company at the commencement of the winding up or judicial management thereof shall be deemed to be a director, manager or secretary during the winding up or judicial management thereof notwithstanding that his duties may have ceased or that he is no longer gainfully employed by the company or by its liquidator or judicial manager on its behalf.

[Section as amended by Act No. 22 of 2001 and Act 9 of 2011]

318 Responsibility of directors and other persons for fraudulent conduct of business

(1) If at any time it appears that any business of a company was being carried on—

(a) recklessly; or

(b) with gross negligence; or

(c) with intent to defraud any person or for any fraudulent purpose; the court may, on the application of the Master, or liquidator or judicial manager or any creditor of or contributory to the company, if it thinks it proper to do so, declare that any of the past or present directors of the company or any other persons who were knowingly parties to the carrying on of the business in the manner or circumstances aforesaid shall be personally responsible, without limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.

(2) Where the court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to the declaration and in particular may, subject to the prior rights of other creditors of any such director or other person, make his declared liability a charge on any debt or obligation due from the company to him or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him or in any company or person on his behalf or in any person claiming as assignee from or through the director, company or person, and may from time to time make such further order as may be necessary for the

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purpose of enforcing any charge imposed under this subsection. For the purposes of this subsection, the expression "assignee" includes any person to whom, or in whose favour, by the directions of the director or other person subject to the declaration, the debt, obligation, mortgage or charge or interest therein was created, issued or transferred but does not include an assignee for valuable consideration given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Without prejudice to any other criminal liability incurred, where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1), every director of the company or other person who was knowingly a party to the carrying on of the business in manner aforesaid shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

319 Prosecution of delinquent directors and others

If it appears in the course of the winding up or judicial management of a company that any past or present officer or member of the company has been guilty of an offence for which he is criminally responsible under this Act or, in relation to the company or the creditors of the company, under the common law, the liquidator or judicial manager shall cause all the facts known to him which appear to constitute the offence to be laid before the Prosecutor-General.

Removal of Defunct Companies from Register

320 Registrar may strike defunct company off register

(1) Where the Registrar has reasonable grounds to believe that a company is not carrying on business or is not in operation, he may send to the company, by registered post, a letter to that effect and stating that if an answer showing cause to the contrary is not received within one month from the date thereof, a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

(2) Unless the Registrar receives an answer within one month from the date of the letter sent in terms of subsection (1) to the effect that the company is carrying on business or is in operation, the Registrar may publish in the *Gazette* and send to the company, by registered post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will thereby be dissolved:

Provided that it shall not be necessary for the Registrar to send a notice to the company in terms of this subsection if the notice sent to the company in terms of subsection (1) was returned undelivered by the postal authorities.

(3) Whenever the Registrar receives notice from a company or any officer thereof that the company is not carrying on business or is not in operation the Registrar may publish in the *Gazette* a notice such as is referred to in subsection (2).

(4) If a company makes default for a period of more than two years in rendering the returns required by section *one hundred and twenty-three*, and the Registrar has reasonable cause to believe that the company is not carrying on business or in operation, the Registrar may publish in the *Gazette* and send to the company by registered post such a notice as is mentioned in subsection (2).

(5) At the expiration of the period mentioned in any such notice as is described or referred to in subsection (2) or (4), unless cause to the contrary is previously shown, or upon receipt from any company of a written statement in the form prescribed signed by every director, that the company has ceased to carry on business and has no assets or liabilities, the Registrar may strike its name off the register and shall publish notice thereof in the *Gazette* and on the publication of this notice the company shall thereby be dissolved:

Provided that the liability, if any, of the liquidator and of every officer and of every member of the company shall continue and may be enforced as if the company had not been dissolved.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court, on the application of the company or member or creditor, may, if satisfied that the company was at the time of the striking off carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may, by the order, give such directions and make such provision as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the company had not been struck off.

(7) The court may, by the order in terms of subsection (6), direct that, subject to any conditions specified by the court, it shall not be necessary for the company or any officer thereof to lodge any particular return or returns that the company or officer, as the case may be, would otherwise be required to lodge in terms of this Act if the court considers that in the circumstances the lodging of the return or returns can be dispensed with.

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(8) A letter or notice under this section shall be addressed to the company at its registered office or, if no office has been registered, to the care of an officer of the company or, if there is no officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum addressed to him at the address mentioned in the memorandum.

321 Property of dissolved company vests in State

(1) Where a company is dissolved, whether as a result of being wound up or as a result of being struck off the register as defunct, the property of the company shall, subject to subsection (4) of section *two hundred and thirty-six* and this section, become *bona vacantia* and shall vest in the State which may dispose of it.

(2) If the court makes an order in terms of section *two hundred and ninety-five* or subsection (6) of section *three hundred and twenty* in respect of a dissolved company it may, if satisfied that notice of intention to apply for such an order has been given to the Minister responsible for finance, direct that—

(a) any property which has vested in the State in terms of subsection (1) and which has not been disposed of shall be restored to the company; or

(b) any proceeds from the disposal of any property, which previously vested in the State in terms of subsection (1) and which has since been disposed of, shall be paid to the company.

PART VI

WINDING UP OF UNREGISTERED ASSOCIATIONS

322 Unregistered association defined

An unregistered association shall mean any company, syndicate, association or partnership having a place of business in Zimbabwe which consists of more than seven members and is not a company to which Parts II, III and IV or VII apply.

323 Winding up of unregistered association

An unregistered association may, subject to this Part, be wound up under this Act and section *one hundred and forty* and all of Part V except sections *three hundred and one* to *three hundred and six* and section *three hundred and twenty* and of the winding-up rules made under section *three hundred and fifty-nine* shall apply, *mutatis mutandis*, to such an association and to its directors, officers or members with the following exceptions and additions—

(a) the head office or principal place of business in Zimbabwe shall for all the purposes of the winding up be deemed to be the registered office of the association;

(b) no unregistered association shall be wound up under this Act voluntarily;

(c) the circumstances in which an unregistered association may be wound up are as follows—

(i) if the association is dissolved, or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs; or

(ii) if the association is unable to pay its debts; or

(iii) if the court is of opinion that it is just and equitable that the association should be wound up;

(d) an unregistered association shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(i) if a creditor to whom the association is indebted in a sum exceeding one hundred United States dollars then due has served on the association a demand requiring the association to pay the sum so due, by leaving it at the association's principal place of business or by delivering it to the secretary or director, manager or other principal officer of the association or by serving it in such other manner as the court may allow, and if the association has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor; or

(ii) if, in respect of any action or other proceeding instituted against any member of the association for any debt or demand due or claimed to be due from the association or from him in his capacity as a member thereof, notice in writing of the institution of such action or proceeding has been served on the association by leaving such notice at its principal place of business or by delivering it to the secretary or a director, manager or other principal officer of the association or by serving the same in such other manner as the court may allow and if the association has for ten days thereafter neglected to pay, secure or compound for the debt or demand or to procure a stay of the action or proceeding or to indemnify the defendant member to his reasonable satisfaction against the action or proceeding and against all costs, damages and expenses incurred or to be incurred by him by reason of or in defending the same at the instance of the association; or

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(iii) if execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the association or any member thereof as such, or any person authorized to be sued as nominal defendant on behalf of the association, is returned unsatisfied by the Sheriff or messenger with the endorsement that no assets could be found to satisfy the debt or that the assets found were insufficient to do so; or

(iv) if it is proved to the satisfaction of the court that the association is unable to pay its debts; and in determining whether an association is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the association;

(e) a member of an unregistered association being wound up under this section shall be deemed to be an officer of the association for the purposes of sections *three hundred and fifteen* to *three hundred and nineteen*.

[Section amended by Act 9 of 2011]

324 Contributories

(1) In the event of an unregistered association being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of— (*a*) any debt or liability of the association; or

(b) any sum for the adjustment of the rights of the members amongst themselves; or

(c) the costs and expenses of winding up the association; and every contributory shall be liable to contribute to the assets of the association all sums due by him in respect of such liability as aforesaid.

(2) In the event of the death or insolvency of any contributory or the assignment of his estate under the law relating to insolvent estates, then section *two hundred and four* shall apply, *mutatis mutandis*.

325 Power of court to stay or restrain proceedings

The provisions of section *one hundred and eighty-two* with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered association, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the association.

326 Actions stayed on winding-up order

Where an order has been made for winding up an unregistered association, no action or proceeding shall be proceeded with or commenced against any contributory of the association in respect of any debt of the association, except by leave of the court, and subject to such terms as the court may impose.

327 Directions as to property in certain cases

If an unregistered association has no power to sue and be sued in a common name or if for any reason it appears expedient, the court may by the winding-up order, or by any subsequent order, direct that all or any part of the property belonging to the association, or to trustees on its behalf, is to vest in the liquidator by his official name and thereupon the property or the part thereof specified in the order shall vest accordingly; and the liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name any action or other legal proceeding relating to that property or necessary to be brought or defended for the purpose of effectually winding up the association and recovering its property.

328 Provisions of this Part cumulative

The provisions of this Part with respect to unregistered associations shall be deemed to be in addition to and not in restriction of any provisions hereinbefore in this Act contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered associations which might be exercised or done by it or him in winding up companies registered under this Act; but an unregistered association shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

PART VII

FOREIGN COMPANIES

329 Interpretation

For the purposes of this Part—

"banking company" means a company which carries on in Zimbabwe banking business as defined in subsection (1) of section 2 of the Banking Act [*Chapter 24:20*];

[Definition as amended by section 33 of Act No. 14 of 2004]

"insurance company" means a company which carries on insurance business within the meaning of the Insurance Act [*Chapter 24:07*];

jbzowa@justice.gov.zw

"place of business", in relation to a company, means any place where the company transacts or holds itself out as transacting business, and includes a share transfer or share registration office.

330 Requirements as to foreign companies

(1) Subject to subsection (14), every foreign company which intends to establish a place of business in Zimbabwe shall submit to the Minister—

(a) a copy, duly certified to be a true copy of the original by a director residing in Zimbabwe or by a notary public, of its charter, statutes or memorandum and articles or other instrument constituting or defining its constitution and, if the instrument is in a foreign language, a certified translation thereof;

(b) a list in the prescribed form of its directors resident or who will upon the establishment of the place of business be resident in Zimbabwe containing in respect of each director similar particulars to those required by section *one hundred and eighty-seven* to be contained in the register of directors and secretaries referred to in that section;

(c) if the foreign company is the subsidiary of another company or companies, the name or names of such holding company or companies as the case may be.

(2) Unless the Minister is of the opinion that it would not be in the public interest to do so, he shall issue a certificate, subject to such conditions as he sees fit, authorizing the foreign company to establish a place of business in Zimbabwe.

(3) No foreign company shall establish a place of business within Zimbabwe unless it is registered and for such purpose shall lodge with the Registrar—

(a) the documents referred to in subsection (1) together with the certificate referred to in subsection (2);

(b) a notice in the prescribed form of the name and residential address of the person responsible for the management of its business in Zimbabwe, being a person who shall accept on its behalf service of process and any notice required to be served on it:

(c) the address of its principal place of business in Zimbabwe

(4) If any alteration is made in—

(a) the charter, statutes or memorandum and articles of a foreign company or other instrument as aforesaid; or

(b) the directors resident in Zimbabwe or the principal officer of a foreign company or the particulars contained in the list referred to in paragraph (*b*) of subsection (1); or

(c) the address of the said principal place of business; the foreign company shall, within one month of such alteration, lodge with the Registrar for registration a return containing particulars of the alteration and, if the alteration is in any instrument referred to in paragraph (*a*), also a certified copy and certified translation, if need be, of the instrument showing the alteration.

(5) Every foreign company shall, within one month after the date of a request in writing by the Registrar to that effect, lodge with the Registrar particulars of the name, residential address and nationality of every director of that foreign company who is not resident in Zimbabwe.

(6) Any process or notice required to be served on a foreign company shall be sufficiently served if delivered at the address of the principal officer: Provided that—

(a) where any such foreign company makes default in filing with the Registrar the name and address of its principal officer; or

(b) if at any time the principal officer is dead or has ceased to reside in Zimbabwe or for any other reason cannot be served;

any process or notice may be served on the foreign company by leaving it at any place of business established by it in Zimbabwe.

(7) Every foreign company shall in every year make out a balance sheet and profit and loss account and, if the foreign company is a holding company, group accounts, in such form, and containing such particulars and including such documents as under this Act it would, had it been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting and lodge a copy of such balance sheet, profit and loss account and group accounts, if any, with the Registrar. If such balance sheet and other documents are in a foreign language there shall be annexed a certified translation thereof:

Provided that this subsection shall not apply to a foreign company which is a banking company or an insurance company.

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(8) Every foreign company shall, within one month after the 1st January in each year, lodge with the Registrar for registration a return in the prescribed form containing particulars of the nominal and issued share capital of the foreign company as at that date and such other particulars as may be prescribed:

Provided that a foreign company shall not be required to lodge such return in the year following that in which it was registered in Zimbabwe.

(9) If any foreign company ceases to have a place of business within Zimbabwe, it shall, within one month of such cessation, give written notice of the fact to the Registrar, and as from the date on which the notice is so given the obligation of the foreign company to deliver to the Registrar any document, save any document which should have been delivered prior to such cessation, shall cease.

(10) On receipt of a notice from a foreign company that it has ceased to have a place of business in Zimbabwe, the Registrar shall remove the name of that foreign company from the register and shall publish notice thereof in the *Gazette*.

(11) When the Registrar has reasonable cause to believe that a foreign company has ceased to have a place of business in Zimbabwe, section *three hundred and twenty* shall apply, *mutatis mutandis*.

(12) Where the Minister is of the opinion that it will be in the public interest to do so, he may, not later than six months after the registration of the foreign company concerned—

(a) revoke; or

(b) amend any conditions of or impose any new conditions upon; the certificate issued in terms of subsection (2) in respect of any foreign company:

Provided that, before exercising any of his powers in terms of this subsection, the Minister shall give the foreign company concerned not less than one month's notice in writing of his proposal to do so, and shall afford it an opportunity of making, in writing, such representations to him relating to his proposal as it may wish.

(13) If any foreign company—

(a) establishes a place of business within Zimbabwe without being registered; or

(b) fails to comply with any other requirement of this section; or

(c) fails to comply with any condition imposed upon any certificate which was issued in respect of the foreign company in terms of subsection (2); or

(d) carries on business in Zimbabwe after the certificate which was issued in respect of the foreign company in terms of subsection (2) has been revoked in terms of subsection (12);

the foreign company and every officer of the foreign company in Zimbabwe who is in default shall be guilty of an offence and liable to a fine not exceeding level eleven and further, in the case of continuing default, to a default fine not exceeding level two

(14) This section shall not apply to any foreign company which— (*a*) submits an application for an investment licence;

(b) intends to provide services as a bank or an insurer;

(c) intends to develop an area into an export processing zone area; in terms of the Export Processing Zones Act [*Chapter 14:09*].

(15) In this section—

"principal officer", in relation to a foreign company, means the person notified in terms of paragraph (*b*) of subsection (3) as the person responsible for the management of the business of that company in Zimbabwe.

[Section as amended by Act No. 22 of 2001]

331 Further administrative duties of foreign company

(1) Every foreign company shall—

(a) continuously display on the outside of every place in which it carries on business in Zimbabwe in a conspicuous position, in letters easily legible, its name and the country in which it is incorporated; and

(b) have its name engraved in legible characters on its seal, if any; and

(c) have its name mentioned in legible characters in all letterheads, 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 delivery notes, invoices, receipts and letters of credit of the company and additionally, in the case of letterheads, have mentioned in legible characters the name of the foreign country in which the company is incorporated; and

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(d) in all business letters on or in which the name of the company appears and which are issued or sent by the company to any person, state in legible characters, with respect to every director resident in Zimbabwe or, if there is no such director, the principal officer as defined in subsection (15) of section *three hundred and thirty*, his present Christian names or the initials thereof and present surname; and (*e*) in respect of its transactions within Zimbabwe, comply with section *one hundred and forty*.

(2) The proviso to subsection (1) of section *one hundred and thirteen* and of subsections (2), (3) and (4) of that section shall apply, *mutatis mutandis*, in relation to a foreign company and to the officers or any person acting on behalf of an officer of a foreign company.

(3) For the purposes of paragraph (*d*) of subsection (1)—

"business letter" includes any quotation or order form but does not include any invoice, statement, delivery note, packing note or similar document.

332 Certain provisions of Act applied to banking companies

Subsections (1), (2) and (4) of section *one hundred and forty-one*, subsections (1), (2), (6) and (7) of section *one hundred and forty-two*, subsections (1) and (3) of section *one hundred and forty-seven* and section *one hundred and forty-eight* shall apply to every foreign company which is a banking company.

333 Exemption in respect of transfer duty

Notwithstanding anything contained in any law, whenever a foreign company satisfies the court that—

(a) it carries on its principal business within Zimbabwe; and

(b) the company is about to be or is being wound up voluntarily in its country of incorporation for the purpose of transferring the whole of its business and property wherever situate to a company which will be or has been registered under this Act, hereinafter referred to as the new company, for the purpose of acquiring such business and property; and

(c) the sole consideration for such transfer is the issue to the members of the foreign company of shares in the new company in proportion to their shareholdings in the foreign company; and

(d) no shares in the new company will be available for issue to any persons other than the members of the foreign company;

the court may, subject to the certificate of the Registrar that—

(i) the foreign company is being wound up voluntarily for the said purpose; and

(ii) a company has been registered under this Act for the said purpose; and

(iii) the members of the foreign company have had issued to them the shares in the new company to which they are entitled;

order that no duty shall be payable in respect of the transfer of immovable property from the foreign company to the company so registered.

Prospectuses

334 Provisions with respect to prospectus of foreign company

(1) No person shall—

(*a*) issue, circulate or distribute in Zimbabwe any prospectus offering for subscription shares in or debentures to prospectus of a foreign company, whether the foreign company has or has not been established or when formed will or will not establish a place of business in Zimbabwe, unless—

(i) before the issue, circulation or distribution of the prospectus in Zimbabwe a copy thereof, certified by the chairman and two other directors of the foreign company or by all directors of the company if the number is certified to be less than three as having been approved by resolution of the managing body, has been delivered for registration to the Registrar; and

(ii) the prospectus states on the face of it that the copy has been so delivered; and

(iii) the prospectus is dated; and

(iv) the prospectus otherwise complies with this section and section *three hundred and thirty-five*; or

(*b*) issue to any person in Zimbabwe a form of application for shares in or debentures of such a foreign company or intended foreign company as aforesaid, unless the form is attached to a prospectus which complies with this section and section *three hundred and thirty-five*:

Provided that this provision shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(2) This section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a foreign company or subsequently.

jbzowa@justice.gov.zw

(3) Where any document by which any shares in or debentures of a foreign company are offered for sale to the public would, if the foreign company had been a company within the meaning of this Act, have been deemed by virtue of section *sixty-one* to be a prospectus issued by the foreign company, that document shall be deemed to be, for the purpose of this section, a prospectus issued by the foreign company.

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

(5) Section *fifty-eight* shall extend to every prospectus to which this section applies.

(6) Subparagraphs (iii) and (iv) of paragraph (*a*) and paragraph (*b*) of subsection (1) and subsections (2) to (4) shall not apply to the issue only to existing members or debenture holders of a foreign company, of a prospectus or form of application relating to shares in or debentures of the foreign company, whether an applicant for such shares or debentures will or will not have the right to renounce in favour of other persons.

(7) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus or for the issue of a form of application for shares or debentures in contravention of any of this section shall be guilty of an offence and liable to a fine not exceeding level eleven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

335 Contents of prospectus

(1) A prospectus issued, circulated or distributed under section *three hundred and thirty-four* shall—

(*a*) contain particulars with respect to the following matters—

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

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

(iii) an address in Zimbabwe where the said instrument, enactments or provisions or copies thereof and, if the same are in a foreign language, a certified translation thereof can be inspected;

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

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

Provided that subparagraphs (i), (ii) and (iii) shall not apply in the case of a prospectus issued more than two years after the date at which the foreign company commenced business in Zimbabwe;

(*b*) subject to this section, state the matters specified in Part I and set out the reports specified in Part II, subject always to Part III, of the Fourth Schedule:

Provided that in paragraph 2 of the said Schedule a reference to the constitution of the company shall be substituted for the reference to the articles.

(2) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

(a) as regards any matter not disclosed, he proves that he was not cognizant thereof; or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 15 of the Fourth Schedule, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(4) Nothing in this section or section *three hundred and thirty-four* shall limit or diminish any liability which any person may incur under the common law or this Act, apart from this section.

336 Provisions as to expert's consent and allotment

(1) A prospectus shall be deemed not to comply with sections *three hundred and thirty-four* and *three hundred and thirty-five*—

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(a) if, where it includes or refers to a statement purporting to be made by an expert, he has not given or has before delivery of a copy of the prospectus for registration withdrawn his written consent to the issue of the prospectus with the statement or reference in the form and context in which it is included and there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or

(b) if it does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by section *sixty-nine* so far as applicable.

(2) The requirements of subsection (1) of section *three hundred and thirty-four* for delivery of a copy of the prospectus to the Registrar before the prospectus is issued, circulated or distributed in Zimbabwe shall be deemed not to be satisfied unless there is endorsed on or attached to the copy so delivered—

(a) any consent required by the foregoing subsection to the issue of the prospectus; and

(b) the written consent so to act of any person named in the prospectus as the legal practitioner, auditor, banker or broker of the company; and

(c) a copy of any contract required by paragraph (*b*) of subsection (1) of section *three hundred and thirtyfour* and paragraph 14 of the Fourth Schedule to be stated in the prospectus or, in the case of a contract not reduced to writing, a memorandum giving full particulars thereof; and

(d) where the person making any report required by paragraph (*b*) of subsection (1) of section *three hundred and thirty four* to be set out in the prospectus has made in the report, or has without giving the reasons indicated in the report any such adjustments as are mentioned in this Act relating to such reports, a written statement signed by that person setting out the adjustments and giving the reasons therefor.

(3) Where any such contract as is mentioned in paragraph (*c*) of subsection (2) is wholly or partly in a foreign language, the reference in that paragraph to a copy of the contract shall be taken as a reference to a copy of a certified translation thereof.

337 Winding up foreign company

(1) Sections *one hundred and ninety-one*, *one hundred and ninety-two* and *two hundred and five* shall be deemed to apply to a foreign company as they apply to a company.

(2) Any foreign company to which this Part applies may be wound up in all respects as if it were an unregistered association and sections *three hundred and twenty-three* to *three hundred and twenty-eight* shall apply, *mutatis mutandis*, to any such foreign company: Provided:

(i) that section *two hundred and five* shall apply to any such foreign company in place of the provisions of paragraph (*d*) of section *three hundred and twenty-three*;

(ii) in addition to the circumstances set out in paragraph (*c*) of section *three hundred and twentythree*, a foreign company may also be wound up if the certificate issued in respect thereof in terms of subsection (2) of section *three hundred and thirty* has been revoked in terms of subsection (12) of that section.

PART VIII

GENERAL *Form of Registers: Books: Inspection and Production*

338 Form of registers and other documents

(1) Any register, index, minute book or book of account required by this Act to be kept by a company or foreign company may be kept either by making entries in bound books or by recording the matters in question in any other manner.

(2) Where any such register, index, minute book or book of account is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and for facilitating its discovery. (3) Any such register, index, minute book or book of account and every other book or document required by

this Act to be kept by a company or foreign company and every document required by this Act or by a company's memorandum or articles to be issued or circulated by a company or foreign company shall be legibly printed in the English language.

(4) Where default is made in complying with subsection (2) or (3) the company or foreign company and every officer of the company or foreign company who is in default shall be guilty of an offence and liable to a fine not exceeding level three.

[Section as amended by Act No. 22 of 2001]

jbzowa@justice.gov.zw

339 Production and inspection of books where offence suspected

If on an application by the Minister or by the Prosecutor-General, as the case may be, to a judge in respect of a company or foreign company there is shown to be reasonable cause to believe that any person has, while an officer of a company or foreign company, committed an offence in connection with the management of the affairs of the company or foreign company and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company or foreign company, an order may be made—

(a) authorizing any person named therein to inspect the said books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or

(b) requiring the secretary of the company or foreign company or such other officer thereof as may be named in the order to produce the said books or papers or any of them to a person named in the order at a place so named.

Offences

340 Provisions with respect to default fines and meaning of officer in default

(1) Where any provision of this Act provides that a person who is in default is liable to a default fine, the person shall be liable, for every day during which default, refusal or contravention mentioned in the provision continues, to a fine not exceeding such amount as is specified in the provision.

(2) For the purpose of any provision in this Act which provides that an officer of a company or foreign company who is in default shall be liable to a fine or penalty, the expression "officer who is in default" means any officer of the company or foreign company who knowingly authorizes or permits the default, refusal or contravention mentioned in the provision.

[Section as amended by Act No. 22 of 2001]

341 Penalties for false statements and oaths

(1) If any person in any statement, return, report, certificate, balance sheet or other document required by or for the purpose of any provisions of this Act makes a statement false in any material particular, knowing it to be false, he shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year.

(2) If any person, on examination on oath authorized under this Act, or in any affidavit or deposition in or about any matter arising under this Act, wilfully and corruptly gives false evidence he shall be guilty of an offence and liable to the a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

342 Penalty for improper use of word "Limited" or "Co-operative"

(1) Any person who trades or carries on business under the name or title—

(a) of which "Limited", or any contraction or imitation of that word, is the last word; and

(b) which is not registered in terms of this Act as the name of that person; shall be guilty of an offence and liable to a default fine not exceeding level one.

(2) Any person who trades or carries on business under the name or title—

(a) of which "Co-operative", or any contraction or imitation of that word, forms a part; and

(b) which is not registered in terms of this Act as the name of that person; shall be guilty of an offence and liable to a default fine not exceeding level one

[Section as amended by Act No. 22 of 2001]

343 False statements by directors and others

(1) Every officer or auditor of a company or foreign company or any other person employed generally or engaged for some special work or service by the company or foreign company who makes, circulates or publishes or concurs in making, circulating or publishing any certificate, written statement, report or account in relation to any property or affair of the company or foreign company which is false in any material particular, shall, subject to subsection (2), be guilty of an offence and liable to a fine not exceeding level eleven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) In any prosecution under subsection (1) it shall be a defence if it is proved that the person charged had, after reasonable investigation, reasonable ground to believe and did believe that the statement, report or account was true and that there was no omission to state any material fact necessary to make the statement as set out not misleading.

[Section as amended by Act No. 22 of 2001]

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344 Power to restrain fraudulent persons from managing companies

(1) Where—

(a) a person is convicted before the High Court of any offence in connection with the promotion, formation or management of a company; or

(b) in the course of the winding up or judicial management of a company it appears that a person— (i) has been guilty of any offence for which he is liable, whether he has been convicted or not, under section *three hundred and eighteen*; or

(ii) has otherwise been guilty, while an officer of the company, of any fraud in relation to the company or of any breach of his duty to the company;

the court may make an order 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 or take part in the management of any company or any foreign company for such period as may be specified in the order.

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

(3) An application for the making of an order under this section may be made by the Master or by the liquidator or judicial manager of the company or by any person who is or has been a member or creditor of the company; and on the hearing of any application for an order under this section by the Master or the liquidator or judicial manager or of any application for leave under this section by a person against whom an order has been made on the application of the Master or the liquidator or judicial manager, the Master or liquidator or judicial manager, as the case may be, may appear and call the attention of the court to any matters which seem to him to be relevant and shall do so if summoned by the court and may himself give evidence and call witnesses.

(4) An order may be made by virtue of subparagraph (ii) of paragraph (*b*) of subsection (1) notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made and for the purposes of the said subparagraph (ii) the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

(5) If any person contravenes an order made under this section, he shall, be liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

345 Penalty for falsification of books

Any person who conceals, destroys, mutilates, falsifies or makes or is privy to the making of any false entry in or, with intent to defraud or deceive, makes or is privy to the making of any erasure in any register, book, including any minute book, security, account or document of any company or foreign company shall, unless he satisfies the court in each case that he had no intention to defraud or deceive, be guilty of an offence and liable to a fine not exceeding level eleven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

Legal Proceedings, Service of Documents, etc.

346 Enforcement of duty of company to make returns to Registrar

(1) If a company or foreign company, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the Registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company or foreign company requiring it to do so, the court may, on an application made to the court by any member or creditor of the company or foreign company or by the Registrar, make an order directing the company or foreign company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or foreign company or by any officer of the company or foreign company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or foreign company or on its officers in respect of any such default as aforesaid.

347 Registrar's power to refuse registration

If the Registrar is of opinion that any document submitted to him—

(a) contains any matter contrary to law; or

(b) by reason of any omission or misdescription has not been duly completed; or

(c) does not comply with the requirements of this Act; or

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(d) contains any error, alteration or erasure; he may refuse to register or receive the document and request that the document be appropriately amended or completed and resubmitted or that a fresh document be submitted in its place.

348 Extension of time for lodging returns

Whenever by this Act a time is prescribed for filing with or delivering or sending to the Registrar any return, account or other document or for giving notice to him of any matter, the Registrar may, on application to him before the expiry of the prescribed time, extend such time for so long as may seem to him to be reasonable; and if any prescribed time is extended by the Registrar under this section *three hundred and forty-six* shall be read as applying to a default in respect of the time as so extended.

349 Power of court to grant relief in certain cases

(1) If in any proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies it appears to the court that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the court may relieve him, either wholly or partly, from his liability, on such terms as the court may think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) The persons to whom this section applies are— (*a*) officers of a company as by this Act defined;

(*b*) directors, managers and other officers of a foreign company; (*c*) persons appointed by a company or foreign company as its auditors.

350 Security for costs

Where a company or foreign company is plaintiff or applicant in any legal proceedings, the court may at any stage, on sufficient proof that there is reason to believe that the company or foreign company or the liquidator or judicial manager thereof will be unable to pay the costs of the defendant or respondent if successful in his defence, require sufficient security to be given for those costs and may stay all proceedings till the security is given.

351 Review of Registrar's decision

Every person or company aggrieved by any decision, ruling or order of the Registrar may bring the same under review by the court.

352 Service of documents

Any notice, order or other document which by this Act may be or is required to be served upon a company, foreign company or unregistered association may, if it cannot be served as in this Act is otherwise expressly prescribed or unless the court shall otherwise direct, be served by leaving the same at, or sending it by prepaid registered post to—

(a) the registered office, in the case of a company;

(b) any place of business established in Zimbabwe, in the case of a foreign company; (*c*) the head office or principal place of business in Zimbabwe, in the case of an unregistered association.

353 Provision as to fees

(1) Where under this Act—

(a) a fee is payable in respect of the performance of any act by the Registrar, the Registrar shall not perform the act until the fee is paid;

(b) a fee is payable in respect of the doing of any act by any person other than the Registrar, the act shall be deemed not to have been done until the fee has been paid;

(c) a fee is payable in respect of the filing or delivery of a document, the document shall be deemed not to have been filed or delivered until the fee has been paid.

(2) All fees shall be paid at the Companies Registration Office or at any other prescribed office in such manner as the Registrar or the Master, with the approval of the Minister, may determine.

354 Proofs of certain facts by affidavit

(1) In any criminal proceedings under this Act concerning the failure of a person to file with or deliver to the Registrar any return or other document, a document purporting to be an affidavit made by a person who alleges therein that—

(a) he is in the service of the State; and

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(b) if the said return or other document had been filed with or delivered to the Registrar, it would in the ordinary course of events have come to the deponent's knowledge and a record thereof, available to him, would have been kept; and

(c) no such return or other document has to the deponent's knowledge been filed with or delivered to the Registrar and that he has satisfied himself that no such record was kept; shall on its mere production in those proceedings by any person, but subject to subsection (2), be *prima facie* proof that such return or other document has not been filed with or delivered to the Registrar.

(2) The court in which any such affidavit is produced in evidence may, and, at the request of the accused made not less than seven days before the trial, shall, cause the person who made it to be summoned to give oral evidence in the proceedings in question.

(3) Nothing in this section contained shall affect any other rule of law under which any certificate or other document is admissible in evidence, and this section shall be deemed to be additional to, and not in substitution for, any such rule of law.

Rules of Procedure, etc.

355 Forms and tables and application of Seventh Schedule and licences

(1) Subject to section *three hundred and sixty-one*, the forms and tables set forth in the First, Third, Fifth and Sixth Schedules or forms and tables as near thereto as the circumstances admit shall be used in all matters to which those forms and tables refer.

(2) Subject to section *three hundred and sixty-one* and to the discretion by this Act conferred on the Master or the Registrar, there shall be paid in respect of the several matters or services mentioned in the Seventh Schedule the several fees specified therein.

(3) Any fee payable by or in relation to a foreign company which is to be calculated in relation to the share capital thereof which is fixed in a currency other than Zimbabwe currency shall be calculated after such share capital has been converted to Zimbabwe currency at the rate of exchange current at the date such fee became payable.

356 Additional fees in respect of late submissions of documents or notices

(1) Without derogation from the penal provisions of this Act, a company which has failed within the time specified in the appropriate provision to furnish a document or give the notice required in terms of any provision referred to in subsection (2) or (3) may thereafter furnish such document or give such notice subject to the payment to the Registrar in respect of the recording of that document or notice of the prescribed fee and of a penalty based on such fee calculated according to the appropriate scale specified in subsection (2) or (3), as the case may be.

(2) In the case of a document or notice required to be lodged in terms of subsection (1) of section *thirty-five*, subsection (2) of section *seventy-one*, subsection (3) of section *one hundred and seven*, subsection (2) of section *one hundred and eight*, subsection (2) of section *one hundred and twelve*, subsection (3) of section *one hundred and fifteen*, subsection (2) of section *one hundred and twenty-one*, subsection (5) of section *one hundred and twenty-four*, subsection (6) of section *one hundred and twenty-five*, subsection (1) of section *one hundred and thirty-six*, subsection (5) of section *one hundred and eighty-seven* or subsection (4) of section *three hundred and thirty*, the penalty shall be a sum calculated in accordance with the scale specified in the Eighth Schedule.

(3) In the case of a document or notice required to be lodged in terms of subsection (2) of section *one hundred and twenty-three* or subsection (8) of section *three hundred and thirty*, the penalty shall be a sum calculated at the rate of ten *per centum* of the prescribed fee in respect of each month or part of a month from the date when the act in respect of which the document is to be furnished or notice given took place:

Provided that such penalty shall not exceed the amount of the prescribed fee.

(4) For the purposes of subsections (2) and (3), the decision of the Registrar as to the time within which a document or notice referred to in either of those subsections was required to be furnished or given shall be final.

(5) Any penalty payable under this section shall be a debt due to the State and may be recovered by the Registrar by action in a magistrates court or other court of competent jurisdiction from the company or, failing which, from the directors of the company, who shall personally be jointly and severally liable therefor.

357 Inspection and copies of documents in Registrar's office and production of documents in evidence

(1) Any person may after application in the prescribed manner and on payment of the prescribed fees, inspect the documents kept under this Act by the Registrar; and any person may require a certificate of the incorporation of any company or a copy or extract of any other document or part of any other document to be certified by the Registrar or assistant registrar on payment of the prescribed fee for the certificate, certified copy or extract.

(2) A copy of or extract from any document kept under this Act by the Registrar, certified to be a true copy under the hand of the Registrar or assistant registrar, shall in all legal proceedings be admissible in evidence as of

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equal validity with the original document. Certified copies or extracts may be handed into court by the party who desires to avail himself of them.

(3) It shall not be necessary in any legal proceedings for the Registrar himself or for any officer under him to produce any original document kept under this Act by the Registrar, but it shall be deemed sufficient if such document is produced by some person authorized by him to do so.

(4) In this section—

"document" includes any sheet in a register of companies kept in terms of this Act.

358 Additional copies of returns or documents

(1) Where under this Act any document is lodged or transmitted, the person lodging or transmitting the same shall, as and when it shall be so required by regulations under this Act, lodge or transmit an additional copy or additional copies of the document.

(2) Such regulations may provide in the respective cases whether such additional copy or copies shall be in duplicate original form, or shall be in the form of clearly legible copy or copies certified in manner prescribed in such regulations.

359 Rules of procedure

The Chief Justice may, in consultation with the Minister, make rules concerning the procedure to be followed with respect to any matter in connection with the winding up of companies, foreign companies or unregistered associations and generally as to all matters in which the court is empowered under this Act to exercise jurisdiction, and all matters which are required by this Act to be prescribed by rules.

360 Regulations

(1) The Minister may from time to time make—

(a) regulations providing for anything required by this Act to be prescribed by regulations; and

(b) regulations altering any amount referred to in section 28(1), 125(8), 132(2)(*b*), 136(4), 157(2), 185(2)(*b*), 205(*a*), 214(1) (proviso), 224(5), 317(1)(*b*), (2)(*b*) or (4)(*b*), or 323(*d*)(i); and

(c) such other regulations as he may deem expedient or necessary for the carrying out of the purposes of this Act.

[Subsection substituted by Act 9 of 2011]

(2) When making regulations for the purpose of subsection (2) of section *one hundred and forty-two*, the Minister shall have regard to such international accounting standards as may have been adopted by the Zimbabwe Accounting Practices Board.

361 Alteration of fees, tables and forms

(1) The Minister may, from time to time—

(a) alter or add to the tables in the Seventh Schedule;

(b) alter Table A in the First Schedule or any of the forms in the Third, Fifth and Sixth Schedules but no such alteration in or addition to Table A shall, as respects any company registered before the publication of the alteration or addition, repeal any portion of Table A which at the date of such publication applies to it.

(2) Any alteration or addition made in terms of subsection (1) shall be by statutory instrument and from the date of such publication any reference in this Act to any Schedule or Table shall be construed as a reference to that Schedule or Table with any alterations or additions made and in force in terms of subsection (1):

Provided that no alteration or addition made in terms of paragraph (*b*) of subsection (1) shall apply to a foreign company which is a banking company as defined in section *three hundred and twenty-nine*.

Acts or Omissions of State Officers

362 Exemption from liability for acts or omissions of State officers

No act or omission whatever of the Registrar or of any officer, clerk or other person in the employment of the State, having duties to perform under this Act, shall render the State or the Registrar or any such officer, clerk or person liable in respect of any loss or damage sustained by any person in consequence of any such act or omission unless such act or omission was *mala fide* or was due to a want of reasonable care or diligence.

FIRST SCHEDULE (Sections 2, 18, 355 and 361)

REGULATIONS AND MEMORANDUM

TABLE A

PART I

REGULATIONS FOR MANAGEMENT OF A COMPANY NOT BEING A PRIVATE COMPANY

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Interpretation

1. In these regulations—

"the Act" means the Companies Act [*Chapter 24:03*];

"the seal" means the common seal of the company;

"secretary" means any person appointed to perform the duties of the secretary of the company; "the office" means the registered office of the company.

Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

Share Capital and Variation of Rights

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in the company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise as the company may from time to time by special resolution determine.
3. Subject to section 76 of the Act, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed on such terms and in such manner as the company before the issue of the shares may by special resolution determine.
4. If at any time the share capital is divided into different classes of shares, the rights attached to any class, unless otherwise provided by the terms of issue of the shares of that class, may whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the regulations relating to general meetings shall apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.
5. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.
6. The company may exercise the powers of paying commissions conferred by section 72 of the Act, provided that the rate *per centum* or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section and the rate of the commission shall not exceed the rate of five *per centum* of the price at which the shares in respect whereof the same is paid are issued or an amount equal to five *per centum* of such price, as the case may be. Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other. The company may also on any issue of shares pay such brokerage as may be lawful.
7. (1) The company may in its discretion enter in its register the fact that any share is held in trust.

(2) There shall be no obligation on the company—

(a) to verify the legal status of any trust or of any trustee who is registered as a member;

(b) to see to the due and proper carrying out of any trust, whether express, implied or constructive, in respect of any share.

8. Every person whose name is entered as a member in the register of members shall be entitled without payment to receive within two months after allotment or lodgement of transfer, or within such other period as the conditions of issue shall provide, one certificate for all his shares or several certificates each for one or more of his shares upon payment of 25c for every certificate after the first or such less sum as the directors shall from time to time determine. Every certificate shall be under the seal, if any, and shall specify the shares to which it relates and the amount paid up thereon:

Provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

9. If a share certificate be defaced, lost or destroyed, it may be renewed on payment of a fee of 25c or such less sum and on such terms, if any, as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investigating evidence as the directors think fit.
10. The company shall not give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or in its holding company nor shall the company make a loan for any purpose whatsoever on the security of its shares or those of its holding company, but nothing in this regulation shall prohibit transactions mentioned in the proviso to subsection (1) of section 73 of the Act.

Lien

11. The company shall have a first and paramount lien on every share, not being a fully-paid share, for all moneys, whether presently payable or not, called or payable at a fixed time in respect of that share and the company shall also have a first and paramount lien on all shares, other than fully-paid shares, standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the company in general meeting may at any time declare any share to be wholly or in part exempt from this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.
12. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or insolvency.
13. To give effect to any such sale the directors may authorize some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.
14. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall, subject to a like lien for sums not presently payable as existed upon the share before the sale, be paid to the person entitled to the shares at the date of the sale.

Calls on Shares

15. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, whether on account of the nominal value of the shares or by way of premium, and not by the conditions of allotment thereof made payable at fixed times, provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call, and each member shall, subject to receiving at least fourteen days' notice specifying the time

jbzowa@justice.gov.zw

or times and place of payment, pay to the company at the time or times and place so specified the amount called on his shares. A call may be revoked or postponed as the directors may determine.

16. A call shall be deemed to have been made at the time when the resolution of the directors authorizing the call was passed and may be required to be paid by instalments.
17. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
18. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate not exceeding six *per centum* per annum as the directors may determine, but the directors shall be at liberty to waive payment of such interest wholly or in part.
19. Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these regulations be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable, and in case of non-payment all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.
20. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.
21. The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him, and upon all or any of the moneys so advanced may, until the same would, but for such advances, become payable, pay interest at such rate not exceeding, unless the company in general meeting shall otherwise direct, five *per centum* per annum, as may be agreed upon between the directors and the member paying such sum in advance.

Transfer of Shares

22. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.
23. Subject to such of the restrictions of these regulations as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve.
24. The directors may decline to register the transfer of a share, not being a fully-paid share, to a person of whom they do not approve, and they may also decline to register the transfer of a share on which the company has a lien.
25. The directors may also decline to recognize any instrument of transfer unless—
    (a) a fee of 25c or such lesser sum as the directors may from time to time require is paid to the company in respect thereof; and
    (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and (*c*) the instrument of transfer is in respect of only one class of share.
26. If the directors refuse to register a transfer they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.
27. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine: Provided always that such registration shall not be suspended for more than thirty days in any year.
28. The company shall be entitled to charge a fee not exceeding 25c on the registration of every probate, letters of administration, certificate of death or marriage, power of attorney, deed of settlement or other instrument.

Transmission of Shares

29. In the case of death of a member the survivor or survivors where the deceased was a joint holder and the executor of the deceased where he was a sole holder, shall be the only persons recognized by the company as having any title to his interest in the shares; but nothing herein contained shall release the estate of the deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.
30. Any person becoming entitled to a share in consequence of the death or insolvency of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death or insolvency, as the case may be.
31. If the person so becoming entitled shall elect to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he shall elect to have another person registered he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or insolvency of the member had not occurred and the notice or transfer were a transfer signed by that member.
32. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company:

    Provided always that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share and if the notice is not complied with within ninety days the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

Forfeiture of Shares

33. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.
34. The notice shall name a further day, not earlier than the expiration of fourteen days from the date of service of the notice, on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.
35. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.
36. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

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37. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were payable by him to the company in respect of the shares, but his liability shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.
38. An affidavit that the deponent is a director or the secretary of the company and that a share in the company has been duly forfeited on a date stated in the declaration shall, unless fraud or mistake be proved, be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.
39. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of Shares into Stock

40. The company may by special resolution convert any paid-up shares into stock and reconvert any stock into paid-up shares of any denomination.
41. The holders of stock may transfer the same or any part thereof in the same manner and subject to the same regulations as and subject to which the shares from which the stock arose might previously to conversion have been transferred or as near thereto as circumstances admit; and the directors may from time to time fix the minimum amount of stock transferable but so that such minimum shall not exceed the nominal amount of the shares from which the stock arose.
42. The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting and meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage, except participation in the dividends and profits of the company and in the assets on winding up, shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.
43. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "member" therein shall include "stock" and "stock-holder".

Alteration of Capital

44. The company may from time to time by special resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.
45. The company may by special resolution—
    (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
    (b) subdivide its existing shares or any of them into shares of smaller amount than is fixed by the memorandum of association; (*c*) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.
46. The company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with and subject to any incident authorized, and consent required, by law.

General Meetings

47. The company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of the company and that of the next:

    Provided that so long as the company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the directors shall appoint.
48. All general meetings other than annual general meetings shall be called extraordinary general meetings.
49. The directors may, whenever they think fit, convene an extraordinary general meeting and extraordinary general meetings shall also be convened on such requisition or, in default, may be convened by such requisitionists, as provided by section 126 of the Act. If at any time there are not within Zimbabwe sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings

50. An annual general meeting and a meeting called for the passing of a special resolution shall be called by twenty-one days' notice in writing at the least and a meeting of the company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by fourteen days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company:

    Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this regulation, be deemed to have been duly called if it is so agreed—
    (a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and
    (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than ninety-five *per centum* in nominal value of the shares giving that right.
51. The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings at that meeting.

Proceedings at General Meetings

52. All business shall be deemed special that is transacted at an extraordinary general meeting and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets and reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of and the fixing of the remuneration of the auditors.

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53. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, two members present in person shall be a quorum.
54. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at any such other time and place as the directors may determine and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the member or members present shall be a quorum.
55. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.
56. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.
57. The chairman may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
58. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is, before or on the declaration of the result of the show of hands, demanded—

    (a) by attend and vote at the meeting, being a majority together member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

    (*d*) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right. Unless a poll be so demanded a declaration by the chairman that a resolution has on a show of hands been carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.
59. Except as provided in regulation 61, if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
60. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.
61. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of a poll.

Votes of Members

62. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person shall have one vote and on a poll every member shall have one vote for each share of which he is the holder.
63. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.
64. A member of unsound mind or in respect of whom an order has been made by any court having jurisdiction in lunacy may vote, whether on a show of hands or on a poll, by his curator *bonis* or other person appointed by that court and any such curator *bonis* or other person may, on a poll, vote by proxy.
65. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.
66. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.
67. On a poll votes may be given either personally or by proxy.
68. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing, or, if the appointer is a corporation, either under seal or under the hand of an officer or attorney duly authorized. A proxy need not be a member of the company.
69. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at such other place within Zimbabwe as is specified for that purpose in the notice convening the meeting, not less than forty-eight hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.
70. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

"..... Limited.

I/We ....., of .....being a member/members of the abovenamed company, hereby appoint .....of ....., or failing him, of ....., as my/our proxy to vote for me/us on my/our behalf at the (annual or extraordinary, as the case may be) general meeting of the company to be held on the .....day of 19....., and at any adjournment thereof.

Signed this .....day of ....., 19....."

71. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

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".....Limited.

I/We ....., of being a member/members of the above-named company, hereby appoint ..... of ....., or failing him, ...of ....., as my /our proxy to vote for me/us on my/our behalf at the (annual or extraordinary, as the case may be) general meeting of the company, to be held on the ..... day of 19....., and at any adjournment thereof.

Signed this ..... day of ....., 19....."

This form is to be used *in favour of / against resolution No.....

Unless otherwise instructed, the proxy will vote as he thinks fit.

*Strike out whichever is not desired".

72. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
73. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death, insolvency or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed or the transfer of the share in respect of which the proxy is given, provided that no intimation in writing of such death, insolvency, insanity, revocation or transfer as aforesaid shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Directors

74. The number of the directors and the names of the first directors shall be appointed in writing by the subscribers of the memorandum of association or a majority of them and shall be set out in the list to be filed with the Registrar in terms of section 171 of the Act and the persons so named shall hold office only until directors are appointed by the company in general meeting.
75. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.
76. The shareholding qualification for directors may be fixed by the company in general meeting and unless and until so fixed no qualification shall be required.
77. A director of the company may be or become a director or other officer of, or otherwise interested in, any company promoted by the company or in which the company may be interested as shareholder or otherwise and no such director shall be accountable to the company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company unless the company otherwise directs.

Borrowing Powers

78. The directors may exercise all the powers of the company to borrow money and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and to issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the company or of any third party:

    Provided that the amount for the time being remaining undischarged of moneys borrowed or secured by the directors as aforesaid, apart from temporary loans obtained from the company's bankers in the ordinary course of business, shall not at any time, without the previous sanction of the company in general meeting, exceed the nominal amount of the share capital of the company for the time being issued, but nevertheless no lender or other person dealing with the company shall be concerned to see or inquire whether this limit is observed. No debt incurred or security given in excess of such limit shall be invalid or ineffectual except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was thereby exceeded.
79. Each director shall have the power to nominate one of the members possessing the necessary qualifications of a director to act as alternate director in his place during his absence or inability to act as such director and, provided that the appointment of an alternate director is approved by the board, on such appointment being made the alternate director shall, in all respects, be subject to the terms, qualifications, and conditions existing with reference to the other directors of the company.
80. The alternate directors, whilst acting in the place of the directors who appointed them, shall exercise and discharge all the duties and functions of the directors they represent. The appointment of an alternate director shall be cancelled and the alternate director shall cease to hold office whenever the director who appointed him ceases to be a director or gives notice to the secretary of the company that the alternate director representing him has ceased to do so and, in case of the disqualification or resignation of any alternate director during the absence or inability to act of the director whom he represents, the vacancy so arising shall be filled by the chairman of the directors nominating a duly qualified member to fill the same, subject to the approval of the board.

Powers and Duties of Directors

81. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act or by these regulations, required to be exercised by the company in general meeting, subject, nevertheless, to any of these regulations, to the provisions of the Act and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.
82. The directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the agent or agents of the company for such purposes and with such powers, authorities and discretions, not exceeding those vested in or exercisable by the directors under these regulations, and for such period and subject to such conditions as they may think fit and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such agent as the directors may think fit, and may also authorize any such agent to delegate all or any of the powers, authorities and discretions vested in him.

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83. The company may exercise the powers conferred by section 51 of the Act with regard to having an official seal for use abroad and such powers shall be vested in the directors.

84. The company may exercise the powers conferred upon the company by sections 121 and 122 of the Act with regard to the keeping of a branch register and the directors may, subject to the provisions of those sections, make and vary such regulations as they may think fit respecting the keeping of any such register.

85. (1) A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall declare the nature of his interest at a meeting of the directors in accordance with section 186 of the Act.

(2) A director shall not vote in respect of any contract or arrangement in which he is interested, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting, but neither of these prohibitions shall apply to—

(a) any arrangement for giving any director any security or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the company; or

(b) any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or

(c) any contract by a director to subscribe for or underwrite shares or debentures of the company; or

(d) any contract or arrangement with any other company or association in which he is interested only as an officer of the company or as holder of shares or other securities;

and these prohibitions may at any time be suspended or relaxed to any extent, and either generally or in respect of any particular contract, arrangement or transaction, by the company in general meeting.

(3) A director may hold any other office or place of profit under the company, other than the office of auditor, in conjunction with his office of director for such period and on such terms, as to remuneration and otherwise, as the directors may determine and no director or intending director shall be disqualified by his office from contracting with the company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract or any contract or arrangement entered into by or on behalf of the company in which any director is in any way interested be liable to be avoided, nor shall any director so contracting or being so interested be liable to account to the company for any profit realized by any such contract or arrangement by reason of such director holding that office or of the fiduciary relation thereby established.

(4) A director, notwithstanding his interest, may be counted in the quorum present at any meeting whereat he or any other director is appointed to hold any such office or place of profit under the company or whereat the terms of any such appointment are arranged and he may vote on any such appointment or arrangement other than his own appointment or the arrangement of the terms thereof.

(5) Any director may act by himself or his firm in a professional capacity for the company and he or his firm shall be entitled to remuneration for professional services as if he were not a director:

Provided that nothing herein contained shall authorize a director or his firm to act as auditor to the company.

86. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for moneys paid to the company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the directors shall from time to time by resolution determine.

87. The directors shall cause minutes to be made in books provided for the purpose— (*a*) of all appointments of officers made by the directors;

(b) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

88. The directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

Disqualification of Directors

89. The office of director shall be vacated if the director—

(a) ceases to be a director by virtue of section 172 of the Act; or

(b) becomes insolvent or makes any arrangement or composition with his creditors generally; or

(c) becomes prohibited from being a director by the terms of section 173 of the Act or by reason of any order made under section 344 of the Act; or

(d) becomes of unsound mind; or

(e) resigns his office by notice in writing to the company; or

(f) shall for more than six months have been absent without permission of the directors from meetings of the directors held during that period.

Rotation of Directors

90. At the first annual general meeting of the company all the directors shall retire from office and at the annual general meeting in every subsequent year one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

91. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall, unless they otherwise agree among themselves, be determined by lot.

92. A retiring director shall be eligible for re-election.

93. The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto and in default the retiring director shall if offering himself for re-election be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

94. No person other than a director retiring at the meeting shall be eligible for election to the office of director at any general meeting unless not less than three nor more than twenty-one days before the date appointed for the meeting there shall have been left at the registered office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election and also notice in writing signed by that person of his willingness to be elected.

95. The company may from time to time by ordinary resolution increase or reduce the number of directors and may also determine in what rotation the increased or reduced number is to go out of office.

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96. The directors shall have power at any time and from time to time to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these regulations. Any director so appointed shall hold office only until the next following annual general meeting and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.
97. The company may by ordinary resolution, of which special notice has been given in accordance with section 136 of the Act, remove any director before the expiration of his period of office notwithstanding anything in these regulations or in any agreement between the company and such director. Such removal shall be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.
98. The company may by ordinary resolution appoint another person in place of a director removed from office under the immediately preceding regulation and, without prejudice to the powers of the directors under regulation 96, the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. A person appointed in place of a director so removed or to fill such a vacancy shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors

99. The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Zimbabwe.
100. The quorum necessary for the transaction of the business of the directors may be fixed by the directors and unless so fixed shall be two.
101. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.
102. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.
103. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.
104. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.
105. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.
106. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.
107. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

Managing Director

108. The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. A director so appointed shall not, whilst holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall be automatically determined if he ceases from any cause to be a director.
109 A managing director shall receive such remuneration, whether by way of salary, commission, or participation in profits, or partly in one way and partly in another, as the directors may determine.
110. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

Secretary

111. The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.
112. A provision of the Act or these regulations requiring or authorizing a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

The Seal

113. The company shall have a seal and the directors shall provide for its safe custody. Subject to section 104 of the Act, it shall only be used by the authority of the directors or of a committee of the directors authorized by the directors in that behalf and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

Dividends and Reserve

114. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.
115. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.
116. No dividend shall be paid otherwise than out of profits.
117. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied and, pending such application, may, at the like discretion, either be employed in the business of the company or be invested in such investments, other than shares of the company, as the directors may from time to time think fit. The directors may also without placing the same to reserve carry forward any profits which they may think prudent not to divide.

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118. Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.
119. The directors may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.
120. Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets and in particular of paid-up shares, debentures or debenture stock of any other company or in any one or more of such ways and the directors shall give effect to such resolution and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties and may vest any such specific assets in trustees as may seem expedient to the directors.
121. Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses or other moneys payable in respect of the shares held by them as joint holders. 122. No dividend shall bear interest against the company.

Accounts

123. The directors shall cause proper books of account to be kept 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 takes place; and
   (b) all sales and purchases of goods by the company; and (*c*) the assets and liabilities of the company.

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.
124. The books of account shall be kept at the registered office of the company, or, subject to section 140 of the Act, at such other place or places as the directors think fit and shall always be open to the inspection of the directors.
125. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member, not being a director, shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the directors or by the company in general meeting.
126. The directors shall from time to time, in accordance with sections 141, 142 and 144 to 147 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets, group accounts, if any, and reports as are referred to in those sections.
127. A copy of every balance sheet, including every document required by law to be annexed thereto, which is to be laid before the company in general meeting, together with a copy of the auditor's report, shall, not less than twenty-one days before the date of the meeting, be sent to every member of, and every holder of debentures of, the company and to every person registered under regulation 31:

Provided that this regulation shall not require a copy of those documents to be sent to any person of whose address the company is not aware or to more than one of the joint holders of any shares or debentures.

Capitalization of Profits 128. The company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalize any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed, credited as fully paid up, to and amongst such members in the proportion aforesaid, or partly in the one way and partly in the other, and the directors shall give effect to such resolution:

Provided that a share premium account and a capital redemption reserve fund may, for the purposes of this regulation, only be applied in the paying up of unissued shares to be issued to members of the company as fully-paid bonus shares.

129. Whenever such a resolution as aforesaid shall have been passed, the directors shall make all appropriations and applications of the undivided profits resolved to be capitalized thereby and all allotments and issues of fully-paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorize any person to enter on behalf of all the members entitled thereto into an agreement with the company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalization, or, as the case may require, for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalized, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members. 130. Auditors shall be appointed and their duties regulated in accordance with sections 150 to 153 of the Act.

Notices

131. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address or, if he has no registered address within Zimbabwe, to the address, if any, within Zimbabwe supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected in the case of a notice of a meeting at the expiration of fortyeight hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.
132. A notice may be given by the company to joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

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133. A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name or by title of representatives of the deceased, or trustee of the insolvent, or by any like description, at the address, if any, within Zimbabwe supplied for the purpose by the persons claiming to be so entitled or, until such an address has been so supplied, by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

134. Notice of every general meeting shall be given in any manner hereinbefore authorized to—
   (a) every member except those members who, having no registered address within Zimbabwe, have not supplied to the company an address within Zimbabwe for the giving of notices to them; and
   (b) every person upon whom the ownership of a share devolves by reason of his being the executor, trustee or assignee of a member where the member but for his death or insolvency would be entitled to receive notice of the meeting; and (*c*) the auditor for the time being of the company.

   No other person shall be entitled to receive notices of general meetings.

Winding Up

135. If the company is wound up the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Act, divide amongst the members in specie or kind the whole or any part of the assets of the company, whether they shall consist of property of the same kind or not, and may for such purposes set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

Indemnity

136. Every director, managing director, agent, auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 349 of the Act in which relief is granted to him by the court.

PART II

REGULATIONS FOR THE MANAGEMENT OF A PRIVATE COMPANY

1. The regulations contained in Part I of Table A, with the exception of regulations 24 and 74, shall apply.
2. The company is a private company and accordingly—
   (a) the right to transfer shares is restricted in manner hereinafter prescribed;
   (b) the number of members of the company, exclusive of persons who are in the employment of the company and of persons who having been formerly in the employment of the company were while in such employment and have continued after the determination of such employment to be members of the company, is limited to fifty:

   Provided that where two or more persons hold one or more shares in the company jointly they shall for the purpose of this regulation be treated as a single member;
   (c) any invitation to the public to subscribe for any shares or debentures of the company is prohibited.
3. The directors may, in their absolute discretion and without assigning any reason therefor, decline to register any transfer of any share, whether or not it is a fully-paid share.
4. Subject to the Act, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings or, being corporations, by their duly authorized representatives shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.
5. The subscribers to the memorandum of association shall be the directors of the company and shall hold office until directors are appointed by the company in general meeting.

   Note: Regulation 3 of this Part is alternative to regulation 24 of Part I.

TABLE B

FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY

1st. The name of the company is "The Zimbabwe Transport Company Limited".

2nd. The objects for which the company is established are, "the conveyance of passengers and goods in motor vehicles between such places as the company may from time to time determine and the doing of all such other things as are incidental or conducive to the attainment of the above object".

3rd. The liability of the members is limited.

4th. The share capital of the company is four hundred thousand dollars divided into one thousand shares of four hundred dollars each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers:	*Number of shares taken by each subscriber:*
	_____
Total shares taken	_____

Dated the ..... day of .....19.....

Witness to the above signatures, Address

....

.....

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SECOND SCHEDULE (Section 2)

REPEALED LAWS

No. of Law	*Year of Law*	*Title or Subject of Law*	*Extent of Repeal*
13	1846	Ordinance for facilitating security of shares in joint-stock companies.	The whole.
23	1861	Act to limit the liability of members of certain joint-stock companies.	The whole.
19	1865	Joint-Stock Banks' Statements Act, 1865.	Sections, 15, 16 and 17.
12	1868	Act to make provision for winding up joint-stock companies.	The whole.
11	1879	Act to enable joint-stock banking companies to participate in the provisions of Companies Liability Act, 1861".	So much as is the "Joint-Stock unrepealed.
13	1888	Act amending "Precious Stones Act, 1883", and the law relating to Joint-Stock Companies.	The whole.
2	1895	The Companies Ordinance, 1895.	The whole.
11	1907	Companies Ordinance, 1907.	The whole.
11	1910	Companies Ordinance Amendment Ordinance, 1910.	The whole.
8	1918	Companies Amendment Ordinance, 1918.	The whole.
4	1920	Companies Law Amendment Ordinance, 1920.	The whole.
14	1921	The Companies Ordinance, 1895, Amendment Ordinance, 1921.	The whole.
23	1927	Licence and Stamp Act [*Chapter 128 of 1939*].	Item 42 of the Second Schedule.

THIRD SCHEDULE (Sections 31, 355 and 361)

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

PART I

FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN

Companies Act [*Chapter 24:03*]

Statement in lieu of Prospectus delivered for registration by .....

(Insert the name of the company).

Pursuant to section 35 of the Companies Act [*Chapter 24:03*].

Delivered for registration by .....

1. Names, descriptions and addresses of directors or proposed directors.

2. (*a*) The nominal share capital of the company..... $
   Divided into..... Shares of $ each
   Shares of $ each
   Shares of $ each
   (b) Amount, if any, of above capital which consists of redeemable preference shares. Shares of $ each
   (c) The earliest date on which the company has power to redeem these shares

3. (*a*) Amount of shares issued..... Shares
   Divided into..... Shares of $ each
   Shares of $ each
   Shares of $ each (*b*) Amount of commissions paid in connection therewith

4. Unless more than one year has elapsed since the date on which the Company was entitled to commence business—
   (a) Amount of preliminary expenses ..... $ By whom those expenses have been paid or are payable.
   (b) Amount paid to any promoter ..... Name of promoter:
   Amount $
   (c) Consideration for the payment..... Consideration:
   (d) Any other benefit given to any promoter..... Name of promoter:
   Nature and value of benefit (*e*)
   Consideration for giving of benefit..... Consideration:

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

6. Number and amount of shares and debentures issued within the two years preceding 1. .....shares of $ the date of this statement as fully or partly paid up otherwise than for cash or agreed fully paid to be so issued at the date of this statement. Consideration for the issue of those 2. ..... shares upon
   shares or debentures which $ per share
   credited as paid.
   3. .....debenture $
   4. Consideration.

7. The substance of any contract or arrangement or proposed contract or arrangement 1. ..... whereby any option or preferential right of any kind has been or is proposed to be 2. Shares of $ given to any person to subscribe for any shares in or debentures of a

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company or to and acquire them from a person to whom they have been allotted or agreed to be allotted Debentures of $

with a view to his offering them for sale; giving the number, description and amount of any such shares or debentures and including the following particulars of the option or right—

(*a*) The period during which it is exercisable. ..... 3. Until..... (*b*) The price to be paid for shares or debentures subscribed for under it 4. .....

(c) The consideration, if any, given or to be given for it or for the right to it..... 5. Consideration:

(d) The names and addresses of the persons to whom it or the right to it was given or if given to existing members or debenture holders as such, the relevant shares or debentures..... 6. Names and addresses:

(e) Any other material fact or circumstance relevant to the grant of such option or right ..... 7. .....

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

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

(c) Amount paid or payable in cash, shares or debentures for any such property, the amount paid or payable for goodwill. $ Total purchase price specifying

Cash.....$
Shares.....$
Debentures.....$
Goodwill.....$

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

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

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

10. Names and addresses of the auditors of the company.

11. Full particulars of the nature and extent of the interest, if any, of every director or promoter in the promotion of, or in the property acquired within two years of the date of the prospectus or proposed to be acquired by the company, or, where the interest of such director or promoter consists in being a member of a partnership, company, syndicate or other association of persons, the nature and extent of the interest of such partnership, company, syndicate or other association and the nature and extent of such director's or promoter's interest in the partnership, company, syndicate or other association, with a statement of all sums paid or agreed to be paid to him or to it in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director or otherwise for services rendered by him or by it in connection with the promotion or formation of the company.

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

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

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

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

Date.....

PART II

REPORTS TO BE SET OUT

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

(a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar; and

(b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2. (1) If unissued shares or debentures of the company are to be applied directly or indirectly in any manner resulting in the acquisition of shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by accountants, who shall be named in the statement, with respect to the profits

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and losses and assets and liabilities of the other body corporate in accordance with subparagraph (2) or (3), as the case requires, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and for holders of other shares, what adjustment would have fallen to be made, in relation to assets and liabilities so dealt with, if the company had at all material times held the shares to be acquired.

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

(a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of the five financial years immediately preceding the delivery of the statement to the Registrar; and

(b) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate at the last date to which the accounts of the body corporate were made up.

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

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

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

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

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

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

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

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

PART III PROVISIONS APPLYING

TO PARTS I AND II OF THIS SCHEDULE

3. In this Schedule the expression "vendor" includes a vendor as defined in Part III of the Fourth Schedule, and the expression "financial year" has the meaning assigned to it in that Part of that Schedule.
4. If in the case of a business which has been carried on or of a body corporate which has been carrying on business for less than five years, the accounts of the business or body corporate have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.
5. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which to the persons making the report appear necessary or shall make those adjustments and indicate that adjustments have been made.
6. Any report by accountants required by Part II of this Schedule shall not be made by any accountant who is an officer or employee or a partner or employer of or in the employment of an officer or employee of the company, or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

FOURTH SCHEDULE (Sections 35, 54, 56, 62, 65, 335 and 336)

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

PART I

MATTERS TO BE SPECIFIED

1. Except where the prospectus is issued prior to the incorporation of the company, the date of incorporation of the company and the address of its registered office.
2. The number of shares, if any, fixed by the articles as the qualification of a director, and any provisions as to the remuneration of the directors whether for their services to the company as directors, managing directors or otherwise, whether under the articles or under contract or otherwise.
3. (1) The names, occupations and addresses of the directors or proposed directors.

(2) The name and address of the auditor, if any.

(3) The term for which any present director and managing director hold office and the manner in and term for which any future director and managing director will be appointed, including information as to any exclusive or special right held in respect of the appointment of any director and managing director.

4. Where shares are offered to the public for subscription, particulars as to—

(*a*) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters—

(i) the purchase price of any property, including goodwill, if any, purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company; (iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters; (iv) working capital;

(v) any other expenditure, stating the nature and purpose thereof and the estimated amount in each case;

and

(*b*) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

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5. The time of the opening of the subscription lists.
6. (1) The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted and the amount, if any, paid on the shares so allotted.
   (2) The amount payable by way of premium, if any, on each share which has been or is to be issued stating the dates of issue, the reasons for any such premium, and, where some shares have been or are to be issued at a premium and other shares at par or at a lower premium, also the reasons for the differentiation, and how any premium has been or is to be disposed of.
7. The substance of any contract or arrangement or proposed contract or arrangement, whereby any option or preferential right of any kind has been or is proposed to be given to any person to subscribe for any shares in or debentures of a company; giving the number, description and amount of any such shares or debentures and including the following particulars of the option or right—
   (a) the period during which it is exercisable;
   (b) the price to be paid for shares or debentures subscribed for under it;
   (c) the consideration, if any, given or to be given for it or for the right to it;
   (d) the names and addresses of the persons to whom it or the right to it was given or, if given to existing members or debenture holders as such, the relevant shares or debentures;
   (e) any other material fact or circumstance relevant to the grant of such option or right.

   Subscribing for shares or debentures shall, for the purpose of this paragraph, include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.
8. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.
9. (1) As respects any property to which this paragraph applies—
   (a) the names and addresses of the vendors;
   (b) the amount payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor;
   (c) short particulars of any transaction relating to the property completed within the preceding two years in which any vendors of the property to the company, or any person who is or was, at the time of the transaction, a promoter or a director or proposed director of the company, had any interest, direct or indirect. When the vendors, or any of them, are a partnership, the members of the partnership shall not be treated as separate vendors.
   (2) The property to which this paragraph applies is property purchased or acquired by the company or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of the issue of the prospectus, other than property—
   (a) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or (*b*)

   as respects which the amount of the purchase money is not material.
10. The amount, if any, paid or payable as purchase money in cash, shares or debentures for any property to which the last foregoing paragraph applies, specifying the amount, if any, payable for goodwill.
11. The amount, if any, and the nature and extent of any consideration, paid within the two preceding years, or payable as commission to any person, including commission so paid or payable to any sub-underwriter, who is a promoter or director or other officer of the company but excluding commission so paid or payable to any other sub-underwriter, for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares in or debentures of the company, the name, occupation and address of each person, particulars of the amounts which each has underwritten or sub-underwritten, of the rate of the commission payable to such underwriting or sub-underwriting, and any other material term or condition of the underwriting or sub-underwriting contract with such person; and when such person is a company, the name of the directors of such company and the nature and extent of any interest, direct or indirect, in such company of any promoter, director or other officer of the company in respect of which the prospectus is issued.
12. The amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.
13. Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter with his name and address, or to any partnership, syndicate or other association of which he is or was at any material time a member, and the consideration for such payment or the giving of such benefit.
14. The dates of, parties to and general nature of every material contract not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus and a reasonable time and place at which any such contract or a copy thereof may be inspected.
15. Full particulars of the nature and extent of the interest, if any, of every director or promoter in the promotion of, or in the property acquired within two years of the date of the prospectus or proposed to be acquired by, the company or, where the interest of such director or promoter consists in being a member of a partnership, company, syndicate or other association of persons, the nature and extent of the interest of such partnership, company, syndicate or other association and the nature and extent of such director's or promoter's interest in the partnership, company, syndicate or other association, with a statement of all sums paid or agreed to be paid to him or to it in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director or otherwise for services rendered by him or by it in connection with the promotion or formation of the company.
16. (1) The number of founders' and management or deferred shares, if any, and any special rights attaching thereto, and the nature and extent of the interest of the holders in the property and profits of the company.
   (2) Particulars of the share capital, nominal, issued, paid up and held in reserve; the number and classes of shares and the nominal value thereof, and if the prospectus invites the public to subscribe for shares in the company, a description of the respective voting rights, preference, conversion and exchange rights, rights to dividends, profits or capital of each class, including redemption rights and rights on liquidation or distribution of capital assets.
17. In the case of a company which has been carrying on business, or of a business which has been carried on, for less than five years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

PART II

REPORTS TO BE SET OUT

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18. (1) A report by the auditors of the company with respect to—
    (a) profits and losses and assets and liabilities, in accordance with subparagraph (2) or (3), as the case requires; and
    (b) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the five financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years;

    and, if no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, containing a statement of that fact. (2) If the company has no subsidiaries, the report shall—
    (a) so far as regards profits and losses, deal with the profits or losses of the company in respect of each of the five financial years immediately preceding the issue of the prospectus; and
    (b) so far as regards assets and liabilities, deal with the assets and liabilities of the company at the last date to which the accounts of the company were made up.

    (3) If the company has subsidiaries, the report shall—
    (a) so far as regards profits and losses, deal separately with the company's profits or losses as provided by subparagraph (2), and in addition, deal—
        (i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the company; or
        (ii) individually with the profits or losses of each subsidiary, so far as they concern members of the company;

        or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company and, so far as they concern members of the company, with the combined profits or losses of its subsidiaries; and
    (b) so far as regards assets and liabilities, deal separately with the company's assets and liabilities as provided by subparagraph (2) and, in addition, deal either—
        (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities;
        or
        (ii) individually with the assets and liabilities of each subsidiary; and shall indicate as respects the assets and liabilities of the subsidiaries the adjustment to be made for persons other than members of the company.
19. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants, who shall be named in the prospectus, upon—
    (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the issue of the prospectus; and
    (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.
20. (1) If—
    (a) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate; and
    (b) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith that body corporate will become a subsidiary of the company;

    a report made by accountants, who shall be named in the prospectus, upon—
    (i) the profits or losses of the other body corporate in respect of each of the five financial years immediately preceding the issue of the prospectus; and
    (ii) the assets and liabilities of the other body corporate at the last date to which the accounts of the body corporate were made up.

    (2) The said report shall—
    (a) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and, for holders of other shares, what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, if the company had at all material times held the shares to be acquired; and
    (b) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by subparagraph (3) of paragraph 18 of this Schedule in relation to the company and its subsidiaries.

PART III

PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE

21. Paragraph 2 and paragraph 12, so far as it relates to preliminary expenses, and paragraph 15 of this Schedule shall not apply in the case of a prospectus issued more than three years after the date at which the company is entitled to commence business.
22. Every person shall, for the purpose of this Schedule, be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—
    (a) the purchase money is not fully paid at the date of the issue of the prospectus; or
    (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or
    (c) the contract depends for its validity or fulfilment on the result of that issue.
23. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchase" included a sub-lessee.
24. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.
25. The expression "financial year" in Part II of this Schedule means the year in respect of which the accounts of the company or of the

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business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of that Part of this Schedule be deemed to be a financial year.

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

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

FIFTH SCHEDULE (Sections 66, 355 and 361)

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A COMPANY WHICH DOES NOT ISSUE A PROSPECTUS OR

WHICH DOES NOT GO TO ALLOTMENT ON A PROSPECTUS ISSUED, AND REPORTS TO BE SET OUT THEREIN

PART I

FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN

Companies Act [*Chapter 24:03*]

Statement in lieu of Prospectus delivered for registration by

.....

(Insert the name of the Company)

Pursuant to section 66 of the Companies Act [*Chapter 24:03*].

Delivered for registration by .....

I. Names, descriptions and addresses of directors or proposed directors.

II. (*a*) The nominal share capital of the company. Divided into..... (*b*) Amount, if any, of above capital which consists of redeemable preference shares.....

$
Shares of $ each
Shares of $ each
Shares of $ each
Shares of $ each

(*c*) The earliest date on which the company has power to redeem these shares.

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

IV. (*a*) Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.

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

(*b*) The consideration for the intended issue of those shares and debentures.

3. .....debenture $
4. .....Consideration:

V. The substance of any contract or arrangement or proposed contract or arrangement, whereby any option or preferential right of any kind has been or is proposed to be given to any person to subscribe for any shares in or debentures of a company or to acquire them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale; giving the number, description and amount of any such shares or debentures and including the following particulars of the option or right—

1.
2. Shares of $ and Debentures of $

(a) The period during which it is exercisable. 3. Until
(b) The price to be paid for shares or debentures subscribed for under it. 4.
(c) The consideration, if any, given or to be given for it or for the right to it. 5. Consideration:
(d) The names and addresses of the person to whom it or the right to it was given 6. Names and or if given to existing members or debenture holders as such, the relevant Addresses:
shares or debentures.
(e) Any other material fact or circumstances relevant to the grant of such option 7. or right.

VI. (*a*) Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired, by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material.

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

(c) The amount payable by way of premium, if any, on each share which has been or is to be issued stating the reasons for any such premium and where some shares have been or are to be issued at a premium and other shares at a lesser or no premium, also the reasons for the differentiation, and how any premium is to be or has been disposed of.

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

Cash.....$

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Shares.....$
Debentures.....$

Goodwill.....$ ____

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

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

(b) Rate of commission ..... Rate *per centum.*

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

VIII. (*a*) Estimated amount of preliminary expenses

(b) By whom those expenses have been paid or are payable ..... $

(c) Amount paid or intended to be paid to any promoter Name of promoter:
Consideration for the payment..... Amount $
Consideration:

(d) Any other benefit given or intended to be given to any promoter Name of promoter:
Nature and value of benefit:
Consideration:
Consideration for giving of benefit .....

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

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

X. Names and addresses of the auditors of the company, if any

XI. Full particulars of the nature and extent of the interest, if any, of every director or promoter in the promotion of, or in the property acquired within two years of the date of the prospectus or proposed to be acquired by, the company, or where the interest of such director or promoter consists in being a member of a partnership, company, syndicate or other association of persons, the nature and extent of the interest of such partnership, company, syndicate or other association and the nature and extent of such director's or promoter's interest in the partnership company, syndicate or other association, with a statement of all sums paid or agreed to be paid to him or to it in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director or otherwise for services rendered by him or by it in connection with the promotion or formation of the company.

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

.....

.....

Date.....

.....

PART II

REPORTS TO BE SET OUT

1. Where it is proposed to acquire a business, a report made by accountants, who shall be named in the statement, upon—
   (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar; and
   (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.
2. (1) Where it is proposed to acquire shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by accountants, who shall be named in the statement, with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with subparagraph (2) or (3) as the case requires, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

   (2) If the other body corporate has no subsidiaries, the report referred to in subparagraph (1) shall—
   (a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar;
   (b) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate at the last date to which the accounts of the body corporate were made up.

   (3) If the other body corporate has subsidiaries, the report referred to in subparagraph (1) shall—
   (*a*) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by subparagraph (2), and in addition deal—
   (i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate; or (ii) individually with the profits or losses of each subsidiary, so far as they concern members of the other body corporate; or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the

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other body corporate and,

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

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

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

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

PART III

PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE

3. In this Schedule the expression "vendor" includes a vendor as defined in Part III of the Fourth Schedule and the expression "financial year" has the meaning assigned to it in that Part of that Schedule.
4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five years, the accounts of the business or body corporate have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.
5. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the person making the report necessary or shall make those adjustments and indicate that adjustments have been made.
6. Any report by accountants required by Part II of this Schedule shall not be made by any accountant who is an officer or servant, or a partner or employer of or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

SIXTH SCHEDULE (Sections 123, 355 and 361)

FORM OF ANNUAL RETURN OF COMPANY

THE COMPANIES ACT [*Chapter 24:03*]

FORM OF ANNUAL RETURN OF A COMPANY

Annual Return of the ..... Company, Limited, made up to the date of the Annual General Meeting.

Date of Meeting ..... (Adjourned to .....)

The address of the registered office of the company is:—

.....

The address at which the register of members is kept (if not kept at the registered office):—

.....

.....

A. Summary of Share Capital and Debentures

(a) Nominal Share Capital

Nominal share capital $..... divided into:

(Insert number and class)

.... shares of ..... each

.... shares of ..... each

.... shares of ..... each

.... shares of ..... each

(b) Issued Share Capital and Debentures

	Number	*Class*
Number of shares of each class taken up to the date of this return.	.....	..... shares
	.....	..... shares
	.....	..... shares
	.....	..... shares
Number of shares of each class issued subject to payment wholly in cash.	.....	..... shares
	.....	..... shares
	.....	..... shares
	.....	..... shares
Number of shares of each class issued as fully paid up for a consideration other than cash.	.....	..... shares
	.....	..... shares
	.....	..... shares
	.....	..... shares
The nature of the consideration given for such shares.	.....	.....

Number *Class*

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Number of shares of each class issued as partly paid up for a consideration other than cash and extent to which each such share is so paid up.

.... shares issued as paid up to the extent of $ ..... per share

.... shares issued as paid up to the extent of $ ..... per share

.... shares issued as paid up to the extent of $ ..... per share

.... shares issued as paid up to the extent of $ ..... per share

The nature of the consideration given for such shares. .....

.....

Number of shares, if any, of each class issued at a discount.

.... shares

.... shares

.... shares

.... shares

Amount of discount on the issue of shares which has not been written off at the date of this return. ..... $.....

Amount called up on number of shares of $..... per share on ....shares each class.

$..... per share on ....shares

$..... per share on ....shares

$..... per share on ....shares

Total amount of calls received, including payments on application and allotment and any sums received on shares forfeited..... $.....

Total amount, if any, agreed to be considered as paid on number of shares of each class issued as fully paid up for a consideration other than cash } { ..... shares ..... shares ..... shares .... shares .... $..... on .....

Total amount, if any, agreed to be considered as paid on number of shares of each class issued as partly paid up for a consideration other than cash. } { ..... shares ..... shares ..... shares .... shares .... $..... on .....

Total amount of calls unpaid $.....

Total amount of the sums, if any, paid by way of commission in respect of any shares or debentures $.....

Number *Class*

Total amount of the sums, if any, allowed by way of discount in respect of any debentures since the date of their last return

$.....

Total number of shares of each class forfeited

.... shares

.... shares

.... shares

.... shares

Total amount paid, if any, on shares forfeited $.....

B. Particulars of Directors, Auditors and Secretaries

Names and Addresses of the Directors, Auditors and Secretaries of the ....., Limited, on the ..... day of ....., 19.....

Directors

Names	Addresses	Other Directorships

Auditors

Names	Addresses

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Secretary

Names	Addresses

.....Director

.....Secretary

Copy of Last Audited Balance Sheet and Accounts of the Company (where required in terms of section 123 of the Act.)

Note: This return must include a copy, certified both by a Director and by the Secretary of the Company to be a true copy, of every balance sheet (including every document required by law to be annexed to the balance sheet) laid before the company in general meeting during the period to which the summary relates, and, in addition, a copy, certified as aforesaid, of the report of the auditors on, and of the report of the directors accompanying, such balance sheet.

Certificates to be given by a Private Company

A.—We certify—

(i) that the Company has not since the date of the incorporation of the Company/the last Annual Return* issued any invitation to the public to subscribe for any shares or debentures of the Company;

*Delete whichever is inappropriate.

(ii) the number of members of the company is .....

.....
Director

.....
Secretary

B.—Should the number of members of the Company exceed fifty, the following certificate is required:—

We certify that the excess of members of the Company above fifty consists wholly of persons who are in the employment of the Company and/or of persons who, having been formerly in the employment of the Company, were while in such employment, and have continued after the determination of such employment to be, members of the Company.

.....
Director

.....
Secretary

SEVENTH SCHEDULE (Sections 226, 355 and 361)

FEES

FIRST TABLE

TABLE OF FEES TO BE PAID BY A COMPANY (OTHER THAN A FOREIGN COMPANY) UNDER THIS ACT

[Table substituted by s.i 23 of 2009]

Matter or proceeding *Fee*

US$

1. For registration of a company for every US$100,00 or portion of US$100 of the capital of the company 5

With a minimum fee of—

(a) in the case of a private company or a non-profit company 600,00

(b) in the case of any other company 1 000,00

2. For registration of alteration in company's memorandum or articles of association 5

3. For registration of any increase of capital made after a company's first registration, for every US$100,00

or portion thereof of such additional capital— 5

Subject to a minimum fee of 200

4. For registration of any statement in lieu of the prospectus pursuant to section 35 or 66 600

5. —

(a) Examination of prospectus in pursuant to section 35 or 66 600

(b) For registration of any prospectus in pursuant of section 56l% o the

total

6. On each application for search as to availability of a name or names to be adopted by or for a company, 5

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including a reservation of any such name or names

SECOND TABLE

FEES TO BE PAID BY A FOREIGN COMPANY UNDER THIS ACT

[Table substituted by s.i 23 of 2009]

Matter or proceeding	*Fee*
US$ l. For registration of the charter, statutes or memorandum and articles of the company or other instrument consisting or defining the constitution of the company	1 000
2. For the registration of the prospectus of the company	800
3. For registration of any return in terms of section 330(5) of this Act, setting out alteration in company's charter, directors, address, etc	800
4. For delivery of the annual return of a foreign company	800

THIRD TABLE

FEES TO BE PAID BY ANY COMPANY UNDER THIS ACT

[Table substituted by s.i 23 of 2009]

Matter or proceeding	*Fee* US$
1. For delivery to the Registrar of any annual return pursuant to section 123 or section 330 (8) of this Act—	
(a) where the share capital of the company does not exceed 1 000	10
(*b*) where the share capital of the company exceeds 1 000 plus, each US$1 000 or part thereof of the issued share capital in excess of US$1 000.	10
5 subject to a maximum of—	—
2. For notice and registration of change of name	100
3. For delivery to the Registrar of any return, document or notice required to be lodged with the Registrar pursuant to this Act and not otherwise provided for:	100
4. For an application for an extension of the period within which to hold the company's annual general meeting	10
5. For every report prepared for the court by the Registrar	50
6. For any certificate issued by the Registrar	100
7. For each entry extra from any register for publication in a newspaper or periodical	10
8. For a copy of any document, per page	1
9. For certifying any document	20
10. For a search conducted—	
(a) on each file	1
(b) by computer	5
11. Application for conversion of a private business corporation to a private limited company	600
12. Registration of a resolution to convert a private company to a public company and vice versa	600
13. Penalty for late holding of annual general meeting, per day 10 subject to a maximum of	200
14. For any act done by the Registrar not referred to elsewhere in this Schedule	50
15. For any rental of a lodging box, per year or part thereof	600
16. Registration as a consultant per year or part thereof	600
17. Filing of an objection	100
18. Request for a hearing	100

FOURTH TABLE

Table of Fees to be Paid to Master in Connection with Winding Up or Judicial Management of Company

(1) On the gross assets, including income and any security taken over by a creditor, dealt with in any liquidation account in respect of a company being wound up by the court or subject to a creditors' voluntary winding up, a fee of *two per centum* of the gross proceeds or gross value of such assets:

Provided that, where a company has been placed under judicial management and is thereafter wound up, the fee shall be reduced to one and one half *per centum*.

(2) On the gross assets, including income, dealt with in any liquidation account in respect of a company being wound up as a members' voluntary winding up, a fee of one half *per centum* of the gross proceeds or gross value of such assets

(3) On the gross value of assets owned by a company which has been placed under judicial management a fee of one half *per centum* of such gross value which value shall be determined by the

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Master by reference to the reports or other information which the judicial manager is required to submit to the Master in terms of paragraph (*b*) of subsection (1) of section 301

(4) For every report prepared by the Master, such fee as the Master may fix, taking into account the length and complexity of the report—

minimum	$4
maximum	$40

(5) Inspection of documents in respect of one company by a person other than the liquidator or judicial manager of that company or by the agent of such liquidator or judicial manager. $1,00

(6) Making a copy of any document, per page—

(a) by photostatic means 50 cents

(b) by original type $1,00

(c) by duplicated or printed copy type 25 cents

(7) Supplying, upon request, transcripts of shorthand notes and of documents in respect of any examination under the Act, per page or part thereof—

(a) for the first copy supplied to any party $1,00

(b) for the second and subsequent copies made at the same time and supplied to the same party requesting the first copy 25 cents

FIFTH TABLE

Table of Fees Payable to Liquidator

(1) Where the appointment is provisional and— (*a*) the petition is withdrawn or dismissed; or (*b*) the winding-up order is made but the provisional liquidator is not continued as liquidator; a fee to be taxed by the Master, with due regard to the special circumstances of the case

(2) Where a liquidator is appointed before the 1st May, 1986, to liquidate the company he shall be entitled—

(a) to remuneration at the following tariffs—

(i) on the proceeds of, and any income or rentals arising from any property which was subject to a special mortgage, landlord's legal hypothec, pledge or right of retention, in respect of the gross amount reflected in each encumbered asset account—

A. on the first $5 000 or fraction thereof 7½ *per centum*
B. on the next $10 000 5 *per centum*
C. on any amount in excess of $15 000 2½ *per centum*
D. minimum fee $15

(ii) on the gross amount of the free residue of the company, including any surplus brought into the free residue from an encumbered asset account—

A. on the first $5 000 12½ *per centum*
B. on the next $10 000 10 *per centum*
C. on the next $10 000 7½ *per centum*
D. on any amount in excess of $25 000 5 *per centum*
E. minimum fee $150

(iii) on the gross turnover of any trading or carrying on of business—

A. on the first $5 000 10 *per centum*
B. on any excess over $5 000 5 *per centum*

(iv) on the value of any asset taken over by a creditor with the consent of the liquidator— 2½ *per centum*
minimum fee $10

(v) on the movable property subject to lease-hire, where the value of the movable property—

A. does not exceed $1 000 $25
B. is more than $1 000 but does not exceed $5 000 $50
C. is more than $5 000 but does not exceed $10 000 $100
D. is more than $10 000 but does not exceed $20 000 $200
E. is more than $20 000 $500

(b) to travelling expenses in the discretion of the Master:

Provided that, where the Master is satisfied that there has been no undue delay by the liquidator in the liquidation of the company, the Master may authorize for such liquidator in respect of work

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done on or after the 1st May, 1986, a remuneration in accordance with the tariff set out in item (3) of this Table.

(3) Where a liquidator is appointed on or after the 1st May, 1986, to liquidate the company, he shall be entitled to remuneration at the following tariffs—

(a) on the proceeds of and on any income or rentals arising from any property which was subject to a special mortgage, landlord's legal hypothec, pledge or right of retention in respect of the gross amount reflected in each encumbered asset account—
(i) on the first $5 000 8 *per centum*
(ii) on the next $10 000 6 *per centum*
(iii)on any amount in excess of $15 000 3 *per centum*
(iv) minimum fee $18

(b) on the gross amount of the free residue of the company, including any surplus brought into the free residue from an encumbered
(i) on the first $5 000 13½ *per centum*
(ii) on the next $10 000 11 *per centum*
(iii)on the next $10 000 8½ *per centum*
(iv) on any amount in excess of $25 000 6 *per centum*
(v) minimum fees $150

(c) on the gross turnover of any trading or carrying on of business
(i) on the first $5 000 11 *per centum*
(ii) on any excess over $5 000 6 *per centum*

(d) on the value of any asset taken over by a creditor with the consent of the liquidator 3 *per centum* minimum fee $12

(e) on the movable property subject to lease-hire, where the value of the movable property—
(i) does not exceed $1 000 $30
(ii) is more than $1 000 but does not exceed $5 000 $60
(iii)is more than $5 000 but does not exceed $10 000 $120
(iv) is more than $10 000 but does not exceed $20 000 $240
(v) is more than $20 000 $600

(4) Where the liquidator is appointed for the purpose of carrying out a reconstruction or other scheme by which the affairs of the company are wound up otherwise than by the realization and distribution of the assets, he shall be entitled to a fee calculated as follows on the value of the company's property as estimated in the statement of affairs—

(a) on the first $10 000 or fraction thereof 1½ *per centum* (*b*) on the next $40 000 or fraction thereof 3/5 *per centum*
(c) on the next $50 000 or fraction thereof 3/10 *per centum*
(d) on the next $100 000 or fraction thereof 3/20 *per centum*
(e) thereafter 3/40 *per centum*

(5) A liquidator shall be entitled to recover travelling expenses incurred during the course of his duties at a rate to be determined in the discretion of the Master.

EIGHTH SCHEDULE (Sections 356)

PENALTIES FOR LATE SUBMISSIONS OF DOCUMENTS OR NOTICES

If the document or notice be lodged within the under-mentioned periods after the date when the act in notice given took place	*Penalty to be paid respect of which the document is to be furnished or*
(a) Three months	Twice the prescribed fee
(b) Six months.....	Three times the prescribed fee
(c) Twelve months.....	Four times the prescribed fee
(d) More than twelve months	Five times the prescribed fee