COMPANIES AND OTHER BUSINESS ENTITIES ACT
[*CHAPTER 24:31*]

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ZIMBABWE

ACT

To provide for the constitution, incorporation, registration, management and internal administration of companies and winding up of companies and

private business corporations; to enable the voluntary registration of other business entities; to ensure the removal of defunct companies and private business corporations by re-registering all existing companies and private business corporations; to repeal the Companies Act [*Chapter 24:03*] and the Private Business Corporations Act [*Chapter 24:11*]; and to provide for matters connected therewith or incidental thereto.

ENACTED by the Parliament and the President of Zimbabwe

CHAPTER I

PRELIMINARY, ADMINISTRATION AND COMMON PROVISIONS PART I

PRELIMINARY

1 Short title and date of commencement

This Act may be cited as the Companies and Other Business Entities Act [*Chapter 24:31*], and shall commence on the ninetieth day after the date of its promulgation. **2 Interpretation**

(1) In this Act—

"accounting officer" means a person chosen by the members of a private business corporation to do the tasks specified in Chapter IV Part I;

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

"articles" means a company's articles of association registered in accordance with section 81 ("Articles of association and alteration thereof");

"associate" or "associated", for the purposes of section 43 ("Power of inspectors to investigate related registered or unregistered business entities"), 44 ("Production of records and evidence on investigation"), 56 ("Transactions involving conflict of interest"), 57 ("Duty to disclose conflict of interest") or 73 ("Prohibition of concealment of beneficial

ownership"), has the meaning given to it by section 3 ("When persons deemed to be associates and when persons deemed to control companies");

"beneficial owner" in relation to a company means a natural person who ultimately owns or controls the rights to or benefits from property or a person who exercises ultimate effective control over a legal person, and, more specifically, refers to a natural person who—

(a) directly or indirectly holds more than twenty *per centum* of the company's shares; or

(b) directly or indirectly holds more than twenty *per centum* of the company's voting rights; or

(c) directly or indirectly holds the right to appoint or remove a majority of the company's directors; or

(d) otherwise exercises significant influence or has the right to exercise control;

"business entity" means a company, a private business corporation, a syndicate, a partnership or any other association of persons, whether corporate or unincorporated, which has a business character;

"business entity incorporation agent" and "business entity service provider" have the meanings given to those terms in section 292 ("Business entity incorporation agents and business entity service providers")(1);

"by-laws" means the by-laws of a private business corporation adopted or altered in terms of section 266 ("By-laws");

"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;

"Chief Registrar" means the Chief Registrar of Companies and Other Business Entities appointed in terms of section 6 ("Office of Companies for the Registration of

and Other Business Entities; Registrar, registries and inspectorate")(3)(a);

"civil penalty order" means an order issued in terms of Part I ("Civil Penalty Orders") of Chapter VII ("General");

"civil penalty provision" means any provision of this Act for which a civil penalty; defaulter is liable to a

"Companies Office" or "Office" means the Office for the Registration of Companies and Business Entities established by section 6 ("Office and Other Business Entities; Registrar, registries and inspectorate");

"company" means—

(a) a company incorporated under this Act or a repealed law;

(b) a foreign company, to the extent that the provisions of this Act apply to such companies;

"company limited by guarantee" means a company described in section 76 ("Mode of forming a company")(b);

"company limited by shares" means a company described in section 76 (a);

"company secretary" or "secretary" includes any official or her title, whatever his normally performed by a secretary of a company;

"constitutive documents", in relation to—

(a) a company other than a foreign company, means its memorandum and articles;

(b) a foreign company, means its charter, statutes, memorandum, articles or other instrument that constitutes it or defines its scope;

(c) a private business corporation, means its incorporation statement and by-laws;

(d) a business entity other than a company or a private business

corporation, means the constitution or agreement that constitutes it or defines its scope;

"controlling member", in relation to a private business corporation—

(a) means the member having a percentage interest that enables him or her to control the corporation; and

(b) when used in the plural, means any two or more members who, between them, have a combined percentage interest that enables them to control the corporation;

"co-operative company" has the meaning given it by section 87 ("Definition of co-operative company and consequences of default in complying with conditions for co-operative company");

"court", in relation to—

(a) any offence (which means the Magistrate's court in relation to this Act shall have jurisdiction Magistrates Court for the purpose of this Act even if under the offence exceeds its criminal jurisdiction [*Chapter 7:10*] the penalty for such offence);

(b) the recovery of any civil penalty means a Magistrates court (which for this purpose shall have jurisdiction in relation to matter even if under the Magistrates Court Act [*Chapter 7:10*] that matter exceeds its civil monetary jurisdiction);

(c) sections 162 ("Power of court to rectify register"), 233 ('Dissenting shareholders' appraisal rights"), 255 ("Cessation of membership by order of court") and 269 ("Protection against unfair prejudice"), the magistrates court having jurisdiction in the area where the registered business entity concerned has its registered office or physical address, as the case may be;

(d) contexts other than those mentioned above, in whichever court has jurisdiction means the matter;

"cumulative penalty clause" has the meaning given to it in section 294 ("Power of Registrar to issue civil penalty orders and categories thereof");

"debenture" includes debenture stock and bonds;

"director" includes any person occupying the position of director or alternate

director of a company, whatever his or her title;

"distribution", in relation to a company, means a direct or indirect—

(a) transfer by a company of money or other property or shares, to or for the benefit of its own shareholders in their capacity as members or shareholders of that company or of another company within the same group of companies, whether—

(i) in the form of a dividend; or

(ii) as a payment in lieu of a capitalisation share, as contemplated in section 137 ("Capitalisation shares"); or

(iii) in consideration for the acquisition—

A. by the company of any of its shares, as contemplated in section 128 ("Power to purchase or own company shares"); or

B. by any company within the same group of companies, of any shares of a company within that group of companies; or

(iv) otherwise in respect of any of the shares of another company within the same group of companies, subject to section 233 ("Dissenting shareholders' appraisal rights") (17);

(b) incurrence of a debt or other obligation by a company for the benefit of one or more holders of any of the shares of that company or of another company within the same group of companies; or

(c) forgiveness or waiver by a company of a debt or other obligation owed to the company by one or more holders of any of the shares of that company or of another company within the same group of companies, but does not include any such action taken upon the final liquidation of the company;

"document" means any document or material on which information is recorded or marked and which is capable of being read or understood by a person, or by an electronic system or other device, and includes a register, index, minute and financial record;

"effective date" means the date of commencement of this Act specified in section 1("Short title and commencement");

"electronic record" has the meaning given to it in section 9 ("Form of registers and other documents");

"electronic registry" has the meaning given to it in section 279 ("Interpretation in Chapter V");

"emoluments", means all or any of the items comprehended by the expression "emoluments" in section 215 ("Particulars of directors' salaries and accounts pensions")(2);

"equity share capital" has the meaning given to it in section 185 ("Meaning of holding company, subsidiary and wholly owned") (6);

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

"financial records", in relation to—

(a) a company, mean the records referred to in section 182 ("Keeping of financial records")(1) (a), (b) and (c), known as the "books of account";

(b) private business corporation mean the records referred to in section 271 ("Financial records")(2);

"financial statements", in relation to—

(a) a company, mean any of the following—

(i) the statement of comprehensive income (inclusive of what is commonly known as a profit and loss account or income and expenditure account);

(ii) the statement of financial position, otherwise known as the balance sheet;

(iii) audited or unaudited monthly, quarterly or annual financial accounts;

(iv) financial information in a circular, prospectus or provisional announcements of results that an actual

or prospective creditor or holder of the company's securities or the Office or Securities and Exchange Commission may reasonably be expected to rely on;

(v) any other statement that may be prescribed under this Act or the Public Accountants and Auditors Act [*Chapter 27:12*] in relation to companies or private business corporations;

(b) in relation to any of the financial statements referred to in section 273 ("Annual financial statements");

"financial year", in relation to a business entity, means the period covered by its financial statements laid before its members in a general meeting, whether that period is year or not;

"fixed penalty clause" has the meaning given to it in section 294 ("Power of Registrar to issue civil penalty orders and categories thereof");

"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 a state or territory other than Zimbabwe;

"foreign language" means any language other than an officially recognised language;

"generally accepted accounting practices" means accounting practices and procedures that are consistent with this Act and are recognised by the Public Accountants and Auditors Board established by section 5 ("Entities that maybe registered and effect of registration") of the Public Accountants and Auditors Act [*Chapter 27:12*];

"group accounts" has the meaning given to it by section 186 ("Obligation to lay group accounts before holding company")(1);

"holding company" means a holding company as defined by section 185 ("Meaning of holding company, subsidiary and wholly owned subsidiary");

"identity document" means—

(a) a document issued to a person in terms of section 7(1) of the National Registration Act [*Chapter 10:17*] or a passport or drivers licence issued by the Government of Zimbabwe; or

(b) a passport, identity document or drivers licence issued by the government of a foreign country;

"incorporation statement" means the incorporation statement of a private business corporation registered in terms of section 248 ("Incorporation statement, registration of private business corporation") or 249 ("Registration of amended incorporation statement");

"inspector" means an officer of the Companies Office responsible for assisting the Registrar in terms of this Act and conducting investigations and generally ensuring compliance with this Act;

"interest", in relation to a member of a private business corporation, means the member's percentage interest in the private business corporation as stated in its incorporation statement;

"internal rules", in relation to—

(a) a company, means its articles and, if appropriate, any rules binding on the company by virtue of a shareholder's agreement;

(b) a private business corporation, means its by-laws;

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

"level", in relation to a penalty imposed under a civil penalty order, means a level on the Standard Scale of Fines referred to in section 280 of the Criminal Law Code, as amended or replaced from time to time;

"local securities exchange" means a stock exchange registered in terms of the Securities and Exchange Act [*Chapter 24:25*];

"manager" in relation to a company or private business corporation, means a person (whatever his or her title and whether or not he or she is a director) who is the principal officer and agent of the company or corporation with authority to represent and bind the company or corporation in transactions with other parties;

"member", in relation to—

(a) a company, has the meaning given to it in section 20 ("Effect of registration and limitation of liability of members of private business corporations")(3)(a);

(b) a private business corporation, means a person who has an interest in a private business corporation;

"memorandum" means a company's memorandum of association registered

in terms of section 77 of company”); (“Memorandum

“minimum subscription” has the meaning given to it by section 115 of (“Prohibition unless minimum subscription received”)(2);

“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;

“near relative” means a person (for the purpose of section 3)—

(a) a spouse of that person; or

(b) a parent or step-mother; of that person, including a step-father or

(c) a child that (natural or adopted) or step-child of person; or

(d) a brother, half-brother, step-brother, sister, half-sister or step-sister of that person; or

(e) the adopter or adopters of that person; or

(f) the spouse in a relative of a person referred to paragraph (c), (d) or (e);

“officer” in relation to a company, means an officer appointed by the company’s board of directors as provided in section 221 and includes a director, manager or secretary; (“Officers of company”);

“officer in default”, who is in relation to a civil penalty provision, means—

(a) an officer or employee of a company; or

(b) a member or employee of a private business corporation; who knowingly or permitted the default, refusal, or contravention mentioned in the authorised or provision; omission

"officially recognised language" means any one of the languages of the Constitution; mentioned in section 7(1)

"ordinary resolution" has the meaning given to it by section 175 ("Special resolutions")(5);

"prescribed" means prescribed by regulations made under this Act;

"prescribed form" means any form set out in a Schedule to this Act or any form prescribed under this Act;

"printed" in relation to words, figures or symbols, means embodied in any readable, material and visible form;

"private business corporation" means a private business corporation incorporated under this Act;

"private company" has the meaning given to it by section 85 ("Definition of private company and consequences of default in complying with conditions for private company");

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

"prospectus" means a prospectus, notice, circular or

advertisement, in printed or electronic form, inviting the public to subscribe for 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 limited by guarantee;

"quoted", in relation to a share, debenture or other security, means that a share, debenture or security are dealings in permitted on a local securities exchange or on a foreign country, and "unquoted" shall be construed accordingly;

"register" without qualification, includes incorporate (in relation to a business corporation) or company register (in relation to a foreign company), as may be appropriate to the context;

"registered business entity" means a company, including a foreign company, or a private business corporation, registered or incorporated in terms of this Act;

"registered user" means a person who is registered as a user of the electronic registry in terms of section 283 ("Registration of registered users and suspension or cancellation of registration");

"Registrar" means—

(a) the Chief Registrar or other registrar appointed in terms of section 6; or

(b) in relation to anything which an officer has been authorised to do on behalf of the Registrar in terms of section 6(4), that officer;

"repealed law" means the Companies Act [*Chapter 24:03*] or the Private Business Corporations Act [*Chapter 24:11*];

"self-actor" means any authorised user of the electronic registry other than a legal practitioner, chartered accountant, chartered secretary, or business entity service

provider entity providers");
referred to incorporation
in section 292 ("Business
agents and business entity service

"serve", record, in
in has section
relation to the 64
any document or
meaning given to it
("Service of documents");

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

"shelf to and
company" it in shelf
has the meaning given
section companies")(1);
293 ("Shell companies

"shell meaning section
company" has the
given to it in
293 (1);

"special it special
notice" has the meaning given to
by section 175 ("Resolutions requiring
notice");

"special resolution" means a resolution passed at a general meeting of a company in accordance with section 175 ("Special resolutions") (1), (2) and (3);

"statement of profits as changes equity other
statement comprehensive income" means a
which, as well as detailing
and losses (or income and expenditure,
the case may be), reflects any
in net assets due to transfer of
holdings, change of ownership, and
factors.

"subsidiary" and "wholly owned subsidiary" have the meanings given to them

by section 185 ("Meaning of holding company, subsidiary and wholly owned subsidiary");

"syndicate" means an association of individuals, companies or other business entities, or other bodies corporate or unincorporated, formed for the purpose of conducting and carrying out some particular business transaction;

"treasury that
share" has the meaning given to
phrase in section 95 ("Legal nature of

company shares and requirement to have shareholders") (5);

"uncertificated share" means a share the title to which is evidenced and transferred without a material certificate;

"unregistered association" means any association of persons whatsoever not registered under any law whether incorporated or unincorporated;

"untrue statement" or "false statement" includes a statement that is misleading in the form and context in which it is made, subject to subsection (4) and (5).

(2) References in this Act to—

(a) the citation of a civil penalty order shall be construed as references to the part of the order in which the Registrar names the defaulter and cites the provision of which the default is alleged to have been made, together with, if necessary, a brief statement of the facts constituting the default;

(b) the clause of a civil penalty order shall be construed as references to the part of the order that fixes the penalty to be paid by the defaulter, and "fixed penalty clause" and "cumulative penalty clause" shall be construed accordingly;

(c) the remediation clause of a civil penalty order shall be construed as references to the part of the order that stipulates the remedial action to be taken by the defaulter.

(3) Where a civil penalty provision states that any person or entity is liable to a civil penalty order, the provision shall be construed as meaning that the Registrar may serve a civil penalty order on that person or entity.

(4) For the purposes of this Act, a person is to be regarded by or in respect of the public, despite that person being a member of a company or a purchaser of goods from the company.

(5) An untrue statement is regarded to have been included in a prospectus, written statement, or summary directing a person to either a prospectus or written statement,

if it is contained in any report or memorandum— (a) that appears on the face of the prospectus, written statement, or summary: or

(b) that is incorporated by reference within, or has attached to or accompanies, the prospectus, written statement or summary.

3 When persons deemed to be associates and when persons deemed to control companies

(1) This section applies where it is necessary for the purposes of section 43 ("Power of inspectors to investigate related registered or unregistered business entities"), 44 ("Production of records and evidence on investigation"), 71 ("Prohibition of concealment of beneficial ownership") or 56 ("Transactions involving conflicts of interest"), 57 ("Duty to disclose conflict of interest") or 58 ("Avoidance and other remedies for conflict-of-interest transactions"), or any regulations that apply this section to the determination of any matter, or whether or not a prescribed entity is associated with or related to another person or whether or not a person controls a company,

(2) Where a person, other than an employee, acts in accordance with the directions, requests, suggestions or wishes of another person, whether or not the persons are in a business relationship and whether or not those directions, requests, suggestions or wishes are communicated to the first-mentioned person, both persons shall be treated as associates of each other for the purposes of this Act.

(3) Without limiting the generality of subsection (2), the following shall be treated as a person's associate—

(a) a near relative of the person, unless the Registrar is satisfied that neither person acts in accordance with the directions, requests, suggestions or wishes of the other;

(b) a partner of the person, unless a court or the Registrar is satisfied that neither person acts in accordance with the directions, requests, suggestions or wishes of the other;

(c) a partnership in which the person is a partner, if the person, either alone or together with one or more associates, controls fifty *per centum* or more of the rights to the partnership's income or capital;

(d) the trustee of a trust under which the person, or an associate of the person, benefits or may benefit;

(e) a company which is controlled by the person, either alone or together with one or more associates;

(f) where the person is a partnership, a partner in the partnership who, either alone or together with one or more associates, controls fifty *per centum* or more of the rights to the partnership's income or capital;

(g) where the person is the trustee of a trust, any person who benefits or may benefit under the other trust;

(h) where the person is a company—

(i) a person who, either alone or together with one or more associates, controls the company; or

(ii) another company which is controlled by a person referred to in subparagraph (i), either alone or together with one or more associates.

(4) For the purposes of this section, a company shall be deemed to be controlled by a person if the person, either alone or together with one or more associates or nominees—

(a) controls the majority of the voting rights attaching to all the shares in the company, whether directly or through one or more companies, interposed partnerships or trusts;

(b) has any direct or indirect influence that, if exercised, results in him or her or his or her associates or nominees factually controlling the company.

4 Non-application of Act to certain institutions

(1) Nothing contained in this Act shall apply to any banking institution, building society, insurer, micro-finance institution, co-operative society or other entity, the formation, registration and management whereof are governed by any other enactment, save as may be otherwise expressly provided in this Act or in such enactment. (2) This Act shall not be construed as applying to a trade union or employers' organisation.

(3) In this section "employers organisation" and "trade union" have the meanings given to them respectively by section 2 of the Labour Act [*Chapter 28:01*].

5 Registrable business entities

(1) The following types of business entities are registrable under this Act—

(a) a public limited company;

(b) a private limited company;

(c) a company limited by guarantee;

(d) a co-operative company;

(e) a foreign company;

(f) a private business corporation;

(g) subject to section 278 ("Voluntary registration of partnership agreements, etc."), partnerships, syndicates, joint ventures and certain associations of persons.

(2) The effects of registering the entities referred to in subsection (1) shall be as set out in this Act.

PART II

administration

6 Office for the Registration of Companies and Other Business Entities; Registrar, registries and inspectorate

(1) For the registration of companies and other business entities registrable under this Act, there is hereby established the Office for the Registration

of Companies and Other Business Entities ("the Companies Office"), which shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of doing anything that bodies corporate may do by law.

(2) The Companies Office shall be located in Harare and Bulawayo and other locations that the Minister may designate.

(3) There shall be—

(a) a Chief Registrar of Companies and Other Business Entities, who shall exercise general supervision and direction of the Companies Office; and

(b) such numbers of registrars, assistant registrars and other officers as may be necessary for the purposes of this Act, and

(c) such number of inspectors as may be necessary for the purposes of this Act;

whose offices shall be public offices and form part of the Civil Service.

(4) The Chief Registrar of Companies and Other Business Entities may in writing authorise an assistant registrar, inspector or other officer referred to in subsection (3) (b) or (c) to exercise any of the functions of a Registrar under this Act.

(5) Subsection (4) shall not be construed as limiting the power of the Chief Registrar of Companies and Other Business Entities to delegate functions under any other law.

(6) The Chief Registrar shall provide every inspector with a document identifying him or her as an inspector and shall produce it on request by any interested person.

7 Funds of Companies Office

The funds of the Companies Office shall consist of—

(a) such funds as may be appropriated for the purpose of the Companies Office by Parliament; and

(b) such portion of the Deeds Retention Fund established under section 18 of the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009) (inclusive of fees

and civil penalties levied in terms of this Act) which must be credited to the office in terms of the constitution of that fund; and

(c) funds that may accrue to the Office in virtue of section 53 (“Undistributed property of dissolved business or defunct company or private corporation: *bona vacantia* orders”); and

(d) such donations as are approved by the Minister.

8 Annual and other reports of Companies Office

(1) The Chief Registrar shall, on behalf of the Companies Office, no later than sixty days after the end of each financial year submit to the Minister an annual report on the operations and activities of the Companies Office during the preceding financial year.

(2) In addition, the Chief Registrar, on behalf of the Companies Office—

(a) shall submit to the Minister any other report, and provide him or her with any other information, that he or she may require in regard to the operations and activities of the Companies and Office; and

(b) may submit to the Companies Office any other report that it considers desirable.

(3) The Minister shall table before Parliament all reports submitted to him or her by the Chief Registrar under subsections (1) and (2) within ninety days.

9 Form of registers and other documents

(1) Any register, index, minutes or financial records required by this Act to be kept by a registered business entity may be kept either by making entries in written form, in bound and legible form, paginated, indexed and together (thereafter in this section called a “bound recording by any other means, the matters in question” or written or electronic and easily retrievable, visible, or readable and referable manner.

(2) Where any such register, index, minutes, financial statements or other document required by this Act to be kept by a registered business entity is not kept by a making entries in bound record, but by some other means, adequate precautions shall be taken for guarding against falsification and for facilitating their retrieval.

(3) Any such register, index, minutes, financial statements and document required by this Act to be kept by a registered business entity and every document required by this Act or by an entity's constitutive documents to be issued or circulated by a registered business entity shall be in the English language or in any officially recognised language:

Provided that where such a record is not in the English language and is required to be furnished to the Registrar, an auditor or any other person, the business entity shall provide the Registrar, auditor or other person with a certified English translation.

(4) If it comes to the notice of the Registrar that the default is made in complying with—

(a) subsection (1) the Registrar may serve a category 4 civil penalty order upon the defaulting registered business entity, suspension of which is conditioned upon the defaulting entity (no later than seven days from the date of service of the civil penalty order) binding or embodying all relevant records that were in existence and satisfaction of the Registrar in relation to a period of three years or if the entity has been incorporated for less than three years, from the date of its incorporation or registration;

(b) subsection (2) the Registrar may serve a category 2 civil penalty order upon the defaulting registered business entity, suspension of which is conditioned upon the defaulting entity (no later than seven days from the date of service of the civil penalty order) instituting adequate precautions to the satisfaction of the Registrar, guarding against falsification or facilitating their retrieval.

(c) subsection (3) the Registrar may serve a category 4 civil penalty order, the suspension of which is conditioned upon the defaulting registered business entity (no later than seven days from the date of service of the civil penalty order) furnishing the required translation.

(5) If a registered business entity is a registered user of the electronic registry, it may, subject to section 282 ("User agreements"), keep the documents referred to in this section in electronic or digital form, in which event the provisions of this section shall not apply to such company with respect to the transfer of shares.

10 Forms and tables and application of certain Schedules and licences

(1) Subject to section 302 ("Alteration of fees, forms and certain provisions of this Act"), the forms and tables set forth in the First Schedule of memorandum of association of a company"), Second Schedule ("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"), Third Schedule ("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") and Fourth Schedule ("Form of annual return of company") 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 302 and to the discretion by this Act conferred on the Registrar, there shall be paid in respect of the several matters or services mentioned in the Fifth Schedule ("Fees") specified therein.

11 Registrar's power to refuse registration

If the Registrar is satisfied that any document submitted to him or her—

(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 (d) contains any error, alteration or erasure; he or she shall 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.

12 Extension of time for lodging returns, etc.

Whenever by this Act a time is prescribed for filing with or delivering or sending to the Registrar any return, account or other record or for giving notice to him or her of any matter, the Registrar may, on application to him or her before the expiry of

the prescribed time, extend such time for so long as may seem to him or her to be reasonable; and if any prescribed time is extended by the Registrar under this section the provisions of section 298 ("Enforcement of duty to make returns") shall be read as applying to a default in respect of the time as so extended.

13 Proof of certain facts by affidavit

(1) In any civil proceedings or 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 or she is employed in the Companies Office; and

(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 or her, would have been kept; and

(c) no such return or other document has been filed with or delivered to the Registrar, and that he or she has satisfied himself or herself 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.

14 Inspection and copies of documents in Companies 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 Companies Office; and any person may require a certificate of the incorporation or registration of any registered business entity or a copy or extract of any constitutive document or 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 to be a true copy or extract by the Companies Office, certified by the Registrar or assistant registrar, of the hand of all legal proceedings be admissible in evidence as evidence with the original document. Certified copies may be handed into court by the party who desires to avail himself or herself of them.

(3) It shall not be necessary in any legal proceedings for the Registrar himself or herself to produce any original document under him or her by the Registrar, but it kept under this Act sufficient if such document shall be deemed is produced by some person authorised by him or her to do so.

15 Additional copies of returns or documents

(1) Where any document is lodged in or under this Act or transmitted, the person lodging or transmitting the same as and when it is required by or under this Act, lodge or transmit an additional copy or additional copies of the document.

(2) The Minister may in regulations provide in the respective cases whether such additional copy or copies shall be in duplicate original form, or shall be in the form of a clearly legible copy or copies certified in prescribed manner in such regulations or be in the form of an electronic record.

16 Replacement of lost documents

(1) Where a document required to be filed by a registered business entity has been lost, or destroyed, or where the Registrar cannot

locate the file copy of a document, the registered business entity may apply to the Registrar in the prescribed manner for leave to file a copy of the document, and the Registrar, on being satisfied—

(a) that the original document has been lost, defaced or destroyed; and

(b) of the date of the filing of the original document; and

(c) that the copy of the document produced is a correct copy; may certify on that copy that he or she is so satisfied and direct that the copy be filed in the same manner as the original document.

(2)Where the Registrar haslost or cannot locate a document that was filed in the Companies Office, no fee shall be payable for filing a copy of it in terms of subsection (1).

(3) A copy filed in terms of subsection (1) shall have the same effect as the original document.

(4) Where a document required to be issued by the Registrar has been lost, defaced or destroyed, the Registrar shall upon application in the prescribed manner replace the document.

(5) The company secretary shall submit all the contemplated applications in this section together with affidavits as prescribed in the regulations.

(6) If a duplicate certificate has been issued in substitution for a certificate which has been lost, defaced or destroyed, the original certificate if still in existence shall thereupon become void and in the case of a defaced certificate, the applicant for its replacement must return it to the Registrar.

(7) If a certificate which has become void in terms of subsection (6) comes into the possession or custody of any person who knows that a duplicate has been issued in substitution therefor,he or she must without delay deliver or transmit such certificate to the Registrar.

(8) If any person makes a fraudulent application for the replacement for a lost, defaced or

destroyed document or certificate under this section, or if a person contravenes subsection (7), he or she 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.

17 Exemption from liability for acts or omissions of Companies Office and persons employed therein

No act or omission of the Companies Office or the Registrar or any officer, clerk, inspector or other person employed in the Companies Office shall render the Companies Office, the State or the Registrar officer, clerk, inspector or person liable in respect of any loss or damage sustained by any person in consequence of such act or omission unless the act or omission was in bad faith or was due to a want of reasonable care or diligence.

CHAPTER II

Provisions Common to ComPanies and Private Business CorPorations

PART I

General

18 Registration of constitutive documents

(1) The registration of a memorandum and articles of association or an incorporation statement may be done either electronically or manually in accordance with this section.

(2) The electronic registration of constitutive documents shall be done by a person who is either a self-actor or a registered user of the electronic registry.

(3) Where the registration is manual the constitutive documents shall be delivered to the Registrar together with either a duplicate original or a printed notarial copy:

Provided that in the case of a company registered or private business corporation to be in Bulawayo or any other location that the Minister may designate there shall be delivered in addition either a further duplicate original or a further printed notarial copy.

(4) In relation to a company, subject to due compliance with section 199 ("Restrictions on appointment or advertisement of share qualifications of director;" director") that section is applicable) (whenever 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.

(5) In relation to a private business corporation, the Registrar shall, upon payment of the prescribed fee, register any incorporation statement delivered to him or her, if it is in accordance with this Act

(6) On registering the memorandum of association or the incorporation statement as the case may be, the Registrar shall—

(a) assign a registered number to the company or the private business corporation; and

(b) return one copy of the memorandum of association or the incorporation statement to the applicant; and

(c) issue a certificate of incorporation.

(7) The certificate of incorporation or a copy thereof issued in terms of subsection (6)(c) 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 company or private business corporation is duly incorporated under this Act.

19 Incorporation of companies and private business corporations and capacity and powers thereof

A company or a private business corporation shall be incorporated from the date of issue by the Registrar of its certificate of incorporation and the company or private business corporation shall thereupon become a body corporate, with the capacity and powers of a natural person of full legal capacity in so far as a body corporate is capable of having such capacity and exercising such powers, until it is struck off the register or dissolved in terms of the Insolvency Act [*Chapter 6:07*].

20 Effect of registration and limitation of liability of companies and private constitutive documents of business members corporations

(1) Subject to this Act, the constitutive documents of a company or private business corporation shall, when registered, bind the company and the members thereof to the same extent as if they had been signed by each member and undertakings on the part of each member to observe all the provisions of the constitutive documents.

(2) Individual natural persons of full capacity acting in their own right and, subject to section 83 (“Membership of company; personal liability where business carried on with no members”) or section 253 (“Requirements for membership”), other persons be members of a company or private business corporation.

(3) Membership of a company or private business corporation is commenced, evidenced and terminated as follows—

(a) in the case of a company—

(i) the subscribers to the memorandum of the 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;

(ii) 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 and continue to be so until his or her name is removed from it for any reason;

and in either case membership is terminated if the company is dissolved in terms of the Insolvency Act [*Chapter 6:07*];

(b) in the case of a private business corporation—

(i) a member’s membership shall commence on the registration of the incorporation statement or amended incorporation statement in which his or her name and signature as a member first appear;

(ii) unless previously terminated by an order of court made under section 255 (“Cessation of membership by order

of court"), a member's membership shall terminate—

A. on the registration of an amended incorporation statement in which his or her name and signature as a member first appear; or

B. on the dissolution of the private business corporation in terms of the Insolvency Act [*Chapter 6:07*];.

(4) Subject to this Act, the members of a company or a private business corporation shall not, solely by reason of their membership, be liable for the debts or obligations of the company or private business corporation.

(5) All money payable by any member to the company or private business corporation under the constitutive documents or a debt due from him or her thereof shall be to the company or private business corporation.

21 Availability and publicity of constitutive documents

(1) Every company and private business corporation shall send to every member at his or her request, on payment of one United States dollars (or such reasonable amount as the Minister may prescribe for the purposes of this section), or such other amount as the company or private business corporation may fix, or a copy of its constitutive documents, or shall afford to every member or his or her duly authorised agent at reasonable facilities for making a copy of the constitutive documents. his or her own expense

(2) Every company and private business corporation shall keep either at its registered office or its physical address, the original or a certified copy of its constitutive documents together with any amendments.

(3) Any person referred to in subsection (2) is entitled to inspect any document at any reasonable time during normal business hours and, on payment of the reasonable costs thereof, to obtain a copy of any such document.

(4) If it comes to the notice of the Registrar that any company or private business corporation has made default in complying with subsections (1), (2) or (3), the Registrar may serve a category 3 civil penalty order upon the defaulting company or corporation.

22 No constructive notice of constitutive documents or other public documents

The fact that a company's memorandum of association or a private business corporation's incorporation statement or any other constitutive document has been registered in terms of this Act or is available for inspection in terms of this Act, shall not, of itself, be construed as giving any person notice or knowledge of its contents.

23 Copies of constitutive documents to embody alterations

(1) Where an alteration is made in the constitutive documents of a company or a private business corporation, every copy of the constitutive documents issued after the date of the alteration must embody such alteration.

(2) If it comes to the notice of the Registrar that any such alteration has been made, and that the company or private business corporation has at any time after the date of its constitutive documents issued any copy of its constitutive documents which does not embody the alteration, the Registrar may issue a category 3 civil penalty order upon the defaulting company or corporation.

24 Presumption of regularity; liability not affected by fraud

(1) Any person having dealings with a registered business entity or with someone deriving title from a registered business entity shall be entitled to make the following assumptions, and the company or private business corporation and anyone deriving title from it shall be estopped from denying their truth—

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

(b) that every person described in the company's register of directors and secretaries or as a member in its register of members, or every person described as a member in the incorporation statement of the private business

corporation, or in any return delivered to the Registrar by the company or the private business corporation in terms of section 217 ("Register of directors and secretaries") as a director, manager or secretary of the company or member of the private business corporation, has been duly appointed and has authority to exercise the functions customarily exercised by a director, manager or secretary of a company or member of the private business corporation, as the case may be, carrying on business of the kind carried on by the company or the private business corporation;

(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 or she has actual knowledge to the contrary or if he or she 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.

(2) A company or private business corporation shall be bound in terms of subsection (1), notwithstanding that the officer or agent concerned acted fraudulently or forged a document purporting to be sealed or signed on behalf of the company or corporation.

(3) For the avoidance of doubt it is declared that if the registered business entity has a seal, and the entity's constitutive documents require that any execution of a document should be done under its seal, any person having dealings with the entity shall not be assumed to have notice of that fact.

25 Prohibition of undesirable name

(1) The Registrar may refuse to register a company or private business corporation with a name which—

(a) is identical to that under which another company or private business corporation is already registered under this Act, or which is so similar to any such name as to be likely to deceive; or

(b) is likely to mislead the public; or

(c) is blasphemous or indecent or likely to cause offence to any person or class of persons; or

(d) suggests patronage of the Government or some other authority or organisation unless the consent thereof has been obtained; or (e) is undesirable for any other reason.

(2) The Registrar may upon application and payment of such fees as may be prescribed and reserve, for a period not exceeding one month, a name for a company or a private business corporation pending its registration or change of name.

(3) If the Registrar after due inquiry and considering any evidence that may be placed before him or her, considers that a

company or private business corporation is registered, whether originally or by reason of a change of name, by a name which is objectionable for any reason mentioned in subsection (1) (a), (b), (c), (d) or (e), he or she shall serve upon the company or private business corporation a category 2 civil penalty order ordering the company or private business corporation in writing to change its name, and the company or private business corporation shall thereupon do so within a period of six weeks from the date of service of the civil penalty 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 private business corporation or the change of name of the company or private business corporation, as the case may be.

(4) If a company or private business corporation fails to comply with an order made in terms of subsection (3), the Registrar may apply to the High Court for an order to have the name of the company or private business corporation changed.

(5) The High Court, on application by an interested person, shall have the same powers as the Registrar in terms of subsection (1), but shall not be limited in the exercise of its powers by the period of twelve months referred to in the proviso to that subsection.

26 Change of name

(1) A company (by special resolution filed with the Registrar) or private business corporation that wishes to change its name shall first obtain the written approval of the Registrar.

(2) If the Registrar grants written approval for a registered business entity to change its name, the company or private business corporation shall

publish in the *Gazette* and in a daily newspaper circulating in the district in which the registered office of the company or private business corporation is situated an advertisement stating the change of name, and shall then apply for a certificate of change of name.

(3) Where the name of a registered business entity is changed in terms of this section, the Registrar shall enter the new name in the register in place of the former name.

(4) Upon the application in writing of a registered business entity that has changed its name in terms of this section and on production of the certificate of change of name, a Registrar of Deeds or commissioner, or other officer responsible for the registration of deeds or mining titles, shall make such alterations in his or her registers and on any title deeds and other documents evidencing title as may be necessary as a result of the changed name:

Provided that nothing in this subsection shall exempt the registered business entity from paying any fees prescribed under the Deeds Registries Act [*Chapter 20:05*] or the Mines and Minerals Act [*Chapter 21:05*] in respect of such alterations.

(5) The change of the name of a registered business entity shall not affect any right or obligation of the registered business entity, or render defective any legal proceedings by or against the entity, and any legal proceedings that might have been continued or commenced by or against it under its former name may be continued or commenced under its new name.

27 Statement of objects of registered business entity and effect thereof

(1) No—

(a) statement of the objects of a registered business entity, whether in its constitutive documents or elsewhere; or

(b) agreement by the members of a registered business entity to enlarge or restrict the objects or activities of the entity;

shall invalidate any transaction carried out by the entity which exceeds any such objects or extends any such activities, even if any other party to the transaction was aware of the statement or agreement.

(2) Without derogation from any other remedies that may be available—

(a) a court may, on application made prior to the event by a member or debenture holder of a registered business entity whose members have agreed to limit its activities to specified objects, issue an interdict

restraining the entity from entering into or completing any transaction that exceeds its objects;

(b) where a registered business entity has concluded a transaction that exceeded its objects and resulted in loss to the entity, a court may, on application made by a member or debenture holder of the entity, order any officer or member of the entity who entered into or took part in the transaction to compensate the entity for the loss:

Provided that, where it appears that the officer or member against whom the claim is made acted honestly and reasonably and, 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 her or may make an award for part only of the compensation or may make such other order or award as the court thinks fit.

28 Provisions in connection with use of names by registered business entities

(1) In this section—

"business paper" means any—

(a) business letter, notice or other official publication of a registered business entity; or

(b) bill of exchange, promissory note, cheque or order for money or goods purporting to be signed by or on behalf of a registered business entity, including any endorsement made or purporting to be made by the entity on any such bill, note, cheque or order;

(c) delivery note, invoice, receipt or letter of credit of a registered business entity.

(2) Every registered business entity— (a) shall have its name engraved in legible characters on its seal, if any; and

(b) shall have its name mentioned in legible characters in all its businesspapers.

(3) For the purposes of subsection (2), the abbreviations "Ltd", "Pvt", "Coop" and "PBC" may be used for the words "Limited", "Private", "Co-operative" and "private business corporation" respectively, and the abbreviation "Co" and the symbol "&" may be used for the words "Company" and "and".

(4) Any officer or member of a registered business entity or any person on its behalf who—

(a) uses or permits the use of a seal, purporting to be a seal of the entity, on which its name is not engraved as required in subsection (2)(a); or

(b) issues or permits the issue of any businesspaper of the entity, or signs or endorses or permits to be signed or endorsed on behalf of the entity any bill of exchange, promissory note, cheque or order for money or goods on which the entity's name is not mentioned as required in subsection (2) (b);

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 registered business entity concerned.

(5) If default is made in complying with subsection (2) (a) or (b), any person acting on behalf of the registered business entity concerned who uses or permits the use of any seal or business paper so as to constitute such a default shall be personally liable for any debt incurred by the entity as a result of such use, unless the debt is duly discharged by the entity.

(6) Any person who trades or carries on businessunder a name or title—

(a) of which "Limited", "Co-operative Company", "Private Business Corporation" or any contraction or imitation of those words, 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 fine not exceeding level two for every day on which that name or title has been used.

(7) If it comes to the notice of the Registrar that any default is made in complying with subsection (5) or (6) then, independently of a prosecution, if any, for an offence under that subsection, the Registrar may serve a category 4 civil penalty order upon the defaulter conditioned upon his or her demonstrating to the satisfaction of the Registrar within the period specified in the order that he or she has ceased to trade or carry on business under a name that contravenes subsection (6), or that the entity concerned has ceased using or permitting the use of any seal or business paper in contravention of subsection (2)(a) or(b), as the case may be.

29 Lawful use of assumed names by registered business entities

(1) Subject to this section, a registered business entity may assume a name other than its registered name for use in conducting business in Zimbabwe.

(2) Before using an assumed name in terms of subsection (1), a registered business entity shall file with the Registrar a notice that it will be conducting business under the name, which notice shall state—

(a) the entity's true name as stated in its constitutive documents; and

(b) the assumed name under which it will be conducting business; and

(c) that the entity intends to conduct business in Zimbabwe under that assumed name;

and the Registrar shall keep the notice on public file, together with the entity's constitutive documents.

(3) Section 25 ("Prohibition of undesirable names") shall apply, with any necessary changes, in relation to the use by a registered business entity of an assumed name in terms of this section.

30 Publication of directors' or members' names

(1) In this section—

"business letter" includes a

quotation or order form, but does not include—

(a) an invoice, statement, delivery note, packing note or similar document; or

(b) a letter written by a professional person on behalf of a registered business entity as a client;

"send" or "issue", in relation to a business letter, includes send or issue electronically.

(2) Every registered business entity shall, in all business letters which it sends or issues to any person and on which the entity's name appears, state in legible characters the present forenames, or their initials, and present surname of—

(a) every director, in the case of a company; and

(b) every member, in the case of a private business corporation:

Provided that, in the case of a private business corporation with more than three members, it shall suffice for its business letters to bear the name of its controlling members or, if the interests held in the corporation are equal or nearly equal, the names of at least two current members followed by the phrase "and others" or words to the same effect.

(3) Any person acting on behalf of a registered business entity who sends or issues or permits the sending or issuing of a business letter that does not comply with subsection (2) shall be personally liable for any debt incurred by the entity as a result of the letter, unless the debt is duly discharged by the entity.

(4) A private business corporation may, in complying with this section, describe any or all of its members as directors:

Provided that the fact that some but not all of the members are so described shall not of itself be taken as notice to any person dealing with the private business corporation that a member not so described has no authority or restricted authority to act on behalf of the private business corporation.

31 Postal address, electronic mail address and registered office

(1) Every registered business entity shall have in Zimbabwe—

(a) a postal address, that is to say an address to which postal articles may be sent and

(b) a registered office at which a physical address at the business entity: which legal process may be served on the

Provided that the registered office of a private business entity may be the physical address of its accounting officer.

(2) Particulars of a registered business entity's postal address and the registered office shall be recorded in the entity's constitutive documents and amended whenever necessary.

(3) Where a registered business entity transacts any of its business or administration electronically, it shall—

(a) record the particulars of its electronic mail address, website, portal or other interactive electronic link in its constitutive documents and amend those documents whenever the particulars change; and

(b) deliver a notice setting out the particulars referred to in paragraph (a), and any changes to those particulars, which notice shall be filed with the entity's Registrar and the constitutive documents.

(4) The Registrar may, on application being made in the prescribed form, by a registered business entity to authorise its electronic mail address, website, portal or other interactive electronic link for effecting any filings or other transactions with the Companies Office that may be required under this Act, whether or not the entity is a registered user of the electronic registry.

(5) If it comes to the notice of the Registrar that the business entity has in complying with subsections (1), (2) or (3), he or she may serve a category 3 civil penalty order upon the defaulting business entity,

in which order the cumulative part of the penalty shall be suspended conditionally upon the defaulter satisfying the Registrar within seven days of service that it has remedied the default.

32 Ratification of contracts

A contract made in writing by a person professing to act as agent or trustee for a company or private business corporation not yet formed, incorporated or registered shall be capable of being ratified or adopted by or otherwise made binding upon and enforceable by the company or private business corporation after it has become a registered business entity, if—

(a) on registration, the entity's constitutive documents contain as one of the entity's objects the adoption or ratification of 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 entity's constitutive documents in terms of section 18 ("Registration of constitutive documents").

33 Form of contracts

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

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

(b) any contract which, if made between private persons, would be valid though made verbally only and not reduced to writing, may be made verbally on behalf of the entity by any person acting under its authority, 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 registered business entity and its successors and all other parties to the contracts.

34 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 registered business entity if made, accepted or endorsed

in the name of, or by or on behalf or on account of, the registered businessentity by any person acting under its authority.

(2) All documents, other than the documents mentioned in section 33 (“Form of contracts”) (1), shall, if executed on behalf of a registered businessentity, be signed as prescribed in section 35 by any person acting under its authority, expressed or implied, unless the articles otherwise provide.

35 Execution of documents domestically and in foreign countries

(1) Except as otherwise provided in this Act or in the constitutive documents of the entity concerned, documents to be executed by a registered businessentity shall be validly executed if signed by any person acting under its authority, express or implied.

(2) A registered businessentity may in writing authorise any person, either generally or in respect of any specified matters, to execute documents on its behalf in any foreign country; and every document signed by such agent, on behalf of the entity, shall bind the entity, if valid in other respects:

Provided that—

(i) if the entity has a seal, and the entity’s constitutive documents require that any execution of a document should be done under its seal and such authorisation shall be under its seal by one signed, in the case of a company, of its directors or, in the case of of a private business corporation, by one of its members;

(ii) if the entity has no seal, such authorisation shall be signed—

A. in the case of a company, by two of its directors or by one director and its secretary;

B. in the case of a private businesscorporation, by two of its members.

36 Official seal for use in foreign countries

(1) A registered business entity whose objects require or comprise the transaction of business in a foreign country may, if authorised by its constitutive documents, have an official seal for use in a foreign country, which shall be a facsimile of the seal referred to in subsection (2), if the entity has such a seal, with the addition on its face of the name of the foreign country where it is to be used.

(2) Subject to subsection (4), where a business entity has an official seal for use in a foreign country, a registered document to which the seal has been affixed by a person authorised thereto by the entity in writing shall bind the entity, if valid in other respects.

(3) A person affixing an official seal in a foreign country to a document in terms of subsection (2) shall certify on the document the date on which the seal is affixed.

(4) Unless the law of the foreign country in question requires a document concerned to be affixed with the seal for the transaction in question to be valid, the failure to affix such seal shall not affect the validity of any transaction to which the document relates if the transaction is valid in other respects and was executed by any person authorised thereto in writing by the entity, or the document relating to the transaction is signed—

(a) by two of its directors or by one director and its secretary, in the case of a company; or

(b) by two of its members, in the case of a private business corporation.

37 Authentication of documents

A document or proceeding requiring authentication by a registered business entity may be signed by a director, secretary, member or other authorised officer of the entity, and need not be under its seal.

PART II

INSPECTION AND INVESTIGATION

38 Purposes of inspections and investigations and powers in connection therewith

(1) In addition to ensuring compliance with this Act, the purpose of inspection and investigation

of registered business entities is to — (a) promote good corporate governance; and

(b) inspire confidence in investors in such entities that their investments are safe and are being dealt with transparently.

(2) For the purposes of this Part, the Registrar and every inspector shall have the same powers, rights and privileges as are conferred upon a commissioner by 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 with necessary changes in relation to the investigation or inspection by the Registrar and to any person summoned to give evidence or giving evidence before him or her.

39 Investigation by Registrar

(1) Where the Registrar has reasonable cause to believe that provisions of this Act relating to the submission to him or her of any document are not being complied with, or where he or she is of the opinion that any document submitted to him or her 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 or she may, by written order, call on the registered business entity concerned to produce all or any of the documents of the registered businessentity specified in the order and to furnish in writing such information or explanation as the Registrar may specify in his or her order, and such documents 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 registered businessentity to produce such documents 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 in default and subject to a category 2 civil penalty order:

Provided that the period within which the documents or information must be produced or furnished before the defaulter becomes criminally liable in terms of section

294 ("Power of Registrar to issue civil penalty orders and categories thereof")(3) shall be seven days and the level of the daily cumulative civil penalty shall be level six.

40 Investigation on request of minority stakeholders

(1) On the request or member or members holding at least five *per centum* of the ordinary shares of the company, or five *per centum* of the business corporation, the interests of the private business entity and to report thereon as the Registrar may direct.

(2) Any such request shall be dated and signed by all of the requesting shareholders or members, shall state the number of shares or the extent of the interests they hold, and shall state the purpose for which each investigation is requested, and a copy of the request shall be delivered by the requesting shareholders or members to the company's board of directors or to the private business corporation's controlling members, as the case may be.

(3) The Registrar may, before assigning an inspector, require the requesting shareholders or members to give satisfactory security in an amount which may be prescribed towards the costs of the investigation.

41 Investigation to determine ownership or control

(1) The Registrar may, with or without a request from members of the registered business entity concerned, assign one or more inspectors to investigate and report on the shareholding of a company, the interests of a private business corporation and other matters, to determine the persons who are or have been financially interested in the success or failure of the entity or are able to control or materially influence the entity's policies.

(2) Where an investigation under this section is conducted at the request of any member of a registered business entity, that member shall pay the reasonable costs incurred by the Registrar in conducting it and, before assigning an inspector under subsection (1), the Registrar may require the member to give satisfactory security, not exceeding an amount that may be prescribed,

for payment of the costs of the investigation.

(3) In an investigation under this section an inspector may require any person whom he or she has reasonable cause to believe—

(a) to be or to have been interested in any shares, debentures or interests; or

(b) to act or to have acted in relation to any shares, debentures or interests as the agent of someone interested therein;

to give the inspector such information as that person has or can reasonably be expected to obtain concerning present and past interests in those shares, debentures or interests, 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, debentures or interests.

(4) For the purposes of this section, and without limiting the phrase, a person shall be deemed to have an interest in a share if he or she has a right to acquire or dispose of the share or any interest therein or to vote with respect thereto, or if the person's consent is necessary for the exercise of any of the rights of other persons interested therein, or other persons interested therein can be required or are accustomed to exercise their rights in accordance with the person's instructions.

42 Investigation of registered business entity's affairs in other cases

(1) Without prejudice to his or her powers under section 39 ("Investigation by Registrar"), the Registrar—

(a) shall assign one or more inspectors to investigate the affairs of a registered business entity and to report thereon in such manner as he or she directs if—

(i) in the case of a company, the company by special resolution; or

(ii) the High Court by order;

declares that its affairs ought to be investigated by the Registrar; and

(b) may do so, if it appears to the Registrar that there are circumstances suggesting a reasonable suspicion that—

(i) 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) persons concerned with its formation or the management of its affairs have been in connection therewith guilty of fraud or other misconduct towards it or towards its members; or

(iii) its members have not been given all the information with respect to its affairs which they might reasonably expect.

(2) Whenever the Registrar intends to act in terms of subsection `(1)(b) he or she shall give adequate prior notice to the Minister of his or her intended action.

43 Power of inspectors to investigate related registered or unregistered business entities

(1) In this section—

"associated entity" means an entity, whether registered or not, which controls or is controlled by a primary business entity;

"primary business entity" means the registered business entity whose affairs an inspector has been assigned to investigate.

(2) Subject to subsections (3), (4) and (5), where an inspector who has been assigned to investigate the affairs of a primary business entity considers that, for the purposes of that investigation, it is necessary to investigate the affairs of an associated entity, the inspector may, with the approval of the Registrar and subject to subsection (3), investigate the affairs of the associated entity and report on them in so far as the inspector thinks the results of that investigation are relevant to the affairs of the primary business entity.

(3) Before conducting an investigation in terms of subsection (1) into the affairs of—

(a) an associated entity which is a registered business entity, the inspector shall obtain the written authority of the Registrar; or

(b) an associated entity which is not a registered business entity, the inspector shall obtain a warrant from—

(i) a justice of the peace (other than a police officer) for the district; or

(ii) a magistrate having jurisdiction in the area;

in which the entity is located or carries on any of its activities.

(4) A justice of the peace or magistrate may issue a warrant for the purposes of subsection (3)(b) if he or she is satisfied, from information on oath, that—

(a) the primary business entity is located or carries on any of its activities in his or her district or area; and

(b) the inspector has lawful authority to investigate the affairs of the primary business entity and that the entity in respect of which the warrant is sought is an associated entity of the primary business entity; and

(c) there are reasonable grounds for believing that an investigation of the affairs of the associated entity will disclose information relevant to the investigation of the primary business entity.

(5) A warrant issued for the purposes of subsection (3)(b) shall be in writing and state—

(a) the identity and registered office of the primary business entity being investigated; and

(b) the purpose for which it is required and

(c) the identity and address of the associated entity; and

(d) the period for which the warrant is to be issued.

(6) An inspector to whom a warrant has been issued in terms of this section shall have the same powers—

(a) to enter and search the premises concerned and to seize

its property as a police officer to whom a search warrant has been issued in terms of Part VI of the Criminal Procedure and Evidence Act [*Chapter 9:07*]; and

(b) to investigate the affairs of the associated entity concerned as if the entity was the primary business entity whose affairs the inspector had been assigned to investigate.

44 Production of records and evidence on investigation

(1) In this section— "agent", in relation to a registered business entity or an associated entity, includes any person who is or at any time was engaged as the entity's legal practitioner, accountant, auditor or banker;

"officer", in relation to a registered business entity or an associated entity, means any person who is or at any time was an officer or employee of the entity.

(2) Subject to the laws relating to privileges, all officers and agents of a registered business entity or associated entity whose affairs are investigated by an inspector under this Part shall—

(a) on request, produce to the inspector all records relating to the entity which are in their custody or power; and

(b) subject to subsection (3), answer any lawful question put to him or her by the inspector regarding the affairs of the entity;

and generally shall give the inspector all assistance in connection with the investigation which they are reasonably able to give.

(3) An officer or agent may refuse to answer a question in terms of subsection (2) if the answer would render him or her liable to—

(a) criminal proceedings in respect of an offence against the law of Zimbabwe; or

(b) proceedings for the recovery of any penalty or forfeiture in favour of the State in terms of any enactment in force in Zimbabwe:

Provided that if, at the request of the Registrar—

(a) the Prosecutor-General or agent by written notice to the officer concerned grants him or her immunity from prosecution for the offence, criminal proceedings shall not thereafter be instituted against the officer or agent for the offence; or

(b) the Attorney-General by written notice to the officer or agent concerned grants him or her exemption from the penalty or forfeiture concerned, the officer or agent shall no longer be liable to the penalty or forfeiture;

and the officer or agent shall thereupon answer the question.

(4) Subject to subsection (3), if an officer or agent contravenes subsection (2), he or she shall be in default and the Registrar may serve upon him or her a category 5 civil penalty or order, she suspended on condition he or she remedies the default as soon as possible and in any event within twenty-four hours of the service of the order:

Provided that—

(i) the period within which any records or information shall be produced or furnished under the order shall be seven days; and

(ii) the level of the fixed penalty under the order shall be level six.

45 Registrar's report

On concluding an investigation under this Part, an inspector shall furnish a written report on it to the Registrar, who—

(a) shall send a copy of the report to—

(i) the Minister; and

(ii) every entity (primary or associated) whose affairs were investigated; and

(iii) every shareholder or member who requested the investigation on request in terms of section 40 ("Investigation of minority shareholders"); and

(iv) the Registrar of the High Court, where the Court ordered the investigation in terms of section 42 ("Investigation of registered business entity's affairs in other cases") (1) (a) (ii); and

(b) may, on request and on payment of the prescribed fee, provide a copy of the report to any shareholder, member or creditor of an entity whose affairs were investigated, or to any other person whose interests appear to the Registrar on reasonable grounds to be affected by the report; and

(c) may cause the report to be published if it appears to the Registrar on reasonable grounds that such publication is in the public interest.

46 Proceedings on Registrar's report

(1) If, from the report made under section 45 ("Registrar's report"), it appears to the Registrar that—

(a) any person is liable to prosecution for an offence in relation to an entity whose affairs were investigated by the inspector, the Registrar shall refer the matter to the Prosecutor-General;

(b) an entity whose affairs were investigated by the inspector should be wound up, the Registrar may apply to the High Court for it to be wound up;

(c) an entity whose affairs were investigated by the inspector should bring proceedings for the recovery of damages in respect of fraud or misconduct in connection with the entity's promotion or formation or the conduct of its affairs, or for the recovery of any property of the entity which has been misapplied or wrongfully retained, the Registrar may, if it appears to the Registrar that such proceedings ought in the public interest to be brought on behalf of the entity (unless the members of the entity have earlier instituted the proceedings in question) bring such proceedings in any court in the name of and on behalf of the entity:

Provided that the Registrar shall indemnify the entity against costs incurred in connection with such proceedings.

(2) After considering the report made under section 45, the Registrar may, by written notice to an entity whose affairs were investigated by the inspector, direct that the entity shall not pay dividends on, or permit the exercise of any rights, including the right of transfer, attached to any of its shares or interests for a specified period and subject to any specified conditions.

(3) Any officer or member of an entity on which a notice in terms of subsection (2) has been served who knowingly contravenes the notice shall be in default and the Registrar may serve on him or her a category 1 civil penalty order.

47 Expenses of investigation of affairs of registered business entity

(1) The expenses of and incidental to an investigation by an inspector under this Part shall be defrayed in the first instance by the Registrar, but the following persons shall, to the

extent mentioned, be liable to repay the Registrar—

(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 section 46 may, in the same proceedings, be ordered to pay the said expenses to such extent as may be specified in the order;

(b) any entity 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 entity dealt with by the report, where the inspector was assigned otherwise than of the Registrar's own motion, shall be liable, except so far as the Registrar may otherwise direct; and

(ii) the applicants for the investigation, where the inspector was assigned under section 40 ("Investigation on request of minority stakeholders"), shall be liable to such extent, if any, as the Registrar may direct;

and any amount for which an entity is liable by virtue of paragraph (*b*) shall be a first charge on the sums or property mentioned in that paragraph.

(2) The report by the Registrar of an investigation initiated otherwise than by his or her own motion may, if he or she thinks fit, include a recommendation as to the directions, if any, which he or she thinks appropriate, in the light of his or her investigation, to be given under subsection (1)(c).

(3) For the purpose of this section, any costs or expenses incurred by or in connection with proceedings brought by virtue of section 46 ("Proceedings on Registrar's report")(1)(c), shall be treated as expenses of the investigation giving rise to the proceedings.

(4) Any liability to repay the Registrar imposed by subsection (1)(a) and (b) shall be a liability also to indemnify —

(a) all persons against liability under subsection (1) (c), that is to say to be liable to reimburse—

(i) the Registrar (if the Registrar has not already received repayment) pursuant to subsection (1)(a) or (b); and

(ii) the applicants for the investigation under section 40 (if they have made repayment to the Registrar under subsection (1) (c));

(b) the entity against liability under subsection (1)(b), that is to say to be liable to reimburse the entity for any repayment made by it to the Registrar by virtue of that provision.

(5) Any person liable to make reimbursement by virtue of subsection (4) shall be entitled to contribution from any other person with whom he or she is jointly so liable according to the amount of their respective liabilities.

(6) The expenses to be defrayed by the Registrar under this section shall, so far as not recovered, be paid out of the funds of the Companies Office.

48 Power to require information as to holders of shares, debentures or interests

(1) Where it appears to the Registrar that there is good reason to investigate— (a) the ownership of any share in or debenture of a company; or

(b) who holds an interest in a private business corporation, or the extent of that interest;

the Registrar may by written notice require any person whom he or she has reasonable cause to believe—

(i) to be or to have been interested in that share, debenture or interest; or

(ii) to act or to have acted in relation to that share, debenture or interest as the agent of someone else;

to give him or her any information which he or she has or can reasonably be expected to obtain as to the share, debenture or interest and the name and address of any person who holds or has held it or who is or has been interested in it.

(2) For the purposes of subsection (1), a person shall be deemed to be interested

in a share, debenture or interest if he or she has any right to acquire or dispose of it or any interest in it or to vote in respect of it, if necessary for any other person is any right in it, or if to exercise interested therein can be required or other persons accustomed to exercise their rights or are accordance with his or her instructions.

(3) Any person who—

(a) fails to give any information required of him or her under subsection (1) shall be in default and liable to a category 2 civil penalty order:

Provided that the period within which the information shall be produced or furnished before the defaulter becomes criminally liable in terms of section 294 (“Power of Registrar to issue civil orders and categories thereof”) penalty shall be seven days and the level (3) of the cumulative penalty shall be level six;

(b) in response to a notice under subsection (1), makes a statement which he or she knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, and 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.

49 Power to impose restrictions on shares, debentures or interests

(1) Where, in connection with an investigation or inquiry under this Part, it appears to the Registrar that there is undue difficulty in ascertaining relevant facts about any share, debenture or interest and that the difficulty is due wholly or mainly to the unwillingness of the registered business entity that is the subject of the investigation or inquiry or of any person with an interest in the share, debenture or

interest concerned to assist the investigation as required by this Part, the Registrar may, by written order, direct that until the order is revoked or amended the share, debenture or interest shall be subject to the restrictions imposed by this section.

(2) So long as an order in relation to any share, debenture or interest—

(a) any transfer of the share, debenture or interest or, in the case of an unissued share, any issue of it or transfer of it, shall be void; and

(b) no voting rights shall be exercisable in respect of the share, debenture or interest; and

(c) no further shares or debentures shall be issued in right of the share or debenture or in pursuance of any offer made to its holder; and

(d) except in a liquidation, no payment shall be made of any sums due from the registered business entity on those shares, debentures or interests, whether in respect of capital or otherwise.

(3) The Registrar may at any time, by written order, amend or revoke an order under subsection (1).

(4) Any person aggrieved by an order under subsection (1), or by the Registrar's refusal to amend or revoke such an order, may apply to the High Court for such relief and the court may make such order in the matter as it considers appropriate.

(5) Any person who, knowing that a share, debenture or interest is subject to an order under subsection (1)—

(a) knowingly contravenes or fails to comply with the order; or

(b) assists any other person to do anything that contravenes the order in relation to the share, debenture or interest;

shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

50 Saving for legal practitioners and bankers

Nothing in this Part shall require disclosure to the Registrar or an inspector—

(a) by a legal practitioner of any privileged communication or information made to or held by him or her in that capacity, except as respects the name and address of his or her client; or

(b) except by order of a court, by a registered business entity's banker of any information as to the affairs of any of its customers other than the registered business entity concerned.

51 Report following investigation to be evidence

A copy of any report of any inspector assigned under this Part shall be admissible in any legal proceedings as evidence.

PART III

Defunct Business Entities

52 Striking off of defunct business entities from register and remedy for aggrieved persons by striking off

(1) Where the Registrar has reasonable grounds to believe that a registered business entity is not in operation, carrying on business or she may send a written notice to the entity if an answer showing cause to that effect, stating that is not received within fourteen days from the contrary is not the notice, a notice will be published in the *Gazette* of the with view striking the name of the entity off the register.

(2) A notice under subsection (1) shall be sent to the registered office of the registered

business entity concerned or, if it has no registered office, to any of its officers whose name and address are known to the Registrar or, if there is no such officer, to each of the persons who signed the entity's memorandum or incorporation statement.

(3) Unless the Registrar receives an answer within fourteen days from the date of the notice sent in terms of subsection (1) to the registered business entity is carrying on that business or is in operation, the Registrar may publish in the *Gazette* and send to the entity, a notice that at the expiration of one month from the date of that notice the entity's name will, unless cause is shown to the contrary, be struck off the register and the entity will thereby be dissolved.

(4) Whenever the Registrar receives notice in prescribed form from a registered business entity or a director, secretary or member thereof that the entity is not carrying on business or is not in operation in question the Registrar may if the entity has not rendered a return for the preceding year and the Registrar is otherwise satisfied that the entity is not carrying on business or is not in operation, forthwith publish a notice referred to in subsection (3).

(5) If, on the expiry of the period mentioned in a notice referred to in subsection (3), no cause to the contrary has been shown, the Registrar may strike the name of the registered business entity concerned from the register and shall publish notice of the striking off in the *Gazette*.

Provided that the liability, if any, of the liquidator and of every officer of the entity shall continue and may be enforced as if the entity had not been dissolved.

(6) If the Registrar receives from a registered business entity a written statement in the form prescribed, signed—

(a) in the case of a company, by every director of the entity;

(b) in the case of a private business corporation, by every member; stating that the entity has ceased to carry on business and has no assets or liabilities, the Registrar may strike the entity's name from the register and shall publish notice off the striking off in the *Gazette*.

(7) Upon the publication of a notice in the *Gazette* in terms of subsection (5) or (6) to the business entity has been struck from the register, the entity shall, subject to subsections (8) and (9), thereby be dissolved:

Provided that the liability, if any, of every officer and member of the liquidator and of the entity shall continue and may be enforced as if the entity had not been dissolved.

(8) Where the name of a business entity has been struck from the register in accordance with this section, any creditor or member or former member of the entity may at any time after the date of publication of the notice of striking off of the entity under subsection (5) apply to the magistrates court within whose area of jurisdiction the entity had its principal place of business for an order that the entity's name be restored to the register, and if the court is satisfied that—

(a) the entity was carrying on business or in operation when its name was struck off; or

(b) it is otherwise just that the entity's name should be restored to the register; the court may grant the order sought and, in addition may—

(i) direct that the entity, or any officer or member of the entity, need not file or lodge any return that the entity, officer or member may have been required to file or lodge in terms of this Act; and

(ii) give such directions and orders as seem just for placing the entity and all other persons in the same position, as nearly as may be, as if the entity's name had not been struck from the register.

(9) Upon the making of an order in terms of subsection (8)—

(a) the business entity concerned shall be deemed, subject to the terms and

conditions of the order, to have continued in existence as if its name had not been struck from the register; and

(b) the Registrar shall forthwith restore the name of the business entity concerned to the register, with a note indicating that it has been restored in accordance with this section.

53 Undistributed property of dissolved or defunct company or private business corporation: *bona vacantia* orders

(1) Where a company or private business corporation is dissolved, whether as a result of being wound up or as a result of being struck off the register as defunct, any undistributed property of the company or corporation shall, subject to this section, become *bona vacantia* and shall vest in the State.

(2) At any time after a company or private business corporation is declared to be defunct in terms of section 52 ("Striking off of defunct business entities from register and remedy for persons aggrieved") (6), the Attorney-General may (unless earlier application has been made to restore a defunct entity to the register under section 52 and such application was successful), on behalf of and in the name of the Chief Registrar apply *ex parte* to the High Court for an order (hereinafter called a "*bona vacantia* order") declaring any property of the defunct company or private business corporation to be *bona vacantia.*

(3) Before the making of an application under subsection (2), the Chief Registrar shall publish a notice in the *Gazette* notifying any persons who may be interested in the contemplated application that—

(a) it is intended to make such an application in relation to the named defunct company or private business corporation not earlier than fourteen days from the date of publication of the notice in the *Gazette*; and

(b) any interested person has a right to oppose the application; and

(c) notice of the Registrar's intention to strike off the defunct entity was published on a specified date and that the defunct entity was struck off the Register by notice published on a specified date;

and

(d) specified property (a brief description of which shall be given in the notice) belonged or apparently belonged to the defunct entity at the date when it was struck off the Register; and

(e) any interested person who is a creditor of the defunct entity or has any other interest in the defunct entity or its property may, at any time before the application for a *bona vacantia* order is made, restore the defunct entity to the Register in terms of section 52 (8).

(4) If, within fourteen days from the publication of the notice in terms of subsection (3), no interested person has instituted the application to restore the defunct entity to the register in terms of section 52 (or, having instituted such application, the application failed), the Attorney-General may proceed with the application for the *bona vacantia* order.

(5) There shall be submitted together with the application for the *bona vacantia* order a copy of the notice referred to in subsection (3), together with a copy of the notices referred to in subsection (3)(c).

(6) If the court grants the application for a *bona vacantia* order, it shall have the same effect as a writ for the attachment and sale in execution of the property declared to be *bona vacantia.*

(7) The proceeds from the sale in execution of property declared to be *bona vacantia* shall be applied to meeting the following costs in the following sequence— (a) the sheriff's costs of executing the *bona vacantia* order; and

(b) the costs incurred by the Attorney-General in obtaining the *bona vacantia* order; and

(c) the costs incurred by the Companies Office in publishing the notices referred to in subsection (2) and (2)(c), together with the proven costs

incurred by the Office in identifying, securing and safeguarding the property declared to be *bona vacantia*;

(8) Any amount remaining after application of the amounts referred to in subsection (7) shall form part of the Deeds Office Fund.

PART IV

Common Provisions relating to fiduciary duties, remedies and legal Proceedings

Subpart A: Duties of office bearers of companies and private business corporations

54 Duty of care and business judgment rule

(1) Every manager of a private business corporation and every director or officer of a company has a duty to perform as such in good faith, in the best interests of the registered business entity, and with the care, skill, and attention that a diligent business person would exercise in the same circumstances.

(2) In performing that duty, the manager, officer or director as the case may be referred to in subsection (1) may rely on information, opinions, reports or statements (including financial statements) of independent auditors or legal practitioners or of experts or employees of the registered business entity whom the person reasonably believes are reliable and competent to issue such information, opinions, reports or statements.

(3) Subsection (2) applies only if the person makes proper inquiry where the need for inquiry is indicated by the circumstances, and has no knowledge that such reliance is unwarranted.

(4) A person who makes a business judgment acting as stated in subsection (1), (2) and (3) fulfils the duty under this section with respect to that judgment if that person—

(a) does not have a personal interest as defined in section 56 (“Transactions involving conflict of interest”) in the subject of the judgment; and

(b) is fully informed on the subject to the extent appropriate under the circumstances; and

(c) honestly believes when the judgment is made that it is in the best interests of the company or corporation.

(5) No provision, whether contained in a company’s by-laws or articles or otherwise, in a private business corporation’s by-laws or shall relieve a director or member from the duty to act in accordance with this Part or relieve him or her from any liability incurred as a result of any breach of such duty. **55**

Duty of loyalty

(1) For purposes of this section a "controlling member" is a person referred to in the definition of "controlling member" in section 2 or a person referred to in section 3(4).

(2) A manager or controlling member of a private business corporation and a director, officer or controlling member of a company has a duty to act with loyalty to that registered business entity and, in the case of a company, towards any subsidiary of that company.

(3) The duty of loyalty referred to in subsection (2) includes but is not limited to a duty—

(a) not to use property of the registered business entity for his or her personal benefit or for the benefit of another person other than the entity; and

(b) not to disclose confidential information of the entity or to use confidential information of the entity for his or her personal benefit or for the benefit of another person other than the entity; and

(c) to communicate to the board or members (as the case may be) at the earliest practicable opportunity any information that comes to his or her attention, unless the he or she—

(i) reasonably believes that the information is—

A. immaterial to the entity; or

B. generally available to the public, or known to the other managers, directors, officers or controlling members; or

(ii) is bound by a not legal or ethical obligation of confidentiality; and

(d) not to abuse the registered business entity for his or her personal benefit, or for the benefit of another person other than the entity; and

(e) not to take business opportunities of the registered business entity for his or her personal benefit, or for the benefit of another person other than the entity; and

(f) not to compete in business with the registered business entity (including as a manager of a competing individually or private business

corporation, company registered is manager, or which business entity director a competes of or director in which officer); officer business he of with or and the she

(g) not for person benefits reasonably rise registered to doing referred which to a business accept or are not *de minimis* above be regarded conflict entity a benefit doing (but of concerned); from anything in this value as interest and a shall or likely with third as cannot to the party a include give

(h) to never and knowingly cause harm to the entity;

(i) to serve all the only transactions person the has registered involving a business personal the entity interest. entity's in in which

Subpart B: Duty of loyalty – conflicts of interest

56 Transactions involving conflict of interest

(1) In this section—

"personal financial interest", when used with respect any person—

(a) means a direct material interest of that person, of a financial, monetary or economic nature, or monetary which a value to attributed; but may be

(b) does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act [*Chapter 24:19*] (No. 25 of 1997), unless that person has direct control over the investment decisions of that fund or investment.

(2) This section does not apply— (a)

to a director of a company—

(i) in respect of a decision that may generally affect—

A. all of their the capacity directors as directors; of the company in

B. a class is the director of one only or persons, member of members associates despite the that of the fact class of the that the director persons, are unless the director;

(ii) in respect of a proposal to remove that director from office

as contemplated in section 202 ("Removal and resignation of directors"); or

(b) to a company or its director, or a private business corporation—

(i) if one person—

A. holds all of the beneficial interests of all of the issued securities of the company and is the only director of that company; or

B. holds all the beneficial interests of the private business corporation and is the only member of the private business corporation.

(3) If a person is the only director of a company, but does not hold all of the issued beneficial interests of the shares or debentures of the company, that person may not—

(a) approve or enter into any agreement in which the person has a personal financial interest; or

(b) as a director, determine any other matter in which the person has a personal financial interest,

unless the agreement or determination is approved by an ordinary resolution of the shareholders after the director has disclosed the nature and extent of that interest to the shareholders.

(4) At any time, a director may disclose any personal financial interest in advance, or by delivering to the board, or shareholders in the case of a company contemplated in subsection (3), a notice in writing setting out the nature and extent of that interest, to be used generally for the purposes of this section until changed or withdrawn by further written notice from that director.

(5) A person referred to in section 55 ("Duty of loyalty") is deemed to have a personal financial interest in an act or transaction with the registered business entity if–

(a) that person or a near relative or other associate of that person is a party to the act or transaction or has a

material financial interest in the act or transaction; or

(b) that person has a financial or family member or relationship with a party to the act or a transaction, or with a person who has material financial interest in the act or transaction, that could reasonably be expected to affect that person's judgment adversely to the registered business entity.

(6) A person who enters into a contract or transaction with the registered business entity in which that person has a personal interest, has not violated the duty of loyalty stated in section 55 ("Duty of loyalty") if the contract or transaction is authorised in advance or ratified after the fact by either–

(a) a majority of the votes of members of the registered business entity who do not have a personal interest in the act or transaction; or

(b) a majority of the board of directors who do not have such personal interest, in the case of a company; or

(c) all members in a case where there are no members who do not have such personal interest;

Provided that in all such cases all material facts regarding the personal interest have been disclosed or are known to the authorising persons, and the conflicted person did not participate in their decision.

(7) Any person who contravenes subsection (3) shall be guilty of an offence and be liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years, or both.

(8) If it comes to the notice of the Registrar that any default is made in complying with this section, then independently of a prosecution, if any, for an offence under subsection (7), the Registrar may serve upon a person referred to in section 55 alleged to be in contravention of this section a category 1 civil penalty order.

57 Duty to disclose conflict of interest

(1) If a person referred to in section 55 ("Duty of loyalty") (but subject to section 56 ("Transactions involving conflict of interest")(2)(b) or (3)), has a personal financial interest in respect of a matter to be considered at a meeting of the board of the company or meeting of the members of the private business corporation, or knows that an associate has a

personal financial interest in the matter, the person—

(a) must disclose the interest and its general nature before the matter is considered at the meeting;

(b) must disclose to the meeting any material information relating to the matter, and known to the person; and

(c) may disclose any observations or pertinent insights relating to the matter if requested to do so by the other persons; and

(d) if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in paragraph (b) or (c); and

(e) must not take part in the consideration of the matter, except to the extent contemplated in paragraphs (b) and (c); and

(f) while absent from the meeting in terms of this subsection—

(i) is to be regarded as being present at the meeting for the purpose of determining whether sufficient directors or members are present to constitute the meeting; and

(ii) is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and

(g) must not execute any document on behalf of the registered entity in relation to the matter unless requested or directed to do so specifically by the board or meeting of members.

(2) If a director of a company acquires a personal financial interest in an agreement or other matter in which the company has a material interest, or knows that an associate has acquired a personal financial interest in the matter, after an agreement or other matter has been approved by the company, the director must promptly disclose to the board, or to the company in the case of a company contemplated in section 56(3), the nature and extent of that interest, and the material circumstances relating to the director or associate's acquisition of that interest.

(3) A decision by the board, or a transaction or agreement approved by the board, or by a company as contemplated in section 56(3), is valid despite any personal financial interest of a director, if director or an associate of the director, it—

(a) was approved in this manner contemplated in this section; or (b) has been ratified by an ordinary resolution of the shareholders.

(4) A court, on application by any interested person, may declare valid a transaction or agreement approved by the members of a private business corporation, board or shareholders of a company, or the case may be, despite the failure of person referred to in section 55 to satisfy the requirements of section 56 and this section.

(5) Any person referred to in section 55 who fails to comply with this section shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

(6) If it comes to the notice of the Registrar that any person in default is independently complying with this section, then for a prosecution, if any, an offence under subsection (5), the Registrar may serve upon a person referred to in section 55 alleged to be in contravention of this section a category 1 civil penalty order.

(7) Nothing in this Part shall be taken to prejudice the operation of any rule of law restricting any person referred to in section 55 from having any interest in contracts with the registered business entity concerned.

58 Avoidance and other remedies for conflict-of-interest transactions

(1) A transaction which is contrary to section 56 shall be voidable at the option of the registered business entity concerned, but any such voidance shall be without prejudice to rights of a third party which were acquired in good faith and

without knowledge of or participation in the contravention.

(2) A registered business entity concerned and the competent court shall have power to order, other remedies including remedies of the kind referred to in sections 59, 60, 61 and 62, and the person having the conflict of interest shall be liable to account for and transfer to the registered business entity any gain which he or she has made from the act or transaction and to indemnify the registered business entity for any loss or damage suffered by it as a result of the act or transaction.

Subpart C: Other legal proceedings and remedies

59 Power of court to grant relief to defendants or potential defendants 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 or she has acted honestly and reasonably and that, having regard to all the circumstances of the case, including those connected with his or her appointment, he or she ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the court may relieve him or her, either wholly or partly, from his or her 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 be made against him or her in respect of negligence, default, breach of duty or breach of trust, he or she may apply to the court for relief and the court may on any such application have the power to relieve him or her 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 (subject however to section 197 of the Companies and Other Business Entities Act (“Liability of directors and officers”) or members of the prescribed private business corporation;

(b) directors, managers and other officers of a foreign company;

(c) persons appointed by a company or foreign company as its auditors.

60 Direct actions by members

(1) A member of a private business corporation or company may bring an action in court in such person's own name against any manager, officer or director referred to in section 54 or 55 or to enforce, or recover damages caused to him or her caused by violation of a duty incumbent upon any such manager, officer or director under this Act or any other law including laws against fraud or misappropriation.

(2) An action under subsection (1) may be brought by one person in the person's own name or by two or more persons in their names acting together.

61 Derivative actions by members on entity's behalf

(1) A member or shareholder of a company or private business corporation may bring an action in court in such person's name and on the company's behalf against any manager, officer or director referred to in sections 54 or 55 or to enforce, or to recover from that manager, officer or director damages caused to the company by violation of, duties owed by that manager, officer or director to the company under this Act or any other law including laws against fraud or misappropriation.

(2) Such an action may be brought by one person in the person's own name and on the company's or corporation's behalf or by two or more persons in their names acting together on the company's or corporation's behalf.

(3) An action may be brought under this section only in cases in which:

(a) damage or a breach of duty to the company itself is claimed; and

(b) the plaintiff was a member or shareholder at the time of the acts which are complained of, or acquired that status as a result of a transfer of that person's interest or shares from a person who had that status at that time;

and

(c) the plaintiff holds interests or shares representing at least ten *per centum* of the private business corporation or company's voting power (which in the case of a private company or public company shall mean ten *per centum* votes of the ordinary shares),

and where two or more plaintiffs bring the action together the holdings of all of them shall be counted for this purpose; and

(d) the plaintiff has previously requested the manager or controlling members of the private business corporation or board of company in writing to rectify the acts which are complained of, and that request was refused or not responded to within thirty days (but the court on good cause shown to it may dispense with this requirement).

(4) Any complaint under this section shall include a copy of the request referred to in subsection (3) and details of all other efforts to have the private business corporation or company itself bring the complaint, or shall state in detail why such a request would not succeed.

(5) A complaint under this section may not be discontinued or settled between the plaintiff and the defendant without the court's approval given after full disclosure of the details of the proposed discontinuance or settlement.

(6) All damages received in a derivative case shall be the property of the company or corporation except that the plaintiffs who prevailed shall be paid their reasonable expenses, including legal fees, from the moneys paid by the defendants.

(7) The amount of such expenses under subsection (6) must be approved by the court.

62 Court remedies in deadlock, fraud, oppression and other situations; piercing the corporate veil

(1) In a legal action by a member of a private business corporation or a company the court may order one or more of the remedies listed in subsections (2) and (3) of this section if it is established that—

(a) the managers or directors, or the member, of the entity are deadlocked, whether even division in their number or another reason, and irreparable injury to the entity's business or likely to be caused to the

business can no longer be conducted to the members' advantage, or

(b) the managers, directors or any other persons in control of the entity have acted illegally, fraudulently or oppressively toward the petitioning member.

(2) In an action under subsection (1) the court shall have the power to order one or more of the following remedies or similar remedies—

(a) dissolution or liquidation of the entity, but if the court finds that the grounds stated in subsection (1) are curable, it may order a reasonable time period for cure;

(b) the performance, variance or setting aside of any transaction or other action of the entity or its members, managers or directors;

(c) the cancellation or amendment of a provision of the entity's constitutive documents;

(d) the removal of any manager, director or officer, or the appointment of any person as a manager, director or officer;

(e) an investigation of the financial effects of any matter in dispute, which may include a forensic audit;

(f) the appointment of one or more inspectors to investigate the acts complained of or of a custodian to manage the business of the company or corporation for a term and under conditions determined by the court;

(g) the submission of the dispute to mediation or other non-binding alternative dispute resolution;

(h) the payment of dividends or other distributions;

(i) the award of damages to any aggrieved party;

(j) the purchase by the company or corporation or another member or shareholder of all of the interests or shares of the petitioning member or shareholder for their fair value as determined by the court.

(3) If the court finds that—

(a) the juristic form of the private business corporation or company has been abused by the board, or a manager, director or officer or any one or more members of the company or private business corporation, for their own or some other person's advantage; or

(b) any acts done or omitted to be done by or on behalf of the private business corporation or company constitutes an unconscionable abuse of the juristic

person of the private business corporation or the company;

the court may declare the entity not to be a juristic person with respect to the said abuses, acts or omissions and impute those abuses, acts or omissions to the persons responsible for them in their personal capacities.

63 Security for costs

Where a company or foreign company or a private business corporation 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, foreign company or private business corporation will be unable to pay the costs of the defendant or respondent if successful in his or her defence, require sufficient security to be given for those costs and may stay all proceedings till the security is given.

64 Service of documents

(1) Without derogation from section 40 of the Interpretation Act [*Chapter 1:01*] but subject to subsection (2), any notice, order or other document which by this Act is required or permitted to be served upon or delivered or sent to a business or other entity may be served, delivered or sent—

(a) by leaving it at, or sending it by prepaid registered post to—

(i) the entity's registered office, in the case of a company or private business corporation;

(ii) any place of business established by the entity in Zimbabwe, in the case of a foreign company; or

(iii) the entity's head office or principal place of business in Zimbabwe, in the case of a voluntary association; or

(b) in the case of an electronic notice, order or document, by sending it to—

(i) the entity's electronic mail address, website, portal or other interactive electronic link whose particulars were notified to the Registrar in terms of section 31 ("Postal address electronic mail address and registered office")(3) operated or used by the entity; or

(ii) an electronic mail address, website, portal or other interactive electronic link operated or used by the entity's legal practitioner in Zimbabwe:

Provided that in either case the electronic communication shall be authenticated by the sender's electronic signature.

(2) Where—

(a) any provision of this Act prescribes the manner in which a notice, order or other document is to be served, delivered or sent, the document shall be served, delivered or sent in that manner unless it is impossible to do so, in which event subsection (1) shall apply;

(b) the High Court has directed the manner in which a notice, order or other document is to be served, delivered or sent, the document shall be served, delivered or sent in that manner.

65 Allegations of voidness, impropriety, etc. by registered business entities

(1) If a registered business entity—

(a) enters into any agreement or makes any resolution in respect of which it is alleged that such agreement or resolution is or any provision of it is prohibited, void or voidable under this Act; or

(b) does anything in the purported exercise of any power under its constitutive documents, which power or exercise is alleged to be prohibited, void or voidable under this Act;

such agreement, resolution, provision of such agreement or resolution, power or exercise of such power shall not be considered to be prohibited, void or voidable under this Act unless a court declares the same to be prohibited, void or voidable as the case may be, or the agreement, resolution, provision, power or exercise in question has been adjudged to be prohibited or void by the issuance of a civil penalty order in relation thereto.

(2) Any person who contravenes any provision of this Act is liable to any other person for any loss or damage suffered by that person as a result of that contravention.

(3) The provisions of this section do not affect the right to any remedy that a person may otherwise have.

Subpart D: Indemnification and insurance

66 Indemnification and insurance of persons referred to in sections 54, 55 and 57

(1) A registered business entity may indemnify a person referred to in section 54 or 55 against expenses (including legal practitioner's fees) incurred by the person in a proceeding—

(a) to which she was a party because he was a person referred to in those sections, or

(b) in which the person was wholly successful in the defence of the proceeding, whether on procedural grounds, or otherwise.

(2) A registered business entity may indemnify a person referred to in section 54 or 55 against—

(a) liability incurred to any person other than the entity (and in the right of the entity under section 60) was a party to a proceeding because he which the person referred to in section 54 or 55; or

(b) expenses (including legal practitioner's fees) incurred by the person in defending or settling any claim in the proceeding relating to any such liability;

if such liability was not criminal liability, was not liability for a breach of a duty stated in sections 54, 55 or 57, and was not liability for conduct for which the person was adjudged liable on the basis of receiving a financial benefit to which he was not entitled, whether or not involving action in the person's official capacity.

(3) A registered business entity may purchase insurance to protect a person referred to in sections 54, 55 or 57 against liability asserted against or incurred by the person in the capacity in which this person referred to in section, whether or not the entity would have power to indemnify the person against

the same liability under subsections (1) or (2) of this section.

(4) This section is additional to, and do not derogate from, section 74 ("Indemnity and civil and criminal liability of officers and auditors of companies and members of PBCs").

PART V

Offences and defaults Common to ReGistered Business Entities

67 Penalties for false statements and oaths

(1) If any person in any statement, return, report, certificate, statement of financial position 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 or she 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.

(2) If any person, on examination on oath authorised 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 or she 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.

(3) Every officer or auditor of a company or foreign company, or accounting officer of a corporation controlling member or private business corporation or any other person employed generally or engaged for some special work or service by the company, foreign company or private business corporation 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, foreign company or private business corporation which is false in any material particular, shall, subject to subsection (4), 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.

(4) In any prosecution under subsection (3) 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.

68 Fraudulent, reckless or grossly negligent conduct of business

(1) A creditor, member, judicial manager or liquidator of a company or private business corporation may, in an action instituted in the High Court, seek a declaration in terms of subsection (3).

(2) The High Court may, in the course of any ongoing criminal or civil proceedings in connection with a company or private business corporation, on its own motion or on the application of the Master of the High Court or of any creditor, member, judicial manager or liquidator of the company or private business corporation, make a declaration in terms of subsection (3).

(3) If it appears to a court that any business of a company or private business corporation is or 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 declare that —

(d) 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 such manner or in such circumstances; or

(e) any person who was knowingly a party to the carrying on of business of the private business corporation in such manner or in such circumstances;

(hereinafter called an "impugned person") shall be personally responsible, without limitation of liability, for all or any of the debts or other liabilities of the company or private

business corporation as the court may direct, and the court may give such further orders as it considers proper for the purpose of giving effect to the declaration and enforcing the liability, including an order under subsection (4).

(4) In particular the court may, subject to the prior rights of other creditors of the impugned person, make his or her declared liability a charge on any debt or obligation due from the company or private business corporation to the impugned person or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company or private business corporation held by or vested in the impugned person or in any company, private business corporation or person on his or her behalf, or in any person claiming as assignee from or through the impugned person, company, private business corporation or person, and may from time to time make such further order as may be necessary for the 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 impugned person, 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.

(5) On the production to the Registrar by any member or creditor of a company or private business corporation of proof satisfactory to the Registrar that a director of the company or controlling member of the private business corporation is carrying on its business in the manner specified in subsection (3)(a) or (b), the Registrar may (unless an action is earlier instituted or taken under subsection (1) or (2)) serve upon the director or the controlling member a category 2 civil penalty order in which the remediation clause (instead of the cumulative penalty) shall require the controlling member to take the remedial action specified in the order within a specified period.

(6) Any person who is knowingly a party to the carrying on of business in the manner specified in subsection (1)(c) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding

one year or to both such fine and such imprisonment.

(7) If it appears in the course of an investigation under Part II of this Chapter that any past or present officer or member of a company or private business corporation has been guilty of an offence under subsection (6) or other offence for which he or she is criminally responsible under this Act or the Criminal Law Code, the Registrar or inspector shall cause all the facts known to him or her which appear to constitute the offence to be laid before the Prosecutor-General.

69 Fraudulent, reckless or wilful failure of financial accounting; falsification of records

(1) Without derogating from section 68 (“Fraudulent, reckless or grossly negligent conduct of business”), any—

(a) director of a company who fraudulently, recklessly or wilfully fails to take all reasonable steps to secure compliance by the company with the requirements of section 182 (“Keeping of financial records”), 183 (“Statement of financial position and statement of comprehensive income and financial year of holding company and subsidiary”), 184 (“General provisions as to contents and form of financial statements”), 186 (“Obligation to lay group accounts before holding company”) or 189 (“Directors report to be attached to statement of financial position”), or has by his or her own wilful act been the cause of any default by the company thereunder, he or she shall be guilty of an offence and liable to a fine not exceeding level twelve, or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment:

Provided that—

(i) it shall be a defence under this paragraph for a director to prove, on a balance of probabilities, that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of

seeing that the requirements of this section were complied with and was in a position to discharge that duty;

(ii) if the court accepts the defence proffered under paragraph (i), it may direct the Registrar to serve upon the director the civil penalty order referred to in section 182(5), 183(5), 184(6) or 189(3), as the case may be;

(b) controlling member of a private business corporation who fraudulently, recklessly or wilfully fails to take all reasonable steps to secure compliance by the private business corporation with the requirements of section 271 (“Financial statements”) or 273 (“Annual financial statements”) or 274 (“Examination of financial statements and reports thereon”), by his or her own wilful act or has been the cause of the private business corporation in complying with any of those requirements, he or she shall, in respect of each default, be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for all defaults for a period not exceeding six months, or to both such fine and such imprisonment:

Provided that—

(i) it shall be on a balance of probabilities that he or she believed on reasonable grounds that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and that such person was in a position to discharge that duty and that he or she had no reason to believe that such person had failed to discharge that duty;

(ii) if the court accepts the defence proffered under paragraph (i), it may direct the Registrar to serve upon the civil penalty order referred to in section 271(7), 273(4) or 274(4).

(2) Any person who conceals, destroys, mutilates, falsifies or makes any false entry in, or, with intent to defraud or deceive, makes any erasure in any register, account or document including any minutes, records, security, or company or private business corporation shall, unless he or she satisfies the court that he or she 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.

70 Power to restrain fraudulent persons from managing companies or controlling PBCs

(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 private business corporation;

(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 or she is liable, whether he or she has been or not, under section 68; or

(ii) has otherwise been guilty, while an officer or officer of the company or controlling member of a private business corporation, of any fraud in relation to the company or of any breach of his or her duty to the company or private business corporation;

the court may on application make an order that the court, whether that person shall not, without the leave of the court, take part directly or indirectly, in any way, whether directly or indirectly, be concerned or take part in the management of any company, foreign company or private business corporation specified 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 or her 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 or herself 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 of the High Court 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 or her to be relevant and shall do so if summoned by the court and may himself or herself give evidence and call witnesses.

(4) An order may be made by virtue of subsection (1)(b)(ii) 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 or she 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.

71 Unlawful personation and misrepresentation in relation to shares and interests

(1) If any person falsely and deceitfully personates any owner of any share or interest in any company or of any interest in a private business or corporation 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 or she shall be guilty of an offence and liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(3) If a member of—

(a) a company makes use of a certificate of any share, stock or debenture delivered to him or her or another person in terms of section 153 of title to shares"); or

(b) a private business corporation makes use of a certificate issued to him or her or another person in terms of section 257 ("Certificate of members interest");

at a time when he or she knows it does not reflect the existence or true extent of his or her current interest in the company, to obtain any benefits or advantage for himself or herself or the private business corporation, he or she shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

72 Obligations to maintain and file beneficial ownership information

(1) Every company shall maintain an accurate and up-to-date register of the beneficial owner or owners of the company, to be known as the register of beneficial owners which register shall—

(a) be kept, within Zimbabwe, and at the same office at which the register of members is kept; and

(b) with respect to each director, record his or her first name and surname, any former first name and appearing in his or her identification reference number full residential or identity document, his or her business address and postal address and his or her nationality, as well as the nature and extent of his or her beneficial ownership in the company.

(2) Every company shall file with the Registrar, in prescribed form, accurate and up-to-date beneficial ownership information referred to in this section and shall within seven days of any change file updates as and when there is any material change to the information.

(3) Beneficial ownership information held and maintained in terms of this section, either by the company or by the Registrar, shall be made available for inspection by the Financial Intelligence Unit or by a law enforcement agency referred to in section 2 of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*].

(4) The company shall appoint a person, resident in Zimbabwe, who shall be responsible for keeping custody of the register of beneficial owners and

who shall be authorised to make the information available to the Financial Intelligence Unit or law enforcement authorities, upon request.

(5) The names and sufficient contact details of the person referred to in subsection (4) shall be recorded in the form filed by the company with the Registrar in terms of subsection (2).

(6) Beneficial ownership and other company information held by the Registrar, shall be public information and shall be available for inspection, whether electronically or physically—

(a) by members of the public (subject to section 73 (10)); and

(b) by a financial institution or a designated non-financial businessor profession referred to in section 2 and section 13, respectively, of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*].

(7) The Registrar or the Financial Intelligence Unit may each, on its own behalf or on behalf of a law enforcement agency, seek beneficial ownership or other company information from their foreign counterparts, in respect of any company, and, likewise, may provide beneficial ownership or other company information to their foreign counterparts.

(8) The Registrar and the Financial Intelligence Unit and any competent authority which, through them, requests beneficial ownership and other company information from other countries, shall monitor the quality of the assistance given by the foreign authorities and shall keep records of such requests and responses.

(9) The company or its administrators, liquidators or other persons involved in the dissolution of the company, shall maintain beneficial ownership information for a period of at least five years after the date on which the company is dissolved or otherwise ceases to exist.

(10) Any person who fails to comply with the requirements of subsection (1), (2), (3), (4), (5) or (9) shall be guilty of an offence and be liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

73 Prohibition of concealment of beneficial ownership

(1) Subject to subsection (2), no company or private business corporation shall—

(a) allot or issue any of its shares in the name of, or register any issue of a certificate in the name of, or transfer any interest of a member's interest to or to (as the case may be), any other person than to say, the person who, even if it is purported that the beneficial owner (that is, the or section referred to ownership of the share (in this dividend and that benefit of the present or future interest, whether or not the benefit is vested or contingent); or one, is a or

(b) transfer any of its shares or interests in the name of a person other than the beneficial owner.

(2) Subsection (1) shall not affect the allotment or issue, or the registration of a transfer, or shares or interests in a company or private business corporation in the name of—

(a) a nominee if he or she is the nominee (whether alone or together with any "associate" as defined in section 3 ("When persons deemed to be associates and when persons deemed to control companies")) who holds less than twenty *per centum* of the shares or interests in the company or private business corporation; or

(b) a manager or trustee of a collective investment scheme registered in terms of the Collective Investment Schemes Act [*Chapter 24:19*]; or

(c) an executor of a deceased estate, a trustee of an insolvent estate or the liquidator of a company in liquidation; or

(d) a curator or guardian of a person under a disability; or

(e) a holder of a licence issued in terms of Part V of the Securities and Exchange Act [*Chapter 24:25*]; or

(f) a central securities depository established in terms of Part IX of the Securities and Exchange Act [*Chapter 24:25*]; or

(g) such other persons as may be prescribed.

(3) Without derogating from section 235 (“acquisition”), a company or private business corporation may, and if so directed by the Registrar shall, request any person to whom it is about to allot, issue or transfer any of its shares or interests to the company to furnish it with such information as the company may require to enable it or private business corporation to comply with subsection (1), and if the person or private business corporation fails or refuses to comply with the request within a reasonable time the company or private business corporation shall not allot, issue or transfer the shares or interest to him or her.

(4) If a company or private business corporation has reason to believe that any of its shares or interests are held by a nominee, the company or private business corporation may request the alleged nominee to provide it with such information as will identify the beneficial owner and additionally, or alternatively, the capacity in which the alleged nominee holds the shares or interests, and the alleged nominee shall without delay comply with the request.

In addition, a company or private business corporation shall not, for so long as a shareholder of a company or private business corporation fails or refuses in terms of this subsection, to comply with a request in terms of either subsection, he or she shall not, either personally or by proxy, cast a vote attached to the share or interest nor receive a dividend or interest payable on the share or interest.

(5) Where a company has allotted, issued or transferred a share or interest in a private business corporation to a nominee, or registered a transfer in the name, of a nominee in contravention of subsection (1), then—

(a) no nominee shall, either personally or by proxy, cast a vote attached to the share or interest nor receive any dividend or interest payable on the share; and

(b) the Registrar may (unless the company has taken action in terms of subsection (4)) serve a category 2 civil penalty order upon the alleged nominee, in which—

(i) the remediation clause shall require the nominee to divest himself or herself of the share or interest within a specified period; and

(ii) it is declared that the failure or refusal of the nominee to divest himself or herself of a share or interest within the specified period will result in every share or interest concerned becoming *bona vacantia* and vesting in the State, which may thereafter dispose of it.

(6) The validity of any resolution adopted by a company or private business corporation shall not be affected by contravention of subsection (4) or (5) (a), if the resolution was adopted by the requisite majority of votes which were validly cast.

(7) A dividend referred to in subsection (4) or (5)(b)(i) shall accrue to the company or private business corporation concerned.

(8) Before requiring an alleged nominee or the interest to divest himself or herself of a share in terms of subsection (5)(b)(i), the Registrar shall, for the purposes of section 296 (“Additional process requirements before service of certain civil penalty orders”) (1), also inform—

(a) the person from whom the interest, if that person is readily identifiable; and

(b) the company or private business corporation concerned;

of his or her reasons for so, and shall give the alleged nominee an opportunity to make those persons representations in the matter.

(9) With reference to subsection (2)(a) the nominee shall disclose the name and beneficial owner relevant particulars of the beneficial business to the company or private business cooperation together with a written request such beneficial owner and particulars that not on the face of the shares or appear share certificate in the certificate in the or in the register of shareholders of interest holders. Whereupon such company or private or interest

business corporation shall comply with such request but keep a separate register containing the names and relevant particulars of beneficial owners in question in accordance with section 72.

(10) The name and relevant particulars of the beneficial owners referred to in subsection (9) shall not be disclosed except with the consent of the nominee or by virtue of an order of a court of competent jurisdiction.

(11) Any company or private business cooperation that fails to keep the register of names and particulars of a beneficial owner referred to in subsection (9) shall be liable to a category 4 civil penalty order at the instance of the Registrar.

(12) An agreement under section 299 may give standing to a foreign company registry to apply to a domestic court for an order referred to in subsection (10).

(13) Every company or private business cooperation shall nominate a director or an officer who shall be responsible for maintaining the registers for beneficial owners, failure to comply with such shall render the company or private business cooperation concerned liable to a category 4 civil penalty.

74 Indemnity of officers and members and civil and criminal liability of auditors and PBCs

(1) Subject to subsections (1) and (2), and unless otherwise provided in this Act or in the articles of the company or by-laws of the private business corporation, or in any contract with a company or private business corporation or otherwise, every director, managing director, agent, auditor, secretary and other officer for the time being of a company or the member for the time being of the private business corporation, shall be entitled to an indemnity from the company or private business corporation for payments made and personal liabilities incurred by him or her—

(a) in the ordinary and proper conduct of the affairs of the company or private business corporation; and

(b) in or about anything necessarily done for the preservation of the company or private business corporation.

(2) Subject to this section, any provisions, whether contained in the articles of a company

or by-laws of the private business corporation, or in any contract with a company or private business corporation or otherwise, for exempting any officer of the company or member of the corporation or any person employed by the company or corporation as auditor from, or indemnifying him or her against, any liability which by law would otherwise attach to him or her in respect of any negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the company or private business corporation shall be void.

(3) In particular, no officer of a company or member of a private business corporation who is personally liable for a civil penalty shall be indemnified by the company or corporation against such liability, and any provisions, whether contained in the articles of a company or by-laws of the private business corporation, or in any contract with a company or corporation or otherwise, for exempting or indemnifying such officer shall be void.

(4) A company or private business corporation that contravenes subsection (2) or (3) and every officer, auditor or member who is party to the payment or receipt of any indemnity in contravention of those subsections shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and imprisonment, and the court imposing such fine or imprisonment or both may suspend the whole or any part of such fine or imprisonment or both conditionally upon the company or private business corporation recovering, or the officer, auditor or member in default reimbursing the company or private business corporation for, the full value of the indemnity.

(5) Despite subsections (2) and (3) a company or private business corporation may indemnify any such officer auditor or members against any liability incurred by him or her in defending any proceedings, whether civil or criminal, in which judgment is given in his or her favour or in which he or she is acquitted or in connection with any application under

section 59 ("Power of court to grant relief to defendants or potential defendants in certain cases") in which relief is granted to him or her by the court.

CHAPTER III

COMPANIES AND OTHER BUSINESS ENTITIES

PART I

INTRODUCTION

Sub-Part A: Incorporation of companies and matters incidental thereto

75 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 Part or as a private business corporation under Part I of Chapter IV, or is formed in pursuance of some other law:

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 purposes of practising or carrying on in Zimbabwe that designated profession or calling;

may consist of more than twenty persons.

(2) For the purposes of this section "designated profession or calling" means—

(a) legal practitioners registered under the Legal Practitioners Act [*Chapter 27:07*]

(b) public accountants and auditors registered under the Public Accountants and Auditors Act [*Chapter 27:12*];

(c) architects registered under the Architects Act [*Chapter 27:01*];

(d) quantity surveyors registered under the Quantity Surveyors Act [*Chapter 27:13*];

(e) medical practitioners registered under the Health Professions Act [*Chapter 27:19*];

(f) any other profession or calling which is controlled and regulated by a council or other body established by or under any Act in force in Zimbabwe, and which is declared by the Minister by notice in the *Gazette* to be a designated profession or calling for the purposes of this proviso.

76 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 whether—

(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 82 ("Power to dispense in certain cases"), 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 would up, in this Act termed a company limited by guarantee.

77 Memorandum of company

(1) In the case of a company limited—

(a) by shares, the memorandum shall be in the English language, or subject to subsection (6).in an officially recognised language and must state—

(i) the name of the company which shall, unless a licence has been granted under section

82 (“Power to dispense with “Limited” in certain cases”), have 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 “Co-op”;

(ii) the objects of the company, if the promoter wishes to specify them; (iii) that the liability of the members is limited;

(iv) the number of shares with which the company proposes to be registered;

(b) by guarantee, the memorandum shall be in the English language or any other prescribed 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 or she is a member or within one year after he or she ceases to be a member for payment of the debts and liabilities of the company contracted before he or she 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 state in words opposite to his or her name the number of shares he or she 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 (or by affixing their digital signature thereto) the number of shares taken.

(4) A public company which converts itself into a private company in terms of section 86 ("Statement of prospectus on ceasing to be private company") (3) shall, within one month after the conversion, insert the term "(Private)" before the word "Limited "in the name.

(5) The insertion of the term "(Private)" in the name of the company in compliance with subsection (4) shall not be regarded as a change of name for the purpose of section 26 ("Change of name")(1).

(6) If the memorandum is submitted in an officially recognised language such memorandum must be accompanied by a translation of the same in English authenticated by a person who in the opinion of the Registrar is competent to translate such language into English.

78 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 every such signature of a subscriber or a witness there shall be typed his or her 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;

(d) a person with a disability impairing his or her ability to sign, his or her representative;

as the case may be, shall sign the memorandum.

79 Alteration of memorandum

(1) 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.

(2) A company may by special resolution—

(a) subject to the Insolvency Act, 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 authorise 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 26 ("Change of name").

(3) Notwithstanding subsection (2), if an application (hereafter called a "cancellation application") is made to the court for an alteration in terms of subsection (2)(a) or (b) to be cancelled, the alteration shall not have effect except in so far as it is confirmed by the court.

(4) A cancellation application may be made—

(a) by the holders of not less than five *per centum* in nominal value of the aggregate company's issued share capital or any class thereof; or

(b) by a group of shareholders referred to in section 80 ("Group voting on amendments to memorandum"):

Provided that a cancellation application shall not be made by any person who, or group of shareholders referred to in section 80 that, has consented to or voted in favour of the alteration.

(5) A cancellation application 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.

(6) On being seized of a cancellation application 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.

(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 or she sees fit to revoke the licence, may vary the licence by making it subject to such conditions and regulations as he or she 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.

Provided that the court may by order at any time extend the time for the delivery of documents to the Registrar under this paragraph 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 Registrar may issue a category 3 civil penalty order upon the defaulting company.

(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 authorised by subsection (2) 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.

80 Group voting on amendments to memorandum

The holders of any type or class of shares on an association shall be entitled to vote as a group on an amendment to the memorandum of association (that is to say, a majority of the votes of the group on the question whether to amend the memorandum shall be deemed to be the totality of the votes of the group) if the memorandum of association so provides or if the change would—

(a) increase or decrease the number of authorised shares of such group;

(b) change any of the rights or preferences of the shares of such group;

(c) create a right of exchange or convert their shares into shares of the type or class held by such group;

(d) change the different number of shares or into shares of another type or class; or

(e) create a new type or class of shares having rights or preferences superior or substantially equal to those of such group, or increase the rights and preferences of any type or class of shares having rights and preferences substantially equal to or superior to those of such group, or increase the rights and preferences of any type or class of shares having rights and preferences subordinate to those of such group if such increase would then make them substantially equal or superior to those of such group; or

(f) limit or deny the existing pre-emptive rights of the shares of such group; or

(g) cancel or otherwise affect accumulated dividends on the shares of such group; or

(h) limit or deny the voting rights of such group; or

(i) otherwise change the rights or preferences of the shares held by such group so as to affect them adversely.

81 Articles of association and alteration thereof

(1) Articles of association signed by the subscribers to the memorandum of a company and prescribing its internal rules may be registered with such memorandum.

(2) Articles of association may adopt all or any of the internal rules contained in Table A (for public companies), B (private companies limited by shares) or C (private companies limited by guarantee) in the Sixth Schedule ("Model Articles and By-Laws").

(3) In the case of—

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

(b) a private company, if articles of association are not registered with the memorandum of association, or if articles of association are registered in so far as the articles do not exclude or modify the internal rules contained in Table B, those internal rules shall, so far as applicable, be the internal rules of the company in the same manner and to the same extent as if they were contained in duly registered articles;

(c) a company limited by guarantee, if articles of association are not registered with the memorandum of association, or if articles of association are registered in so far as the articles do not exclude or modify the internal rules contained in Table C, those internal rules shall, so far as applicable, be the internal rules of the company in the same manner and to the same extent as if they were contained in duly registered articles;

(4) 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 chairperson 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.

(5) The articles shall be in English or any other officially recognised language and shall 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 or her full name, occupation and full residential or business address:

Provided that, if any other official language is used for the articles, the articles shall be accompanied by a translation of the same in English, authenticated by a person who in the opinion of the Registrar is competent to translate such language into English.

(6) 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.

82 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 or her a memorandum complying with section 74 ("Indemnity and civil and criminal liability of officers and auditors of companies and members of private businesscorporations"), by licence signed by him or her, directing 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 115 ("Prohibition of allotment unless minimum subscription received"), 116 ("Prohibition of allotment in certain cases unless statement

in lieu of prospectus delivered to Registrar"), 121 ("Register and return as to allotments"), 158 (" Restrictions on commencement of business"), 165 ("Annual return to be made by company"), 166 ("Statutory meeting and statutory report"),170 ("Right to receive copy of statement of financial position and auditor's report") and 199 ("Restrictions on appointment or advertisement of director;share qualifications of directors")

(3) Subject to subsection (4), 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.

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

(5) Any application to the court to review the Minister's decision in terms of subsection (3) must be made no later than thirty days after the company receiving notice of the Minister's decision to that effect.

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

(7) Section 26 ("Change of name") shall apply to a change of name under this section.

(8) A licence by the Minister under this section may be granted on such conditions and subject to such regulations as he or she 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.

(9) 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 or she may vary the licence by making it subject to such conditions and regulations as he or she thinks fit, *in lieu* of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.

Sub-Part B: Membership of company

83 Membership of company; personal liability where business carried on with no members

(1) Section 20 ("Effect of registration of constitutive documents and limitation of liability of members and private business corporations") (3)(a) describes how membership in a company is commenced, evidenced and terminated.

(2) 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.

84 Membership of holding company

(1) Except as provided under this section—

(a) a body corporate that is a member of a company cannot be its holding company, and

(b) any allotment or transfer of shares in a company to its subsidiary is void.

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

(3) The prohibition in subsection (1) does not apply where the subsidiary is concerned only—

(a) as personal representative; or

(b) as trustee;

unless, in the latter case, the holding company or a subsidiary of it is beneficially interested under the trust.

(4) For the purpose of ascertaining whether the holding company or a subsidiary is so interested, there shall be disregarded—

(a) any interest held only by way of security for the purposes of a transaction entered into by the holding company or subsidiary in the ordinary course of a business that includes the lending of money;

(b) any interest within—

(i) subsection (5) (a) (interests to be disregarded: residual interest under pension scheme or employees' share scheme);

(ii) subsection (5)(b) (interests to be disregarded: employer's or employees' rights of share recovery under pension scheme scheme);

(c) any rights that the company or subsidiary has in its capacity as trustee, including in particular—

(i) any right to recover its expenses or be remunerated out of the trust property; and

(ii) any right to be indemnified out of the trust property for any liability incurred by reason of any act or omission in the performance of its duties as trustee.

(5) Where shares in a company are held on trust for the purposes of a pension scheme or employees' share scheme, there shall be disregarded for the purposes of subsection (3) any—

(a) residual interest that has not vested in possession; or

(b) charge or lien on, or set-off against, any benefit or other right or interest under the scheme for the purpose of enabling the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to him or her from the member.

(6) In subsections (4) and (5)—

"employee" shall be read as if a director

of a company were employed by it;

"employees' share scheme" means an "approved employee share ownership scheme or trust" as defined in section 2 of the Income Tax Act [*Chapter 23:06*] or an employee share ownership scheme or trust as defined in the Indigenisation and Economic Empowerment Act [*Chapter 14:33*] (No. 14 of 2007);

"pension scheme" means a scheme for the provision of benefits consisting of or in respect including of relevant benefits for or former employees;

"relevant benefits" means any pension, lump sum, gratuity or other like benefit given or to be given in anticipation of or on retirement or in connection with past service, after retirement or death;

"residual interest" means a right of the company or subsidiary ("the residual beneficiary") to receive any of the trust property in the event of—

(a) all the liabilities arising under the scheme having been satisfied or provided for; or

(b) the residual beneficiary ceasing to participate in the scheme; or

(c) the trust property at any time exceeding what is necessary for satisfying the liabilities arising or expected to arise under the scheme;

"vest in possession", in relation to a residual interest, means—

(a) in a case within paragraph (a) of the definition of "residual interest", the occurrence of the event mentioned there (whether or not the amount of the property receivable pursuant to the right is ascertained);

(b) in a case within paragraph (b) or (c) of the definition of "residual interest", when the beneficiary becomes entitled to require the trustee to transfer to him or her any of the property receivable pursuant to the right.

(7) In subsection (6), in the definition of "residual interest"—

(a) the reference to a right includes a right dependent on the exercise of a discretion vested by the scheme in the trustee or another person, and

(b) the reference to liabilities arising under a scheme includes liabilities that have resulted, or may result, from the exercise of any such discretion.

Sub-Part C: Private companies

85 Definition of private company and consequences of default in complying with conditions for private company

(1) In this Act—

"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 termination 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 High Court, a public company may convert itself into a private company.

(4) If a company registered as a private company— (a) knowingly permits its membership to exceed fifty members (other than members who are its employees or former employees as contemplated in paragraph (b) of the definition of the "private company") it shall be guilty of an offence and liable to a fine not exceeding level two for every day during which it is in contravention of this paragraph; or

(b) invites members of the public to subscribe for its shares or debentures, the provisions of sections 108 ("Civil liability for misstatements in prospectus") and 111 ("Document containing offer of shares or debentures for sale to be deemed to be prospectus") ("Restrictions on offering shares to 114 ("Restrictions or sale") shall apply to it as if it was a public company, without affecting the liability of the private company under subsection (5).

(5) If it comes to the notice of the Registrar that a company is in default of subsection (4)(a) or (b) or has not complied with the restriction referred to in paragraph (a) of the definition of "private company" in the subsection (1) independently of a prosecution, if any, for an offence under subsection (4)(a) or (b), the Registrar may serve a category 1 civil penalty order upon the defaulting company.

86 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 longer include the provisions which, under section 85 ("Definition of private company and consequences of default in complying with conditions for

private company"), 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 Second 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 Eighth Schedule is issued and is lodged with the Registrar as required by section 106 ("Registration of prospectus").

(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 a company is in default of subsection (1), the Registrar may serve a category 1 civil penalty order upon the defaulting company.

(4) Section 115 ("Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar") (5) and (6) shall apply, with such changes as may be necessary, 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 section 26 ("Change of name")(1).

Sub-Part D: Co-operative companies

87 Definition of co-operative company and consequences of default in complying with conditions for 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 89 ("Voting rights of members of the co-operative company"), 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 89; 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 subsection (1)(a)—

"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 firstmentioned co-operative company.

(4) Where the memorandum and articles of a company include the provisions which under subsection (1) 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 cooperative company.

(5) If it comes to the notice of the Registrar that a company is in default of subsection (4), the Registrar may serve a category 1 civil penalty order upon the defaulting company:

Provided that the Registrar, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, may waive the civil penalty and relieve the company from the consequences referred to in subsection (4).

(6) If no civil penalty order has been served in relation to it the foregoing default, or, having been served, is appealed in terms of section 296 (“Additional due process requirements before service of certain civil penalty orders”)(3), 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.

88 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 co-operative company.

89 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 co-operative company is less than one hundred 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 forms a subsidiary co-operative company or acquires 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 prescribed;

(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 subsection (1), in respect of matters affecting the rights of any such holder of any such preference shares or the dissolution of the cooperative company.

9 0 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 Part XV of liquidation and application of the Insolvency Act [*Chapter 6:07*], there remains of any surplus assets the liquidator shall distribute such surplus, including the capital 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 for such cases may be provided 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.

91 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 authorised 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 on insolvency, that is to say, 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);

(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.

92 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.

93 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 contained in this subsection 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.

94 Company ceasing to be 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 85 ("Definition of co-operative company and consequences of default in complying with conditions for co-operative company") 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 section 26 ("Change of name") (1).

(3) If it comes to the notice of the Registrar that a company is in default of subsection (1), the Registrar may serve a category 1 civil penalty order upon the defaulting company.

PART II

Share CaPital and deBentures

Sub-Part A: General nature of share capital of companies

95 Legal nature of shares and requirement to have shareholders

(1) A share issued by a company is movable property and transferable in any manner provided for by the articles of the company or recognised by this Act or any other law.

(2) Subject to section 304 ("Transitional provisions in relation to par value shares, treasury shares, capital accounts and share certificates"), a share does not have a nominal or par value.

(3) A company may not issue shares to itself as provided in section 128 ("Power of company to purchase own shares").

(4) An authorised share of a company has no rights associated with it until it has been issued.

(5) Shares of a company that have been issued and subsequently—

(a)

acquired by that company, as contemplated in section 129 ("Authority required by company to purchase its own shares"); or

(b) surrendered to that company in the exercise of appraisal rights in terms of section 233 ("Dissenting shareholders' appraisal rights");

have the same status as treasury shares, that is to say, shares that have been authorised but not issued.

(6) Despite the repeal of the Companies Act [*Chapter 24:03*], a share issued by a pre-existing company, and held by a shareholder immediately before the effective date, continues to have all of the rights associated with it immediately before the effective date, irrespective of whether those rights existed in terms of the company's memorandum or articles, or in terms of that Act, subject only to—

(a) amendments to that company's memorandum or articles after the effective date; and

(b) the operation of subsection (5); and

(c) the regulations contemplated in section 303 ("Repeals, re-registration of companies and PBCs, general transitional provisions and savings") (30).

96 Authorisation for shares

(1) A company's memorandum—

(a) must set out the classes of shares, and the number of each class, and the company is to issue; and

(b) must set out, with respect to each class of shares—

(i) a distinguishing designation for that class; and

(ii) the preferences, rights, limitations and other

(a)

terms
associated
with

that class, subject to

paragraph (d); and

(c) may authorise a stated number of unclassified shares, which are subject to classification by the board of directors in accordance with subsection (3)(c); and

(d) may set out a class of shares—

(i) without specifying the associated preferences, rights, limitations or other terms of that class; or

(ii) for which the board of directors must determine the associated preferences, rights, limitations or other terms; or

(iii) which must not be issued until the board directors has determined the associated preferences, rights, limitations or other terms, as contemplated in subparagraph (ii).

(2) The authorisation and classification of shares, the numbers of authorised shares of each class, and the preferences, rights, limitations and other terms associated with each class of shares, as set out in a company's memorandum, may be changed only by—

(a) an amendment of the memorandum by special resolution of the shareholders; or

(b) the board of directors, in the manner contemplated in subsection (3), except to the extent that the memorandum provides otherwise.

(3) Except to the extent that a company's memorandum provides otherwise, the company's board may—

increase or decrease the number of authorised shares of any class of shares on a *pro rata* basis to the shareholders of one or more classes of those shares, by the use of any one or more of the following expedients—

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

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

(a)

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

(iv) 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; or

(b) reclassify any authorised but unissued shares that have been classified but not issued; or

(c) classify any authorised but unclassified shares that have been as contemplated in subsection (1)(c), are not issued; or

(d) determine the terms of preferences, rights, limitations or other shares in a class contemplated in subsection (1)(d).

(4) If the board of directors acts pursuant to its authority contemplated in subsection (3), the company must file a notice of amendment of its memorandum, setting out the changes effected by the board of directors.

97 Preferences, rights, limitations and other share terms

(1) All of the shares of any particular class authorised by a company have preferences, rights, limitations and other terms that are identical to those of other shares of the same class, except to the extent that the company's memorandum provides otherwise.

(2) Each issued share of a company, regardless of its class, has associated with it one general voting right, except to the extent provided otherwise by—

(a) this Act; or

(b) the preferences, rights, limitations and other terms determined by or in terms of the company's memorandum in accordance with section 96 ("Authorisation for shares").

(a)

(3) Despite anything to the contrary in a company's memorandum—

(a) every share issued by that company has associated with it an irrevocable right of the shareholder to vote on any proposal to amend the preferences, rights, limitations and other terms associated with that share; and

(b) a company must always have ordinary shares and in addition to any class of share as may be prescribed in the company's constitutive documents.

(4) If a company's memorandum has established more than one class of shares, the memorandum, in setting out the terms of those preferences, rights, limitations and other classes of shares, must provide that—

for each particular matter that may be submitted for a decision to the holders of the company, at least one class of the company's shares has voting rights that may be exercised on that matter; and

(b) the holders of at least one class of the company's shares, irrespective of whether it is the same class of contemplated in paragraph (a), are entitled to receive the net assets of the company upon its liquidation.

(5) Subject to this Act or any other enactment a company's memorandum may establish, for any particular class of shares, preferences, rights, limitations or other terms that—

(a) bestow special, conditional or limited voting rights; or

(b) provide for shares of that class to be redeemable, subject to the requirements of section 129 ("Authority required by company to purchase its own shares"), or convertible, as specified in the memorandum—

(i) at the option of the company, the shareholder, or another person at any time, or upon the occurrence of any specified contingency; or

(ii) for cash, indebtedness, securities or other property; or

(a)

(iii) at prices and in amounts specified, or fixed in accordance with a formula determined by the board; or

(iv) subject to any other terms set out in the company's memorandum; or

(c) entitle the shareholders to distributions calculated in any manner, including dividends that may be cumulative, non-cumulative, or partially cumulative; or

(d) provide for shares of that class to have preference over any other class of shares with respect to distributions, or rights upon the final liquidation of the company.

(6) The memorandum of a company may provide for preferences, rights, limitations or other terms of any class of shares of that company to vary in response to any objectively ascertainable external fact or facts.

(7) For the purpose of subsection (6)—

(a) "external fact or facts'' includes the occurrence of any event, a fact, benchmark or variation in any reference, a determination or action by the company, its board, or any other person, an agreement to which the company is a party, or any other document; and

(b) themanner in which a fact affects the preferences, rights, limitations or other terms of shares must be expressly determined by or in terms of the company's memorandum, in accordance with section 96 ("Authorisation for shares").

(8) If the memorandum of a company has been amended to materially and adversely alter the preferences, rights, limitations or other terms of a class of shares, any holder of those shares is entitled to seek relief in terms of section 233 (" Dissenting shareholders and appraisal rights") if that shareholder—

(a) notified the company in advance of the intention to oppose the resolution to amend the memorandum; and

(a)

(b) was present at the meeting, and voted against that resolution.

98 Issuing shares

(1) The board of directors may resolve to issue shares of the company at any time, but only within the classes, and to the extent, that the shares have been authorised by or in terms of the company's memorandum, in accordance with section 96 ("Authorisation of shares").

(2) If a company issues shares—

(a) that have not been authorised in accordance with section 96; or (b) in excess of the number of authorised shares of any particular class; the issuance of those shares may be retroactively authorised in accordance with section 96.

(3) If a resolution seeking to retroactively authorise an issue of shares, as contemplated in subsection (2), is not adopted when it is put to a vote—

(a) the share issue is a nullity to the extent that it exceeds any authorisation; and

(b) the company must return to any person the fair value of consideration received by the company in respect of that share issue to the extent that it is nullified, together with interest in accordance with the Prescribed Rate of Interest Act [*Chapter 8:10*], from the date on which the consideration for the shares was received by the company, until the date on which the company complies with this paragraph; and

(c) any certificate evidencing a share so issued and nullified, and any entry in the shareholders' register in respect of such an issue, is void; and

(d) a director of the company is liable to the extent set out in section 197 ("Liability of directors and prescribed officers") (3)(e)(i) if the director—

(i) was present at a meeting when the board approved or participated in the making of such unauthorised shares, or decision in terms of section 196 ("Directors acting other than at meeting"); and

(ii) failed to vote against the issue of those shares, despite knowing that the shares had not been authorised in accordance with section 96.

99 Subscription for additional shares in private companies

(1) This section—

(a) does not apply to a public company or State-owned company, except to the extent that the company's memorandum provides otherwise; and

(b) applies to a private company with respect to any issue of its shares, other than—

(i) shares issued—

A. in terms of options or conversion rights; or

B. as contemplated in section 100 ("Consideration for shares") (5) to (7); or

(ii) capitalisation shares issued as contemplated in section 137 ("Capitalisation shares").

(2) If a private company proposes to issue any shares, other than as contemplated in subsection (1)(b),each shareholder of that private company has a right, before any other person who is not a shareholder of that company, to be offered and, within a reasonable time to subscribe for, a percentage of the shares to be issued equal to the voting power of that shareholder's general voting rights immediately before the offer was made.

(3) A private company's memorandum may limit, negate, restrict or place conditions upon the right set out in subsection (2), with respect to any or all classes of shares of that company.

(4) Except to the extent that a private company's memorandum provides otherwise—

(a) in exercising a right in terms of subsection (2), a shareholder may subscribe for fewer shares than the shareholder would be entitled to subscribe under that subsection; and

(b) shares not subscribed by a shareholder within the reasonable time contemplated in subsection (2), may be offered to other persons to the extent permitted by the memorandum.

100 Consideration for shares

(1) The board of directors may issue authorised shares only—

(a) for adequate consideration to the company, as determined by the board of directors; or

(b) in terms of conversion rights associated with previously issued shares or debentures of the company; or

(c) as a capitalisation share as contemplated in section 137 ("Capitalisation shares").

(2) Before a company issues any particular shares, the board must determine the consideration for which, and the terms on which, those shares will be issued.

(3) The consideration referred to in subsection (2) may be in money, in other tangible or intangible property, other rights having monetary value, a binding obligation to pay money, or services previously performed:

Provided that the value of any non-monetary consideration shall be verified by the opinion of an independent expert, which opinion has been made available to all existing members before any shares are issued for such non-monetary consideration and shall, in addition, be approved by all such existing members.

(4) A determination by the board of directors in terms of subsection (2) as to the adequacy of consideration for any shares may not be challenged on any basis other than in terms of section 195 ("Directors and their functions and responsibilities").

(5) Subject to subsections (6) to (8), when a company has received the consideration approved by its board of directors for the issuance of any shares—

(a) those shares are fully paid; and

(b) the company must issue those shares and cause the name of the holder to be entered on the company's shareholders' register in accordance with section 159 ("Register and index of members and use of register as presumptive proof of membership").

(6) If the consideration for any shares that are issued or to be issued is in the form of an instrument that is not negotiable by the company at the time the shares are to be issued, or is in the form of an agreement for future payment by the subscribing party—

(a) the consideration for those shares is regarded as having been received by the company at any time only to the extent—

(i) that the instrument is negotiable by the company; or

(ii) that the subscribing party to the agreement has fulfilled its obligations in terms of the agreement; and

(b) upon receiving the instrument or entering into the agreement, the company must—

(i) issue the shares immediately; and

(ii) cause the issued shares to be transferred to a third party, to be held in trust and later transferred to the subscribing party in accordance with a trust agreement.

(7) Except to the extent that a trust agreement contemplated in subsection (6)

(b) provides otherwise—

(a) voting rights, and appraisal rights set out in section 233 ("Dissenting shareholders appraisal rights"), associated with shares that have been issued but are held in trust may not be exercised; and

(b) any rights of first refusal associated with shares that have been issued but are held in trust may be exercised only to the extent that the instrument has become negotiable by the company or the subscribing party has fulfilled its obligations under the agreement; and

(c) any distribution with respect to shares that have been issued but are held in trust—

(i) must be paid or credited by the company to the subscribing party to the extent that the instrument has become negotiable by the company or the subscribing party has fulfilled its obligations under the agreement; and

(ii) may be credited against the remaining value at that time of any services still to be

performed by the subscribing party, any future payment to be remaining due, or the benefits still received by the company; and

(d) shares that have been issued but are held in trust—

(i) may not be transferred by or at the direction of the subscribing party unless the company has expressly consented to the transfer in advance; and

(ii) may be transferred to the subscribing party on a quarterly basis, to the extent that the instrument has become negotiable by the company or the subscribing party has fulfilled its obligations under the agreement; and

(iii) must be transferred to the subscribing party when the instrument has become negotiable by the company, or upon satisfaction of all of the subscribing party's obligations in terms of the agreement; and (iv) to the extent that the instrument is dishonoured after becoming negotiable, or that the subscribing party has failed to fulfil its obligations under the agreement, must be returned to the company and cancelled, on demand by the company.

(8) A company may not make a demand contemplated in subsection (7)(d)(iv) unless—

(a) a negotiable instrument is dishonoured after becoming negotiable by the company; or

(b) in the case of an agreement, the subscribing party has failed to fulfil any obligation in terms of the agreement for a period of at least forty (40) business days after the date on which the obligation was due to be fulfilled.

101 Options for subscription for shares or debentures

(1) A company may issue options for the allotment or subscription of authorised shares or debentures of the company if so authorised by its articles, but such issuance must comply with this section.

(2) The board of a company must determine the consideration or other benefit for which, and

the terms upon which— (a) any options are issued; and

(b) the related shares or debentures are to be issued.

(3) A company may by decision of the board that the issue— (a) any options, to which the decision constitutes also the authorized shares or debentures for which the options may be exercised; or

(b) any shares or debentures convertible into shares of any class, constitutes also the decision of the board to issue the authorized shares into which the first mentioned shares or debentures may be converted.

(4) A director of a company is liable to the extent set out in section 197 of the directors and prescribed officers”)(3)(e)(iii) if the director—

(a) was present at a meeting when the board approved the granting of an option or a right as contemplated in this section, or participated in the making of such a decision in terms of section 196 (“Directors other than at meeting”); and acting

(b) failed to vote against the granting of the option or right, despite knowing that any shares—

(i) for which the options could be exercised; or

(ii) into which any securities could be converted, had not been authorised in terms of section 96 (“Authorisation for shares”).

102 Solvency and liquidity test

(1) For any purpose of this Act, a company satisfies the solvency and liquidity test at a particular time if, considering all reasonably foreseeable financial circumstances of the company at that time—

(a) the assets of the company is a member of a group of companies, the aggregate assets of the company, as fairly valued, equal or exceed the liabilities of the company or, if the company is a member of a group of companies, the aggregate liabilities of the company, as fairly valued; and

(b) it appears that the company will be able to pay its debts as they become due in the ordinary course of business for a period of—

(i) twelve (12) months after the date on which the test is applied; or

(ii) in the case of a distribution contemplated in paragraph (a) of the definition of ‘distribution’ in section 2 (“Interpretation”), twelve (12) months following that distribution.

(2) For the purposes contemplated in subsection (1)—

(a) any financial information to be considered concerning the company must be based on—

(i) financial records that satisfy the requirements of section 182 (“Keeping of financial records”) and

(ii) financial statements that satisfy the requirements of section 184 (“General provisions as to contents and form of financial statements”); and

(b) subject to paragraph (c), the board of directors or any other person applying the solvency and liquidity test to a company—

(i) must consider a fair valuation of the company’s assets and liabilities, including any reasonably foreseeable contingent assets and liabilities, irrespective of whether or not arising as a result of the proposed distribution, or otherwise; and

(ii) may consider any other valuation of the company’s assets and liabilities that is reasonable in the circumstances; and

(c) unless the memorandum of the company provides otherwise, a person applying the test in respect of a distribution contemplated in paragraph (a) of the definition of ‘distribution’ in section 2 (“Interpretation”) is not to regard as a liability any amount that would be required (if the company were to be liquidated at the time of the distribution) to satisfy the preferential

rights upon liquidation of shareholders whose preferential rights upon liquidation are superior to the preferential rights upon liquidation of those receiving the distribution. *Sub-Part B: Prospectus*

103 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.

104 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 or any other officially recognised language (subject to the requirement of an authenticated translation in English as provided in section 9 ("Form of registers and other documents")(3)) and must state the matters specified in Parts I and II of the Eighth Schedule ("Matters to be specified in prospectus and reports to be set out therein") 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 or her report and of his or her opinions and conclusions.

(2) A condition requiring or binding an applicant for shares in a company or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him or her 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.

(4) If it comes to the notice of the Registrar that any person is in default of subsection (3), the Registrar may serve upon him or her a civil penalty order.

(5) 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 or she proves that he or she was not cognisant thereof; or

(b) he or she proves that the non-compliance or contravention arose from an honest mistake of fact on his or her 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, 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 Eighth Schedule, no director or other person shall incur any liability in respect of the failure unless it be proved that he or she had knowledge of the matters not disclosed.

(6) 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.

(7) 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 and Exchange Act [*Chapter 24:25*] or on a stock exchange of good repute outside Zimbabwe;

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.

(8) 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.

(9) 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.

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

105 Expert's consent to issue of prospectus containing statement by him or her

(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 or she has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his or her 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 or she has given and has not withdrawn his or her 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 a party to the issue thereof shall be knowingly guilty of an offence and liable, in the case of a company, to a fine not exceeding level 14 and, in the case of any such person, to a fine not exceeding level 14 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(3) In addition, the Registrar may serve upon a company in contravention of subsection (1), a category 1 civil penalty order.

106 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 or her agent authorised in writing, and shall have endorsed thereon or attached thereto—

(a) any consent required by section 105 ("Expert's consent") to the issue of the prospectus containing a statement by him 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 Eighth 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 to the copy of a contract required by paragraph (b)(i) 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 the contract or a certified translation of a certified copy embodying a foreign language, translation of the parts in 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 110 (“Underwriting contract and affidavit to be delivered to Registrar”).

(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 authorised 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.

107 Non-registration of prospectus; unapproved alteration of terms mentioned in prospectus or in statement in lieu of prospectus

(1) If it comes to the notice of the Registrar that a prospectus is issued—

(a) without a copy thereof being filed with and registered by the Registrar under section 106 (“Registration of prospectus”); or

(b) without the copy so filed and attached thereto having endorsed thereon or required by section 106;

the Registrar may serve upon the defaulting company and every person who is knowingly a party to the issue of the prospectus in contravention of this section a civil penalty category 3 order.

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

(3) If it comes to the notice of the Registrar that default has been made in complying with subsection (2), the Registrar may serve upon the defaulting company a category 1 civil penalty order.

108 Civil liability for misstatements 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 authorised himself or herself 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 authorised the issue of the prospectus:

Provided that—

(i) where, under section 105 ("Expert's consent to issue of prospectus containing statement by him or her"), the consent of a person is required to the issue of a prospectus and he or she has given that consent, he or she shall not by reason of his or her having given it be liable under this subsection as a person who has authorised the issue of the prospectus except in respect of an untrue statement purporting to be made by him or her 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 authorised the issue of the prospectus by reason only that he or she 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 or she proves— (a) that, having consented to become a director of the company, he or she

withdrew his or her consent in writing before the issue of the prospectus

and that it was issued without his or her authority or consent; or

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

(c) that, after the issue of the prospectus and before allotment thereunder, he or she, on becoming aware of the untrue statement, made an immediate written withdrawal of his or her 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 or she 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 or she 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 104 to be stated and reports (“Matters to be set out in prospectus”) 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 or her having given a consent required of him or her by section 105, as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him or her as an expert.

(3) A person who apart from this subsection would under subsection (1) be liable, by reason of his or her having given the consent required of him or her by section 105, as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him or her as an expert shall not be so liable if he or she proves—

(a) that, having given his or her consent under section 105 to the issue of the prospectus, he or she 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 or she, on becoming aware of the untrue statement, made an immediate written withdrawal of his or her consent and gave reasonable public notice of such withdrawal and of the reason therefor; or

(c) that he or she was competent to make the statement and that he or she 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 or she has not consented in writing to become a director or has in writing withdrawn his or her consent before the issue of the prospectus and has not authorised or consented to the issue thereof; or

(b) the consent of a person is required under section 105 to the issue of the prospectus and he or she 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 authorised 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 or she may be made liable by reason of his or her name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him or her as an expert, as the case may be, or in defending himself or herself against any action or legal proceeding brought against him or her in respect thereof:

Provided that a person shall not be deemed for the purposes of this subsection to have authorised the issue of a prospectus by reason only of his or her having given the consent required by section 107 ("Non-registration of prospectus; unapproved alteration of terms mentioned in prospectus or in statement in lieu of prospectus") to the inclusion therein of a statement purporting to be made by him or her as an expert.

109 Criminal liability for misstatements in prospectus

(1) Where a prospectus includes any untrue statement, any person who authorised the issue of the prospectus shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment unless he or she proves either that the statement was immaterial or that he or she 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 authorised the issue of a prospectus by reason only of his or her having given the consent required by section 105 ("Expert consent to issue of prospectus containing statement by

him or her") to the inclusion therein of a statement purporting to be made by him or her as an expert.

110 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 or her 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 or she shall be in default and liable to a category 3 civil penalty order.

(4) In the event of any underwriter, if such an affidavit is sworn, being unable, when duly called upon, to carry out his or her 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 or she proves that he or she 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.

111 Document containing offer of shares or debentures for sale to be deemed to be 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 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 misstatements 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 for sale to the public of any of them 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 104 (“Matters to be stated in prospectus”) and reports to be set out as required by this section shall have effect as if it a prospectus required by that section to be stated the matters 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 which the said shares or debentures may be or are to be allotted have been inspected;

and section 106 ("Registration of prospectus") 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 and 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 or her agent authorised in writing.

112 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 104 ("Matters to be stated in prospectus"), and 106 ("Registration and the Eighth Schedule ("Matters specified prospectus and reports set out therein") or to be under section 111 ("Document containing offer of shares or debentures for sale to be deemed to be prospectus")(3), 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.

113 Construction of references to offering shares or debentures to public

(1) Any reference to offering shares or debentures to the public shall, subject to any provision contained therein, be construed as including a reference to offering them to the public, any

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 being calculated directly or indirectly, to result, 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.

114 Restrictions on offering shares for subscription or sale

(1) It shall not be lawful for any person to engage in the door-to-door solicitation of members of the public at their homes or in offices, shops or business premises, to subscribe for shares or debentures (however, the solicitation at the office or business premises of any person whose ordinary business or part of whose ordinary business it is to deal in shares or debentures, whether as principal or agent, is permitted)

(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 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.

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

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

(c) if the offer or invitation is made only to persons or the material is published 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.

(4) 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 or her 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 or her 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 authorised 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 and Exchange 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 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 were offered—

(i) originally issued by the company; and

(ii) acquired by the person making the offer, or by his or her 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.

(5) If any person contravenes this section he or she 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) If a person is convicted of an offence under this section within a company, whether 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 or she proves that the act constituting the offence took place without his or her knowledge or consent.

(7) In this section, unless the context otherwise requires, the expression "offer" includes an invitation to make an offer, and "shares" means the shares of a company, whether 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, and 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 or she is a holder of shares in the company or a purchaser of goods from the company.

(8) If any person is convicted of having made an offer in contravention of this section the court before which he or she 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.

Sub-Part C: Allotment

115 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 Eighth Schedule ("Matters to be specified in prospectus and reports to be set out therein") 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 undertaking to pay stated in any cheque or other intermediary received by through a bank or payment shall be deemed not to have been paid to and received by the company—

(a) until the amount of any such cheque or undertaking 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 undertaking to pay through a bank or other intermediary 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, any cheque or undertaking to pay through a bank or other intermediary 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 in default and liable to a category 3 civil penalty.

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

116 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 or her agent authorised in writing, in the form and containing the particulars set out in Part I of the Third Schedule ("Form of statement in lieu of prospectus to be delivered to registrar by a company which

does not issue prospectus or which does not go to allotment on a prospectus issued and reports to be set out therein") 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 Third 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 authorises or permits the contravention shall be in default and liable a category 3 civil penalty order.

(5) Where a statement in lieu of prospectus delivered to the Registrar under subsection (2) includes any untrue statement, any person who authorised 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 or she proves either that the untrue statement was immaterial or that he or she 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 Third 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.

117 Effect of irregular allotment

(1) An allotment made by a company in contravention of section 115 ("Prohibition of allotment received") or 116 ("Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar") shall be voidable at the instance of a person who makes application to a court 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 authorises the contravention of section 115 or 116 he or she 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.

118 Allotment voidable if application form not attached to prospectus

Where an application form is required by section 104 ("Matters to be stated and reports to be attached to set out in prospectus") 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 section 104(3) shall be voidable at the instance of the allottee who makes application to a court within one month after allotment, unless it is shown that the allottee at the time of

his or her application was in fact possessed of a copy of the prospectus or was aware of its contents. **119 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 in default and liable to a category 1 civil penalty order.

(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 authorises 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 108 ("Civil liability for misstatements in prospectus") 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 120 ("Allotment of shares and debentures to be dealt in on stock exchange") 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.

120 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 local 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 or she proves that the default in the repayment of the money was not due to any misconduct or negligence on his or her part.

(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—

(a) in the case of a company, liable to a fine not exceeding level ten; or

(b) in the case of an officer, 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 or she 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 authorises or permits the default.

121 Register and return as to allotments

(1) Every company shall keep a register of allotments at its 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 subsection (2)(b) 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 liable to a category 3 civil penalty order:

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 request the Registrar to extend the time for the lodging of the documents for a specified period, and if the Registrar is satisfied that the omission to lodge the document was accidental or due to inadvertence, the Registrar may grant the request and waive the civil penalty.

Sub-Part D: Commissions and discounts

122 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 or her 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 authorised 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 authorised by the articles, whichever is the less; and

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

(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) thenumber of shares which persons have agreed for a commission to subscribe absolutely is disclosed in the 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, discountor allowance to any person in consideration of his or her 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 propertyacquired 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 receivedin 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 liable to a category 1 civil penalty order.

123 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.

Sub-Part E: Issue of shares at premium or discount and redeemable preference shares

124 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.

125 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—

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

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

(c) not less than one year must, at the date on which the company was entitled to commence business;

(d) theshares to be issued at a discountmust 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 authorising 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.

(4) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a category 1 civil penalty order.

126 Power to issue redeemable shares

(1) Subject to this section and sections 127 ("Financing at redemption"), 128 ("Power of company to purchase own shares"), 133 ("Capital redemption reserve") and 134 ("Effect of failure by company to redeem or purchase shares"), a company may, if authorised 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.

127 Financing at redemption

(1) Subject to section 134 ("Effectof failure by company to redeem or purchase shares") (2) and (4)—

(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 128 ("Power of company to purchase own shares"), 133 ("Capital redemption reserve") and 134 ("Effect of failure by company to redeem or purchase shares"), 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 authorised 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.

128 Power of company to purchase own shares

(1) Subject to this section and to sections 129 ("Authority required by company to purchase its own shares") to 134 ("Effect of failure by company to redeem or purchase shares"), a company may, if authorised by its articles, purchase its own shares, including any redeemable shares.

(2) Sections 126 ("Power to issue redeemable shares") and 127 ("Financing at redemption") shall apply, with the necessary changes, 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 section 127 (3).

(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.

129 Authority required by company to purchase its own shares

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

(2) An authority granted by the company in a 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 and Exchange 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.

130 Cession or renunciation of rights

(1) Where a company has obtained rights to purchase shares pursuant to an authority obtained in terms of section 129 ("Authority required by company to purchase its own shares")—

(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 authorised in advance by the company in a general meeting.

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

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

(b) where the purchase is to be effected otherwise than on a securities exchange registered under the Securities and Exchange 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.

131 Payments for rights to purchase or for release thereof

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

(a) acquiring any right to purchase its shares pursuant to an authority granted in terms

of section 129 ("Authority required by company to purchase its own shares"); or

(b) the release of any obligation to purchase shares in pursuance of an authority granted in terms of section 129;

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.

132 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 may be included in a single return to the Registrar and, when this is done, the amount to be stated in terms of subsection (1)(c) 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 contract, is not in terms of any written 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— (a) subsection (3) shall be liable to a category 1 civil penalty order;

(b) subsection (4) shall be liable to a category 4 civil penalty order;

(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, with necessary changes, to any variation of the contract.

133 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 section 127 ("Financing cancellation of the shares concerned in redemption")(4) on transferred to a reserve, shall be called "the capital redemption reserve".

(2) If shares are redeemed 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 between the capital redemption reserve and the amount transferred to the 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 to a trustee for such employees, as bonus shares. fully paid or persons,

134 Effect of failure by company to redeem or purchase shares

(1) Where a company has —

(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 the Insolvency Act [*Chapter 6:07*], 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.

Sub-Part F: Miscellaneous provisions as to share capital

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

A company, if so authorised 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 or her, 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 others, pay dividends in proportion to the amount paid up on each share.

136 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, except in the event 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.

137 Capitalisation shares

(1) Except to the extent that a company's memorandum of incorporation provides otherwise—

(a) the board of that company, by resolution, may approve the issuing of any authorised shares of the company, as capitalisation shares, on a *pro rata* basis to the shareholders of one or more classes of shares; and

(b) shares of one class may be issued as a capitalisation share in respect of shares of another class; and

(c) subject to sub-section (2), when resolving to award a capitalisation share, the board may at the same time resolve to permit any shareholder entitled to receive such an award to elect to receive payment in cash, at a value determined by the board.

(2) The board of a company may not resolve to offer a cash payment in lieu of awarding a capitalisation share, as contemplated in subsection(1)(c), unless the board—

(a) has applied the solvency and liquidity test, as required by section 138 ("Distributions must be authorised by board"), on the assumption that every such shareholder would elect to receive cash; and

(b) is satisfied that the company would satisfy the solvency and liquidity test immediately upon the completion of the distribution.

138 Distributions must be authorised by board

(1) A company must not make any proposed distribution unless—

(a) the distribution—

(i) is pursuant to an existing legal obligation of the company, or a court order; or

(ii) the board of the company, by resolution, has authorised the distribution; and

(b) it reasonably appears that the company will satisfy the solvency and liquidity test immediately after completing the proposed distribution; and

(c) the board of the company, by resolution, has acknowledged that it has applied the solvency and liquidity test, as set out in section 102 ("Solvency and liquidity test"), and reasonably concluded that the company will satisfy the solvency and liquidity test immediately after completing the proposed distribution.

(2) When the board of a company has adopted a resolution contemplated in subsection (1)(c), the relevant distribution must be fully carried out, subject only to subsection (3).

(3) If the distribution contemplated in a particular board resolution, court order or existing legal obligation has not been completed within one hundred and twenty (120) business days after the board made the acknowledgement required by subsection (1)(c), or after a fresh acknowledgement being made in terms of this subsection, as the case may be—

(a) the board must re-apply the solvency and liquidity test with respect to the remaining distribution to be made pursuant to the original resolution, order or obligation; and

(b) despite any law, order or agreement to the contrary, the company must not proceed with or continue with any such distribution unless the board adopts a further resolution as contemplated in subsection (1)(c).

(4) If a distribution takes the form of the incurrence of a debt or other obligation by the company, as contemplated in paragraph (b) of the definition of 'distribution' set out in section 2 ("Interpretation")(1), the requirements of this section—

(a) apply at the time that the board resolves that the company may incur that debt or obligation; and

(b) do not apply to any subsequent action of the company in satisfaction of that debt or obligation, except to the extent that the resolution, or the terms and conditions of the debt or obligation, provide otherwise.

(5) If, after applying the solvency and liquidity test as required by this section, it appears to the company that the section prohibits

its immediate compliance with a court order contemplated in subsection (1)(a)(i)—

(a) the company may apply to a court for an order varying the original order; and

(b) the court may make an order that—

(i) is just and equitable, having regard to the financial circumstances of the company; and

(ii) ensures that the person to whom the company is required to make a payment in terms of the original order is paid at the earliest possible date compatible with the company satisfying its other financial obligations as they fall due and payable.

(6) A director of a company is liable to the extent set out in section 197 ("Liability of directors and prescribed officers")(3)(e)(vi) if the director—

(a) was present at the meeting when the board approved a distribution as contemplated in this section, or participated in the making of such a decision in terms of section 196 acting other than at a meeting"); and

(b) failed to vote against the distribution, despite knowing that the distribution was contrary to this section.

139 Existing shareholders' right of first refusal to new shares

(1) Shareholders of a company shall have a pre-emptive right to acquire newly issued shares as provided in this section, for which purpose—

(a) "shares" does not include options to acquire shares or non-share securities convertible into shares;

(b) the right shall be to acquire the newly-issued shares *pro rata* in proportion to the number of shares already held by such existing shareholders, at a price no less favourable than that offered to other persons.

(2) The company shall give each existing shareholder advance notice of any proposed issuance stating, at a minimum, the number of shares to be issued, the proposed price or method of determining the price of issuance, and the

time period and procedure for exercising the pre-emptive rights:

Provided that the time period and all rules and procedures for the exercise of the pre-emptive rights shall be reasonable for all shareholders having the right.

(3) Unless otherwise provided (and except to the extent) in the company's memorandum of association, only holders of ordinary shares shall have pre-emptive rights, and there shall be no pre-emptive rights to acquire any of the following—

(a) preference shares, except for preference shares which are convertible into or carry a right to subscribe for or acquire ordinary shares;

(b) shares issued in accordance with this Act to directors, officers or employees as compensation for their services;

(c) shares issued in accordance with this Act to satisfy conversion or option rights created to provide compensation to directors, officers or employees for their services.

(4) Shares subject to pre-emptive rights that are not acquired by existing shareholders pursuant to such rights may be issued to any person for a period of three months after having been offered to existing shareholders under this section, at the same price as the price set for the exercise of pre-emptive rights. Any offer at a lower price during such three-month period, and any offer after such period, shall be subject to existing shareholders' rights under this section.

(5) The pre-emptive rights provided for in this section may be further restricted or eliminated by a company's memorandum of association.

140 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 or smaller 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 96 ("Authorisation for shares")(3)(a);

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 and the Registrar shall register such consolidated, divided, converted, subdivided, redeemed or cancelled shares or the stock reconverted shares.

(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 liable to a category 3 civil penalty order.

141 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 authorising 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 liable to a category 3 civil penalty order.

142 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 authorised by the articles or by special resolution; and

(b) whether authorised 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 or her as to the circumstances of the case and before such appointment may require the company to give satisfactory security for the payment of the costs of the inquiry; and

(d) thepayment 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) therate of interest shall in no case exceed *6 per centum per annum* or such other rate as may for the time being be prescribed; and

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

143 Variation of rights attaching to shares

(1) If, in the case of a company the shares of which are divided into different classes of shares, provision is made by the memorandum or articles for authorising 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 in rights attached to any such class of shares are at any time varied, the provisions of sections 232 (“Dissenting shareholders appraisal rights”) shall apply to any holder of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, with necessary changes.

(2) The expression “variation” in this section includes abrogation and the expression “varied”shall be construed accordingly.

Sub-Part G: Reduction of share capital

144 Special resolution for reduction of share capital

(1) Subject to confirmation by the court, a company may, if so authorised by its articles, by special resolution and in particular, 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 so far as is necessary, amend 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 Sub-Part referred to as "a resolution for reducing share capital".

145 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 or her 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.

146 Order confirming reduction

The court, if satisfied, with respect to every creditor of the company who under section 145 ("Application by creditors") is entitled to object to the reduction, confirm order, that either his or her consent to the reduction has been obtained or his or her 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.

147 Registration of order and minute of reduction

(1) The Registrar, on production to him or her of an order of the court confirming the reduction of the share capital of a company, and the delivery to him or her 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 amended 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 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 the registration of the order and minute, and his or her 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 amendable 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 amendment of the memorandum within the meaning of section 23 (“Copies of constitutive documents to embody alterations”).

148 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 or her 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 3 of the Insolvency Act [*Chapter 6:07*] to pay the amount of his or her 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 or she 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 or her 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.

149 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 or she 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.

Numbering of shares

(1) 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 on an equal footing for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks on an equal footing for all purposes with all shares of the same class for the time being issued and fully paid up.

(2) Where in terms of the proviso to subsection (1) 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.

151 Transfer of title to shares and debentures

(1) 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.

(2) 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.

(3) 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.

(4) 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 liable to a category 3 civil penalty.

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

152 Prohibition of bearer shares

(1) No company shall issue any share (commonly known as a "bearer share") in respect of which it is purported that the holder at any time of the share certificate thereof has title to it without the need to register him or her as the owner of the share in the register, and any such share purportedly so issued is void.

(2) Where a share in a company or is held or purported to be held by a person as a bearer share in contravention of subsection (1), then—

(a) no person purporting to hold a bearer share shall, either personally or by proxy, cast a vote attached to the share nor shall any person receive a dividend payable on the share; and

(b) the Registrar may issue a category 1 civil penalty order upon the company purporting to issue any bearer share.

(3) The validity of any resolution adopted by a company shall not be affected by a vote cast in contravention of subsection (2)(a), if the resolution was adopted by the requisite majority of votes which were validly cast.

(4) A dividend referred to in subsection (2)(a) shall accrue to the company concerned.

153 Evidence of title to shares

(1) Subject to subsection (3) and (5), every company shall, within two months after the allotment of its shares, debentures or any 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) A certificate evidencing any certificated share, debenture or debenture stock of a company must state on its face —

(a) the name of the issuing company; and

(b) the name of the person to whom the share, debenture or debenture stock was issued; and

(c) the number and class of share, debenture or debenture stock and the designation of the series, if any, evidenced by that certificate; and

(d) any restriction on the transfer of the share, debenture or debenture stock evidenced by that certificate.

(3) A certificate, whether or not under the seal of the company, shall be signed by one of its directors and counter-signed by another director or 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.

(4) The signature of a director and secretary for the purpose of subsection (3) may be affixed to the certificate by autographic, electronic or manual means.

(5) If a company is a registered user of the electronic Registry, it may issue uncertificated shares, subject to the conditions of the issuance of such shares in section 289 ("Use of electronic registry otherwise than for business entity registration"), in which event the

provisions of this section shall not apply to such company with respect to the transfer of shares.

(6) Any holder of any uncertificated shares may demand proof of title to his or her shares in the form of a material certificate endorsed in accordance with subsection (5), and the company concerned shall issue such certificates to the shareholder no later than fourteen days after such request is received in writing:

Provided that if there is any restriction on the transfer of such shares by virtue of the shares in question being warehoused in pursuance of an employee share ownership trust or scheme or for any other reason, such certificate shall be clearly endorsed to that effect.

(7) If default is made in complying with the requirements of subsection (1), (2), (3) or (6) the company and every officer of the company who is in default shall be liable to a category 3 civil penalty order.

154 Creation and registration of debentures; contracts to subscribe for debentures

(1) A company, if so authorised 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, or assets that may be detached from immovable property, they may be registered as a security interest in terms of the Movable Property Security Interest Act [*Chapter 14:35*].

(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) 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.

155 Register of mortgages and debentures and register of debenture holders

(1) Every company shall keep—

(a) a register of mortgages, registered in terms of section 154 (“Creation and registration of debentures”)(2) referred to and contracts to subscribe for debentures and enter therein within fourteen days and of the date of any hypothecation full particulars of the thereof, giving each case the date of the property hypothecation, in a short description of the debt secured, the mortgaged, the amount of 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 liable to a category 4 civil penalty.

(5) The register of mortgages, registered security interests and debentures shall be open at all reasonable times to the inspection of the Registrar or any person authorised by him or her 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, as the company may fix.

(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 a 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 or her 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 or her request on payment of the sum of seventy-five cents or such less sum as may be fixed 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 Registrar may serve upon the company and every officer of the company who is in default a category 4 civil penalty order in which the remediation clause may, in addition to forbidding future defaults, 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.

(9) If a company is a registered user of the electronic registry, it may create and issue any debenture dematerialised form, subject to the conditions of the issuance and creation of such debentures in section 289 ("Use of

electronic registry otherwise than for businessentity registration"), in which event the provisions of this section shall not apply to such company with respect to the creation and issuance of debentures.

(10) Any holder of a dematerialised debenture may demand proof that he or she is the holder thereof in the form of a material debenture certificate and the company concerned shall issue such certificate to the debenture holder no later than fourteen days after such request is received in writing.

(11) If default is made in complying with the requirements of subsection (10) the company and every officer of the company who is in default shall be liable to a category 3 civil penalty order.

156 Branch registers of debenture holders

(1) A company issuing debentures may, if so authorised 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 liable to a category 4 civil penalty.

(4) 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").

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

(6) 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).

(7) 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.

(8) 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.

(9) 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.

(10) If default is made in complying with subsection (6) the company and every officer of the company who is in default shall be liable to a category 4 civil penalty.

157 Power to re-issue redeemed debentures in certain cases

(1) Where a company has any debentures previously redeemed 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 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 re-issuing 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 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 or her security without payment of the stamp duty or any penalty in respect thereof, unless he or she had notice or, but for his or her 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. PART III

MANAGEMENT AND ADMINISTRATION OF COMPANIES

Sub-Part A: Restrictions on commencement of business and register and index of members

158 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 82 to dispense with "Limited" in certain cases ("Power to dispense").

(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 or contracted to be taken by him or her and for which he or she 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 or her and for which he or she 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 or her 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 liable to a category 4 civil penalty.

159 Register and index of members presumptive and use of register as proof of membership

(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 the 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 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;

so, 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 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 liable to a penalty, and for the purposes of this section any person with whom the company makes an arrangement in terms of proviso (b) to subsection (2) shall be deemed to be an officer of the company and liable accordingly.

(8) If a company is a registered user of the electronic Registry, it may keep an electronic register of its members, subject to the conditions of the keeping of such

a register in section 289 ("Use of electronic registry otherwise than for business entity registration"), in which event the provisions of this section and of sections 160 ("Inspection of register and register in and 164 ("Power to keep branch register index") and countries"), shall not apply to such foreign company.

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

160 Inspection of register and index

(1) Except where the register of members is closed under this Act, the register and index of the company names of the members shall during business hours (subject to a reasonable restrictions as the company 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 fix, for each inspection.

(2) Any member may require a copy of the register, or any part thereof, on payment of twenty cents or such less sum as the company may fix, 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 proper period, the company who is in default of the company shall, in the case of a contravention subsection (1), be liable to a category 4 penalty, and in the case of a contravention subsection (2) be liable to a category 3 penalty, and the remediation clause of the relevant civil penalty order may, in addition to any other appropriate remedial action**,** 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.

161 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 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 referred to in subsection (2) and every officer of the company who is in default shall be liable to a civil penalty.

162 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 or of a company; or

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

the company or any member of 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 or her name entered in or omitted from the register, whether 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.

163 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 but where it exercises its discretion to register that fact, it must verify the legal status of any trust or of any trustee who is registered as a member.

(2) There shall be no obligation on any company that exercises its discretion to register the fact that any share is held in trust, to see to the due and proper carrying out of any trust, whether express, implied or constructive, in respect of any share.

164 Power to keep branch register in foreign countries

(1) A company may, if so authorised 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 the discontinuance, and any such notice shall be given within one month of the opening 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 liable to a category 4 penalty. (4) A branch register, shall be deemed to be a part of the company's register of members in this section called the principal register.

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

(6) 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.

(7) 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.

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

(9) If default is made in complying with subsection (6) the company and every officer of the company who is in default shall be liable to a category 4 civil penalty.

Sub-Part B: Annual return and meetings and proceedings

165 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 Fourth Schedule (" Form of annual return of company") 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 (this provision does not apply if the company is permitted in terms of section 153(5) to issue uncertificated shares);

(d) the number of shares of the company analysed by class of share as at the date of the return, and the number of shares issued and fully paid-up as at the date of return;

(2) The annual return of a company must be submitted within twenty-one (21) days of the anniversary date of its incorporation, or re-registration (in terms of section 303).

(3) 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 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 of persons who, under section 85 and consequences of default in private company complying with conditions for private company"), are to be excluded in reckoning the number of fifty.

(4) 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 Fourth 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.

(5) 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.

(6) The Registrar may from time to time require a company to transmit to him or her 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.

(7) 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 liable to a category 3 civil penalty.

166 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 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—

(a) subsection (1), (2) (unless this default is condoned in terms of the proviso thereto) or (5), he or she shall be liable to a category 3 civil penalty; (b) subsection (6), he or she shall be liable to a category 4 civil penalty;

(c) subsection (7), he or she shall be liable to a category 1 civil penalty.

167 Annual general meeting

(1) Subject to the periods specified in this section, every company shall, within general meetings to be known and described in the notices calling such meetings as annual general meetings of that company.

(2) Annual general meeting of a company must be held once in every period of twelve months.

(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) At an annual general meeting, only matters within the scope of the notice and agenda previously sent may be voted on except in the case of essential and urgent matters which arose after the notice was included and could not have been given in the notice, but this restriction shall not prevent discussion of other matters and shareholders shall be free to raise any other matters.

(5) The agenda for an annual general meeting shall in any event include the following items—

(a) electing the members of the board of directors who are to be elected at that time;

(b) setting or approving the compensation of directors including emoluments, salaries and pensions referred to in sections 207 ("Shareholder approval of directors' emoluments") and 215 ("Particulars of directors' salaries and pensions");

(c) reviewing the report of the board with respect to its responsibilities and activities referred to in sections 183 ("Statement of financial position and statement of comprehensive income and year of holding company and subsidiary") and 218 ("Board's role and responsibilities")(5);

(d) in a public company, the report of the audit committee pursuant to section 219 ("Audit committee of public company");

(e) in a public company, reviewing the board's "comply or explain" report on the company's corporate governance guidelines and the current National Code on Corporate Governance referred to in section 220 ("Corporate governance guidelines for public companies");

(f) reviewing the external auditor's report (if required under this Act or this report is otherwise provided) and shall include but not be limited to—

(i) a statement of whether the auditor has obtained the information necessary for performing its duties and satisfactorily;

(ii) whether the financial statements are in accordance with the financial reporting standards prescribed by the Public and Accounting Board under the Public Accountants and Auditors Act [*Chapter 27:12*], and any other appropriate accounting rules and standards;

(iii) whether the board's report is consistent with those standards; and

(iv) whether there have been violations of the company's memorandum

of association or of this Act during the financial year which affect the company's activities or financial position;

(g) appointing the company's external auditor and setting its compensation for the following financial year after review of the report and recommendation of the board's audit committee with respect thereto (except in cases where an external audit is not required); and

(h) reviewing the board's recommendations and actions authorising any distributions or relating to issuance of bonds or other borrowing by the company.

(6) A member or members of a company shall have the right to place issues on the agenda of that meeting including the right to propose candidates for election at that meeting to the company's board of directors, as provided in section 174 ("Circulation of members resolutions").

(7) A company which has failed to hold an annual general meeting within the period specified in terms of subsection (2) shall be liable to a category 4 civil penalty.

168 Convening of extraordinary general meeting on requisition

(1) On the requisition of members of a company holding at the date of the deposit not less than five *per centum* 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 requisition, issue a notice to the deposit of the 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 twenty-one 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 as required by subsection (1) the requisitionists, or any of them numbering more than fifty or representing more than fifty *per centum* 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—

(a) shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors;

(b) at an extraordinary meeting, only business within the scope of the notice and agenda previously sent may be voted on.

(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 liable to a category 3 civil penalty.

169 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.

(3) If it is mutually agreed in writing between the officer of the company responsible for calling meetings of the membership of the company and any of the members concerned to serve notices of any such meeting by electronic mail, then, if such meeting is called by such means and in accordance with the conditions agreed between the officer and the members, such notice shall be valid for the purpose of this section.

170 General provisions as to meetings and votes and power of court to order meeting

(1) A majority of the total number of votes entitled to vote on a matter shall constitute a quorum for decision of the meeting on that matter unless the company's memorandum of association provides for a greater or lesser quorum but not less than one-third of the votes of the shares entitled to vote.

(2) A meeting may not act or make decisions for the company unless a quorum is present.

(3) If a quorum specified in subsection (2) is not present the meeting shall be adjourned.

(4) If a meeting is adjourned because of a lack of quorum it may be reconvened with the same proposed agenda for a date not later than twenty days from the date of adjournment:

Provided that the quorum at such a reconvened meeting shall be twenty-five *per centum* of the votes of shares entitled to vote on a matter

which shall be decided, unless the memorandum requires a greater quorum.

(5) If a quorum is present, the affirmative vote of a majority of the shares present and entitled to vote on the matter shall be the decision of the meeting, unless a greater number of votes are required by this Act or the company's memorandum.

(6) The vote of a special resolution is required under this Act— (a) whenever so stated in a memorandum; or

(b) for adoption of an amendment to the memorandum; or

(c) for adoption of a plan and contract for merger; or

(d) for approval of a major transaction; or (e) for a decision to dissolve the company.

(7) 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 and the Sixth Schedule ("Model, articles and by-laws");

(b) two or more members holding not less than one-tenth of the issued share capital may call a meeting, subject to section 175 ("Special resolutions");

(c) any member elected by the members present at a meeting may be chairperson thereof;

(d) every member shall have one vote in respect of each share or each twenty dollars of stock held by him or her.

(8) 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 its 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 company meeting, 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.

(9) Any meeting called, held and conducted in accordance with an order under subsection (8) shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

(10) If so provided in the articles of a company or by a resolution thereof—

(a) a private company may hold a virtual meeting, as opposed to a physical meeting, that is to say a meeting at which the members can hear and see each other by electronic means although they are not physically present at the meeting;

(b) a public company may permit the participation of members who are not physically present at the meeting, but can be heard and seen by the other members by electronic means.

171 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 or her proxy to attend and vote instead of him or her, 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 or her, 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 liable to a category 1 civil penalty.

(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 liable to a category 1 civil penalty:

Provided that an officer shall not be liable under this subsection by reason only of the issue to a member at his or her 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 or she votes, use all his or her votes or cast all the votes he or she 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.

(8) A director or officer of a company may not act as a proxy for a shareholder, and shall be liable to a category 1 civil penalty if he she purports to do so.

(9) No proxy appointment shall be valid for longer than six months unless otherwise provided in the proxy appointment or the Articles of Association.

(10) Any vote cast by a person purporting to vote as a proxy in violation of subsection (8) or (9) shall be invalid.

172 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 or her, the chairperson 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 chairperson 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 chairperson 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 shall be liable to a category 1 civil penalty.

173 Representation of body corporates at meeting of company and of creditors

(1) A body corporate whether a company within the meaning of this Act or not, may—

(a) if it is a member of another body corporate, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise 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 body corporate, being a company within the meaning of this Act or any other law, by resolution of its directors or other governing body, authorise, 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 authorised as aforesaid shall be entitled to exercise the same powers on behalf of the body corporate which he or she represents as that body corporate could exercise if it were an individual member, creditor or holder of debentures of that other company.

174 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 the 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 five *per centum* 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.

(3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members 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 or her 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 liable to a category 1 civil penalty.

175 Special resolutions

(1) A resolution shall be a special resolution when it has been passed by a majority of not less than seventy-five *per centum* of such members entitled to vote as are present in person or by proxy at a general meeting of which not less than twentyone 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 twenty-five *per centum* 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 twenty-five *per centum* 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 seventy-five *per centum* of such members shall be deemed to be a special resolution, notwithstanding that less than twenty-five *per centum* 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 twentyone 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 chairperson 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 the manner provided by the articles but subject always to the provisions of this Act.

176 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 authorised 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 and 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 or her 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.

177 Resolutions requiring special notice

(1) Where, in this Act or in 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 liable to a category 3 civil penalty.

178 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 or her if such resolution appears to him or her 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 or her request on payment of one United States dollar or such less sum as the company may direct.

(5) If default is made—

(a) in transmitting the copy of a special resolution to the Registrar

(b) in complying with subsection (3) or (4); the company and every officer of the company who is in default shall be liable to a category 4 civil penalty.

179 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.

180 Minutes of meetings of members

(1) A record of each meeting of members shall be prepared as promptly as possible but not later than twenty (20) days after the meeting, and shall be signed by the chairperson and any secretary of the meeting, who shall be responsible for its completeness and accuracy.

(2) The minutes shall include the date, time and place of the meeting, the name of the chairperson and any secretary of the meeting, in the case of a private company, the names of the shareholders present, the agenda, the number of shares and votes represented both in person and by proxy, the ballot or other procedures used for voting, the issues voted on and the number of votes "for,"

"against" or abstained on each issue, a summary of speeches and discussions, and a list of the decisions actually made at the meeting.

(3) The minutes shall be retained by the company and made available to any shareholder for inspection and copying at his or her expense during normal business hours.

(4) If it comes to the notice of the Registrar that a company has not been keeping minutes in accordance with this section it shall be liable to a category 2 civil penalty.

181 Inspection of minutes

(1) The minutes of proceedings of any general meeting of a company, certified by a director or secretary, 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 in open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished, within a fourteen days after he or she has made 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 United States 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 Registrar may serve upon the company and every officer of the company who is in default a category 3 civil penalty order, in which the remediation clause must, in addition to any other appropriate remedial action, require 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.

Sub-Part C: Accounts and audit

182 Keeping of financial records

(1) Every company shall cause to be kept in the English language or (subject to the proviso to section 9 ("Form of registers and other documents")(3)) any language officially recognised with respect to— financial records

(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), financial records shall not be deemed to be kept with respect to the matters aforesaid if there are such records as are necessary and true and fair view of the company's affairs and to explain the state of the transactions.

(3) The financial records shall be kept at the registered office of the company or at such other place as the directors think fit and shall be open to inspection at all times by the directors:

Provided that if financial records 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 financial records so kept as will disclose with reasonable accuracy the financial position of the business at intervals not exceeding twelve months and will enable the company's financial statements, to be prepared in accordance with this Act and any document annexed to those documents giving any information which is required by this Act and is thereby allowed to be so given.

(4) The financial records 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 by the company has been the cause of any default by the company (unless he or she is thereunder or the director's conduct was fraudulent, Registrar may in which event section 69 reckless or wilful, reckless or wilful failure of financial Fraudulent, falsification of records")(1)(a) shall accounting; or her a category apply) serve upon him or her in which the remediation 2 civil penalty order in any other appropriate clause may, in addition to require that proof be given remedial action, within a specified period to the Registrar that—

(a) the director concerned has commenced or completed an appropriate course of instruction to enable him or her to comply with the requirements of this section; or

(b) the company has employed a competent and reliable person with the duty of seeing that the requirements of this section are complied with.

(6) It shall be no defence to a civil penalty order or proposed civil penalty under subsection (5) for a director to prove that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty.

(7) Subsection (3) shall not exempt a person from compliance with the Customs and Excise Act [*Chapter 23:02*] or any other law.

(8) A person who retains, in terms of section 81(2) 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 financial records.

183 Statement of financial position and statement of comprehensive income 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 and to

be laid before the company at each annual general meeting required to be held in terms of section 167 ("Annual general meeting"), a statement of financial position and a statement of comprehensive income as at end of the financial year, which the shall comply with section 184 and form of financial provisions as to contents and ("General financial statements") .

(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) In addition to the requirements of subsection (1), directors of a public company shall cause to be presented at each annual general shareholders' meeting the report of the board's audit committee referred to in section 220 ("Corporate governance guidelines for public companies"), giving a review of the nature of the business and descriptive of the company and any subsidiaries and any changes therein, and total amount of remuneration paid to and the value of any benefits received by each director and the former director during the financial year last or ended.

(4) If any director of a company fails to take all reasonable steps to comply with the requirements of this section the Registrar may (unless he or she is satisfied that the director's conduct was fraudulent, reckless or in which event section 69 ("Fraudulent, reckless or wilful failure of financial accounting; falsification of records") (1)(a) shall apply), subject to subsection (5), serve upon him or her a category 3 civil penalty order.

(5) It shall be a partial defence to a civil penalty order or proposed civil penalty under subsection (4) for a director to prove (the burden whereof rests on him or her) that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty, in which case the Registrar may waive those parts of the penalty clause of the order referred to in section 294 ("Power of Registrar

to issue civil penalty orders and categories thereof") (4)(a) and (b)(i).

184 General provisions as to contents and form of financial statements

(1) Every 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 statement of comprehensive income of a company, shall give a true and fair view of the profits and losses (or income and expenditure, as the case may be) and other items of comprehensive income of the company for the financial year.

(2) Subject to subsection (1), a company's statement of financial position and statement of comprehensive income and statement of income and expenditure account shall comply with any requirements that may be prescribed 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 to the general requirements of subsection (1) or any other requirements of this Act.

(4) The Registrar may, on the application or with the consent of a company's directors, any of the company to that company's statement of financial position or matters to be stated in this Act as to the statement of comprehensive income, except for the purpose of adapting the requirements of subsection (1), them to the circumstances of the company.

(5) Subsections (1) and (2) shall not apply to a company's statement of comprehensive income if—

(a) the company has subsidiaries; and

(b) the statement of comprehensive income is framed as a consolidated statement of comprehensive income 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 statements of comprehensive income; and

(ii) shows how much of the consolidated comprehensive income 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 required to be laid before the statements 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 financial statements, the Registrar may (unless he or she is satisfied that the director's conduct was fraudulent, or wilful, in which event section 69 reckless or wilful failure of financial (“Fraudulent, reckless or falsification of records”) shall apply), accounting; subsection (7), 3 serve upon him or subject to a penalty order her category

(7) It shall be a defence to a civil penalty order or proposed civil penalty under subsection (6) for a director to prove (the burden whereof rests on him or her) that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty, which case the Registrar may waive those parts of the penalty clause of the order referred to in section 294 (“Power of Registrar to issue civil orders and categories thereof”) (4)(a) and (b)(i).

(8) For the purposes of this Act, except where the context otherwise requires, any reference to a statement of financial position or statement of comprehensive income shall include any note or document annexed thereto giving information which is required by this Act and is thereby allowed to be given.

(9) Financial statements made in terms of this section shall comply with international accounting standards adopted by the Public Accountants and Auditors Board constituted under the Public Accountants and Auditors Act [*Chapter 27:12*] and prescribed as applicable for the purposes of this section.

185 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 —

(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 fifty *per centum* in nominal value of the equity share capital of the first-mentioned company or if that other and one or more of its subsidiaries between them hold more than fifty *per centum* 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 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 or her favour by that other company of such power as aforesaid; or

(b) that a person's appointment thereto follows necessarily from his or her 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—

(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.

(4) 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 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.

186 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 comprehensive income of the company and the subsidiaries shall, subject to subsection (2), be laid before the company in general meeting when the company's own financial statements 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 Registrar 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 the Registrar may (unless he or she is satisfied that the director's conduct was fraudulent, reckless or wilful, in which event section 69 ("Fraudulent", reckless or wilful failure of

financial accounting; falsification of records")(1)(a) shall apply), subject to subsection (4), serve upon him or her a category 3 civil penalty order.

(4) It shall be a partial defence to a civil penalty order or proposed civil penalty under subsection (3) for a director to prove (the burden whereof rests on him or her) that he did believe, had reasonable grounds to believe, and was charged with a competent and reliable person requirements of this duty of seeing that the and was in which section were complied with duty, those parts case position to discharge that referred to of the Registrar may waive to in section clause (the Registrar thereof") issue 294 ("Power of orders and categories (4)(a) civil penalty and (b)(i).

187 Form and contents of group accounts

(1) The group accounts laid before a holding company shall be consolidated accounts comprising—

(a) a consolidated statement of financial position dealing with the state of affairs of the company and all the subsidiaries to be dealt with in the group accounts;

(b) a consolidated statement of comprehensive income dealing with the profit or loss (or income and expenditure, as the case may be) and items of comprehensive income and other of those subsidiaries. company

(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 comprehensive income 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 financial statements.

(4) The group accounts laid before a company shall give a true and fair view of the state of affairs and comprehensive income 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 (or income and arising from transactions within the group in so far as those profits or losses (or income and expenditure) 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 shall, unless the Registrar 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 section 301 ("Regulations")(2) so far as applicable thereto and if not so prepared, shall give the same or equivalent information:

Provided that the Registrar 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.

188 Accounts and auditor's report to be annexed to signed statement of financial position

(1) The statement of comprehensive income and, so far as not incorporated in the financial statements, any group accounts laid before a company in general meeting shall be annexed to the statement of financial position and approved by the board of directors before the statement of financial position 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 section 166 (" Statutory meeting and statutory report") (7) is not required to appoint an auditor.

(2) If any copy of a statement of financial position is issued, circulated or published without having a copy annexed thereto of the statement of comprehensive income 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 Registrar may serve upon the company and every officer who is in default a category 2 civil penalty order.

(3) Every statement of financial position 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 statement of financial position which has not been signed as required by this section is issued, circulated or published, the Registrar may serve upon the company and every officer who is in default a category 2 civil penalty order.

189 Directors' report to be attached to statement of financial position

(1) There shall be attached to every statement of financial position 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 section 301 (" Regulations") (2) 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 the law of a foreign country; or this Act or

(b) a private company which is a subsidiary, as determined in terms of section 185 (" Meaning of holding company, subsidiary and wholly owned subsidiary"), 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 any of its subsidiaries, with any change of 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) the Registrar may (unless he or she is satisfied that the director's conduct was reckless or wilful, in which event section 69 ("Fraudulent, reckless or wilful failure of financial accounting; records")(1)(a) shall apply), serve upon the defaulting director a category 1 civil penalty order:

Provided that the Registrar may waive the penalty if director to proves that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty.

190 Right to receive copy of statement of financial position and auditor's report

(1) A copy of every statement of financial position, 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 186 ("Obligation to lay

group accounts before holding company") and 187 ("Form and contents of group accounts") 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 the law of a foreign country; or

(b) a private company which is a subsidiary, as determined in terms of section 185 ("Meaning of holding company, subsidiary and wholly owned subsidiary"), of a public company referred to in paragraph (a).

(2) Any member of any company shall be entitled to be furnished on demand, without charge, a copy of the last statement of financial position of the company, including every document required by law to be annexed thereto, a copy of the auditor's report together with the statement of financial position or she shall previously have been supplied he or she shall therewith.

(3) If default is made in complying with subsection (1) and every officer of the company who is in default shall be liable to a category 1 civil penalty, and if, where any person makes a demand for a document to which he or she is entitled, by virtue of subsection (2) 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 liable to a category 3 civil penalty.

191 Appointment, remuneration, duties, powers and removal 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 which section 158 ("Restrictions on commencement of business")

applies and, in the case of other companies, within one month of the issue of the certificate of incorporation; and appointed shall hold office until the of the first annual general meeting:

Provided that—

(i) the company may at a general meeting remove any such auditor and appoint in his or her 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 company members 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 Registrar 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 annual general meeting until the conclusion of the next annual general meeting.

(3) Where at an annual general meeting no auditor is appointed or reappointed, the Registrar, on the application of any member may appoint a person to fill the vacancy.

(4) The company shall, within one week of the Registrar's power under subsection (3) becoming exercisable, give the Registrar 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 liable to a category 3 civil penalty:

Provided that, instead of the remediation clause in the civil penalty order concerned, the Registrar shall give notice to the company of his or her appointment of the auditor.

(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 the law of a foreign country; or

(ii) a private company which is a subsidiary, as determined in terms of section 185 ("Meaning of holding company, subsidiary and wholly owned subsidiary"), 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.

(8) The relevant provisions of the Public Accountants and Auditors Act [*Chapter 27:12*] and of generally accepted accounting practices shall apply to the terms of appointment, qualifications, independence and work of the auditor.

(9) Without limiting the foregoing—

(a) a company's auditor may not own shares in the company, may not be a director or officer of the company, and may not directly or indirectly supervise the company's internal accounts, while engaged in auditing the company or for a period of two years prior thereto or thereafter;

(b) a company's auditor may not perform non-audit services for the company if the performance of those services is or may be inconsistent with

the performance of audit services for the company

(10) For the purposes of subsection (9) an auditor includes an individual who is an auditor and any family member of that individual, and any firm that is an auditor or any employee or agent of that firm who participates in that firm's audit of the company in question.

(11) No person shall serve as an auditor of a company for more than five consecutive financial years:

Provided that where a person has served as the auditor or designated auditor of a company for two or more consecutive financial years and then ceases to be such, such person shall not be re-appointed as the auditor or designated auditor of that company until after the expiry of at least two further financial years.

(12) A company's auditor shall have the right—

(a) of full access to the company's books, records, vouchers, securities and documents, and the right to verify the existence and value of the company's assets and liabilities;

(b) to ask any director or officer of the company for particulars which the auditor deems necessary for the performance of the auditor's duties and responsibilities;

(c) of access to all current and former accounts of any company subsidiary thereto and be entitled to require from the officers of the holding or subsidiary company all such information and explanations in connection therewith as he or she may deem necessary;

(d) 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 or she attends on any part of the business of the meeting which concerns him or her as auditor.

(13) 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 (other than one retiring by the operation of subsection (11)) shall not be reappointed.

192 Disqualifications for appointment as auditor

(1) The following persons shall not 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 person who is an officer or servant of a body corporate which is an officer of the company;

(e) a person who by himself or herself, or his or her partner or his or her employee, regularly performs the duties of secretary or bookkeeper to the company.

(2) A person shall also not be qualified for appointment as auditor of a company if he or she 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 fourteen or imprisonment not exceeding two years.

(4) In addition, the Registrar may serve upon a company that is knowingly in contravention of this section a category 2 civil penalty order.

193 Auditor's report

(1) The auditor shall make a report to the members on the accounts examined by him or her and on every financial statement laid before the company in general meeting during his or her tenure of office and the report shall contain statements as to the following matters—

(a) whether, in his or her opinion, the financial statements 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 financial statements 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 or her opinion, the financial statements 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 financial year ended on that date, so far as is required by the provisions of this Act applicable to the class of company concerned.

(2) The auditor shall include in his or her report which, in his or her opinion, are necessary statements if—

(a) he or she has not obtained all the information and explanations which to the best of his or her knowledge and belief were necessary for the purposes of his or her audit;

(b) so far as appears from his or her examination, proper financial records have not been kept by the company;

(c) proper returns adequate for the purpose of his or her audit have not been received from branches not visited by him or her;

(d) the company's financial statements are not in agreement with the financial records 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 or she shall inscribe upon or attach to the statement of financial position a statement of that fact or of the nature of the qualification, as the case may be, and he or she shall set forth therein

the facts or circumstances which prevent him or her 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.

194 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.

Sub-Part D: Directors and other officers

195 Directors and their functions and responsibilities

(1) A private company with more than one and fewer than ten shareholders shall have two or more directors, a private company with ten or more shareholders shall have not fewer than three directors, and a public company shall have not fewer than seven nor more than fifteen directors.

(2) At least one director shall be ordinarily resident in Zimbabwe.

(3) Any director who is a company's chief executive officer shall not also be the chairperson of the board of that company

(4) Eachor every director (as the case may be) shall exercise independent judgment and shall act within the powers of the company in a way that he or she considers, in good faith, to promote the success of the company for the benefit of its shareholders as a whole.

(5) For the purpose of subsection (4), every director shall have regard to, among other things—

(a) the long-term consequences of any decision;

(b) the interests of the company's employees;

(c) the need to foster the company's relationships with suppliers, customers and others;

(d) the impact of the company's operations on the community and the environment;

(e) the desirability of the company maintaining a reputation for high standards of business conduct;

(f) the need to act fairly as between shareholders of the company.

(6) An individual director may not assign or delegate his or her responsibility or accountability under this Act to another person.

Provided that for the avoidance of doubt this subsection does not prohibit the delegation of clerical, administrative and other non-core management functions to other staff or to a company service provider licensed under section 292 ("Business service entity incorporation agents and business entity service providers").

(7) 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 qualified person to be a director shall be deemed to be a director.

(8) The provision of a director of this section relating to the duties in addition to, and do not derogate from, sections 54 and 55 ("Duty of care and loyalty") outlined in the business judgment rule")

(9) In the case of public company no director shall serve on more than six boards of unassociated public companies, and his or her service to other boards be disclosed at every general meeting.

(10) Where any director contravenes subsection (9), he or she shall be in default and be liable to a civil penalty:

Provided that any director who serves on more than six boards on the effective date may continue to do so until the expiration of his or her term of office of the board in question.

(11) The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his or her appointment or qualification. **196 Directors acting other than in person at meeting**

(1) A decision that could be voted on at a meeting of the board of a company may instead be adopted by written consent, stating the action so taken, signed by all directors entitled to vote on the matter. A decision made in such manner is of the same effect as if it had been approved by voting at a meeting.

(2) Unless prohibited by a company's memorandum of association or articles of association, a meeting of the company's board may be held by means of electronic, telephone or other audio or visual conference equipment if all participants can hear and talk with each other. communicate concurrently with each other.

The persons attending a meeting in this way shall be considered to be present at the meeting.

197 Liability of directors and prescribed officers

(1) In this section—

"director'' includes an alternate director, and a person who is a member of a committee of a board of a company, or of the audit committee company, of a company, irrespective of whether or not the person is also a member of the company's board;

"reasonable public notice", in relation to the giving of such notice by a director for the purpose of proviso (vii) or (viii) to paragraph (d), may be constituted by the giving of a written notice to the Registrar timeously, that is to say in before the issue of the prospectus or at the case of proviso (viii),

time the director concerned became aware of the untrue statement in the case of proviso (viii), as the case may be (but in either case the onus is on the director to prove timeousness).

(2) A director of a company may be held liable—

(a) in accordance with the principles of the common law relating to breach of a fiduciary duty, for any loss, damages or costs sustained by the company as a consequence of any breach by the director of—

(i) a duty of care and business judgment contemplated in section 54 (“Duty of care and loyalty”), 55 (“Duty of conflict of interest”) and 57 (“Duty to disclose and their functions and responsibilities”) and 195 (“Directors and Prescribed Officers: duties and liabilities”) (4), (5) and (6); or

(ii) section 56 (“Transactions involving conflict of interest”); or

(iii) any provision of this Act not mentioned in this section; or

(iv) any provision of the company’s memorandum and articles of association for which the director is personally responsible or may be held personally liable.

(3) A director of a company is liable for any loss, damages or costs sustained by the company as a consequence of the director having—

(a) acted in the name of the company, signed anything on behalf of the company, or purported to bind the company or authorise the taking of any action by or on behalf of the company, despite knowing that the director lacked the authority to do so; or

(b) acquiesced in the carrying on of the company’s business despite knowing that it was being conducted in a manner described in section 68 of grossly negligent (“Fraudulent, reckless business”)(3); or conduct

(c) been a party to an act or omission by the company despite knowing that the act or omission was calculated to defraud a creditor, employee or shareholder

of the company, or had another fraudulent purpose; or

(d) signed, consented to, or authorised, the publication of—

(i) any financial statements that were false or misleading in a material respect; or

(ii) a prospectus or a statement in lieu of prospectus that contains—

A. an "untrue statement" as defined and described in section 2 ("Interpretation")(1); or

B. a statement to the effect that a person had consented to be a director of the company, when no such consent had been given, despite knowing that the statement was false, misleading or untrue, as the case may be:

Provided that the liability contemplated in this paragraph does not apply if —

(iii) with respect to every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, the director had reasonable grounds to believe, and did up to the time of the allotment of the shares or the acceptance of the offer, as the statement was true; or

(iv) the director had reasonable grounds to believe and did up to the time that the prospectus was delivered to the Registrar for registration as required by this Act to the making of the offer and had not withdrawn that consent before the prospectus was filed or, to the director's knowledge, before any allotment or before the acceptance of the offer; or

(v) any 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 and was a correct and fair representation of the statement or copy or extract from the document; or

(vi) the director consented to become a director of the company, but subsequently withdrew that consent before the issue of the prospectus and that it was issued without his or her consent; or

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

(viii) after the issue of the prospectus and before allotment or acceptance thereunder, the director, on becoming aware of any untrue statement in it, withdrew any consent to the prospectus and gave reasonable public notice of the withdrawal and of the reason for it;

(e) been present at a meeting, or participated in the making of a decision in terms of section 196 ("Directors acting other than in person at meeting"), and failed to vote against—

(i) the issuing of any unauthorised shares, despite knowing that those shares had not been authorised in accordance with section 96 ("Authorisation for shares");

(ii) the issuing of any authorised shares or debentures, despite knowing that the issue of those shares or debentures was inconsistent with section 96 and 139 ("Existing shareholders' right of first refusal to new shares");

(iii) the granting of options to any person contemplated in section 101 ("Options for subscription of shares or debentures")(4), despite knowing that any shares—

A. for which the options could be exercised; or B. into which any shares could be converted;

had not been authorised in terms of section 96;

(iv) the provision of financial assistance to any person contemplated in section 123 ("Financial assistance by company for purchase of its own or its holding company's shares") for the acquisition of securities of the company, despite knowing that the provision of financial assistance was inconsistent with section 121 or the company's memorandum of

association, to the extent that the resolution or agreement has been declared void in terms of section 123(2)(a) ("Financial assistance by company for purchase of its own or its holding company's shares"), read with section 65 ("Allegations of voidness, impropriety, etc. by registered business entities")(1);

(v) the provision of financial assistance to a director for a purpose contemplated in section 208 ("Prohibition of financial assistance to directors"), despite knowing that the provision of financial assistance was inconsistent with that section or the company's memorandum of association;

(vi) a resolution approving a distribution, despite knowing that the distribution was contrary to section 138 ("Distributions must be authorised by board"), subject to subsection (4);

(vii) the acquisition by the company of any of its shares, or the shares of its holding company, despite knowing that the acquisition was contrary to section 128 ("Power of company to purchase own shares"); or

(viii) an allotment by the company, despite knowing that the allotment was contrary to any provision of Part II of Sub-Part C ("Share Capital and Debentures") of this Chapter and to the extent that the allotment or an acceptance is declared void under that Sub-Part as read with section 65(1).

(4) The liability of a director in terms of subsection (3)(e)(vi) as a consequence of the director having failed to vote against a distribution in contravention of section 138—

(a) arises only if—

(i) immediately after making all of the distribution contemplated in a resolution in terms of section 135 ("Power of company to arrange for different amounts being paid on the company shares"), and liquidity test; does not satisfy the solvency test; and

(ii) it was unreasonable at the time of the decision to conclude that the

company would satisfy the solvency and liquidity test after making the relevant distribution; and

(b) does not exceed, in aggregate, the difference between—

(i) the amount by which the value of the distribution exceeded the amount that could have been distributed without causing the company to fail to satisfy the solvency and liquidity test; and

(ii) the amount, if any, recovered by the company from persons to whom the distribution was made.

(5) If the board of a company has made a decision in a manner contemplated in subsection (3)(e)—

(a) a company, or any director who has been held liable in terms of subsection (3)(e), may apply to a court for an order setting aside the decision of the board; and

(b) the court may make—

(i) an order setting aside the decision in whole or in part, absolutely or conditionally; and

(ii) any further order that is just and equitable in the circumstances, including an order—

A. to rectify the decision, reverse any transaction, or restore any consideration paid or benefit received by any person in terms of the decision of the board; and

B. requiring the company to indemnify any director who has been held liable in terms of this section, or may be held liable for the costs of the proceedings including indemnification under this subsection.

(6) The liability of a person in terms of this section is joint and several with any other person who is or may be held liable for the same act.

(7) Proceedings to recover any loss, damages or costs for which a person is or may be held liable in terms of this section may not be commenced more than three years after the act or omission that gave rise to that liability.

(8) In addition to the liability set out elsewhere in this section, any person who would be so

liable is jointly and severally liable with all other such persons—

(a) to pay the costs of all parties in the court in a proceeding contemplated in this section unless the proceedings are abandoned, or exculpate that person; and

(b) to restore to the company any amount improperly paid by the company as a consequence of the impugned act, and not recoverable in terms of this Act.

(9) In any proceedings against a director, other than for wilful misconduct or wilful breach of trust, the court may relieve either wholly or partly, from any liability set out in this section, on terms the court considers just if it appears to the court that—

(a) the director is or may be liable, but has acted honestly and reasonably; or

(b) having regard to all the circumstances of the case, including those connected with the appointment of the director, it would be fair to excuse the director.

(10) A director who has reason to apprehend that a claim may be made alleging that the director is liable, other than for wilful misconduct or breach of trust, a court may apply to grant relief, and may grant relief to the director if the court is satisfied on the same grounds as had come before the court in terms of subsection (9).

198 Company secretary: functions, qualifications and disqualifications (1) Every company shall have at least one secretary ordinarily resident in Zimbabwe.

(2) The board of a public company shall appoint one or more secretaries, being a person or persons who are qualified in terms of subsection (4) to be the secretary of a public company, and who must not also hold another office as an officer of the company.

(3) The functions of the secretary shall include but need not be restricted to—

(a) acting as custodian of the company's records including the shareholder records referred to in

Sub-Part H ("Transfer of shares and debentures, evidence of titles, etc") of Part II ("Share Capital and Debentures") of Chapter III and the company's accounting records; and

(b) ensuring that notices of all shareholder meetings, board meetings and board committee meetings are given in accordance with this Act; and

(c) ensuring that minutes of all such meetings are recorded in accordance with this Act; and

(d) advising the directors as to their duties and powers under this Act; and

(e) making to the directors aware of other laws or affecting the company; and relevant

(f) certifying in the company's annual financial statements whether the company has filed required returns and notices in terms of this Act, including but not limited to the company's annual return and the board's "comply or explain" report to shareholders on corporate governance under section 220 **(**"Corporate governance guidelines for public companies")(3).

(4) A person shall be qualified to hold office as secretary of a public company if—

(a) for at least three of the five years immediately before his or her appointment as secretary, he or she held office as secretary of a public company; or

(b) he or she is registered or entitled to be registered as a chartered accountant under the Chartered Accountants Act [*Chapter 27:02*]; or

(c) he or she is registered or entitled to be registered as a chartered secretary under the Chartered Secretaries (Private) Act [*Chapter 27:03*]; or

(d) he or she is registered or entitled to be registered as a legal practitioner under the Legal Practitioners Act [*Chapter 27:07*]; or

(e) he or she 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

(f) he or she holds such other qualification as may be prescribed in regulations.

(5) The following persons shall be disqualified from being appointed as secretary of a public company (and if any of the following disqualifications affect a secretary of a private company, subsection (10) shall apply thereto)—

(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 bankrupt or insolvent 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.

(6) 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 (4) and is not disqualified in terms of subsection (5) and, in addition, has the requisite knowledge and experience to discharge the functions of secretary of the company.

(7) A secretary of a public company shall cease to hold office as such if—

(a) he or she has at any time been adjudged or is or has been declared insolvent or bankrupt under a law in force in Zimbabwe or any other country; or

(b) he or she 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 or she is removed by a competent court from any office of trust on account of misconduct.

(8) If a person who is disqualified under this section from being or continuing to be a secretary of any public company or is directly or indirectly in the management of any company, he or she shall be guilty of an 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.

(9) Nothing in this section shall be deemed to prevent a company from applying under its regulations for the appointment of, or the retention of office by, a secretary.

(10) The director or principal shareholder of a private company is not bound by the provisions of subsections (4) and (5) when appointing or continuing to retain the secretary of that company, but the director or principal shareholder must file with the Registrar (within thirty days of becoming aware) a statement in the event that the secretary becomes affected by any of the disqualifications in subsection (3) that would apply to him or her if the secretary was the secretary of a public company, which statement shall be available for inspection to the public at normal working hours.

Provided that the director or principal shareholder shall withdraw such filing in the event of the secretary no longer being subject to any such disqualification.

199 Restrictions on appointment or advertisement of director; share qualifications of directors

(1) This section shall not apply to—

(a) an association licensed under section 82 ("Power to dispense in certain cases"); or

(b) a private company; or

(c) a company which was a private company before becoming a public company; or

(d) a company 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.

(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 by or on behalf of the company, lodged by or on behalf of the list or unless, before the lodging of the articles or publication registration of the prospectus, or the lodging of the statement in lieu of prospectus, as the case may be, he or she has himself or herself or by his or her agent authorised 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 or her qualification, if any, or signed and lodged with the Registrar a contract in writing to take from the company and pay for his or her 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 18 ("Registration documents") for registration of constitutive documents") for articles, if any, of the memorandum and of 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 or her consent by notice in writing lodged with the Registrar, shall be deemed to be a person who has not so consented.

(6) Without prejudice to the restrictions imposed by this section, 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 or her qualification within two months after appointment or such shorter time as may be fixed by the articles.

(7) The office of director of a company shall be vacated if the director does not, within two months from the date of his or her appointment or within such shorter time as may be fixed by the articles, obtain his or her qualification or if, after the expiration of the said period or shorter time, he or she ceases at any time to hold his or her qualification.

(8) A person vacating office under subsection (7) shall be incapable of being reappointed director of the company until he or she has obtained his or her qualification.

(9) If, after the expiration of the said period or shorter time, any person acts as a director of the company, the Registrar may serve upon him or her a category 1 civil penalty order, in which the cumulative penalty shall be calculated for every day between the expiration of the said period or shorter time, or the day on which he or she ceased to be qualified, as the case may be, and the last day on which it is proved that he or she acted as a director.

200 Disqualification for appointment as director

(1) Any of the following persons shall be disqualified from being appointed a director of

a public company—

(a) a body corporate;

or

(b) a minor or any other person under legal disability;

or

(c) a person who is removed by the court from any office of trust on account of misconduct save with the leave of the court; or

(d) a person who has at any time been convicted whether in Zimbabwe or elsewhere, of theft, fraud, forgery or perjury and has been sentenced therefor to serve a term of imprisonment without the option of a fine exceeding level five.

(2) A company shall cause any director to cease to hold any public office as such if—

(a) he or she has at any time been declared insolvent or adjudged bankrupt otherwise in force in Zimbabwe or under any law in country; or

(b) he or she is convicted, whether in Zimbabwe or elsewhere, of theft, fraud, forgery or perjury and has been sentenced therefore to serve a term of imprisonment without the option of a fine exceeding level five; or

(c) except with the leave of the court, any person who has at any time been declared insolvent or adjudged bankrupt otherwise in force in Zimbabwe or under any law in country, and has not been rehabilitated or discharged;

(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 or she 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 to its regulations for the further disqualification or retention of office appointment by, any director.

(5) In relation to private companies, the secretary or principal shareholder shall file with the Registrar (within thirty days of becoming aware) a statement in the event that a director of his or her company is or becomes affected by any of the disqualifications in this section that would apply to him or her if the director was the director of a public company, which statement shall be available for inspection to the public at normal working hours:

Provided that the secretary or principal shareholder shall withdraw such filing in the event of the director of his or her company no longer being subject to any such disqualification.

201 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 195 ("Directors and their functions and responsibilities")(5);

(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 or her appointment.

202 Removal and resignation of directors

(1) One or more directors may be removed, with or without a stated reason or cause, at a general meeting by a majority of the votes of shares entitled to vote at an election of directors, then except that no director may be removed unless the notice of the meeting states

that a purpose of the meeting was to vote on the removal of such director at the meeting.

(2) The removal of a director shall not in itself prejudice any right to compensation upon removal which the director may have under a contract with the company. However, the election or status of a person as a director shall not, in itself, create any such rights.

(3) A director may resign at any time by giving written notice, as far in advance as is practicable, to the board of directors or its chairperson. A resignation is effective when the notice is given unless the notice specifies a future date. The pending vacancy may be filled before the effective date of the resignation, but the successor shall not take office until the effective date.

203 Vacancies on board of directors

(1) A vacancy on a board of directors shall be filled by election at the next general meeting at which directors are to be elected, except that the company's articles of association may provide that the board of directors may fill such vacancy until such time, in which case it may do so but subject to subsection (2).

(2) If at any time vacancies on a board equal twenty-five (25) *per centum* or more of the total number of board seats, the board shall convene an extraordinary shareholder meeting to meet within two months after that event occurs, for the purpose filling the vacancies.

(3) The foregoing shall not apply if the annual general meeting is to occur within that time.

(4) A director elected to fill a vacancy shall serve until the expiration of the term of the director whose vacancy the person filled.

204 Quorum and vote required

(1) A majority of the total number of directors fixed in a company's articles of association shall constitute a quorum for decision making and the transaction of business, unless a greater

number for a quorum is specified in the articles of association.

(2) The affirmative vote of a majority of the directors present at a meeting at which a quorum is present shall be the act and decision of the board of directors, unless the articles of association requires a greater number of directors.

(3) The chairperson of the board shall have a casting vote in the event of a deadlock of the vote referred to in subsection (2), unless provided otherwise in the articles of association.

205 Minutes of meeting of board and committees

(1) Minutes of each meeting of the board and any committee shall be prepared promptly after the meeting, and shall be submitted to the board or committee at its next meeting for its review and adoption.

(2) The minutes referred to in subsection (1) shall include—

(a) a statement of the place and time of the meeting; and

(b) the persons present; and

(c) the agenda at the meeting; and

(d) the issues submitted for voting; and

(e) the results of each vote including the names of the directors who voted "for" or "against" or who abstained; and

(f) the decisions which were adopted at the meeting.

(3) The minutes required to be kept in terms of this section shall be deemed approved if signed by the chairperson of the meeting.

(4) Failure to act as required by subsection (1) shall not in itself affect otherwise valid decisions of the board of directors

(5) If it comes to the notice of the Registrar that a company has not been keeping minutes in accordance with this section it shall be liable to a category 2 civil penalty.

206 Independent directors required for public companies

(1) In this section—

"independent director" means a director of the company who has not, or whose family members have not received any payment or held any share or interest, or any post in the company referred to in the definition of "non-executive director";

"non-executive director" means a director of the company who, or any of whose family members either separately or together with him or her or each other, during the two years preceding the time in question—

(a) was not an employee of the company; and

(b) did not—

(i) make to or receive from the company payments of more than fifty thousand (50 0000) United States dollars or the equivalent thereof; or

(ii) own more than a twenty (20) *per centum* of the shares or other ownership interest of the same extent, directly or indirectly, in an entity that made to or received from the company payments of more than the amount stated in subparagraph (i); or

(iii) act as a partner, manager, director or officer of a partnership or company that made to or received from the company payments of more than such amount;

and

(c) did not own directly or indirectly (including for this purpose ownership by and family shareholder or related person) more than twenty (20) *per centum* of the shares of any type or class of the company; and

(d) was not engaged directly or indirectly as an auditor for the company.

(2) A public company shall have at least three non–executive or independent directors on its board of directors.

(3) In a public company, any person who nominates candidates for the board who would comprise a majority of the members of the board must nominate at least three candidates any one of whom would, if appointed, be an independent director.

207 Shareholder approval of directors' emoluments

(1) A company may pay reasonable emoluments to directors which may include shares or options for shares of the company.

(2) The emoluments of a director of a public company must be approved by the shareholders of that company at the annual general meeting.

(3) If it comes to the notice of the Registrar that a public company has not complied with subsection (2) to the Registrar shall serve a category 2 civil penalty order upon the company

208 Prohibition of financial assistance to directors

(1) It shall not be lawful for a company to make a loan or render other financial assistance 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 or her for the purposes of the company or for the purpose of enabling him or her properly to perform his or her 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 or her to purchase or subscribe for fully paid shares in the company to be held

by him or her or in trust for him or her, if the loan is made in accordance with section 123 ("Financial assistance by company for purchase of its own or its holding company's shares")**.**

(2) Proviso (1) (a) shall not authorise 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 authorising 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) If it comes to the notice of the Registrar that any default has been made in complying with subsection (1), he or she may serve a category 3 civil penalty order upon the company and every officer of the company who is in default, in which the director receiving any loan clause shall require the director of this section to repay it in contravention of this section within the specified period to the company together with interest at twice the level of the prescribed rate of interest prevailing at the time the civil penalty order is issued

(5) In relation to any private company, the secretary or principal shareholder shall file with the Registrar (within thirty days of becoming so aware) a statement in the event that a director receives any loan which in this section would be prohibited if the director was a director of a public company, which

statement shall be available for inspection by the public during normal working hours.

209 Approval of company requisite for payment by it to director for loss of office

(1) It shall not be lawful for a public 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 or her 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.

(2) In relation to private companies, the secretary or principal shareholder shall file with the Registrar (within thirty days of becoming so aware) a statement in the event that a director has been paid for loss of office, furnishing all the particulars thereof, which statement shall be available for inspection by the public during normal working hours.

210 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 public 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 or her 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 or her in trust for the company.

(3) In relation to private companies, the secretary or principal shareholder shall file with the

Registrar (within thirty days of becoming so aware) a statement in the event that a transfer contemplated by subsection (1) has been made, furnishing all the particulars thereof, which statement shall be available for inspection by the public during normal working hours.

211 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 public 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 or her 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 (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 or her 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 liable to a category 1 civil penalty.

(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 or her in trust for any of persons who have sold their shares as a result of the offer made and the expenses incurred by him or her in distributing that sum amongst those persons shall be borne by him or her and not retained out of that sum.

(4) Where the shareholders referred to in subsection (3)(b) 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 provision, the provisions of 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 Registrar 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 required by subsection (3)(b) 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.

212 Provisions supplementary to sections 209, 210 and 211

(1) Where in proceedings for the recovery of any payment as having, by virtue of section 209 ("Approval of company requisite for payment by it to director for loss of office") (1), 210 ("Approval for company in connection with requisite for payment in its property to director for loss of transfer of office")(1) and (2) or 211 ("Duty of director

to disclose payment for loss of office, made with transfer of shares in company")(1) and (3), 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 aforementioned provisions apply.

(2) If, in connection with any such transfer as is mentioned in section 210 or

211—

(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 company held by him or her is in excess of the price which could at the time have been obtained by other holders of like shares; or

(b) any such valuable consideration is given to any 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 or her by way of compensation for loss of office or as consideration for or in connection with his retirement from office. or her

(3) References in section 208 to financial assistance ("Prohibition of directors"), 209 or 210 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 208 or 209 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.

213 Register of directors' share holdings

(1) Every company, other than a private company, shall keep a register showing as respects each director of the company and amount of the number, description and any other body corporate, being any shares in or debentures of the company or any 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 her or of which he or she 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) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him or her in the said register must be indicated in the register.

(3) 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.

(4) 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 Registrar.

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.

(5) The Registrar may at any time require a copy of the said register or any part thereof.

(6) 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.

(7) 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 or her directions or instructions; or

(ii) he or she 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.

(8) It shall be the duty of every director of a company and of every person deemed to be a director under subsection (7) (a) to give notice to the company of such matters relating to himself or herself 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.

(9) If default is made in complying with—

(a) subsection (1) or (2), the company and every officer of the company who is in default shall be liable to a category 3 civil penalty;

(b) subsection (4), the company and every officer of the company who is in default shall be liable to a category 4 civil penalty;

(c) subsection (5), the company and every officer of the company who is in default shall be liable to a category 2 civil penalty;

(d) subsection (6) or (8), the company and every officer of the company who is in default shall be liable to a category 1 civil penalty.

214 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 or her nominee in so far as they are issued or allotted to him or her 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 subsection (1)(b) unless it authorises, in terms, the specific transaction proposed by the directors.

215 Particulars of directors' salaries in accounts 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 financial records 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 subsection (1) (a) —

(a) shall include any emoluments paid to or receivable by any person in respect of his or her services as director of the company or in respect of his or her services, while 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 share of the profits, shares and share options, 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 or her under any pension scheme and the estimated money value of any other benefits received by him or her otherwise than in cash.

(3) The amount to be shown under subsection (1) (b) —

(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 her or, on his or her nomination or by virtue of dependence on or other connection with him or her, 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 subsection (1) (c) —

(a) shall include any sums paid to or receivable by a director for the past director by way of compensation of the company for the loss of office as director of the company or for the loss, or in connection with his or her ceasing to be a director of the company, or on or in connection with the management 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;

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 211 (" Duty of director to disclose payment for loss of office, made in connection with transfer of shares in company"), 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 subsection (1)(c), 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 subsection (5)(a), 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 public 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 or herself as may be necessary for the purposes of this section; and if he or she makes default in complying with such duty he or she shall be liable to a category 3 civil penalty.

216 Particulars in accounts of loans to officers

(1) Save in the case of private companies, the accounts 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 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, by the company or a loan made by the ordinary course of its business; or the subsidiary in

(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.

(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 officer, as or other officer of the company or a director or he or she became a director or officer of the company. it applies to a loan to a director or

(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 a 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 or herself as

may be necessary for the purposes of this section; and if he or she makes default in complying with such duty he or she shall be liable to a category 3 civil penalty.

217 Register of directors and secretaries

(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 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.

(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 address and postal addresses; and

(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 165 ("Annual return to be made by company"), 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 every 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 in default and liable to a category 3 civil penalty.

(7) The resignation of a director or a secretary shall not relieve him or her of his or her 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 or her resignation, had reasonable ground to believe that the company would comply with subsection (5).

(8) The register to be kept under this section shall, during businesshours, 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 defaulting company shall be liable to a category 4 civil penalty.

(11) If any inspection under this section is refused, the defaulting company shall be liable to a category 2 civil penalty.

(12) For the purposes of this section—

(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 or her surname the expression "surname" means that title;

(c) references to a former first name or surname do not include— (i) 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; or

(ii) in the case of a married woman, the name or surname by which she was known previous to the marriage.

Sub-Part E: Responsibilities of boards, audit committees of public company and corporate governance guidelines for public companies

218 Board's role and responsibilities

(1) The board of directors shall be responsible for decisions on all matters except those reserved to the shareholders by this Act or by the company's constitutive documents.

(2) Without limiting the foregoing, the board's responsibilities include—

(a) determining and directing overall business performance and strategy and plans for the company; and

(b) ensuring that the financial records, financial statements and external audit referred to in Sub-Part C ("Accounts and audit") are kept, maintained and performed as stated in that Sub-Part; and

(c) the appointment, removal, compensation and performance of officers and oversight of management of the company; and

(d) the convening of and preparation of the initial agenda for shareholder meetings; and

(e) determining the record date for shareholders entitled to participate in a shareholder meeting, and setting the amounts and the record dates of, and payment dates for, and procedures in connection with, the payment of dividends and other distributions; and

(f) authorising the issuance of shares and other securities that the board is authorised to issue and authorising the borrowing of money and otherwise incurring debt, except in each case when those powers are reserved to the shareholders; and

(g) deciding any other matters referred to the exclusive competence of the board of directors in the company's constitutive documents.

(3) The board shall exercise collectively the responsibilities that under section 195 ("Directors and their functions and responsibilities")(2) directors must exercise individually.

(4) The responsibilities and accountability of the board of directors and its committees may not be transferred to, discharged by or determined by other persons or other bodies within or outside the company; in particular, an individual director may not assign or delegate his or her responsibilities or accountability under this Act to another person.

219 Audit committee of public company

(1) The Board of every public company shall have such committees as may be specified in its articles of association, but must in any event appoint an audit committee consisting of at least three appointees, all of whom shall be independent directors (under no circumstances may

the chairperson of the board be a member of the audit committee) and having the responsibilities specified in subsection (2).

(2) The audit committee shall be responsible for—

(a) the selection, remuneration, and terms of engagement of an external auditor, who, in its judgment, is independent of the company, subject to ratification by the shareholders; and

(b) proposing, for approval by the shareholders, the engagement of that auditor upon such remuneration and other terms as it has determined to be reasonable; and

(c) monitoring the independence of the company's external auditor in terms of subsection (4); and

(d) discharging the particular tasks referred to in subsection (5); and (e) reporting to the shareholders generally on its activities and on matters of its greatest concern.

(3) Subsection (2) does not preclude the appointment by the shareholders at an annual general meeting of an auditor other than one nominated by the audit committee, but if such an auditor is appointed, the appointment shall be valid only if the audit committee is satisfied that the proposed auditor is independent of the company and qualified to audit public companies under the Public Accountants and Auditors Act [*Chapter 27:12*].

(4) For that purpose of subsection (2)(c) the audit committee shall have authority to pre-approve any arrangement under which the auditor, directly or indirectly, provides non-audit services to the company, and the audit committee shall, in any event, make a determination at least once each year of the auditor's independence taking account of any relationships of the auditor with the company or other persons that may compromise the auditor's independence

(5) The audit committee shall, in addition—

(a) regularly review and discuss with the auditor the scope and results of its audit, any difficulties the auditor encountered including any restrictions on its access to requested information and any disagreements or difficulties encountered with management; and

(b) review and discuss with the company's management and the auditor each

annual and each quarterly financial statement of the company including judgments made in connection with the financial statements; and

(c) review and discuss the adequacy of the company's internal auditing personnel and procedures and its internal controls and compliance procedures, and any risk management systems, and any changes to those; and

(d) oversee the company's compliance with legal and regulatory requirements including but not limited to its compliance with generally accepted accounting practices; and

(e) review and discuss arrangements under which company employees can confidentially raise concerns about possible improprieties in financial reporting or other matters, and ensure that arrangements are in place for independent investigation and follow-up regarding such matters.

(6) The board shall ensure that the audit committee has the resources necessary for its duties including the authority to engage external legal, accounting or other advisors without seeking the approval of the Board. The company shall provide funding for the compensation of any such persons.

220 Corporate governance guidelines for public companies

(1) The board of every public company shall establish or adopt written corporate governance guidelines covering matters such as standards for qualification and independence of a director, directors' responsibilities including meeting attendance, diligence in reviewing materials, and rules for disclosure and review of potential conflicts of interest with the company, director compensation policy, succession planning for both directors and officers, and other corporate governance matters deemed appropriate. Such guidelines shall be consistent with the then current National Code on Corporate Governance.

(2) The company shall make such guidelines available in print to any shareholder who requests it, at the shareholder's expense.

(3) At each annual shareholders' meeting the company's board of directors shall report to the meeting on the company's compliance with its guidelines and their

conformity to the principles set forth in the National Code on Corporate Governance, and explain the extent if any to which it has varied them or believes that any noncompliance therewith is justified.

(4) Every public company shall formulate and implement a policy to promote diversity and gender balance in their governance structures and employment policies from the board downwards.

221 Officers of company

(1) A board of directors shall appoint one or more individual persons as officers.

(2) A person may be both a director and an officer, and a person may simultaneously hold more than one office, unless provided otherwise in the company's memorandum or articles.

(3) The officers shall be under the direction of the board of directors and their responsibility shall include management and operation of current activities of the company or parts thereof, other than matters within the exclusive competence of the board of directors or the members.

(4) The board of directors may elect a head officer and give such person the title "chief executive officer," "president," "managing director," or another similar title, and the person's duties may be prescribed in detail in the company's articles of association or by a separate resolution of the board.

(5) The head officer referred to in subsection (4) shall have authority to act generally in the company's name, representing the company's interests, concluding transactions on the company's behalf and giving instructions to the company's employees.

(6) The board shall elect such other officers, and may authorise officers to appoint subordinate officers, as the board considers appropriate, and the board may prescribe their respective titles, functions and authorities.

(7) An appointment as an officer shall not of itself create contractual rights, and any officer may be removed by the board of directors at any time with or without specific cause, but such removal shall not in itself prejudice rights under an employment contract, if any, of the person so removed.

Meaning of "member" and "company" in sections 223 to 225

(1) In sections 223 ("Order on application of member"), 224 ("Order on application of Registrar") and 225 ("Powers of High Court in applications under sections 223 and 224")—

"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 223 and 224 —

"company" includes a body corporate referred to in section 43 ("Power of inspectors to investigate related registered or unregistered entities")

223 Order on application of member

A member of a company may apply to the court for an order in terms of section 225 ("Powers of High Court in applications under sections 223 to 224") 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 herself, or any act or omission of the company, including or proposed act or omission on its behalf, is or would be so oppressive or prejudicial. **224**

Order on application of Registrar

(1) If in the case of any company—

(a) the Registrar has received a report from an investigator under section 45 ("Registrar's report") (1); and

(b) it appears to him or her that the company's affairs are being or have been conducted in a manner which is oppressive or unfairly prejudicial to the members, or that any actual or proposed act or omission of the company, including or omission on its behalf, is or would be so oppressive or prejudicial;

he or she may, in addition to or instead of applying under section 46 ("Proceedings on inspector's report")(2) for the winding up of the company, apply to the court for an order in terms of section 225 **("**Powers of High Court in applications under sections 223 to 224**").**

225 Powers of court in applications under sections 223 and 224

(1) If the High Court is satisfied that an application under section 223 ("Order on application of member") or 224 ("Order on application of Registrar") 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;

(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) authorise 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 constitutive documents, the company shall not have power without leave of the court to make any such alteration.

(4) Any alteration in the company's constitutive documents 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 constitutive documents, 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 it comes to the notice of the Registrar that a company has made default

in complying with subsection (5), the defaulting company shall be liable to a category 3 civil penalty.

Sub-Part G: Mergers, etc.

226 Definitions in Chapter II Part III (G)

In this Sub-Part—

"amalgamation" means a merger in which one more existing companies merge into another existing company;

"consolidation" means a merger in which two or more companies are consolidated into a new company;

"major asset transaction" means a transaction or related series of transactions involving—

(a) the purchase or other acquisition outside the usual course of the company's business; or

(b) the sale or other transfer outside the usual course of the company's business; or

(c) the pledge or mortgage or other encumbrance outside the usual course of the company's business;

by the company of another company's property, property rights, or other rights the value of which, on the date of the company's decision to complete the transaction, is fifty *per centum* or more of the book value of the company's assets based on the company's most recently compiled statement of financial position;

"merger" means amalgamation or consolidation of two or more companies.

227 Power to undertake mergers and major asset transactions A private or public company or cooperative company may undertake and complete a merger at any time as provided by the Tariff and Competition Act [*Chapter 14:20*] or a major asset transaction in accordance with this Sub-Part.

228 Procedure for merger

(1) Two or more public companies or any combination of companies consisting of at least one public company and at least one private company (hereafter called the "merging companies") may undertake a merger which must comply with the following requirements—

(a) enter into a provisional contract for merger compliant with section 229

("Contents of contract of merger"**)**; and

(b) the merging companies shall publish notice of the proposed merger in the *Gazette* and in a daily newspaper circulating in the district in which the registered office of the company is situated, making mention of the names of the merging companies;

(c) give notice of the provisional contract of merger to the shareholders of each of the merging companies, which notice shall be compliant with the requirements for a special resolution and shall be accompanied by—

(i) a copy of the contract for merger together with an explanation which describes the legal and economic grounds for the merger; and

(ii) any recommendation of the board of directors on the proposed merger and the reasons for the recommendation; and

(iii) a copy of an opinion of an independent financial adviser if such an opinion has been obtained or is required under section 230 ("Independent financial opinion"); and

(iv) the annual financial statements of all the companies which are parties to the merger for the previous three years (or any shorter time of the company's existence):

Provided if the latest annual financial statement was as of a date more than six months before the contract for merger, an audited financial statement for the intervening period not less than one month before the shareholder meeting concerned which reflects the financial condition of the company concerned (except that the foregoing shall not apply to any new company which was created to be the surviving company in the merger), and

(v) a notice that in the event that the merger is approved, dissenting shareholders are entitled to the rights referred to section 233 ("Dissenting shareholders' appraisal rights");

(d) not later than fourteen days after the approval of the merger by the last

shareholder meeting to approve it, the merged company or the merging companies, as the case may be, shall—

(i) file the contract for merger with the Registrar in the prescribed manner and form and together with the prescribed fee, upon which registration the merger shall become effective;

(ii) publish notice of the merger in the *Gazette* and in a daily newspaper circulating in the district in which the registered office of the company is situated, making mention of the names of the merging companies.

(2) Notwithstanding the foregoing provisions of this section, a company that owns ninety *per centum* or more of the shares of each class of shares of another company may—

(a) merge that subsidiary into itself; or

(b) merge that company into another such subsidiary; or

(c) merge itself into that subsidiary;

without the approval of the board of directors or shareholders of the subsidiary, unless the constitutive documents of the subsidiary expressly provides otherwise.

(3) A company engaging in a merger referred to in subsection (2) shall not require approval of its shareholders in terms of this section, unless the constitutive documents of theholdingcompany provides otherwise. Inany such case where approval by the subsidiary's shareholders is not required, the parent company shall, within ten days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

(4) If default is made in complying with subsection (1) (d) (i) or (ii) the defaulting merged company or the merging companies, as the case may be, shall be liable to a category 3 civil penalty.

229 Contents of contract of merger

A contract of merger shall include—

(a) the name of the registered office and company secretary of each company that will merge and of the surviving or new company into which each company plans to merge; and

(b) the terms and conditions of the proposed merger; and

(c) the manner and basis of converting the shares of each merging company into cash or other property, or shares, other securities or debt or other obligations of the surviving or new company or of any shareholder of the surviving company; and

(d) the full text of the constitutive documents of the surviving or new company as it will be in effect immediately following the merger; and

(e) the date from which the transactions of each non-surviving company shall be treated for accounting purposes as being those of the surviving or new company; and

(f) the rights conferred by the surviving or new company on the holders of securities other than shares, or the measures proposed concerning them; and

(g) any provisions under which the proposed merger can be abandoned before its completion; and

(h) other provisions relating to the merger including but not limited to a possible provision that payment will not be made for any converted shares until after the merger has become effective.

230 Independent financial opinion

The board of directors of a private company may, and the board of a public company must, obtain an opinion of an independent professional financial adviser on the terms of the contract for merger and the proposed merger, in which the adviser shall state—

(a) the adviser's analysis and an explanation of all the terms of the contract for merger, including the method or methods used to arrive at any proposed share exchange ratio and the values arrived at using each method; and

(b) an opinion as to the fairness of the merger to the shareholders and, if

there is more than one type or class of shareholders, to each type or class of shareholders and creditors of the merging companies.

231 Effect of merger

The effect of a merger is that--

(a) the companies that are parties to the merger are one single company which will be the new or surviving company named in its constitutive documents filed with the Registrar under section 228 ("Procedure for merger") (1)(d) (i), and the separate existence of all such companies except the surviving or new company shall terminate on the date of such filing; and

(b) the surviving or new company owns all of the assets of and claims by each company that was a party to the merger, in each case of every kind, whether in contract, delict or otherwise and whether known or unknown, and will owe all of the debts, liabilities and obligations of and be subject to and responsible for all of the claims by any person against each company that was a party to the merger, in each case of every kind, whether in contact, delict or otherwise and whether known or unknown; and

(c) all legal actions or other claims against any company that was a party to the merger may be continued against the surviving or new company, which will be substituted in the lawsuit or claim for the company whose existence has terminated; and

(d) the constitutive documents of the surviving or new company shall be the constitutive documents as set forth in or together with the contract; and

(e) the shares of each company that was a party to the merger are converted into shares, other securities or debt or other obligations or the right to receive money of the surviving or new company, and the former holders of such shares shall be entitled only to the rights provided in the contract of merger.

232 Procedure for major asset transactions

(1) A public company may undertake a major asset transaction subject to the following conditions—

(a) the board of directors of the company must recommend the transaction and direct that it be submitted for approval to an annual or extraordinary shareholder meeting; and

(b) written notice of the transaction must be dispatched not less than twenty one days before the meeting of the shareholders, stating that the purpose of the meeting is to consider the transaction and including —

(i) a summary of the transaction and the recommendation of the board of directors on the transaction; and

(ii) a statement of the shareholders' right to dissent to the transaction; and

(iii) a statement that in the event that the transaction is approved, aggrieved shareholders are entitled to the rights referred to section 233 ("Dissenting appraisal rights"); and

(c) the shareholders adopting a special resolution by affirmative vote of the holders of all shares entitled to vote on the transaction and, if voting is required, a special resolution of the voting group entitled to vote on the transaction and of the total number of votes of the shares entitled to vote on the transaction.

(2) If at any time before the transaction in question is referred to a meeting of shareholders, any dispute or question arises as to whether the transaction in question is outside the usual course of the business of the company or not, or that the transaction is a merger and not a major asset transaction, any dissenting director or shareholder of the company concerned or any other interested person may on notice to the other disputants make a chamber application to a Magistrate having jurisdiction in the area where the company has its registered office.

233 Dissenting shareholders' appraisal rights

(1) If a company has given notice to shareholders of a meeting to consider adopting

a resolution to enter into a transaction contemplated in section 143 ("Variation of rights attachingto shares") and228 ("Procedure for merger"),that notice must include a statement informing shareholders of their rights under this section.

(2) At any time before a resolution referred to in subsection (1) is to be voted on, a dissenting shareholder may give the company a written notice objecting to the resolution.

(3) Within ten businessdays after a company has adopted a resolution contemplated in this section, the company must send a notice that the resolution has been adopted to each shareholder who—

(a) gave the company a written notice of objection in terms of subsection (1); and

(b) has neither— (i) withdrawn that notice; or

(ii) voted in support of the resolution.

(4) A shareholder may demand that the company pay the shareholder the fair value for all of the shares of the company held by that person if—

(a) theshareholder—

(i) sent the company a notice of objection, subject to subsection (5); and

(ii) in the case of section 140 ("Notice to Registrar of consolidation of share capital, conversion of shares into stock") holds shares of a class that is materially and adversely affected by the alteration; and

(b) thecompany has adopted the resolution contemplated in subsection (1); and

(c) theshareholder—

(i) voted against that resolution; and

(ii) has complied with all of the procedural requirements of this section.

(5) The requirement of subsection (4)(a)(i) does not apply if the company failed to give notice of the meeting, or failed to include in that notice a statement of the shareholders rights under this section.

(6) A shareholder who satisfies the requirements of subsection (4) may make a demand contemplated in that subsection by delivering a written notice to the company within—

(a) twenty business days after receiving a notice under subsection (4); or

(b) if the shareholder does not receive a notice under subsection (4), within twenty business days after learning that the resolution has been adopted.

(7) A demand delivered in terms of subsections (4) to (6) must state— (a) the shareholder's name and address; and

(b) the number and class of shares in respect of which the shareholder seeks payment; and

(c) a demand for payment of the fair value of those shares.

(8) A shareholder who has sent a demand in terms of subsections (4) to (6) has no further rights in respect of those shares, other than to be paid their fair value, unless—

(a) the shareholder withdraws that demand before the company makes an offer under subsection (9), or allows an offer made by the company to lapse, as contemplated in subsection (10)(b); or

(b) the company fails to make an offer in accordance with subsection (9) and the shareholder withdraws the demand; or

(c) the company revokes the adopted resolution that gave rise to the shareholder's rights under this section.

(9) If any of the events contemplated in subsection (8) occur, all of the shareholder's rights in respect of the shares are reinstated without interruption.

(10) Within five business days after the later of—

(a) the day on which the action approved by the resolution is effective; or

(b) the last day for the receipt of demands in terms of subsection (6)(a); or

(c) the day the company received a demand as contemplated in subsection (6)(b), if applicable; the company must send to each shareholder who has sent such a demand a written offer to pay an amount considered by the company's directors to be the fair value of the relevant shares, subject to subsection (14), accompanied by a statement showing how that value was determined.

(11) Every offer made under subsection (10)—

(a) in respect of shares of the same class or series must be on the same terms; and

(b) lapses if it has not been accepted within thirty business days after it was made.

(12) If a shareholder accepts an offer made under subsection (10)—

(a) the shareholder must either in the case of—

(i) shares evidenced by certificates, tender the relevant share certificates to the company or the company's transfer agent; or

(ii) uncertificated shares, take the steps required in terms of section 151 ("Transfer of title to shares and debentures") to direct the transfer of those shares to the company or the company's transfer agent; and

(b) the company must pay that shareholder the agreed amount within ten business days after the shareholder accepted the offer and—

(i) tendered the share certificates; or

(ii) directed the transfer to the company of uncertificated shares.

(13) A shareholder who has made a demand in terms of subsections (4) to (7) may apply to a court to determine a fair value in respect of the shares that were the subject of that demand, and an order requiring the company to pay the shareholder the fair value so determined, if the company has—

(a) failed to make an offer under subsection (10); or

(b) made an offer that the shareholder considers to be inadequate, and that offer has not lapsed.

(14) On an application to the court under subsection (13)—

(a) all dissenting shareholders who have not accepted an offer from the company as at the date of the application must be joined as parties and are bound by the decision of the court; and

(b) the company must notify each affected dissenting shareholder of the date, place and consequences of the application and of their right to participate in the court proceedings; and

(c) thecourt—

(i) may determine whether any other person is a dissenting shareholder who should be joined as a party; and

(ii) must determine a fair value in respect of the shares of all dissenting shareholders, subject to subsection (15); and

(iii) in its discretion may—

A. appoint one or more appraisers to assist it in determining the fair value in respect of the shares; or

B. allow a reasonable rate of interest on the amount payable to each dissenting shareholder from the date the action approved by the resolution is effective, until the date of payment; and

(iv) may make an appropriate order of costs, having regard to any offer made by the company, and the final determination of the fair value by the court; and

(v) must make an order requiring—

A. thedissenting shareholders to either withdraw their respective demands, in which case the shareholder is reinstated to their full rights as a shareholder, or to comply with subsection (12) (a); and

B. thecompany to pay the fair value in respect of their shares to each dissenting shareholder who complies with subsection (12)(a), subject to any conditions the court considers necessary to ensure that the company fulfils its obligations under this section.

(15) The fair value in respect of any shares must be determined as at the date on which, and time immediately before, the company adopted the resolution that gave rise to a shareholder's rights under this section.

(16) If there are reasonable grounds to believe that compliance by a company with subsection (12)(b), or with a court order in terms of subsection (14)(c)(v)(B), would result in the company being unable to pay its debts as they fall due and payable for the ensuing twelve months—

(a) the company may apply to a court for an order varying the company's obligations in terms of the relevant subsection; and

(b) the court may make an order that—

(i) is just and equitable, having regard to the financial circumstances of the company; and

(ii) ensures that the person to whom the company owes money in terms of this section is paid at the earliest possible date compatible with the company satisfying its other financial obligations as they fall due and payable.

(17) If the resolution that gave rise to a shareholder's rights under this section authorised the company to conclude a merger or major asset transaction or variation of shares with one or more other companies, such that the company whose shares are the subject of a demand in terms of this section has ceased to exist, the obligations of that company under this section are obligations of the successor to that company resulting from the amalgamation or merger or variation of shares.

(18) For greater certainty, the making of a demand, tendering of shares and payment by a company to a shareholder in terms of this section do not constitute a distribution by the company, or an acquisition of its shares by the company within the meaning of section 128 ("Power of company to purchase its own shares"), and therefore are not subject to—

(a) the provisions of that section; or

(b) the application by the company of the solvency and liquidity test set out in section 102 ("Solvency and liquidity test"). *Sub-Part H: Takeovers*

234 Definitions in Sub-Part H

In this Sub-Part—

"associate" of a person means any natural or juristic person who (whether or not with a view to enabling them to acquire a control block of shares in a company) is an associate in virtue of all or any of the following, that is to say in virtue of—

(a) acting by mutual agreement in concert with the first-mentioned person; or

(b) holding the control block of shares in the first-mentioned person, or the first mentioned person holding the controlling block of shares in the associate; or

(c) acting in accordance with the first-mentioned person's instructions, or the first-mentioned person acting in accordance with the associate's instructions; or

(d) being related by blood or marriage to each other;

"control block" means thirty-five *per centum* or more of the total of the ordinary shares of a company and any preference shares which have the right to vote with ordinary shares.

235 Disclosure of potential control acquisition

(1) A person who alone or together with any associate acquires or owns more than twenty *per centum* of the ordinary shares of a public company shall, no later than fifteen days from the date that such person acquires such number of shares, send written notice to the company stating the person's name, the names of the associate or associates, if any, the number of shares of the company belonging to him or her or to each of them (as the case may be), and whether the person intends to acquire a control block.

(2) If a person makes default in complying with subsection (1) the company secretary or other responsible officer of the company public company concerned shall request any person—

(a) to whom it is about to allot, issue or transfer any of its shares that may exceed the

threshold mentioned in that provision, to furnish it with the information required by that provision, and if the person fails or refuses within a reasonable time to comply with the request the company shall not allot, issue or transfer the shares or interest to him or her;

(b) whom it has reason to believe holds shares that may exceed the threshold mentioned in that provision to furnish it with the information required

by that person fails or refuses within a reasonable time to comply with the request he or she shall not, either personally or by proxy, cast a vote attached to the share nor receive a dividend payable on the share.

236 Acquisition of control block of shares of public company

(1) A person who intends, alone or together with one or more associates to acquire, taking into account the number of shares belonging to the person and the associates, a control block of shares of a public company no later than thirty days prior to the date of acquiring the control block, send the company written notice of the person's intent to acquire a control block of shares.

(2) A public company in which a control block under subsection (1), is sought to be acquired may by a decision of the shareholder meeting within thirty-day notice period, adopted by majority vote of the holders of ordinary shares participating in the meeting, excluding votes of shares held by shareholders who intend to acquire the control block, and excluding votes of shares held by associates who intend to acquire the control block.

(3) Any shareholder or class of shareholders may for good cause shown, by application to a magistrate in chambers having jurisdiction in the area where the takeover is being effected, apply for an interdict stopping the acquisition of the control block after notice of

intention to acquire it is given in terms of this section, whereupon the magistrate may if he or she thinks fit, refer the matter for trial.

237 Offer for remaining shares

(1) A person who alone or together with the person's associate or associates has acquired a control block of shares of a public company on the date of acquisition in writing and must give notice thereof to shareholders in writing within sixty days of such notice and must give further notice in writing to all of the remaining company's shareholders offering to acquire the company's ordinary shares belonging to them at a price not less than the weighted price at which he or she acquired the company's shares comprising the control block during the last six months preceding the date of acquisition of the control block, except for the case when a shareholder meeting adopts a decision to waive the rights of shareholders to sell the shares belonging to them in accordance with subsection (3).

(2) The notice of offer shall contain information identifying and describing the person who has acquired the control block and the person's associate or associates, including their names, residence and business addresses, the number of shares belonging to them, the price offered for the shares, the price or prices paid by them for the shares which they hold, and the period during which the offeree shareholders can accept the offer to acquire shares (which may not be less than thirty days from the date of sending the offer to shareholders).

(3) Any decision under subsection (1) to waive the shareholders' right to sell shares belonging to them to a person who has acquired or intends to acquire a control block may be adopted by a shareholder meeting by a majority of votes of the holders of ordinary shares participating in the meeting, excluding votes of shares belonging to the person who has acquired or intends to acquire a control block of shares held by the and excluding votes of shares person's associate or associates.

(4) Any shareholder or class of shareholders may by application to a magistrate in

chambers having jurisdiction in the area where the takeover is being effected, apply for an interdict stopping the acquisition of the control block on the grounds that the person acquiring the control block and his or her associates are not complying with the requirements of this section, whereupon the magistrate may if he or she thinks fit, refer the matter for trial.

(5) Acquisition of a control block and sending to holders of ordinary shares belonging to them shall be ordinary shares within one hundred and twenty days from completed the date of sending the notice under subsection (2) of the offer of a control block of a company's shares.

238 Drag-along: right of offeror with 90% to squeeze out minority

(1) If within one hundred and twenty days after the date for an offer made under section 237 ("Offer accepted remaining shares") the offer has been of the target shares, other than any such shares held before the offer by the offeror and its associate or associates—

(a) the offeror may within sixty days thereafter notify the holders of the remaining target shares that the offer has been accepted to that extent and the offeror wishes to acquire all remaining target shares; and

(b) after giving such notice the offeror shall be entitled and bound to acquire all such remaining shares on the same terms that applied to shares whose holders accepted the original offer.

(2) If an offer to acquire such remaining shares has not been accepted by all such offerees, the offeror may apply to the magistrates court having jurisdiction in the area where the takeover is being effected, for an order authorising the offeror to give again the notice contemplated by subsection (1)(b) with the effect stated in that subsection. The court shall issue such order if the court finds that—

(a) the minimum number of acceptances referred to in subsection (1) have been received; and

(b) the offeror, after making reasonable inquiries, has been unable to trace holders if any of target shares to whom the notice is not given; and

(c) the court is satisfied that it is just and reasonable to make the order having regard, in particular, to the number of holders of target shares who have not been traced and notified but who have accepted the offer.

239 Tag-along: right of minority to sell out to offeror having 90%

(1) If an offer made under section 237 ("Offer shares") for remaining shares has resulted in the offeror's acquisition of at least ninety *per centum* of the target shares, the offeror must inform the holders of the remaining target shares in writing no later than thirty days after acquiring them that the offer has resulted in the acquisition of the target shares to that extent.

(2) Within ninety days of receipt of such information any holder of the remaining target shares may demand by notice in writing that the offeror acquire all of that person's shares.

(3) After receiving such notice the offeror is bound to acquire all of such person's target shares on the same terms that applied to shares of holders who accepted the original offer.

(4) An offeror who fails to comply with this section is subject to a category 3 civil penalty.

PART IV foreiGn ComPanies

Sub Part A: General

240 Definitions in Chapter II Part IV (A)

For the purposes of this Part—

"banking company" means a company which carries on banking business in Zimbabwe as defined in section 2(1) of the Banking Act [*Chapter 24:20*];

"insurance company" means a company which carries on insurance business within the meaning of the Insurance Act [*Chapter 24:07*];

"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;

"principal officer", in relation to a foreign company, means the person notified in terms of section 241 ("Requirements as to foreign companies")(3) (b) as the person responsible for the management of the business of that company in Zimbabwe

241 Requirements as to foreign companies

(1) Subject to subsection (16), every foreign company which intends to establish a place of business in Zimbabwe shall submit to the Minister—

(a) a copy, duly certified by a notary public, of the original by the director or by a director residing in Zimbabwe or by documents in its constitutive instrument and, if the instrument is in a foreign language, a certified translation thereof;

(b) a list in the prescribed form of its directors resident in Zimbabwe who will upon establishment of the place of business be resident in Zimbabwe containing particulars in respect of each director similar to those required by section 217 ("Register of directors and secretaries") 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 or she shall issue a certificate, subject to such conditions as may be prescribed, authorising 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 principal officer who will be the person responsible for the management of its business in Zimbabwe, being a person who is ordinarily resident or a citizen of Zimbabwe and 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 constitutive or documents of a foreign company;

(b) the directors resident in Zimbabwe or the principal officer of a foreign company or the particulars contained in the list referred to in subsection (1)(b); 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 statement of financial position and profit or loss and other comprehensive income account, 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 statement of financial position, profit or loss and other comprehensive income account with the Registrar. If such statement of financial position 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.

(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

52 ("Striking off of defunct businessentities from register and remedy for persons aggrieved by striking off") shall, with such changes as may be necessary, apply.

(12) Where the Ministeris of the opinion that it will be in the public interest to do so, he or she 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—

(i) before exercising any of his or her powers in terms of this subsection, the Ministershall give the foreign company concerned not less than one month's notice in writing of his or her proposal to do so, and afford it an opportunity of making, in writing, such representations to him or her relating to his or her proposal as it may wish;

(ii) a foreign company whose representations to the Minister are rejected may within fourteen days of receiving notice of rejection have recourseto the High Court in terms of Administrative Justice Act 12 of 2004).

(13) If any foreign company—

(a) establishes a place of business within Zimbabwe without being registered; or

(b) carries on business in Zimbabwe after the certificate issued in respect of the foreign company has been revoked in terms of subsection (2) 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.

(14) In addition, the Registrar may serve upon the foreign company and every officer of the foreign company in Zimbabwe who is in default as described in subsection (13) a category 4 civil penalty order.

(15) If any foreign company—

(a) establishes a place of business within Zimbabwe without being registered the foreign company and every officer of the foreign company in Zimbabwe shall be liable to a category 2 civil penalty; or

(b) fails to comply with subsection (1), (3) or (7), the foreign company and every officer of the foreign company in Zimbabwe shall be liable to a category 2 civil penalty; or

(c) fails to comply with any condition imposed upon any certificate issued in respect of subsection (2), the foreign company in terms of subsection (2), the foreign company and every officer of the foreign company in Zimbabwe shall be liable to a category 4 civil penalty; or

(d) fails to comply with subsection (4), (5), (8) or (9), the foreign company and every officer of the foreign company in Zimbabwe shall be liable to a category 3 civil penalty; or

(e) carries on business in Zimbabwe after the certificate of the foreign company has been revoked in respect of subsection (2) the foreign company in terms of subsection (12), the foreign company and every officer of the foreign company in Zimbabwe shall be liable to a category 1 civil penalty.

(16) This section shall not apply to any foreign company which—

(a) has obtained an investment licence;

(b) has obtained a licence as a bank or an insurer;

(c) is operating in a special economic zone in terms of the Special Economic Zones Act [*Chapter 14:34*] (No. 7 of 2016).

242 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

(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, his or her present first names or the initials thereof and present surname; and

(e) in respect of its transactions within Zimbabwe, comply with section 182 (“Keeping of financial records”).

(2) Section 28 (“Provisions by companies and private use of names by companies and subsections (2), (3), business corporations”)(1)(c) of that section and (4), (5) and (6) of registered office and electronic 31 (“Postal address, registered with such changes as mail address”) (3) shall apply, in relation to a foreign may be necessary, in relation to the officers or any person company and to the officers of a foreign acting on behalf of an officer of a company.

(3) For the purposes of subsection (1)(d)—

“business letter” includes any quotation or order form but does not include any invoice, statement, delivery note, packing note or similar document.

243 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.

Sub-Part B: Prospectuses of foreign companies

244 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 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 chairperson 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 245 ("Contents of prospectus"); 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 245:

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.

(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 111 ("Document containing offer of shares or debentures for sale to be deemed to be prospectus") 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 108 ("Civil liability for misstatements in prospectus") shall extend to every prospectus to which this section applies.

(6) Subsection (1)(a)(iii) and (iv) and (b) 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.

245 Contents of prospectus

(1) A prospectus issued, circulated or distributed under section 244 ("Provisions with respect to prospectus of foreign company") 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 businessin 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 or her 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 or she proves that he or she was not cognisant thereof; or

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

(c) thenon-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 ("Form of annual return of company"), no director or other person shall incur any liability in respect of the failure unless it be proved that he or she had knowledge of the matters not disclosed.

(4) Nothing in this section or section 244 shall limit or diminish any liability which any person may incur under the common law or this Act, apart from this section.

246 Provisions as to expert's consent and allotment

(1) A prospectus shall be deemed not to comply with sections 244 ("Provisions with respect to prospectus of foreign company") and 245 ("Contents of prospectus")—

(a) if, where it includes or refers to a statement purporting to be made by an expert, he or she has not given or has before delivery of a copy of the prospectus for registration withdrawn his or her 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 or she has given consent and has not withdrawn his or her 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 120 ("Allotment of shares and debentures to be dealt in on stock exchange") so far as applicable.

(2) The requirements of section 244(1) 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 as person named in the prospectus of any legal practitioner, auditor, banker or broker of the company; and

(c) a copy of any contract required by section 244(1)(b) 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 section 244(1)(b) 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 subsection (2)(c) 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.

CHAPTER IV

Private Business CorPoration and other Business Entities

PART I

Private Business CorPorations

Sub-Part A: Incorporation of private business corporations and matters incidental thereto

247 Formation

Any one or more persons, not exceeding twenty, who qualify for membership in terms of a private business corporation for membership") may, by subscribing their names to an incorporation statement and otherwise complying with the requirements of this Act in respect of registration, form a private business corporation.

248 Incorporation statement, signing thereof and registration of private business corporation

(1) The incorporation statement shall be in the prescribed form and shall state—

(a) the name of the private business corporation with the words "Private Business Corporation" as the last words of the name or the abbreviation "PBC", in capital letters, at the end of the name; and

(b) the postal address of the private business corporation for the purposes of section 31 ("Postal address, address"); and

and

(c) the physical address, not being a post office box or private bag number, of the registered office of the private business corporation for the purposes of section 31; and

(d) the full name of each member and his or her national identity number or, if he or she has no such number, the number of any other official identity document he or she may possess and his or her date of birth; and

(e) the percentage of each member's interest in the private business corporation, taking the total of members' interests as one hundred *per centum*; and

(f) the amount of each member's contribution to the assets of the private business corporation, stating the extent to which each contribution is in cash or in property or in services rendered towards the formation or registration of the private business corporation, and stating the fair value of any contribution that is not in cash; and

(g) the name and postal address of an accounting officer to whom the members of the private business corporation intend to submit their financial statements in terms of section 274 ("Examination report of financial statements and thereon");

(h) the date of the end of the financial year of the private business corporation.

(2) Subject to section 27 ("Statement of objects of registered entity and effect thereof"), the incorporation statement shall state the objects of the private business corporation.

(3) An incorporation statement shall be signed by—

(a) every person who is to become a member of the private business corporation upon its incorporation; and

(b) a person who is qualified to become the accounting officer of the private business corporation upon its incorporation.

(4) The effect of each member's signature on an incorporation statement shall be to acknowledge the correctness of each item in

the incorporation statement and the fairness of any valuation included therein in terms of subsection (1) (f), and the effect of the signature of the person referred to in subsection (3)(b) shall be to indicate that he or she has no cause to believe that such valuation is unfair.

(5) The registration of incorporation statements and the issuance of a certificate of incorporation shall be as provided in section 18 (“Registration of constitutive documents”).

249 Registration of amended incorporation statement

(1) Subject to the proviso to section 253 (“Requirements for membership”) (1), if any change takes place in any of the matters stated in an incorporation statement, in accordance with section 248 (“Incorporation statement, signing thereof and registration of Private Business Corporations”)(1) (d), (e) or (f), the private business corporation shall within twenty-eight days send to the Registrar—

(a) an amended incorporation statement complying in every respect with section 248 (1) and incorporating the change that has taken place, signed in accordance with section 248 (3) by every existing and new member, together with the duplicate original or originals or copy or copies required by section 18 (“Registration of Constitutive documents”)(3); and

(b) the private business corporation’s copy of its original incorporation statement and any previous amended incorporation statement.

(2) The Registrar shall, upon payment of the prescribed fee, register any amended incorporation statement sent to him or her in terms of subsection (1) if it is in accordance with the provisions of this Act.

(3) On registering an amended incorporation statement the Registrar shall— (a) endorse on each copy the date of registration; and

(b) endorse on each copy of the private business corporation’s original incorporation statement and any previous amended incorporation statement the date of registration of the new amendment; and

(c) return to the private business corporation one copy of the new amended incorporation statement and its

own copy of its original incorporation statement and any previous amended incorporation statement if any so endorsed.

(4) If any change takes place in any of the matters stated in an incorporation statement in terms of section 248(1) (a), (b), (c), (g) or (h), the private business corporation and the Registrar shall proceed in terms of subsections (1), (2) and (3), but the change shall not take effect until registration of the amended incorporation statement or any later date specified therein.

(5) If a private business corporation defaults in complying with subsection (1) or (4), the Registrar may, on his or her own motion or on application by a member or creditor, serve on the members individually by registered post or by electronic mail a direction that they rectify the default within twenty-eight days.

(6) If the members of a private business corporation fail to comply with any direction given in terms of subsection (5), the Registrar may, by further written notice served on the members individually by registered post or by electronic mail, impose on them, or any of them, liability jointly and severally with the private business corporation for every debt of the private business corporation incurred from the date on which the direction was sent until the default in subsection (5) is rectified.

(7) On application by any member or members or any of the court may relieve them from any liability imposed under subsection (6).

250 Conversion of private business corporation into company

(1) 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.

(2) If the Registrar is satisfied that the private business corporation has complied with subsection

(1) and is not in default under this Act, he or she shall— (a) cancel its registration as a private business corporation; and

(b) proceed in accordance with section 18 ("Registration of Constitutive documents").

(3) 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.

251 Conversion of company into private business corporation

(1) Any company having not more than twenty members, all of whom qualify for membership in terms of a private business corporation ("Requirements for membership"), may apply for conversion to a private business corporation in terms of this section.

(2) A company referred to in subsection (1) shall publish a notice in the *Gazette* and in a newspaper circulating in the district in which its registered office is situated stating that—

(a) an application is intended to be made, on a date to be specified in the notice, to the Registrar for the conversion of the company to a private business corporation; and

(b) the application may be inspected at the office of the Registrar; and

(c) any interested person who wishes to oppose the application may do so by lodging his or her objections and his or her name and address, in writing, with the Registrar within the ten days next following the date on which the application will be made.

(3) Where a company has given notice in terms of subsection (2), it shall lodge with the Registrar, not later than the date specified in the notice—

(a) an application for conversion in the prescribed form signed by all the members of the company and containing a statement that upon conversion the assets of the private business corporation, fairly valued, will exceed its liabilities and that upon conversion it will be able to pay its debts as they become

due in the ordinary course of its business; and

(b) an incorporation statement which complies with section 248 ("Incorporation statement, signing thereof and registration of private business corporations") but in which the members' contributions to the private business corporation are shown as an aggregate amount, which amount shall not be greater than the excess of the fair value of the assets to be acquired by the private business corporation over the liabilities to be assumed by the private business corporation:

Provided that—

(i) the private business corporation may treat any portion of such excess not reflected as members' contributions to its members which may be distributed as amounts;

(ii) the members' interests in the private business corporation shall be in the same proportions to each other as their relative shareholdings in the company.

(4) An incorporation statement referred to subsection (3) (b) shall reflect every member of the private company as a member of the business corporation, and shall be signed on its incorporation, accordingly by every member and by an accounting officer in terms of section 248(3).

(5) Upon the expiry of the period of ten days next following the date specified in terms of subsection (2) (a), the Registrar shall, if he or she is satisfied that subsections (2) and (3) have been complied with by the company, consider the application and any objections thereto that may have been lodged and may grant or refuse the application:

Provided that, if any objections have been lodged, the Registrar shall give the objector or objectors and the company an opportunity of being heard in the matter.

(6) The Registrar shall notify the company and any objector of his or her decision on the application for conversion and the company or any objector may, within ten days of the notification of the decision, appeal against it

to the High Court, which may confirm, reverse or vary the decision of the Registrar or give such other direction in the matter as it thinks fit.

(7) Where an application for conversion has been granted in terms of this section, the Registrar shall proceed in terms of section 18 ("Registration of constitutive documents") (5) and (6) and shall include in the certificate of incorporation of the private business corporation a statement that the private business corporation has been converted from a company, referring to its previous name and registered number.

(8) When he or she has registered a private business corporation which previously existed as a company, the Registrar shall ensure that the company's registration has been cancelled.

(9) Upon registration of a private business corporation which previously existed as a company, the private business corporation shall forthwith give notice in writing to all the creditors of its conversion of the company at the time of conversion and to all other parties to contracts or legal proceedings in which the company was concerned at the time of conversion.

(10) On the registration of a private business corporation which previously existed as a company, all the assets, rights, obligations and liabilities of the company concerned shall vest in the private business corporation and any legal proceedings instituted by or against the company or other things done or commenced by or against the company shall be deemed to have been instituted, done or commenced, as the case may be, by or against the private business corporation.

(11) The conversion of a company to a private business corporation shall not affect—

(a) any liability of a director or officer of the company to the company on the ground of breach of trust or negligence, or to any other person pursuant to any provision of this Act; and

(b) any liability of the company, or of any other person, as surety;

and the juristic person of the company shall continue to exist in the form of the private business corporation to which it has been converted.

(12) Upon the production by a private business corporation, which previously existed as a company, of its certificate of incorporation to any registrar or other officer charged with the custody of any register or record in terms of any law, registrar or officer shall, free of charge, make all such alterations in his or her registers or records as may be necessary as a result of the conversion of the company to a private business corporation, and no transfer or stamp duty shall be payable in respect thereof. *Sub-Part B: Members*

252 Number of members; commencement and termination of membership (1) A private business corporation shall have a minimum of one member and a maximum of twenty members.

(2) A private business corporation shall not cease to exist solely on account of its having no members or more than twenty members:

Provided that—

(i) any person who knowingly causes a private business corporation to incur a debt whilst it has no members shall be liable, jointly and severally with the private business corporation, for the debt;

(ii) if a private business corporation has or purports to have more than twenty members, every member and purported member shall be liable, jointly and severally with the private business corporation, for every debt incurred by the private business corporation whilst the number of its members and purported members exceeds twenty.

(3) Section 20 documents of constitutive members and limitation of liability of corporations")(3)(b) describes how membership in a private business corporation is commenced, evidenced and terminated.

253 Requirements for membership

(1) Subject to this section, only individual natural persons acting in their own right may be members

of a private business corporation, and no partnership, association or body corporate or other legal person shall be a member, whether directly or through a nominee:

Provided that, if a member dies or becomes insolvent, mentally challenged or subject to any other legal disability, his or her estate may, without it being necessary to amend the incorporation statement, become a member in his or her place, and he or she or his or her estate shall be represented for all purposes of membership by his or her executor, trustee, curator or other legal representative, whether or not such representative is a partnership, association or body corporate or other legal person.

(2) Subject to this section, a minor or an unrehabilitated insolvent may be a member of a private business corporation:

Provided that in the case of a minor he or she shall be represented or assisted by his or her guardian in the exercise of his or her rights and duties as a member, and, in the case of an unrehabilitated insolvent, he or she must exhibit to the Registrar the written leave of his or her trustee in insolvency to become such member.

(3) Any person, partnership, association or body corporate or other legal person who or which, as the case may be, purports to become a member of a private business corporation in contravention of subsection (1) or (2) shall, notwithstanding the invalidity of his or her or its purported membership, be liable jointly and severally with the private business corporation for every debt of the private business corporation incurred while such purported membership continues.

254 Members' contributions

(1) Each person who is to become a member of a private business corporation upon its incorporation shall, with every other such person, make a contribution to the private business corporation's assets in the form of money or property or services rendered towards its formation or registration, or in a combination of those forms.

(2) Any person becoming a member of an existing private business corporation may, with the agreement of all existing members, make a contribution to the private business corporation's assets similar to that referred to in subsection (1). (3) Any member's contribution may, with the agreement of all members, be increased or reduced:

Provided that a reduction involving a private business corporation's assets shall be subject to section 270 ("Restriction on payments to members").

(4) A private business corporation shall record and secure the registration of any new member's contribution and any increase or reduction in an existing member's contribution by the procedure laid down in section 249 ("Registration of amended incorporation statement")(1).

(5) All money payable or property transferable by any member to the private business corporation as a member's contribution shall be a debt due by him or her to the private business corporation.

255 Cessation of membership by order of court

(1) On application by any member or members, a court may by order that any member shall cease to be a member of the private business corporation in any of the following cases—

(a) where the member is shown to the satisfaction of the court to have become permanently of unsound mind;

(b) where the member is shown to the satisfaction of the court to have become in any other way permanently incapable of performing his or her duties as a member;

(c) where the member has been guilty of such conduct as, in the opinion of the court, regard being had to the nature of the private business undertaking, is calculated to affect prejudicially the carrying on of the undertaking;

(d) where the member has wilfully or persistently committed a breach of the private business corporation's by-laws, or has otherwise conducted himself or herself in matters relating to the private business corporation's undertaking that it

is not reasonably practicable for the other member or members to carry on the undertaking in association with him or her;

(e) whenever circumstances have arisen which, in the opinion of the court, render it just and equitable that the member should cease to be a member of the private business corporation.

(2) Application to a court on either or both of the grounds specified in subsection (1) (c) and (d) shall not be made by the member whose conduct is alleged to justify the making of an order that he or she shall cease to be a member.

(3) The court making an order in terms of subsection (1) (a) may order the appointment of a curator who may represent a member in a private business corporation.

(4) The court making an order in terms of subsection (1) may make such consequential orders as appear to it necessary to effect a just settlement between the person it has ordered to cease being a member, the other members and the private business corporation concerned.

Sub-Part C: Members' interests

256 Nature of member's interest

(1) Each member's interest in a private business corporation shall be expressed as a percentage, taking the total of members' interests as one hundred *per centum*, and shall be transferable by the method specified by section 249 ("Registration of amended incorporation statement").

(2) Each member's interest in a private business corporation shall entitle him or her, on the winding up or dissolution of the private business corporation, to a corresponding percentage of the assets of the private business corporation that are then distributable to members.

(3) Each member's interest in a private business corporation shall be held by that member alone, and shall not be capable of joint ownership.

257 Certificate of member's interest

(1) Each member shall be entitled to a certificate showing the percentage of his or her interest

in the private business corporation, signed by every member.

(2) Whenever the percentage of a member's interest in a private business corporation changes he or she shall forthwith surrender to the private business corporation for cancellation any certificate previously issued to him or her and he or she shall be entitled to a new certificate reflecting his or her current interest.

(3) If a private business corporation is a registered user of the electronic registry, it may issue membership interests in dematerialised form, subject to the conditions of the issuance of such shares in section 289 ("Use of such registry otherwise than for business entity electronic registration").

(4) Any holder of a dematerialised membership interest may demand proof of title to his or her membership interest in the form of a material certificate signed by every member in accordance with subsection (1), and the corporation concerned shall issue such certificate to the member no later than fourteen days after such request is received in writing:

Provided that if there is any lawful restriction on the transfer of such an interest, such certificate shall be clearly endorsed to that effect.

258 Acquisition of member's interest by new member

Subject to the by-laws of the private business corporation concerned, a new member may acquire his or her member's interest in an existing private business corporation either—

(a) subject to section 259 ("Other disposals of members' interests"), or from one or more existing members or their estates; or

(b) by making a contribution to the assets of the private business corporation in accordance with section 254 ("Members' contributions")(2), in which case the percentage of his or her interest shall be agreed between him or her and the existing members.

259 Disposal of interest of insolvent member

(1) On the insolvency of the sole member of a private business corporation his or her trustee in insolvency shall, in the exercise of his or her functions as trustee, have unrestricted power to sell his or her member's interest.

(2) On the insolvency of a member of a private business corporation having two or more members his or her trustee in insolvency shall, in the exercise of his or her functions as trustee, have power to sell the member's interest—

(a) to the private business corporation, subject to section 263 ("Acquisition by private business corporation of members' interests");

(b) to any or all of the other members *pro rata* or in such proportions as they and the trustee may agree; or

(c) after giving a right of pre-emption on twenty-eight days' written notice to the private business corporation and the other members, to any person qualified under section 253 ("Requirements for membership") to be a member.

(3) The members of a private business corporation shall be obliged to accept as a new member a person who has acquired an insolvent member's interest in accordance with subsection (2)(c).

(4) No by-laws or agreement to which the private business corporation or any member is a party shall affect the powers conferred on a trustee in insolvency by this section

260 Disposal of interest of deceased member

(1) The executor of the estate of a deceased member of a private business corporation shall give effect to any by-law of the private business corporation which makes provision for the sale or disposal of the member's interest on his or her death, and any such by-law shall override any provision to the contrary in the deceased member's will or the law of intestate succession.

(2) If there is no provision to the contrary in the by-laws of the private business corporation concerned, on the death of the sole member of a private business corporation the his or her executor shall have unrestricted power,

in the exercise of his or her functions as executor, to sell or dispose of the member's interest.

(3) If there is no provision to the contrary in the by-laws of the private business corporation concerned, on the death of a member of a private business corporation having two or more members, his or her executor shall have power, in the exercise of his or her functions as executor, to sell or dispose of the member's interest—

(a) to the private business corporation, subject to section 263 ("Acquisition of private business corporation by members' interests");

(b) to all or any of the remaining members *pro rata* or in such proportions as they and the executor may agree; or

(c) after giving a right of pre-emption on twenty-eight days' written notice to the private business corporation and the other members, to any person qualified under section 253 ("Requirements for membership") to be a member.

(4)The members of a private business corporation shall be obliged to accept as a new member any person who has acquired a deceased member's interest in accordance with subsection (3)(c).

261 Other disposals of members' interests

Subject to sections 255 ("Cessation of membership by order of court"), 259 ("Disposal of interest of insolvent member") and 260 ("Disposal of interest of deceased member"), a private business corporation's by-laws may restrict the right to dispose of members' interests, but in the absence of such restriction all disposals of members' interests shall require the consent of every member.

262 Maintenance of total members' interests

To maintain the total members' interests at one hundred *per centum*, in conformity with section 248 ("Incorporation of private business corporation") and signing a statement, thereof in terms of section 247 (1)(e), and registration and

section 256 ("Nature of member's interest")(1) —

(a) when a person becomes a new member of an existing private business corporation by making a contribution to its assets in accordance with section 254 ("Members' contributions") (2), the interests of all existing members shall be reduced in proportion to their existing percentages, so that the total of those reductions equals the percentage of the interest acquired by the new member in accordance with section 258 ("Acquisition of member's interest by new member")(b); and

(b) when a private business corporation acquires any member's interest it shall be distributed between the remaining members' interests in proportion to their existing percentages.

263 Acquisition by private business corporation of members' interests

(1) Subject to section 252 ("Number of members; commencement and termination of membership"), a private business corporation may—

(a) accept the surrender of any member's interest for no consideration; or

(b) with the consent of all members, acquire any member's interest in exchange for payment or the delivery of property if, immediately after such payment or delivery, the private business corporation's assets, fairly valued, will exceed its liabilities and it will be able to pay its debts as they become due in the ordinary course of its business.

(2) If a private business corporation makes a payment or delivers property in contravention of subsection (1)(b) the purported acquisition of the interest shall be void and every member, including both parties to the purported acquisition, shall be liable, jointly and severally with the private business corporation, for every debt of the private business corporation incurred before the acquisition was given, unless he or she can prove that he or she had no knowledge of the making of the payment or delivery of the property or took all reasonable steps to prevent it.

264 Financial assistance by private business corporation for acquisition of members' interests

(1) A private business corporation may, with the consent of all its members, give financial assistance for the acquisition of a member's interest in the private business corporation if, immediately after such assistance is given, the private business corporation's assets, excluding any claim or security resulting from the giving of assistance, fairly valued, will exceed its liabilities and it will be able to pay its debts as they become due in the ordinary course of its business:

Provided that, where the lending of money is a part of the ordinary business of a private business corporation, nothing in this subsection shall be taken to prohibit the lending of money by the private business corporation in the ordinary course of its business.

(2) If a private business corporation gives financial assistance for the acquisition of a member's interest in the private business corporation in contravention of subsection (1), the purported giving of the assistance and purported acquisition of the interest shall be void and every member, including both parties to the purported acquisition, shall be liable, jointly and severally with the private business corporation, for every debt of the private business corporation incurred before the assistance was given, unless he or she can prove that he or she had no knowledge of the giving of the assistance or took all reasonable steps to prevent it.

Sub-Part D: Management and administration

265 Power of members to bind private business corporation

(1) Subject to this section, every member who is not a minor shall be an agent of the private business corporation for the purpose of the business of the private business corporation.

(2) The acts of every member shall bind the private business corporation if—

(a) such acts were authorised, expressly or impliedly, by the private business corporation or were subsequently ratified by it; or

(b) such acts were done for carrying on, in the usual way, business of the kind carried on by the private business corporation, unless the member acting has in fact no authority to act for the private business corporation in the particular matter and the person with whom he or she is dealing knew or ought reasonably to have known that he or she had no authority.

(3) Where any act of a member is for a purpose apparently not connected with the private business corporation's ordinary business, the private business corporation shall not be bound unless it authorised him or her to do the act or subsequently ratified the act.

(4) If a private business corporation's by-laws or any agreement place any restriction on the authority of any member to bind the private business corporation, no act done in contravention of the restriction shall bind the private business corporation to any person who knew or ought reasonably to have known of the restriction.

(5) The fact that some but not all of the members of a private business corporation are described as directors or executive members shall not of itself be taken as notice, for the purposes of subsection (2) (b) or subsection (4), that any member not so described has no authority or restricted authority to act on behalf of the private business corporation.

266 By laws

(1) A private business corporation shall if it has not adopted the by-laws specified in Table D of the Sixth Schedule —

(a) as soon as practicable adopt by-laws agreed to by all members regulating the management of its affairs; or

(b) on the registration of its incorporation statement or at any time thereafter adopt all or any of the by-laws set out in Table D in the Sixth Schedule ("Model Articles and By-laws").

(2) By-laws shall be signed by every member at the time of their adoption, and shall be kept at the registered office of the private business corporation or accounting officer's physical address.

(3) A private business corporation may at a meeting, by the affirmative votes of members whose combined interests total at least seventy-five *per centum*, amend its by-laws, and any amendment so made in the by-laws shall be as valid as if originally contained therein and be subject to amendment by the same method.

(4) Subject to this Act, by-laws shall, when signed by every member at the time of the adoption, bind the private business corporation and the members thereof, including persons becoming members after the time of adoption, to the same extent as if they had been signed by each member and contained undertakings on the part of each member to observe all the by-laws.

(5) All moneys payable or property transferable by any member to the private business corporation under the by-laws shall be a debt due by him or her to the private business corporation.

(6) Every member of a private business corporation shall be entitled to one free copy of the private business corporation's by-laws and of any amendments thereto.

(7) In the absence of by-laws the members of a private business corporation may, subject to section 267 ("Variable management"), regulate the management of its affairs in any manner agreed to by them from time to time. **267 Variable rules for management**

(1) Unless otherwise provided in this Act or in the by-laws of the private business corporation concerned or in any agreement between the members concerned or between the private business corporation and its members—

(a) every member may take part in the management of the affairs of the private business corporation;

(b) no member shall be entitled to remuneration for taking part in the management of the affairs of the private business corporation;

(c) any difference arising between members in connection with the affairs of the private business corporation shall be decided by majority vote.

(2) Each matter listed below shall require the agreement of all of the private business corporation members, unless provided otherwise in the private business corporation by-laws. The by-laws may reduce such unanimous vote requirement for any or all matters listed below by specifying a smaller vote requirement, but not less than a simple majority of all members' voting power—

(a) amendment of the private business corporation's incorporation statement or by-laws (but an amendment may not in any event increase a member's obligation to make contributions or eliminate or reduce a member's rights, without that member's consent);

(b) authorisation or ratification of a conflict of interest transaction under Chapter II Part IV of this Act;

(c) making of a distribution to members, including a purchase by the private business corporation of a member's interest;

(d) admission of a new member of the private business corporation, including either a transferee of an existing member's interest or a person who becomes a new member by a payment into the capital of the private business corporation;

(e) a decision to dissolve the private business corporation;

(f) a decision to merge the private business corporation with another private business corporation;

(g) a decision to convert the private business corporation into another form of entity; or

(h) the sale, lease, pledge, mortgage or other transfer of all or substantially all of the private business corporation's assets.

(3) If the by-laws of the private business corporation so allow and the election of managers shall be in accordance with the relevant provisions of the model by-laws in Table D of the Sixth Schedule.

(4) A manager of a private business corporation is an agent of the private business corporation with authority to represent and bind the private business corporation in transactions with third parties. An act of a manager, including signing an agreement in the private business corporation's name, which is for carrying on the usual business of the private business corporation, is binding on the private business corporation, unless the manager had no authority to act for the private business corporation in that particular matter and the person with whom the manager was dealing knew that the manager lacked authority.

(5) An act of a manager which is not apparently for carrying on the usual business of the private business corporation is binding on the private business corporation only if the act was authorised by the members.

(6) A manager or other person who knowingly purports to act for a private business corporation without authority of the private business corporation shall be personally liable for damages caused thereby to the private business corporation and any person with whom he or she has dealt.

268 Meetings of members

(1) Every private business corporation with more than one member shall hold a meeting of its members annually, to be known as its annual meeting, not later than six months after the end of the private business corporation's financial year.

(2) Any member of a private business corporation may at any time convene an additional meeting by giving all members seven days notice, not necessarily in writing, of the time and place and purpose of the meeting:

Provided that the time and place of the meeting shall be convenient for the attendance of members.

(3) Unless otherwise provided in the by-laws, at any meeting of members of a private business corporation—

(a) to constitute a quorum, there shall be present in person or by proxy, members whose interests exceed fifty *per centum* of the total members' interests;

(b) the chairperson of the meeting shall be the member elected as chairperson of the private business corporation or, if no member has been so elected or he or she is not present, the meeting shall elect its own chairperson.

(c) the chairperson shall not have a casting vote;

(d) each member shall have a vote corresponding with the percentage of his or her interest:

Provided that the appointment of a proxy by a member shall be in writing.

(4) Every private business corporation shall cause minutes of all proceedings of meetings of its members to be kept for that purpose, and any such minutes, signed by the chairperson of the meeting or of the

next succeeding meeting, shall be evidence of the proceedings and evidence that the meeting was properly convened and conducted:

Provided that no later than three months after the annual meeting the chairperson or other responsible member of the private business corporation shall submit a signed declaration in accordance with the prescribed form that the annual meeting was held in conformity with this section.

(5) Unless otherwise provided in the by-laws of a private business corporation, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at meetings of members shall, with effect from the date of the last signature, which date shall be recorded on the signed document, be as valid and effective as if it had been passed at a meeting of members duly convened and held in terms of this section.

269 Protection against unfair prejudice

(1) A member may apply to a court for an order under this section on the ground that the private business corporation's affairs are being or have been conducted in a manner which is unfairly prejudicial to—

(a) his or her interests; or

(b) his or her interests and the interests of one or more of the other members; or on the ground that any actual or proposed act or omission of the private business corporation, including an act or omission on its behalf, is or would be so prejudicial.

(2) Subsection (1) shall apply to a person who is not a member but is representing or assisting a member or his or her estate in accordance with section 259 ("Disposal of interest of insolvent member")(1) or (2), and references in this section to a member or members shall be construed accordingly.

(3) If the court is satisfied that an application under this section is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(4) Without prejudice to the generality of subsection (3), the court's order may—

(a) regulate the conduct of the private business corporation's affairs in the future;

(b) require the private business corporation to—

(i) refrain from doing or continuing an act complained of by the applicant;

(ii) do an act which the applicant has complained it has omitted to do;

(c) authorise civil proceedings to be brought or defended in the name and on behalf of the private business corporation by such person or persons and on such terms as the court may direct;

(d) provide for the purchase of the interests of any members of the private business corporation by other members or by the private business corporation itself.

(5) If an order under this section requires the private business corporation not to make any, or any specified, amendment in its incorporation statement or by-laws, the private business corporation shall not then have power without leave of the court to make any such amendment in breach of that requirement.

(6) Any amendment in a private business corporation's incorporation statement or by-laws made by virtue of an order under this section shall be of the same effect as if duly made by agreement of all the members, and the provisions of this Act shall apply to the incorporation statement and by-laws as so amended accordingly.

270 Restriction on payments to members

(1) A private business corporation shall not directly or indirectly pay any dividend, make any distribution, repay any contribution, make any other payment or transfer any property to any member by reason only of his or her membership unless, immediately after the payment or transfer, the private business corporation's assets, fairly valued, will exceed its liabilities and it will be able to pay its debts as they become due in the ordinary course of its business.

(2) A member shall repay any money and return any property he or she has received from the private

business corporation in contravention of subsection (1), and until he or she does so he or she shall be liable, jointly and severally with the private business corporation, for all its debts.

(3) Nothing in this section shall apply to the discharge by a private business corporation in good faith of —

(a) an obligation towards a member arising out of contract or enrichment and resulting from the private business corporation—

(i) employing the member as an officer or employee; or

(ii) buying or hiring property from the member or borrowing money from him or her or otherwise contracting with him or her;

(iii) in the ordinary course of its business; or

(b) a statutory obligation towards a member; or

(c) a delictual obligation towards a member.

(4) A member, manager or other person who causes such a prohibited distribution to be made, and who knew at the time that the distribution was thus prohibited, shall be personally liable to the private business corporation for the return of the amount of all such distributions.

Sub-Part E: Accounting

271 Financial records

(1) Every private business corporation shall cause financial records to be kept in accordance with this section.

(2) The financial records shall be such as are necessary fairly to present the state of affairs and business of the private business corporation and to explain the transactions and financial position of the private business corporation, including—

(a) records showing its assets and liabilities, members' contributions, undrawn profits, revaluations of fixed assets and amounts of loans to and from members; and

(b) records containing entries from day to day of all cash received and paid out, in sufficient detail to enable the nature of the transactions

and, except in the case of cash sales, the names of the parties to the transactions to be identified; and

(c) records of all goods purchased and sold on credit, and services received and rendered on credit, in sufficient detail to enable the nature of those goods or services and the parties to the transactions to be identified; and

(d) statements of the annual stock-taking and records to enable the value of stock at the end of the financial year to be determined; and (e) vouchers supporting entries in the financial records.

(3) The financial records relating to—

(a) contributions by members; and

(b) loans to and from members; and

(c) payments to members;

shall contain sufficient detail of individual transactions to enable the nature and purpose thereof to be clearly identified.

(4) The financial records referred to in subsection (1) shall be kept in such a manner as to provide adequate precautions against falsification and to facilitate the discovery of any falsification.

(5) The financial records referred to in subsection (1) shall be kept at the place or places of business or at the registered office of the private business corporation or accounting officer's physical address concerned and, wherever kept, shall be open at all reasonable times for inspection by any member.

(6) Every private business corporation shall preserve its financial records for six years from the end of the financial year to which they relate.

(7) If any member of a private business corporation fails to take all reasonable steps to secure compliance by the private business corporation with the requirements of this section, or has by his or her own act been the cause in the corporation of default by the private business corporation in complying with any of those requirements,, the Registrar may (unless he or she is satisfied that the member's conduct was fraudulent, reckless or wilful, in which event section 69 ("Fraudulent, reckless or falsification of financial accounting; subsection (8), failure shall apply), subject to a category 3 records")(1)(b) serve upon him or her civil penalty order

(8) It shall be a partial defence to a civil penalty order or proposed civil penalty under subsection (7) for a director to prove (the burden whereof rests on him or her) that he had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements and of this section were complied with and was in a position to discharge that duty, in which case the Registrar may waive those parts of the penalty clause of the order referred to in section 294 ("Power of Registrar to issue civil penalty orders and categories thereof")

(4)(a) and (b)(i).

272 Financial year

(1) The date of the end of the financial year of a private business corporation shall be fixed in accordance with section 248 ("Incorporation statement, signing thereof and registration of private business corporation")(1)(h) and may be changed in accordance with section 249 ("Registration of amended incorporation statement"):

Provided that the change from an old to a new financial year shall be effected by fixing a period of not less than six months and not more than eighteen months as the private business corporation's financial year on the occasion of the change.

(2) For convenience of accounting, a private business corporation may take as the end of its financial year any date not more than fourteen days before or after the date fixed in accordance with subsection (1).

273 Annual financial statements

(1) The members of a private business corporation shall, within three months after the end of every financial year of the private business corporation, cause financial statements in respect of that financial year to be made out.

(2) The financial statements of a private business corporation—

(a) shall consist of—

(i) a statement of financial position and any notes thereon, where applicable; and

(ii) an income statement, or any similar financial statement where appropriate, and any notes thereon where applicable; and

(b) shall, in conformity with generally accepted accounting practice appropriate to the business of the private business corporation, fairly present the state of affairs of the private business corporation as at the end of the financial year concerned, and the results of its operations for that year; and

(c) shall disclose separately the aggregate amounts, as at the end of the financial year, of contributions by the members, undrawn profits, revaluations of fixed assets and amounts of loans to and from members, and the changes in those amounts during the year; and

(d) shall be in agreement with the financial records, which shall be summarised in such a form that—

(i) compliance with this subsection is made possible; and

(ii) an accounting officer is enabled to report to the corporation in terms of section 275 ("Duties of accounting officer")(1)(c) without having to refer to any subsidiary financial records and vouchers supporting the entries in the financial records:

Provided that nothing contained in this paragraph shall be construed as preventing an accounting officer, if he or she considers it necessary, from inspecting such subsidiary financial records and vouchers; and

(e) shall contain the report of an accounting officer referred to in section 275(1)(c).

(3) The annual financial statements of a private business corporation shall be approved and signed by or on behalf of one or more members who have an aggregate of more than fifty *per centum* of all the members' interests.

(4) If any member of a private business corporation fails to take all reasonable steps to comply with the requirements of this section, or has by his or her own act been the cause of any of its members in complying with any of those requirements, the Registrar may (unless he or she is satisfied that the member's conduct was fraudulent, reckless or wilful, in which event section 69 ("Fraudulent, reckless or wilful failure of financial accounting; falsification of records") (1)(b) shall apply), subject to subsection (6), serve upon him or her a category 3 civil penalty order.

(5) It shall be a partial defence to a civil penalty order or proposed civil penalty under subsection (4) for a member to prove (the burden whereof rests on him or her) that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty, in which case the Registrar may waive those parts of the penalty clause of the order referred to in section 294 ("Power of Registrar to issue civil penalty orders and categories thereof") (4)(a) and (b)(i).

274 Examination of financial statements and report thereon

(1) Not later than three months after completion of its annual financial statements in terms of section 273 ("Annual financial statements"), a private business corporation shall submit them to an accounting officer, who shall be a person who is either— (a) a member, entitled to practise as such, of a profession approved by

the Minister in accordance with regulations made under section 301 ("Regulations"); or

(b) a person licensed by the Minister in accordance with regulations made under section 301;

for examination, review and report in terms of section 275 ("Duties of accounting officer").

(2) A private business corporation may submit its financial statements to one of its own members for examination, review and report if the member is an qualified accounting officer under subsection (1) and the private business corporation has at least one other member.

(3) If any member of a private business corporation fails to take all reasonable steps to comply with the requirements of this section, or has by his or her own act been the cause of any default by the private business corporation or its members in complying with any of those requirements, or he or she is satisfied that the member's conduct was fraudulent, reckless or wilful, in which event section 68 ("Fraudulent, reckless or wilful failure of financial accounting; falsification of records") shall apply), subject to subsection (6), serve upon him or her a penalty order.

(4) It shall be a partial defence to a civil penalty order or proposed civil penalty under subsection (4) for a member to prove (the burden whereof rests on him or her) that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty, in which case the Registrar may waive those parts of the penalty clause of the order referred to in section 294 ("Power of Registrar to issue civil penalty orders and categories thereof") (4)(a) and (b)(i).

275 Duties of accounting officer

(1) An accounting officer to whom the annual financial statements of a private business corporation have been submitted in terms of

section 274 and report ("Examination thereon") of financial statements shall without delay—

(a) determine whether the annual financial statements are in agreement with the financial records of the private business corporation as provided in section 273 ("Annual financial statements")(2)(d); and

(b) review the appropriateness of the accounting policies applied in the preparation of the annual financial statements; and

(c) report in respect of paragraphs (a) and (b) to the private business corporation.

(2) If in the performance of his or her duties the accounting officer becomes aware of a private business corporation of any contravention of this Act, he or she shall describe the nature of such contravention in his or herreport made interms of subsection (1)(c).

(3) If an accounting officer is—

(a) a member or employee of the private business corporation; or (b) a partner of a member or employee of the private business corporation; or

(c) a member of a partnership or firm which employs a member or employee of the private business corporation;

he or she shall state that fact in his or her report made in terms of subsection (1)(c).

(4) If an accounting officer of a private business corporation— (a) at any time knows, or has reason to believe, that the private business corporation is not carrying on business or is not in operation and has no intention of resuming operations in the foreseeable future; or

(b) in the performance of his or her duties finds—

(i) that any change in respect of any particulars mentioned in the corporation's incorporation or statement has not been registered;

(ii) that the financial statements prepared in terms of section 273 indicate that, as at the end of the financial year concerned, the private

business corporation's liabilities exceeded its assets; or

(iii) that the financial statements prepared in terms of section 273 incorrectly indicate that, as at the end of the financial year concerned, the assets of the private business corporation exceeded its liabilities, or if he or she has reason to believe that such an indication is given;

he or she shall forthwith report his or her findings to the Registrar: Provided that, if the accounting officer subsequently finds that any matter or situation reported on in terms of this section has been amended he or she may report thereon to the Registrar.

(5) Any report submitted to the Registrar in terms of subsection (4), including any subsequent report submitted in terms of the proviso thereto, shall be open for inspection at his or her office in terms of section 14 ("Inspection and copies of documents in Companies Office and production of documents in evidence").

276 Accounting officer's right of access to records, etc., and to convene meetings

An accounting officer of a private business corporation to whom the annual financial statements have been submitted in terms of section 274 and report ("Examination of financial statements thereon") shall—

(a) have a right of access at all times to the records, accounts, vouchers and securities of the private business corporation; and

(b) be entitled to require from the members and manager and employee of the private business corporation such information and explanations as he or she thinks necessary for the performance of his or her duties; and

(c) have the same right as is conferred on members of the private business corporation by section 268 ("Meetings of members")(2) to convene a meeting of members; and

(d) be entitled to be heard at any meeting of members of the private business corporation on any matter which concerns him or her as the accounting officer.

277 Termination of accounting officer's mandate

(1) If for any reason a private business corporation terminates the mandate of an accounting officer before he or she has been able to carry out his or her duties in terms of section 275 ("Duties of accounting officer"), the accounting officer shall forthwith report the fact of termination, in writing, to the Registrar.

(2) If an accounting officer has reason to believe that the termination of his or her mandate results from the commission by the private business corporation or any member of any fraud or financial or other irregularity in the conduct of the private business corporation's affairs, he or she shall append to his or her report under subsection (1) a concise statement of the fraud or irregularity.

(3) No action or other proceedings shall lie against an accounting officer in respect of any statement made in terms of subsection (2) unless it is false and malicious.

PART II

Other Business Entities

278 Voluntary registration of partnership agreements, etc.

(1) In this section "constitutive document", means, as the case may be, a partnership agreement, a joint venture agreement or a constitution, or other contract or agreement by which the entity or unregistered association, in question is constituted.

(2) The authorised representative of any partnership, syndicate, consortium, joint venture or unregistered association, may, on payment of the prescribed fee and in the prescribed manner register a copy of the constitutive document relating to the entity in question, and thereupon the document lodged in the Registry shall be deemed for all purposes to be the authentic record of such document.

(3) A certificate by the Registrar that—

(a) the constitutive document of a partnership, a joint venture or unregistered association is registered with the Office; or

(b) a copy of the constitutive document of a partnership agreement, a joint venture agreement or unregistered association is an authentic copy of the one registered at the Office;

shall be presumptive proof of the facts thus certified and be admissible as such in all legal proceedings.

(4) Any changes to a constitutive document registered under this section must be notified to the Registrar within the prescribed time and in the prescribed manner, in default of which the party responsible for the registration shall be liable to a category 2 civil penalty.

CHAPTER V

Electronic Registry

279 Interpretation in Chapter V

In this Part—

"access", means gaining entry into, instructing or communicating with the logical, arithmetical or memory function resources of the electronic registry;

"affixing a digital signature", in relation to an electronic record or communication, means authenticating the electronic record or communication by means of a digital signature;

"business entity registration work" means the preparation by a legal practitioner, chartered accountant, chartered secretary, businessentity incorporation agent or businessentity service provider of any document for registration with the Office or for attestation or execution by the Registrar;

"computer" means any electronic, magnetic, optical or other high speed data processing device or system which performs logical, arithmetic and memory functions by manipulation of electronic, magnetic or optical impulses and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to

the computer in a computer system or a computer network;

"computer network" means the interconnection of one or more computers through—

(a) the use of satellite, microwave, terrestrial line or other communication media; and

(b) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;

"computer system", means a device or collection of devices, including input and output devices, capable of being used with external files which contain computer programmes, electronic instructions, input and output data that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

"digital signature" means an electronic signature created by computer that is intended by the registered user using it and by the Registrar accepting it to have the same effect as a manual signature, and which complies with the requirements for acceptance as a digital signature specified in section 284 ("Digital signatures")(1);

"electronic data" means any information, knowledge, fact, concept or instruction stored internally in the memory of the computer or represented in any form (including computer printouts, magnetic optical storage media, punchedcards or punchedtapes) that is being or has been prepared in a formalised manner and is intended to be or is being or has been processed in a computer system or network;

"electronic registry" means the computer system or computer network that constitutes the electronic version of the Office for the Registration of Companies and Other Business Entities;

"electronic record or communication" means electronic data that is recorded, received or sent in an electronic form or in microfilm or computergenerated microfiche;

"intermediary", with respect to any particular electronic communication, means any person who on behalf of another person receives, stores

or transmits any service that with respect to communication or provides that communication;

"Internet" has the meaning given to that word by the Postal and Telecommunications Act [*Chapter 12:03*];

"notarial practice", means the work of a notary public;

"originator", means a person who generates, stores or transmits any electronic communication to be sent, generated, stored or transmitted to any other person, but does not include an intermediary;

"registered user" means a person registered in terms of section 283 ("Registration of registered users and suspension or cancellation of registration");

"researcher" means a person engaged in research and information gathering for statistical, economic, sociological and similar *bona fide* scientific or academic work;

"self-actor" means a person wishing to register a company or a shelf company) private business corporation on his or her own behalf or on behalf of his or her fellow members, that is to say without the assistance of a legal practitioner, chartered accountant or chartered secretary;

"unique electronic document" means a document in electronic form having no contemporaneous material counterpart, or whose material prototype is lost, damaged or destroyed;

"user agreement", means the agreement between the registered user and the Registrar referred to in section 282 ("User agreements").

280 Establishmentof electronic registry

(1) The Registrar may establish an electronic registry, for which purpose, despite anything to the contrary in this Act, the Registrar may—

(a) digitise every register, record under his or her or other constitutive document and charge;

(b) establish and maintain a computer system for the purpose of applying information technology to any process or procedure under this Act, including the despatch and receipt and processing of any return, record, declaration, form, notice, statement or other record or document for the purposes of this Act.

(2) The electronic registry shall become operational from such date as the Registrar, in consultation with the Minister, shall specify by notice in a statutory instrument:

Provided that before such date the Registrar may in terms of sections 282 ("User agreements") and 284 ("Digital signatures") register users of the electronic registry to allow them to access the electronic registry for research and information gathering purposes only.

(3) The use of the electronic registry shall be restricted to registered users, but—

(a) such use shall not interrupt or prejudice the continued use of the paperbased Registry by users who are not so registered; and

(b) registered users may be required to use the paper-based deeds registry to such extent and under such conditions or in such circumstances as may be prescribed by regulations under section 301 ("Regulations").

281 Use of electronic data generally as evidence

(1) In the event of any discrepancy between an electronic copy of a document lodged with the electronic registry and the material version of the same document that is lodged with the paper-based Registry, the latter shall be deemed to be the authentic record of the document.

(2) If a unique electronic document is generated by, stored with or communicated to, a certificate from or through the electronic registry, a by the Registrar—

(a) that the document is a unique document and that is or was electronic generated, stored and communicated; so or

(b) as to the identity of the originator or recipient of the document; or or

(c) that, to the best of his or her knowledge, the contents of the document are an authentic record of any transaction to which it relates; or

(d) attesting to all or any combination of the foregoing paragraphs (a), (b) and (c);

shall be presumptive proof of the facts thus certified and be admissible as such in all legal proceedings.

(3) Apart from subsection (2), with respect to the admissibility in evidence of any electronic data for any purpose under this Act, and notwithstanding anything to the contrary contained in any other law, the admissibility in evidence of any electronic data for any purpose under this Act shall not be denied—

(a) on the sole ground that it is electronic data; or

(b) if it is the best evidence that the person adducing it can reasonably be expected to obtain, on the grounds that it is not in original form.

(4) Information in the form of electronic data shall be given due evidential weight.

(5) In assessing the evidential weight of electronic data a court shall have regard to such of the following considerations as may be applicable in the circumstances of the case—

(a) thereliability of the manner in which the data was generated, stored and communicated; and

(b) thereliability of the manner in which the integrityof the data was maintained; and

(c) themanner in which its originator was identified.

282 User agreements

The Registrar shall, for the purpose of regulating the use of the electronic registry by registered users, enter into a user agreement with each registered user substantially in the form set out in the Seventh Schedule (“User Agreement”).

283 Registration of registered users and suspension or cancellation of registration

(1) No person shall communicate with the Registrar through the electronic registry unless such person is a registered user.

(2) An application for registration as a registered user shall be made in the prescribed form, and be accompanied by the user agreement completed by the applicant and the prescribed fee, if any, and such other information as the Registrar may reasonably require the applicant to furnish in support of the application.

(3) If, after considering an application in terms of subsection (2) and making such enquiries as he or she may deem necessary, the Registrar is satisfied that the applicant—

(a) is a person qualified to do business entity registration work or notarial practice, or a researcher, or a self-actor;

(b) will introduce adequate measures to—

(i) prevent disclosure of the digital signature allocated to him or her by the Registrar to any person not authorised to affix such signature; and

(ii) safeguard the integrity of information communicated through the electronic registry, apart from any change which may occur in the normal course of such communication or during storage and display of such information; and

(c) will maintain the standard of reliability of his or her own computer system required in accordance with the user agreement;

the Registrar may approve the application, subject to such reasonable conditions as he or she may impose either generally or in relation to the applicant.

(4) If, at any time after granting an application in terms of subsection (2), the Registrar is satisfied that a registered user—

(a) has not complied with the requirements of his or her user agreement or with any condition or obligation imposed by the Registrar in respect of such registration; or

(b) has made a false or misleading statement with respect to any material fact or omits to state any material fact which was required to be stated in the application for registration; or

(c) has contravened or failed to comply with any provision of this Act; or (d) has been convicted of an offence under this Act; or

(e) has been convicted of an offence involving dishonesty; or

(f) is an unrehabilitated solvent or liquidated; or

(g) no longer carries on the business for which the registration was issued; the Registrar may cancel or suspend for a specified period the registration of the registered user.

(5) Before cancelling or suspending the registration of a registered user in terms of subsection (4) the Registrar shall—

(a) give notice to the registered user of the proposed cancellation or suspension; and

(b) provide the reasons for the proposed cancellation or suspension; and

(c) afford the registered user a reasonable opportunity to respond and make representations as to why the registration should not be cancelled or suspended.

284 Digital signatures

(1) Every digital signature intended for use in connection with the electronic registry shall comply with the following requirements, namely, it must—

(a) be unique to the registered user and under the sole control of the registered user; and

(b) be capable of verification; and

(c) be linked or attached to electronically transmitted data in such a manner that, if the integrity of the data transmitted is compromised, the digital signature is invalidated; and

(d) be in complete conformity with the requirements prescribed by the Registrar and contained in the user agreement.

(2) The Registrar shall, on registering a user, allocate to the registered user—

(a) if the user is a natural person, a digital signature or sufficient digital signatures for the user and each employee of the user nominated in the user agreement; or

(b) if the user is not a natural person, sufficient digital signatures for each employee of the user nominated in the user agreement.

285 Production and retention of documents

Where any provision of this Act prescribes or requires that documents, records, information or the like should be retained for a specific period, that requirement shall be deemed to have been satisfied by a registered user if such documents, records, information or the like are so retained in electronic form that—

(a) the information contained therein remains accessible so as to be subsequently usable; and

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received; and

(c) the details which will facilitate the identity of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record.

286 Sending and receipt of electronic communications

(1) An electronic communication through the electronic registry or the record of such communication shall be attributed to the originator—

(a) if it was sent by the originator; or

(b) if it was sent by a person who had the authority to act on behalf of the originator in respect of that communication or record; or

(c) if it was sent by a computer system programmed by or on behalf of the originator to operate automatically.

(2) Where the Registrar and a registered user have not agreed that an acknowledgment of receipt of electronic communication be given in any particular form or by any particular method, an acknowledgement may be given by— (a) any communication by the Registrar, electronic or otherwise; or

(b) conduct by the Registrar or any officer sufficient to indicate to the registered user that the electronic communication has been received.

(3) Where the Registrar and the registered user have agreed that an electronic communication shall be binding only on the receipt of an acknowledgement of such electronic communication, then, unless such acknowledgement has been so received within such time as agreed upon, such electronic communication shall be deemed not to have been sent.

(4) As between the electronic registry and any other computer system of a registered user, the lodgement of an electronic communication occurs when it enters a computer system outside the control of the originator.

(5) The time of receipt of an electronic communication shall be the time when the electronic communication enters the computer—

(a) where the registered user, at any office of the Registry, or to the Registrar, to whichever it was addressed, and such office shall be the place of receipt; or

(b) if the electronic communication is sent by the Registry or the Registrar to a registered user, at the place of receipt that is stipulated in the user agreement.

(6) Whenever any registered user is authorised to submit and sign electronically any return, record, declaration, form, notice, statement or the like, which is required to be submitted and signed in terms of this Act, such signature electronically affixed to such electronic communication and communicated to the Registry or the Registrar, shall, for the purposes of this Act, have effect as if it was affixed thereto in manuscript, and acceptance thereof shall not be denied if it is in conformity with the user agreement concluded between the Registrar and the registered user.

(7) The Registrar may, notwithstanding anything to the contrary contained in this section, permit any registered user to submit electronically, any return, record, declaration, form, notice, statement or the like, which is required to be submitted in terms of this Act, by using the Internet, and subject to such exceptions, adaptations or

additional requirements as the Registrar may stipulate or prescribe, this section shall apply to the submission of the foregoing documents using the Internet.

287 Obligations, indemnities and presumptions with respect to digital signatures

(1) If the security of a digital signature allocated to a registered user has been compromised in any manner the registered user shall inform the Registrar in writing of that fact without delay.

(2) No liability shall attach to the Registrar, the Registry or any officer or employee thereof for any failure on the part of a registered user to ensure the security of the digital signature allocated to him or her and, in particular, where electronic data authenticated by a digital signature is received by the Registry or the Registrar—

(a) without the authority of the registered user to whom such signature was allocated; and

(b) before notification to the Registry or the Registrar by the registered user that the security of the digital signature allocated to him or her has been compromised;

the Registry or the Registrar shall be entitled to assume that such data has been communicated by, or with the authority of, the registered user of that digital signature.

(3) Where in any proceedings or prosecution under this Act or in any dispute to which the Registry is a party, the question arises whether a digital signature affixed to any electronic communication to the Registry or the Registrar was used in such communication with or without the consent and authority of the registered user, it shall be presumed, in the absence of proof to the contrary, that such signature was so used with the consent and authority of the registered user.

288 Alternatives to electronic communication in certain cases

(1) Whenever the electronic registry or a computer system of a registered user is inoperative, the registered user and the Registrar shall communicate with each other in writing in the manner prescribed in this Act.

(2) The Registrar may at any time require from any registered user the submission of any original document required to be produced under any of the provisions of this Act.

289 Use of electronic registry otherwise than for business entity registration

(1) The Registrar may, in accordance with the prescribed conditions and subject to payment of the prescribed fee, if any, permit any company or private business corporation to become a registered user of electronic registry for any or all of the following purposes—

(a) the keeping and rendering of documents and returns in electronic form for the purposes of sections 9 and 15 of registers and other documents") ("Additional records"); copies of returns or

(b) the electronic service of process and documents as between the company or private business corporation and the Office in terms of section 64 ("Service of documents");

(c) the issuance of uncertificated shares or of dematerialised membership interests in terms of section 153 ("Evidence of title to shares") or 257 ("Certificate of member's interest")(3);

(d) the issuance of debentures in dematerialised form in terms of section 154 ("Creation and registration of debentures; contracts to subscribe for debentures");

(e) the keeping of an electronic register of members in terms of section 159

("Register and index of members and use of register as presumptive proof of membership").

(2) For the avoidance of doubt it is declared that nothing in this section prohibits registered business entities that are not registered users from transacting their internal or external business electronically, but unless and until they become registered users they must continue to comply fully with the paper-based requirements of the sections of this Act mentioned in subsection (1).

290 Unlawful uses of computer systems

(1) A person who, not being the registered user of a digital signature to whom it is allocated, uses such a signature in any

electronic communication to the Registry or the Registrar without the authority of such registered user, commits an offence and is liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

(2) A person who—

(a) makes a false electronic record or falsifies an electronic record; or

(b) dishonestly or fraudulently—

(i) makes, affixes any digital signature to, or transmits or executes an electronic record or communication; or

(ii) causes any other person to make, affix any digital signature to, execute, transmit or execute an electronic record or communication;

commits an offence and is liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

291 Restrictions on disclosure of information

(1) Except for the purposes of a prosecution in respect of an offence under this Act, no user of the electronic registry who is registered to use it for purposes other than business entity registration work, business entity service provision, or notarial practice shall—

(a) disclose to any other person any information relating to an individual without the consent of the individual concerned; or

(b) put any information obtained from the electronic registry into the public domain unless such information is sufficiently anonymised, that is to say it must only be presented in bulk for statistical purposes and so presented as not to name any individual to which such information relates.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

CHAPTER VI

Business Entity incorporation Agents and Business Entity Service Providers, and Shell and Shelf Companies

292 Business entity incorporation agents and business entity service providers (1) In this section—

"business entity incorporation agent" means a person licensed under this section to do business entity registration work;

"business entity registration work" means the preparation by any person for profit, or otherwise than on his or her own behalf, of any document for registration with the Companies Office or for attestation or execution by the Registrar;

"business entity service provision" means the business of providing any one or more of the following services for profit, and otherwise than on his or her own behalf or on behalf of more than three registrable business entities (whether or not in addition to doing business entity registration work)—

(a) acting as, or arranging for another person to act as, a director or secretary of a company or a partner of a partnership, or to hold a similar position in relation to other legal persons;

(b) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;

(c) managing the share registers of other companies and providing services pertinent thereto such as the issuance of share certificates and the payments of dividends to shareholders on behalf of the companies in question;

(d) acting as, or arranging for another person to act as, a nominee shareholder for another person;

and "business entity service provider" shall be construed accordingly.

(2) No person other than a legal practitioner, chartered accountant, person registered under the Public Accountants and Auditors Act [*Chapter 27:12*] or chartered secretary may engage in business entity registration work or business entity service provision unless he or she is licensed in terms of this section.

(3) Any individual who—

(a) is not a legal practitioner, chartered accountant, person registered under the Public Accountants and Auditors Act [*Chapter 27:12*] or chartered secretary; but

(b) is an individual who has either or both of the following qualifications—

(i) is registered as a public accountant or auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*]; or

(ii) has a Bachelor in Business Administration degree from a recognised university or an equivalent prescribed qualification;

may apply to the Registrar in the prescribed form and manner and on payment of the prescribed fee to be licensed as a business entity incorporation agent or business entity service provider.

(4) Any person who—

(a) is not a legal practitioner, chartered accountant or chartered secretary; and

(b) is incorporated as a company under this Act;

may apply to the Registrar in the prescribed form and manner and on payment of the prescribed fee to be licensed as a business entity incorporation agent or a business entity service provider.

(5) If the Registrar is satisfied that the applicant is qualified to be a business entity incorporation agent or business entity service provider, the Registrar shall issue him, her or it with a licence in the prescribed form with or without such conditions as may be specified in the licence:

Provided that it shall not be necessary for a person licensed as a business entity service provider whose services include the incorporation of

businessentities to be also licensed as a business entity incorporation agent.

(6) A businessentity incorporation agent's licence or a businessentity service provider's licence shall not be transferable

(7) A businessentity incorporation agent's licence or a businessentity service provider's licence shall expire on the 31st December following the year in which it was issued, and may be renewed in accordance with the provisions of this section for obtaining a first licence.

(8) The Registrar may refuse an application for a licence or licence if the renewal thereof, or applicant cancel or licensee has—

(a) given false or misleading information in an application to be licensed; or (b) persistently failed to comply with any provision of this Act; or

(c) been convicted of an offence under this Act, or any other offence involving fraud, forgery, or money laundering, or an offence referred to in Chapter IX ("bribery and corruption") of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].

(9)Any person other than a legal practitioner, chartered accountant, chartered secretary, licensed businessentity incorporation agent or licensed businessentity service provider who engages in or offers services in connection with businessentity registration work or businessentity service provision shall be guilty of an offence and is liable to a fine of level two or imprisonment for a period of 7 years or both.

(10) A person who, having been licensed to engage in businessentity registration work or businessentity service provision, continues to engage in such work after the expiry of his or her licence, shall be in default and liable to category 4 civil penalty.

(11) Any person who, at the effective date, is engaged in business entity registration work or business entity service provision at the date of commencement of this Act shall have six months within which to become licensed in terms of this section

293 Shell and shelf companies

(1) In this section—

"active business entity" means a company or private business corporation that, in addition to submitting regular statutory returns and notices to the Registrar, is being operated in accordance with its stated objects, and is otherwise active in business;

"shelf company" means a shell company incorporated or registered in the name of a person who intends to sell or otherwise transfer it to another person or persons, who in turn may operate it as an active business entity, a shell company or a shelf company;

"shell company" means a company that, apart from submitting regular statutory returns and notices to the Registrar, is not being operated in accordance with its stated objects, or is not otherwise active in business for more than twelve months after its registration. (12)

(2) Any person engaging in business entity registration work or business entity service provision who wishes to incorporate any shelf company or shell company whether singly or in bulk—

(a) must lodge together with the constitutive documents of the shelf company or shell company in question a declaration to the effect that the constitutive documents relate to such shelf company or shell company; and

(b) shall (subject to a prescribed discount for bulk lodgements) pay double the fees for the registration of each set of constitutive documents relating to each such company.

(3) If it comes to the notice of the Registrar that any person engaging in business entity registration work or business entity service provision has incorporated any shelf company

or shell company without making the declaration required by subsection (2) (a), the Registrar shall serve on that person a category 2 civil penalty order, whose remediation clause shall require the payment of the fees outstanding for each named shelf company or shell company dealt with in contravention of subsection (2).

CHAPTER VII

General PART I

Civil Penalty Orders

294 Power of Registrar to issue civil penalty orders and categories thereof

(1) Where default is made in complying with any provision of this Act or regulations made under this Act for which a civil penalty is specified in addition to, and the Registrar may, in criminal or non-criminal penalty without derogating from, any criminal or this Act, or any other law may be imposed by conduct constituting the default, serve for the defaulter a civil penalty order upon the appropriate category specified in subsection (2), (3), (4), (5) or (6) or any combination of such orders as the provision in question may allow.

(2) A category 1 civil penalty order provides for a combination penalty over a fixed penalty and a cumulative penalty for a period not exceeding ninety days for a specified completed and irremediable default (that is to say a default in respect of which no remediation is sought by the Registrar or is possible), of which—

(a) the fixed penalty shall be the maximum amount specified for level ten; and

(b) the cumulative penalty shall be a penalty of the maximum amount of level three for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the civil penalty under paragraph (a).

(3) A category 2 civil penalty order provides for a cumulative civil penalty for a

specified completed but remediable default which—

(a) must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the specified period; and

(b) upon the civil penalty becoming operative because of non-compliance with the requested remedial action, shall provide for a penalty of the maximum amount of level three for each day, not exceeding ninety days, during which the defaulter continues to be in default (beginning on the day after the last day on which the defaulter fails to take the remedial action).

(4) A category 3 civil penalty order provides for a combination of a fixed penalty and potentially two cumulative penalties for a specified but partially remediable default, of which—

(a) the fixed penalty shall be the maximum amount specified for level five; and

(b) the cumulative penalty—

(i) relating to paragraph (a) amount of the maximum amount of a level three for each day (beginning on the day after the service of a civil penalty during which the defaulter fails to pay the order) the civil penalty under paragraph (a); and

(ii) relating to the taking of the specified remedial action—

A. shall be the maximum amount of level three for each day, not exceeding ninety days, that the defaulter fails to take the specified remedial action with effect from a specified date;

and

B. must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the time specified in the order.

(5) A category 4 civil penalty order provides for a cumulative penalty for a continuing default which—

(a) must be suspended conditionally upon the defaulter immediately (that is to say, on the day after the civil penalty is served on him or her or such longer period not exceeding seven days as may be specified in the provision or in the order in question) ceasing the default; and

(b) upon the civil penalty becoming operative because of failure to cease the default immediately, be for the maximum amount fixed for level one not exceeding day during which the default continues, a period of ninety days.

(6) A category 5 civil penalty order provides for a combination of a fixed penalty and a cumulative penalty for a specified continuing default where the time of compliance is of the essence—

(a) both of which penalties must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the time specified in the order; and

(b) which, upon the civil penalty becoming operative because of noncompliance with the requested remedial action, shall provide—

(i) a fixed penalty of the maximum amount for level ten for not meeting the specified deadline; and

(ii) a cumulative penalty of the maximum amount of level three for each day, not exceeding ninety days, for which the defaulter fails to pay the amount specified in subparagraph (i).

(7) References in this Act to—

(a) the"citation clause" of a civil penalty order are references to the part of the order in which the Registrar names the defaulter and which cites the provision of the Act in respect of which the default was made or is alleged, together with (if necessary) a brief statement of the facts constituting the default; or

(b) the"penalty clause" of a civil penalty order are references to the part of the order that fixes the penalty to be paid by the

defaulter, and "fixed penalty clause" and "cumulative penalty clause" shall be construed accordingly; or

(c) the"remediation clause" of a civil penalty order are references to the part of the order that stipulates the remedial action to be taken by the defaulter.

295 Service and enforcement of civil penalties and destination of proceeds thereof

(1) References to the Registrar serving upon a defaulter any civil penalty order in terms of this Act (or serving notice upon an alleged defaulter in a show cause notice referred to section 296 ("Additional process requirements of certain civil penalty orders"), before service of interpreted as requiring are to be deliver such order (or such notice) to the defaulter in any of the following ways—

(a) by registered post addressed to the defaulter's (or alleged defaulter's) principal office in Zimbabwe or other place of business of the defaulter (or alleged defaulter); or

(b) by hand delivery to the director, manager, secretary or accounting officer of the defaulter (or alleged defaulter) in person (or through an inspector or other person employed in the Office, or a police officer), or to a responsible individual at the place of business of the defaulter; or

(c) by delivery through a commercial courier service to the defaulter's (or alleged defaulter's) principal office in Zimbabwe or other place of business of the defaulter (or alleged defaulter); or

(d) by electronic mail or telefacsimile at the electronic mail or telefacsimile address furnished by the defaulter (or alleged defaulter) to the Registrar:

Provided that in this case a copy of the order or notice shall also be sent to the electronic mail or telefacsimile address of the defaulter's (or alleged defaulter's) legal practitioner in Zimbabwe.

(2) The Registrar shall not extend the period specified in a civil penalty order for compliance therewith except upon good cause shown to him or her by the defaulter, and

any extension of time so granted shall be noted by the Registrar in the civil penalty enforcement register referred to in section 297 ("Evidentiary penalty orders").

(3) If in this Act both the defaulting company who is in default and every officer of the said company to a civil penalty are liable order, the Registrar may—

(a) in the same civil penalty order, name the defaulting company and every officer concerned as being so liable separately, or issue separate civil penalty orders in respect of the defaulting company and each of the officers concerned;

(b) may choose to serve the order only upon the defaulting company if, in his or her opinion (which shall note in the opinion the Registrar referred to in section civil penalty enforcement register substantial dispute 297, of there may be a particular fact about the identity of officer or officers who may be in default:

Provided that nothing in this section affects the default liability of officers of the company mentioned in subsection (8).

(4) The Registrar may, in the citation clause of a single civil penalty order, cite two or more defaults relating to different provisions of this Act if the defaults in question—

(a) occurred concurrently or within a period not exceeding six months from the first default or defaults to the last default or (b) or arose in connection with the same set of facts.

(5) Where in this Act the same acts or omissions are liable both criminal and civil penalty proceedings, to the Registrar may serve a civil penalty order at any time before the commencement of the criminal proceedings in relation to that default, that is to say at any time before—

(a) summons is issued to the accused person for the prosecution of the offence; or

(b) a statement of the charge is lodged with the clerk of the magistrates court before which the

accused is to be tried, where the offence is to be tried summarily; or

(c) an indictment has been served upon the accused person, where the person is to be tried before the High Court;

as the case may be, but may not serve any civil penalty order after the commencement of the criminal proceedings are concluded until after those proceedings are concluded (the criminal proceedings are deemed for this purpose to be concluded even if they are appealed or taken on review). (For the avoidance of doubt it is declared that the acquittal of an alleged defaulter in criminal proceedings does not excuse the defaulter from liability for civil penalty proceedings).

(6) Upon the expiry of the ninety day period within which any civil penalty order of any category must be paid, the defaulter shall be guilty of an offence and liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding one year or to both.

(7) The amount of any civil penalty shall—

(a) be payable to the Registrar and shall form part of the funds of the Office; and

(b) be a debt due to the Office and may be sued for in the name of the Registrar in any court of competent civil jurisdiction.

(8) If the defaulter is a company, private business corporation or other body corporate, every officer of the company, corporation or body corporate, mentioned in the civil penalty order by name or by office, is deemed to be in default and any one of them can, on the basis of joint and several liability, be made by the Registrar to pay the civil penalty in the event that the company, corporation or body corporate does not pay.

(9) If the Registrar in terms of subsection (7)(b) desires to institute proceedings to recover the amounts of two or more civil penalties in any court of competent civil jurisdiction, he or she may, after notice to all interested parties, bring a single action in relation to the recovery of those penalties if the orders relating to those penalties —

(a) were all served within the period of twelve months preceding the institution of the proceedings; and

(b) were served—

(i) on the same company or private business corporation; or

(ii) in relation to the same default or set of defaults, whether committed by the same company or private business corporation or different companies or private business corporations; or

(iii) on two or more companies or private business corporations whose registered offices are in the same area of jurisdiction of the court before which the proceedings are instituted.

(10) Unless the Registrar has earlier recovered in civil court the amount outstanding under a civil penalty order, a court convicting a person of an offence against subsection (6), may on its own motion or on the application of the prosecutor and in addition to any penalty which it may impose give summary judgement in favour of the Registrar for the amount of any outstanding civil penalty due from the convicted defaulter.

296 Additional due process requirements before service of certain civil penalty orders

(1) Except in relation to any civil penalty order which the Registrar is satisfied concerns a strictly administrative default that does not involve any substantive dispute of fact, the Registrar must notify the alleged defaulter in writing of the Registrar's intention to serve the civil penalty order (which notice shall hereafter be called a "show cause notice") and the Registrar's reasons for doing so and shall call upon the alleged defaulter to show cause within the period specified in the notice (which period shall not be less than forty-eight hours or more than seven days from the date of service of the notice) why the civil penalty order should not be served upon him or her, and, if the alleged defaulter—

(a) makes no representations thereto within the notice period, the Registrar shall proceed to serve the civil penalty order, or

(b) makes representations showing that the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter's control or for any other reason specified in the civil penalty provision in question, the Registrar shall not proceed to serve the civil penalty order; or

(c) makes no representations of the kind referred to in paragraph (b) the Registrar shall proceed to serve the civil penalty order.

(2) In addition, where it appears to the Registrar from written representations received under subsection (1) that there may be a material dispute of fact concerning the existence or any salient aspect of the alleged default, the Registrar must afford the alleged defaulter an opportunity to be heard by making oral representations before the Registrar, for which purpose 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 with necessary changes in relation to the hearing and determination before the Registrar of the alleged default in question, and to any person summoned to give evidence or giving evidence before the Registrar.

(3) Any person who is aggrieved by a civil penalty order made after the making of representations in terms of this section may appeal against the order to a Magistrate's Court or a judge of the High Court, and the magistrate or the judge may make such order as he or she thinks fit

297 Evidentiary provisions in connection with civil penalty orders

(1) For the purposes of this Sub-Part the Registrar shall keep a civil penalty enforcement register wherein shall be recorded—

(a) the date of service of every show cause notice, the name and the physical or registered office address of the person upon whom it was served, the civil penalty provision in relation to which the alleged defaulter was

alleged to be in default, and whether or not the show cause notice was followed by the service of a civil penalty order:

Provided that a record or an adequate summary of any representations made in response to a show cause notice shall be made by way of an entry or cross-reference in, or annexure to, the register, and if recorded by way of annexure or cross-reference, the representations must be preserved for a period of at least three years from the date when they were made to the Registrar;

(b) the date of service of every civil penalty order, the name and the physical or registered office address of the person upon whom it was served, the civil penalty provision in relation to which the defaulter was in default, and the date on which the civil penalty order was complied with or the penalty thereunder was recovered as the case may be.

(2) A copy of—

(a) any entry in the civil penalty enforcement register, and of any annexure thereto or record cross-referenced therein, authenticated by the Registrar as a true copy of the original, and shall on its mere production in any civil or criminal proceedings by any person, be *prima facie* proof of the contents therein; or

(b) any civil penalty order that has been served in terms of this Act, authenticated by the Registrar as a true copy of the original, and shall on its mere production in any civil or criminal proceedings by any person, be *prima facie* proof of the date stated in the service of the order on the defaulter named therein, and therein upon the contents of the order. PART II

further General Provisions

298 Enforcement of duty to make returns

If a registered business entity, having complying with any provision made default in of this Act

which requires it to file with, deliver or send to the Registrar any return, account or other record, or to give notice to him or her of any matter, fails to make good the default within fourteen days after the service of a notice on the registered business entity requiring it to do so, the Registrar may serve a category 2 civil penalty order upon the defaulting registered business entity.

299 Co-operation with foreign company registries

(1) The President, or the Minister with the President's authority, may enter into agreements with the government of any other country or territory with a view to the rendering of reciprocal assistance in any or all of the following—

(a) the incorporation or registration of companies and other business entities and the exchange of information related thereto;

(b) the exchange of information and the rendering of mutual assistance related to the combating of the transnational abuse of the company form for criminal purposes, the monitoring of the quality of the assistance given and the keeping of records of requests for information or assistance and of the responses thereto;

(c) the administration of any office or offices that are a counterpart to the Office for the Registration of Companies and Other Business Entities, including the mutual secondment and training of the staff of the Office and such offices.

(2) In particular, an agreement referred to in subsection (1) may empower the Registrar or the financial intelligence unit of the Reserve Bank, or its own behalf or on behalf of any law enforcement agency, to seek beneficial ownership or other information in respect of any company from the foreign counterpart, and, likewise, may provide beneficial ownership or other information in respect of any company to the foreign counterpart.

(3) As soon as may be after the conclusion of any such agreement the terms thereof shall be notified by the President by proclamation in the *Gazette*, whereupon until such proclamation is revoked by the President the agreement

shall have effect as if enacted in this Act but only if, and for so long as, the agreement has the effect of law in such country or territory.

(4) The President may at any time revoke any such proclamation by a further proclamation in the *Gazette*, and the agreement shall cease to have effect upon the date fixed in such latter proclamation, but the revocation of any proclamation shall not affect the validity of anything previously done thereunder.

(5) Any agreement referred to in subsection (1) may be made with retrospective effect if the President considers it expedient so to do.

300 Minister may give policy directions to Registrar

(1) Subject to subsection (2), the Minister may, on his or her own motion or at the written request of the Registrar in any specific or general case, give the Registrar such general directions relating to the policy to the Registrar is to observe in the exercise of his or her functions referred to in sections 25 (“Prohibition of undesirable name”), 39 (“Investigation by Registrar”), 41 (“Investigation to determine ownership or control”), 142 (“Payment of interest out of capital”) (b), (c) and (d), 184 (“General provision as to contents and form of financial statements”)(4), 186 (“Obligation to lay group accounts before holding company”)(2)(c)(ii), 187 (“Form and contents of group accounts”) (5) and (6)(proviso), 191 (“Appointment remuneration, duties, powers and removal of auditors”)(1) (proviso (iii)) and (3), 211 (“Duty of director to disclose payments for loss of office, made in connection with transfer of shares in company”)(4), 213 (“Register of directors’ share holdings (4)(b), 224 (“Order on application of Registrar”) and 299 (“Co-operation with foreign company registries”), or generally in the exercise of his or her functions as the Minister considers to be necessary in the national interest

(2) Before giving terms of the Registrar the Registrar, direction and days or allow, or submit her views on the Registrar subsection (1), requested in writing, the Registrar further period as the Minister, proposal. a direction the Ministershall direction) of the proposed shall, within thirty Ministermay in writing, his

(3) The Registrar to comply or her shall with in take any terms all direction of necessary given to subsection steps him (1).

(4) When any Registrar Registrar set direction in terms shall out has been given to ensure that in the subsection (1), the Office's the annual direction report. the is

301 Regulations

(1) The Companies Ministermay, Office, after from consultation time to with time the make—

(a) regulations providing Act for to anything be required prescribed by by this regulations; and

(b) regulations altering ("Investigation stakeholders"(3), and debentures holders"(5), register and provisions power of ("Circulation ("Inspection accounts 217 any on request 155 and (6) and index")(1) as to court to of members' of minutes")(2), of loans ("Register secretaries")(8) and amount referred to in section 40 of minority ("Register of mortgages register of debenture (7), 160 ("Inspection of and (2), 170 ("General meetings and votes and order meeting") (1), 174 resolutions")(2)(b), 181 215 ("Particulars in officers")(2)(b) or directors and (9);

(c) such may other deem regulations expedient as or he necessary or she for the carrying out of the purposes of this Act.

(2) When making regulations for the purpose of section 184 ("General provisions as to contents and form of financial statements") (2), the Ministershall have regard to generally accepted accounting practices.

302 Alteration of fees, tables, forms and certain provisions of this Act.

(1) The Ministermay, from time to time—

(a) alter or add to the tables in the Third Schedule ("Form of statement in lieu of

prospectus to be delivered to Registrar by a company which does not issue prospectus or which does not go to allotment on a prospectus issues and reports to be set out therein");

(b) alter any of the Tables in the Sixth Schedule("model articles") or any of the forms in the First, Second, Third and Fourth Schedules but no such alteration in or addition to Sixth Schedule shall, as respects any company or private businesscorporation registered before the publication of the alteration or addition, repeal any portion of Sixth Schedule which at the date of such publication applies to it;

(c) subject to subsection (3), amend any provisions concerned with the electronic Registryin Chapter V or the Seventh Schedule ("User Agreement").

(2) Any alteration, addition or amendment made in terms of subsection (1) shall be by statutory instrument and from the date of publication of a statutory instrument made under subsection (1)(a) or (b) 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 subsection (1)(b) shall apply to a foreign company which is a banking company as defined in section 240 **(**Definitions in Chapter II Part IV (A)**)**.

(3) The Ministershall on the next sitting day of the National Assembly after he or she publishes a statutory instrument in terms of subsection (1) (c), lay it before the National Assembly and, unless the National Assembly by a negativeresolution earlier resolves not to approve it, the statutory instrument shall come in to effect on the thirtieth day after the date on which it was laid before the National Assembly.

303 Repeals, re-registration of companies and PBCs, general transitional provisions and savings

(1) In this Part—

"repealed Companies Act" means the Companies Act [*Chapter 24:03*];

"repealed Private Business Corporations Act" means the Public Business Corporations Act [*Chapter 24:11*];

"transfer date" means the date fixed by the Minister in terms of subsection (4) (b) or, where two or more such dates are fixed, the first such date.

(2) Subject to this section, the Companies Act [*Chapter 24:03*] and the Private Business Corporations Act [*Chapter 24:11*] are repealed.

(3) The establishment for which the Chief Registrar of Companies was responsible under the repealed Companies Act (the "Companies Registration Office") shall continue in existence after the effective date as the Companies and Other Business Entities Registration Office (the "Companies Office").

(4) The assets and rights of the State which—

(a) before the effective date, were used or otherwise connected with the Companies Registration Office; and

(b) are specified by the Minister by notice in a statutory instrument;

together with any liabilities or obligations attaching to them shall be transferred with effect from the transfer date to the Companies Office.

(5) On the relevant transfer date, every asset and liability of the State which the Minister has directed shall be transferred to the Companies Office shall vest in the Companies Office.

(6) All contracts, instruments, documents, banking accounts and working arrangements that subsisted immediately before the relevant transfer date and to which the State on behalf of the Companies Registration Office was a party shall, on and after that date, be as fully effective and enforceable against or in favour of the Companies Office.

(7) It shall not be necessary for the Registrar of Deeds to make any endorsement on title deeds or other documents or in his or her registers in respect of any immovable property, right or obligation which passes to the Companies Office under this section, but the Registrar of Deeds, when so requested in writing by the Registrar in relation to any particular such property, right or obligation, shall cause the name of the Office to be substituted, free of charge, for that of the State on the appropriate title deed or other document or in the appropriate register.

(8) Subject to subsection (9), every domestic company or private business corporation incorporated, and every foreign company registered under the repealed Companies Act or repealed Private Business Corporations Act, as the case maybe, that appears in the registers of the Companies Registration Office on the effective date shall continue to be incorporated or registered under the same name and registration number previously assigned to it as if incorporated or registered under the appropriate provisions of this Act.

(9) A company or private business corporation referred to subsection (8) must within a period of twelve months from the effective date re-register under this Act by submitting the form in the Tenth Schedule as may be appropriate, together with the fee and other documentation as maybe required in terms of that form. A company or private business corporation must re-register under its existing name, without prejudice to its right after re-registration to change its name under section 26.

(10) The object of re-registration under subsection (9) is twofold, namely—

(a) to establish a new and updated register of companies and private business corporations;

(b) to expunge apparently defunct business entities from the register, that is to say a company or private business corporation which appears to the Registrar to be defunct because—

(i) it is not submitting to the Registrar the statutory returns and notices required by the repealed Acts and this Act; and

(ii) it appears to the Registrar to be inactive, that is to say it is not being operated or is not active in business.

(11) Accordingly under subsection (10) no company or private business corporation may change its name, address, registered office, directorship or its share structure or do any other thing affecting its rights and liabilities and those of its members under the guise of re-registration, without prejudice however to its right to make such changes in accordance with the formalities prescribed in this Act, before, after or together with re-registration.

(12) The effect of failing to re-register in terms of subsection (9) is that the existing company or private business corporation will be struck off the register with effect from the expiry of the period of twelve months referred to in that subsection, and subject to this section, will no longer be able to carry on business as a company or private business corporation unless it registers as a new company or private business corporation under Part I of Chapter II after that date.

(13) For the avoidance of doubt it is declared that the re-registration in terms of subsection (9) or of an existing company or private business corporation does not—

(a) create a new legal entity; or

(b) prejudice or affect the identity of the body corporate constituted by the company or private business corporation or its continuity as a legal entity; or

(c) affect the property, rights or obligations of the company or private business corporation; or

(d) affect legal or other proceedings by or against the company or private business corporation.

(14) For the avoidance of doubt it is declared that the failure by an existing company or private business corporation to re-register in terms of subsection (9) does not –

(a) affect the property, rights or obligations of the company or private business corporation

in relation to its members or third parties; or

(b) affect legal or other proceedings by or against the company or private business corporation in relation to its members or third parties.

(15) Subject to this section, every licence issued and in force under section 82 ("Power to dispense with certain cases") of the repealed "Limited" in Companies Act, shall continue in force after the effective date.

(16) Any cause of action or proceeding which existed or was pending by or against the Registrar immediately before the effective date may be enforced or continued, as the case may be, on and after that date by or against the Registrar in the same way that it might have been enforced or continued by or against the Registrar had this Act not been passed.

(17) Any guarantee or suretyship which was given or made by the Government or any other person in respect of any debt or obligation of the Companies Office or the Registrar and which was effective immediately before the effective date shall remain fully effective against the guarantor or surety on and after that date in relation to the repayment of the debt or obligation, as the case may be, by the Companies Office or the Registrar to which it was transferred.

(18) The Registrar, every assistant Registrar and other civil servant employed in the Companies Registration Office before the effective date shall continue in such office or employment after the effective date as members of the Civil Service.

(19) The portion of the proceeds of fees and other revenues that accrued to the Deeds Retention Fund before the effective date shall continue to so accrue after the effective date until such time, if any, as a separate retention Fund is established for the Office under section 18 of the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009).

(20) For the avoidance of doubt, if on the effective date—

(a) there were any disciplinary proceedings in terms of the Public Service Act [*Chapter 16:04*] pending against a person who is employed in the Companies Registration Office, such proceedings shall continue after the effective date;

(b) any promotion or advancement was being processed in terms of the Public Service Act [*Chapter 16:04*] in relation to any person employed in the Companies Registration office such promotion or advancement shall be processed and completed after the effective date.

(21) All regulations and other statutory instruments and general notices in force or having effect immediately before the effective date, shall continue in force or have effect after the effective until repealed or replaced under this Act.

(22) At any time within a period of twenty-four months after the effective date, the Minister responsible for Finance from consultation with the Minister of Companies and the Office, may make any regulations for the purpose of this section and section 301 (“Regulations”) that he or she deems necessary or expedient to manage the transition from the repealed Acts to this Act.

304 Transitional Provisions in relation to par value of shares, treasury shares, capital and share accounts certificates

(1) Despite section 93 (“Legal nature of company and requirement to have shareholders”)(2) any shares of a company existing on the effective date (in this section called a “pre-existing company”) that have been issued with a or par value, and are held by a shareholder immediately before the effective or par continue to have the nominal date, assigned to them when issued, subject to any regulations made in terms of section 303 (22).

(2) A failure of any share certificate issued by a pre-existing company to satisfy the requirements of section 153 (“Evidence of title to shares”)(2)— (a) is not a contravention of that section; and (b) does not invalidate that share certificate.

FIRST SCHEDULE (Section 10)

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 .....

.....20.....

Witness to the above signatures,

Address

.....

.....

.....

SECOND SCHEDULE (Section 9)

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 of $ each

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..... $

(b) Amount paid to any promoter.....Name of promoter: Amount $ By whom those expenses have been or are payable. $

(c) Consideration for the payment.....
Consideration:

(d) Anyother benefit given to any 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

THIRD SCHEDULE (Section 86)

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 24:31*]

Statement in lieu of Prospectus delivered for registration by

.....

(Insert the name of the Company)

Pursuant to section 66 of the Companies Act [*Chapter 24:31*].

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 ..... 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.

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 and 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

1.

2. Shares in a person Debentures of $ to of $

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 person to whom it or 6. Names and the right to it was given or if given to existing members Addresses: or debenture holders as such, the relevant shares or debentures.

(e) Any other material fact or circumstances relevant to . 7. the grant of such option 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 Total purchase price debentures) for any such property, specifying amount, $ if any, paid or payable for goodwill. Cash.....$

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 Amount paid subscribing or agreeing to 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 Name of promoter: promoter
Nature and value of benefit:
Consideration forgiving of benefit
Consideration:

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 her or to it in cash or shares or otherwise by any person either to induce him or her to become, or to qualify him or her as, a director or otherwise for services rendered by him or her or by it in connection with the promotion or formation of the company.

(Signatures of the persons above named as directors or proposed directors or of their agents authorised 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 corporate's profits or losses, deal with the profits or losses of a whole with the corporate members and, so far as they concern 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 combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities; or (ii) individually with 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 Eighth 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 been made up only 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.

FOURTH SCHEDULE (Section 165)

Form of Annual Return of a 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 Shares and Debentures

(a) Number of shares

Number of shares .....divided into:
(Insert number and class)

.... shares
.... shares
.... shares
.... shares

(b) Issued Shares 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 fully paid up .... shares
.... shares
.... shares
.... shares

B. Particulars of Directors, Auditors and Secretaries

Names and Addresses of the Directors, Auditors and Secretaries of the ....., Limited, on the ..... day of ....., 20.....

Directors		
Names	Addresses	Other Directorships
Auditors		
Names	Addresses	
Secretary		

Names	Addresses

.....Director

.....Secretary

Copy of the Last Company of the Audited Balance Sheet required in terms of section 165 of the Act.)

Note: This return must include a copy, certified both by a Director and to be a true copy, of by the Company to be (including every 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.—Wecertify—

(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 are 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

.....

FIFTH SCHEDULE (Section 10, 18 (1)(b), 69(2))

fees

FIRST TABLE

Table of fees to be paid by a company (other than a foreign company) under this Act

1. For registration of a company—		
(a) in the case of a private company or a non-profit company		100,00
(b) in the case of any other company		500,00
2. For registration of any increase of capital made after the first registration of the company—		
	fifty cents for every $100 or portion of such additional capital	
3. For registration of any statement in lieu of the prospectus pursuant to section 86 to 116		75,00
4. For registration of any prospectus pursuant to section 56		75,00
5. On each application for search as to availability of a name or names proposed to be adopted by a company, including or for a reservation of such name or names		30,00

SECOND TABLE

Table of fees to be paid by a foreign company under this Act

l.	For the registration of the charter, statutes or memorandum and articles of the company consisting or defining the or other instrument constitution of the company	300,00
	2. For the registration of the prospectus of the company	75,00

THIRD TABLE

Table of fees to be paid in respect of any company or foreign company under this Act

1.	For the delivery to the Registrar of any annual return pursuant to section 165 (a) where the share capital of the company does not exceed $20 000	50,00
	section 241 (8) of this Act—	
	(b) where the share capital of the company exceeds $20 000	50,00
	plus an additional $10 for each $10 000 or part thereof of the share capital in excess of $20 000, subject to a maximum fee of $500.	
	For the purposes of this item, the share capital of a company means the share capital subscribed for or issued in payment for services rendered or rights acquired or otherwise allotted, whether fully paid-up or not.	
2.	For the 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:	
	Provided that this fee shall not be payable if the return, document or notice is lodged within the time prescribed by the Act	5,00
	3. For every report prepared	15,00

for the court by the Registrar	
4. For any certificate issued by the Registrar	
5. For each entry extracted from any register for publication in a newspaper or periodical	10,00
	0,50
6. For a copy of any document, per page	
	1,00

SIXTH SCHEDULE (**Section 18 (1)(b), 170(7)(a) and 266(1)(b)**)

Model Articles and By-laws

[*Explanatory note: in this Schedule annotations in square brackets and italics do not form part of the articles but are inserted to draw the attention of potential adopters or adapters of these articles to relevant provisions of this Act*] Table A: Model Articles for Public Companies

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4. Members' reserve power. 5. Directors may delegate.
6. Committees.

Decision-making by Directors

7. Directors to take decisions collectively
8. Calling a directors' meeting
9. Participation in directors' meetings

10. Quorum for directors' meetings
11. Meetings where total number of directors less than quorum
12. Chairing directors' meetings
13. Voting at directors' meetings: general rules
14. Chairperson's casting vote at directors' meetings
15. Alternates voting at directors' meetings
16. Conflicts of interest
17. Proposing directors' written resolutions
18. Adoption of directors' written resolutions
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20. Methods of appointing directors
21. Retirement of directors by rotation
22. Termination of director's appointment
23. Directors' remuneration 24. Directors' expenses.

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60. Effect of forfeiture 61. Procedure following forfeiture 62. Surrender of shares.

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70. Procedure for declaring dividends.
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75. Unclaimed distributions.
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Part 1: Interpretation and Limitation of Liability

Definitions

1. (1) In the articles, unless the context requires otherwise—

"alternate" or "alternate director" has the meaning given in article 25;

"appointor" has the meaning given in article 25;

"articles" means the company's articles of association;

"call" has the meaning given in article 54;

"call notice" has the meaning given in article 54;

"certificate" means a paper certificate (other than a share warrant) evidencing a person's title to specified shares or other securities;

"certificated" in relation to a share, means that it is not an uncertificated share or a share in respect of which a share warrant has been issued and is current;

"chairperson" has the meaning given in article 12;

"chairperson of the meeting" has the meaning given in article 31;

"Act" means the Companies and Other Business Entities Act [*Chapter 24:31*];

"company's lien" has the meaning given in article 52;

"director" means a director of the company, and includes any person occupying the position of director, by whatever name called;

"distribution recipient" has the meaning given in article 72;

"document" includes, unless otherwise specified, any document sent or supplied in electronic form;

"fully paid" in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;

"holder" in relation to shares means the person whose name is entered in the register of members as the holder of the shares, or, in the case of a share warrant in respect of which a share warrant has been issued (and not cancelled), the person in possession of that warrant;

"insolvency" includes individual insolvency proceedings in a jurisdiction other than Zimbabwe which have an effect similar to that of insolvency;

"instrument" means a document in hard copy form;

"lien enforcement notice" has the meaning given in article 53;

"member" has the meaning given in section 83 of the Companies Act;

"ordinary resolution" has the meaning given in section 175(4) of the Act;

"paid" means paid or credited as paid;

"participate", in relation to a directors' meeting, has the meaning given in article 9;

"partly paid" in relation to a share means that part of that share's nominal value or any premium at which it was issued has not been paid to the company;

"prescribed rate of interest" means the maximum rate of interest prescribed in terms of the Prescribed Rate of Interest Act [*Chapter 8:10*] or any other law that may be substituted for that Act;

"proxy notice" has the meaning given in article 38;

"securities seal" has the meaning given in article 47;

"shares" means shares in the company;

"special resolution" has the meaning given in section 175 of the Act;; "subsidiary" has the meaning given in section 185 of the Act;

"transmittee" means a person entitled to a share by reason of the death or insolvency of a shareholder or otherwise by operation of law;

"uncertificated" has the meaning given in section 2(1) of the Act;

"writing" means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

(2) Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Act as in force on the date when these articles become binding on the company.

Liability of members 2. The liability of the members is limited to the amount, if any, unpaid on the

shares held by them.

Part 2: directors

Directors' powers and responsibilities

Directors' general authority

3. Subject to the articles, the directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company.

Members' reserve power

4. (1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) No such special resolution have the directors invalidates anything which done before the passing of the resolution.

Directors may delegate

5. (1) Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles— (a) to such person or committee;

(b) by such means (including and by power of attorney);

(c) to such an extent; and

(d) in relation to such matters or territories; and

(e) on such terms and conditions; as they think fit.

(2) If the directors may authorise so specify, any such delegation further delegation of the directors' powers by any person to whom they are delegated.

(3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

Committees

6. (1) Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.

(2) The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

Decision-making by Directors

Directors to take decisions collectively

7. Decisions of the directors may be taken—

(a) at a directors' meeting; or

(b) in the form of a directors' written resolution.

Calling a directors' meeting

8. (1) Any director may call a directors' meeting.

(2) The company secretary must call a directors' meeting if a director so requests.

(3) A directors' meeting is called by giving notice of the meeting to the directors.

(4) Notice of any directors' meeting must indicate—

(a) its proposed date and time; and

(b) where it is to take place; and

(c) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

(5) Notice of a directors' meeting must be given to each director, but need not be in writing.

(6) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

Participation in directors' meetings

9. (1) Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when—

(a) themeeting has been called and takes place in accordance with the articles; and

(b) they can each communicate to the others any information or opinions they have on any particular item of the businessof the meeting.

(2) In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.

(3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

Quorum for directors' meetings

10. (1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

(2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must never be less than two, and unless otherwise fixed it is two.

Meetings where total number of directors less than quorum

11. (1) This article applies where the total number of directors is less than the quorum for the time being for directors' meetings.

(2) If there is only one director, that director may appoint sufficient directors to make up a quorum or call a general meeting to do so.

(3) If there is more than one director—

(a) a directors' meeting may take place, if it is called in accordance with the articles and at least two directors participate in it, with a view to appointing sufficient directors to make up a quorum or calling a general meeting to do so;

(b) if a directors' meeting is called but only one director attends at the appointed date and time to participate in it, that director may appoint sufficient directors to make up a quorum or call a general meeting to do so.

Chairing directors' meetings

12. (1) The directors may appoint a director to chair their meetings.

(2) The person so appointed for the time being is known as the chairperson.

(3) The directors may appoint other directors as deputy or assistant chairperson to chair directors' meetings in the chairperson's absence.

(4) The directors may terminate the appointment of the chairperson, deputy or assistant chairperson at any time.

(5) If neither the chairperson nor any director appointed generally to chair directors' meetings in the chairperson's absence is participating in a meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

Voting at directors' meetings: general rules

13. (1) Subject to the articles, a decision is taken at a directors' meeting by a majority of the votes of the participating directors.

(2) Subject to the articles, each director participating in a directors' meeting has one vote.

(3) Subject to the articles, if a director has an interest in an actual or proposed transaction or arrangement with the company—

(a) that director and that director's alternate may not vote on any proposal relating to it; but

(b) this does not preclude the alternate from voting in relation to that transaction or arrangement on behalf of another appointor who does not have such an interest.

Chairperson's casting vote at directors' meetings

14. (1) If the numbers of votes for and against a proposal are equal, the chairperson or other director chairing the meeting has a casting vote.

(2) But this does not apply if, in accordance with the articles, the chairperson or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

Alternates voting at directors' meetings

15. A director who is also an alternate director has an additional vote on behalf of each appointor who is—

(a) not participating in a directors' meeting; and

(b) would have been entitled to vote if they were participating in it. *Conflicts of interest* 16. (1) If a directors' meeting, or part of a directors' meeting, is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in that meeting, or part

of a meeting, for quorum or voting purposes.

(2) But if sub-article (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in a decision at a directors' meeting, or part of a directors' meeting, relating to it for quorum and voting purposes.

(3) This sub-article applies when—

(a) the company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in, or voting at, a directors' meeting; or

(b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(c) the director's conflict of interest arises from a permitted cause.

(4) For the purposes of this article, the following are permitted causes— (a) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;

(b) subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such shares or securities;

(c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

(5) Subject to sub-article (6), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairperson whose ruling in relation to any director other than the chairperson is to be final and conclusive.

(6) If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairperson, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairperson is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

Proposing directors' written resolutions

17. (1) Any director may propose a directors' written resolution.

(2) The company secretary must propose a directors' written resolution if a director so requests.

(3) A directors' written resolution is proposed by giving notice of the proposed resolution to the directors.

(4) Notice of a proposed directors' written resolution must indicate—

(a) the proposed resolution; and

(b) the time by which it is proposed that the directors should adopt it. (5) Notice of a proposed directors' written resolution must be given in writing to each director.

(6) Any decision which a person giving notice of a proposed directors' written resolution takes regarding the process of adopting that resolution must be taken reasonably in good faith.

Adoption of directors' written resolutions

18. (1) A proposed directors' written resolution is adopted when all the directors who would have been entitled to vote on the resolution at a directors' meeting have signed one or more copies of it, provided that those directors would have formed a quorum at such a meeting.

(2) It is immaterial whether any director signs the resolution before or after the time by which the notice proposed that it should be adopted.

(3) Once a directors' written resolution has been adopted, it must be treated as if it had been a decision taken at a directors' meeting in accordance with the articles.

(4) The company secretary must ensure that the company keeps a record, in writing, of all directors' written resolutions for at least ten years from the date of their adoption.

Directors' discretion to make further rules

19. Subject to the articles, the directors may make any rule which they think fit about how they take decisions, and how such rules are to be recorded or communicated to directors.

Appointment of Directors

Methods of appointing directors

20. Any person who is willing to act as a director, and so, may be appointed by law to be a director—

(a) by ordinary resolution; or

(b) by a decision of the directors.

Retirement of directors by rotation

21. (1) At the first annual general meeting all the directors must retire from office.

(2) At every subsequent annual general meeting any directors—

(a) who have been appointed by the directors since the last annual general meeting; or

(b) who were not appointed or reappointed at one of the preceding two annual general meetings, must retire from office and may offer themselves for reappointment by the members.

Termination of director's appointment

22. A person ceases to be a director as soon as—

(a) that person ceases to be a director by virtue of any provision of the Act or is prohibited from being a director by law;

(b) a liquidation order is made against that person;

(c) a composition is made with that person's creditors generally in satisfaction of that person's debts;

(d) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;

(e) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;

(f) notification is received by the company from the director that the director is resigning from office as director, and such resignation has taken effect in accordance with its terms.

Directors' remuneration

23. (1) Directors may undertake any services for the company that the directors decide.

(2) Directors are entitled to such remuneration as the directors determine—

(a) for their services to the company as directors; and

(b) for any other service which they undertake for the company.

(3) Subject to the articles, a director's remuneration may—

(a) take any form; and

(b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

(4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.

(5) Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

Directors' expenses

24. The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at—

(a) meetings of directors or committees of directors; or

(b) general meetings; or

(c) separate meetings of the holders of any class of shares or of debentures of the company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

Alternate Directors

Appointment and removal of alternates

25. (1) Any director (the "appointor") may appoint as an alternate any other director, or any other person approved by resolution of the directors, to— (a) exercise that director's powers; and

(b) carry out that director's responsibilities; in relation to the taking of decisions by the directors in the absence of the alternate's appointor.

(2) Any appointment or removal of an alternate must be effected by notice in writing to the company signed by the appointor, or in any other manner approved by the directors.

(3) The notice must—

(a) identify the proposed alternate; and

(b) in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

Rights and responsibilities of alternate directors

26. (1) An alternate director has the same rights, in relation to any directors' meeting or directors' written resolution, as the alternate's appointor.

(2) Except as the articles specify otherwise, alternate directors—

(a) are deemed for all purposes to be directors; and

(b) are liable for their own acts and omissions; and (c) are subject to the same restrictions as their appointors; and (d) are not deemed to be agents of or for their appointors.

(3) A person who is an alternate director but not a director—

(a) may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's appointor is not participating); and

(b) may sign a written resolution (but only if it is not signed or to be signed by that person's appointor).

No alternate may be counted as more than one director for such purposes.

(4) An alternate director is not entitled to receive any remuneration from the company for serving as an alternate director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the company.

Termination of alternate directorship

27. An alternate director's appointment as an alternate terminates—

(a) when the alternate's appointor revokes the appointment by notice to the company in writing specifying when it is to terminate; or

(b) on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director; or

(c) on the death of the alternate's appointor; or

(d) when the alternate's appointor's appointment as a director terminates,

except that an alternate's appointment as an alternate does not terminate when the appointor retires by rotation at a general meeting and is then re-appointed as a director at the same general meeting.

Part 3: decision-making By members *organisation of general meetings*

Members can call general meeting if not enough directors

28. If—

(a) thecompany has fewer than two directors; and

(b) thedirector (if any) is unable or unwilling to appoint sufficient directors to make up a quorum or to call a general meeting to do so;

then two or more members may call a general meeting (or instruct the company secretary to do so) for the purpose of appointing one or more directors.

Attendance and speaking at general meetings

29. (1) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the businessof the meeting.

(2) A person is able to exercise the right to vote at a general meeting when—

(a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and

(b) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

(4) In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.

(5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them. *Quorum for general meetings*

30. No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

Chairing general meetings 31. (1) If the directors have appointed a chairperson, the chairperson shall chair general meetings if present and willing to do so.

(2) If the directors have not appointed a chairperson, or if the chairperson is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start—

(a) the directors present; or

(b) (if no directors are present), the meeting;

must appoint a director or member to chair the meeting, and the appointment of the chairperson of the meeting must be the first business of the meeting.

(3) The person chairing a meeting in accordance with this article is referred to as "the chairperson of the meeting".

Attendance and speaking by directors and non-members

32. (1) Directors may attend and speak at general meetings, whether or not they are members.

(2) The chairperson of the meeting may permit other persons who are not—

(a) members of the company; or

(b) otherwise entitled to exercise the rights of members in relation to general meetings;

to attend and speak at a general meeting.

Adjournment

33. (1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairperson of the meeting must adjourn it.

(2) The chairperson of a general meeting at which a quorum is present may adjourn the meeting if—

(a) the meeting consents to an adjournment; or

(b) it appears to the chairperson of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

(3) The chairperson of the meeting must adjourn a general meeting if directed to do so by the meeting.

(4) When adjourning a general meeting, the chairperson of the meeting must—

(a) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors, and

(b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

(5) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting

and the day on which the notice is given)—

(a) to the same persons to whom notice of the company's general meetings is required to be given; and

(b) containing the same information which such notice is required to contain.

(6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place. *Voting at general meetings*

Voting: general 34. A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

Errors and disputes

35. (1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

(2) Any such objection must be referred to the chairperson of the meeting whose decision is final.

Demanding a poll

36. (1) A poll on a resolution may be demanded—

(a) in advance of the general meeting where it is to be put to the vote; or

(b) at a general meeting, either before or immediately after the result of a show of hands on that resolution is declared.

(2) A poll may be demanded by— (a) the chairperson of the meeting; or

(b) the directors; or

(c) two or more persons having the right to vote on the resolution; or

(d) a person or persons representing not less than one tenth of the total voting rights of all the members having the right to vote on the resolution.

(3) A demand for a poll may be withdrawn if—

(a) thepoll has not yet been taken, and

(b) thechairperson of the meeting consents to the withdrawal.

Procedure on a poll

37. (1) Subject to the articles, polls at general meetings must be taken when, where and in such manner as the chairperson of the meeting directs.

(2) The chairperson of the meeting may appoint scrutineers (who need not be members) and decide how and when the result of the poll is to be declared.

(3) The result of a poll shall be the decision of the meeting in respect of the resolution on which the poll was demanded.

(4) A poll on—

(a) theelection of the chairperson of the meeting; or

(b) a questionof adjournment; must be taken immediately.

(5) Other polls must be taken within 30 days of their being demanded.

(6) A demand for a poll does not prevent a general meeting from continuing, except as regards the question on which the poll was demanded.

(7) No notice need be given of a poll not taken immediately if it is to be taken at which it is announced at the meeting at which it is demanded.

(8) In any case, at least 7 days' notice must be given specifying the time and place at which the poll is to be taken.

Content of proxy notices

39. (1) Proxies may only be appointed by a notice in writing (a "proxy notice") which—

(a) states the name and address of the member appointing the proxy; and

(b) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed; and

(c) is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the directors may determine; and

(d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.

(2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

(3) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

(4) Unless a proxy notice indicates otherwise, it must be treated as—

(a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and

(b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

Delivery of proxy notices

40. (1) Any notice of a general meeting must specify the address or addresses ("proxy notification address") at which the company or its agents will receive proxy notices relating to that meeting, or any adjournment of it, delivered in hard copy or electronic form.

(2) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.

(3) Subject to sub-articles (4) and (5), a proxy notice must be delivered to a proxy notification address not less than 48 hours before the general meeting or adjourned meeting to which it relates.

(4) In the case of a poll taken more than 48 hours after it is demanded, the notice must be delivered to a proxy notification address

not less than 24 hours before the time appointed for the taking of the poll.

(5) In the case of a poll not taken during the meeting but taken not more than 48 hours after it was demanded, the proxy notice must be delivered—

(a) in accordance with sub-article (3); or

(b) at the meeting at which the poll was demanded to the chairperson, secretary or any director.

(6) An appointment under a proxy notice may be revoked by delivering a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given to a proxy notification address.

(7) A notice revoking a proxy appointment only takes effect if it is delivered before—

(a) the start of the meeting or adjourned meeting to which it relates, or

(b) (in the case of a poll not taken on the same day as the meeting or adjourned meeting) the time appointed for taking the poll to which it relates.

(8) If a proxy notice is not signed by the person appointing it, the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

Amendments to resolutions

41. (1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—

(a) notice of the proposed amendment is given to the company secretary in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairperson of the meeting may determine), and

(b) the proposed amendment does not, in the reasonable opinion of the chairperson of the meeting, materially alter the scope of the resolution.

(2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—

(a) the chairperson of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and

(b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

(3) If the chairperson of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairperson's error does not invalidate the vote on that resolution.

Restrictions on Members' Rights

No voting of shares on which money owed to company

42. No voting rights attached to a share may be exercised at any general meeting, or at any adjournment of it, or on any poll called at or in relation to it, unless all amounts payable to the company in respect of that share have been paid.

Application of Rules to Class Meetings Class meetings

43. The provisions of the articles relating to general meetings apply, with any necessary modifications, to meetings of the holders of any class of shares. Part 4: Shares and Distributions

ISSUE OF SHARES

Powers to issue different classes of share

44. (1) Subject to the articles, but without prejudice to the rights attached to any existing share, the company may issue shares with such rights or restrictions as may be determined by ordinary resolution.

(2) The company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.

Payment of commissions on subscription for shares

45. (1) The company may pay any person a commission in consideration for that person—

(a) subscribing, or agreeing to subscribe, for shares; or

(b) procuring, or agreeing to procure, subscriptions for shares.

(2) Any such commission may be paid—

(a) in cash, or in fully paid or partly paid shares or other securities, or partly in one way and partly in the other; and

(b) in respect of a conditional or an absolute subscription.

Interests in Shares

Company not bound by less than absolute interests

46. Except as required by law, no person is to be recognised by the company as holding any share upon any trust, and except as otherwise required by law or the articles, the company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

Share Certificates

Certificates to be issued except in certain cases

47. (1) The company must issue each member with one or more certificates in respect of the shares which that member holds.

(2) This article does not apply to—

(a) uncertificated shares; or

(b) shares in respect of which a share warrant has been issued; or

(c) shares in respect of which the Act permits the company not to issue a certificate.

(3) Except as otherwise specified in the articles, all certificates must be issued free of charge.

(4) No certificate may be issued in respect of shares of more than one class.

(5) If more than one person holds a share, only one certificate may be issued in respect of it.

Contents and execution of share certificates

48. (1) Every certificate must specify—

(a) in respect of how many shares, of what class, it is issued; and

(b) the nominal value of those shares; and

(c) the amount paid up on them; and

(d) any distinguishing numbers assigned to them.

(2) Certificates must— (a) have affixed to them the company's common seal or an official seal which

is a facsimile of the company's common seal with the addition on its face of the word "Securities" or (a "securities seal"); or

(b) be otherwise executed in accordance with the Act.

Consolidated share certificates

49. (1) When a member's holding of shares of a particular class increases, the company may issue that member with—

(a) a single, consolidated certificate in respect of all the shares of a particular class which that member holds; or

(b) a separate certificate in respect of only those shares by which that member's holding has increased.

(2) When a member's holding of shares of a particular class is reduced, the company must ensure that the member is issued with one or more certificates in respect of the number of shares held by the member after that reduction. But the company need not (in the absence of a request from the member) issue any new certificate if— (a) all the shares which the member no longer holds as a result of the reduction; and

(b) none of the shares which the member retains following the reduction; were, immediately before the reduction, represented by the same certificate.

(3) A member may request the company, in writing, to replace— (a) the member's separate certificates with a consolidated certificate; or

(b) the member's consolidated certificate with two or more separate certificates representing such proportion of the shares as the member may specify.

(4) When the company complies with such a request it may charge such reasonable fee as the directors may decide for doing so.

(5) A consolidated certificate must not be issued unless any certificates which it is to replace have first been returned to the company for cancellation.

Replacement share certificates

50. (1) If a certificate issued in respect of a member's shares is—

(a) damaged or defaced, or

(b) said to be lost, stolen or destroyed, that member is entitled to be issued with a replacement certificate in respect of the same shares.

(2) A member exercising the right to be issued with such a replacement certificate—

(a) may at the same time exercise the right to be issued with a single certificate or separate certificates; and

(b) must return the certificate which is to be replaced to the company if it is damaged or defaced; and

(c) must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

Share not held in certificated form Uncertificated shares

51. (1) In this article, "the relevant rules" means—

(a) any applicable provision of the Act about the holding, evidencing other than in certificated or transfer of shares title to, form; and

(b) any applicable legislation, rules or other arrangements made under or by virtue of such provision.

(2) The provisions of this article have effect subject to the relevant rules.

(3) Any provision of the articles which is inconsistent with the relevant rules must be disregarded, to the extent that it is inconsistent, whenever the relevant rules apply.

(4) Any share or class of shares of the company may be issued or held on such terms, or in such a way, that—

(a) title to it or them is not, or must not be, evidenced by a certificate; or

(b) it or they may or must be transferred wholly or partly without a certificate.

(5) The directors have power to take such steps as they think fit in relation to—

(a) the evidencing of and transfer of title to uncertificated shares (including the issue of such shares); or in connection with

(b) any records relating to the holding of uncertificated shares; or

(c) the conversion of certificated shares into uncertificated shares; or

(d) the conversion of uncertificated shares into certificated shares.

(6) The company may by notice to the holder of a share require that share—

(a) if it is uncertificated, to be converted into certificated form; and

(b) if it is certificated, to be converted into uncertificated form; to enable it to be dealt with in accordance with the articles.

(7) If—

(a) the articles give the directors power to take action, or require other persons to take action, in order to sell, transfer or otherwise dispose of shares; and

(b) uncertificated shares are subject to that power, but the power is expressed in terms which assume the use of a certificate or other written instrument;

the directors may take such action as is necessary or expedient to achieve the same results when exercising that power in relation to uncertificated shares.

(8) In particular, the directors may take such action as they consider appropriate to achieve the transfer, disposal, forfeiture, re-allotment or surrender of an uncertificated share or otherwise to enforce a lien in respect of it.

(9) Unless the directors otherwise determine, shares which a member holds in uncertificated form must

be treated as separate holdings from any shares which that member holds in certificated form.

(10) A class of shares must not be treated as two classes simply because some shares of that class are held in certificated form and others are held in uncertificated form.

Share warrants

52. (1) The directors may issue a share warrant in respect of any fully paid share.

(2) Share warrants must be— (a) issued in such form; and (b) executed in such manner, as the directors decide.

(3) A share represented by a share warrant may be transferred by delivery of the warrant representing it.

(4) The directors may make provision for the payment of dividends in respect of any share represented by a share warrant.

(5) Subject to the articles, the directors may decide the conditions on which any share warrant is issued. In particular, they may—

(a) decide the conditions on which new warrants are to be issued in place of warrants which are damaged or defaced, or said to have been lost, stolen or destroyed; and

(b) decide the conditions on which bearers of warrants are entitled to attend and vote at general meetings; and

(c) decide the conditions subject to which bearers of warrants may surrender their warrant so as to hold their shares in certificated or uncertificated form instead; and

(d) vary the conditions of issue of any warrant from time to time;

and the bearer of a warrant is subject to the conditions and procedures in force in relation to it, whether or not they were decided or specified before the warrant was issued.

(6) Subject to the conditions on which the warrants are issued from time to time, bearers of share warrants have the same rights and privileges as they would if their names had been included in the register as holders of the shares represented by their warrants.

(7) The company must not in any way be bound by or recognise any interest in a share

represented by a share warrant other than the absolute right of the bearer of that warrant.

Partly Paid Shares

Company's lien over partly paid shares

53. (1) The company has a lien ("the company's lien") over every share which is partly paid for any part of—

(a) that share's nominal value; and

(b) any premium at which it was issued;

which has not been paid to the company, and which is payable immediately or at some time in the future, whether or not a call notice has been sent in respect of it.

(2) The company's lien over a share—

(a) takes priority over any third party's interest in that share; and

(b) extends to any dividend or other money payable by the company in respect of that share and the share proceeds (if the lien is enforced by the sale of that share).

(3) The directors may at any time decide that a share which is or would otherwise be subject to the company's lien shall not be subject to it, either wholly or in part.

Enforcement of the company's lien

54. (1) Subject to the provisions of this article, if—

(a) a lien enforcement notice has been given in respect of a share; and (b) the person to whom the notice was given has failed to comply with it; the company may sell that share in such manner as the directors decide.

(2) A lien enforcement notice—

(a) may only be given in respect of a share which is subject to the company's lien, in respect of which a sum is payable and for the due payment of that sum has passed; and

(b) must specify the share concerned; and

(c) must require payment of the sum payable within 14 days of the notice; and

(d) must be addressed either to the holder of the share or to a person entitled to it by reason of the holder's death, insolvency or otherwise; and

(e) must state the company's intention to sell the share if the notice is not complied with.

(3) Where shares are sold under this article—

(a) the directors may authorise any person to execute an instrument of transfer of the shares to the purchaser or a person nominated by the purchaser, and

(b) the transferee is not bound to see to the application of the consideration, and the transferee's title is not affected by any irregularity in or invalidity of the process leading to the sale.

(4) The net proceeds of any such sale (after payment of the costs of sale and any other costs of enforcing the lien) must be applied—

(a) first, in payment of so much of the sum for which the lien exists as was payable at the date of the lien enforcement notice;

(b) second, to the person entitled to the shares at the date of the sale, but only after the certificate for the shares sold has been surrendered to the company for cancellation or a suitable indemnity has been given for any lost certificates, and subject to a lien equivalent to the company's lien over the shares before the sale for any money payable in respect of the shares after the date of the lien enforcement notice.

(5) A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been sold to satisfy the company's lien on a specified date—

(a) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share; and

(b) subject to compliance with any other formalities of transfer required by the articles or by law, constitutes a good title to the share. *Call notices*

55. (1) Subject to the articles and the terms on which shares are allotted, the directors may send a notice (a "call notice") to a member requiring the member to pay a specified sum of money (a "call") which is payable in respect of shares which that member holds at the date when the directors decide to send the call notice.

(2) A call notice—

(a) may not require a member to pay a call which exceeds the total sum unpaid on that member's shares (whether as to the share's nominal value or any amount payable to the company by way of premium); and

(b) must state when and how any call to which it relates is to be paid; and (c) may permit or require the call to be paid by instalments.

(3) A member must comply with the requirements of a call notice, but no member is obliged to pay any call before 14 days have passed since the notice was sent.

(4) Before the company has received any call due under a call notice the directors may—

(a) revoke it wholly or in part; or

(b) specify a later time for payment than is specified in the notice; by a further notice in writing to the member in respect of whose shares the call is made. *Liability to pay calls*

56. (1) Liability to pay a call is not extinguished or transferred by transferring the shares in respect of which it is required to be paid.

(2) Joint holders of a share are jointly and severally liable to pay all calls in respect of that share.

(3) Subject to the terms on which shares are allotted, the directors may, when issuing shares, provide that call notices sent to the holders of those shares may require them—

(a) to pay calls which are not the same; or (b) to pay calls at different times.

When call notice need not be issued

57. (1) A call notice need not be issued in respect of sums which are specified, in the terms on which a share is issued, as being payable to the company in respect of nominal value or (whether that share premium)—

(a) on allotment; or

(b) on the occurrence of a particular event; or

(c) on a date fixed by or in accordance with the terms of issue.

(2) But if the due date for payment of such a sum has passed and it has not been paid, the holder of the share concerned is treated in all respects as having failed to comply with a call notice in respect of that sum, and is liable to the same consequences as regards the payment of interest and forfeiture.

Failure to comply with call notice: automatic consequences

58. (1) If a person is liable to pay a call and fails to do so by the payment date—

(a) the directors may issue a notice of intended forfeiture to that person; and

(b) until the call is paid, the company must pay interest on the call from the payment date at the relevant rate.

(2) For the purposes of this article—

(a) the "call payment date" is the time when the call notice states that a call is payable, unless the directors give a notice specifying a later date, in which case the later date is the "call payment date";

(b) the "relevant rate" is—

(i) the rate fixed by the terms on which the share was allotted; or

(ii) such other rate as was fixed in the call notice which required payment of the call, or has otherwise been determined by the directors; or

(iii) if no rate is fixed in either of these ways, 5 per cent *per annum*.

(3) The relevant rate must not exceed by

more than 5 percentage points the prescribed rate of interest.

(4) The directors may waive any obligation to pay interest on a call wholly or in part.

Notice of intended forfeiture

59. A notice of intended forfeiture—

(a) may be sent in respect of any share in respect of which a call has been paid as required by a call notice; and

(b) must be sent to the holder of that share or to the person entitled by reason of the holder's death, insolvency or otherwise; and

(c) must require payment of the call and any accrued interest by a date which is not less than 14 days after the date of the notice; and

(d) must state how the payment is to be made; and

(e) must state that if the notice is not complied with, the shares in respect of which the call is payable will be liable to be forfeited.

Directors' power to forfeit shares

60. If a notice of intended forfeiture is not complied with before the date by which payment of the call is required in the notice of intended forfeiture, the directors may decide that any share in respect of which it was given is forfeited, and the forfeiture is to include all dividends or other moneys payable in respect of the forfeited shares and not paid before the forfeiture.

Effect of forfeiture

61. (1) Subject to the articles, the forfeiture of a share extinguishes—

(a) all interests in that share, and all claims and demands against the company in respect of it; and

(b) all other rights and liabilities incidental to the share as between the person whose share it was prior to the forfeiture and the company.

(2) Any share which is forfeited in accordance with the articles—

(a) is deemed to have been forfeited when the directors decide that it is forfeited; and

(b) is deemed to be the property of the company; and

(c) may be sold, re-allotted or otherwise disposed of as the directors think fit.

(3) If a person's shares have been forfeited—

(a) the company must send that person notice that forfeiture has occurred and record it in the register of members; and

(b) that person ceases to be a member in respect of those shares;

(c) that person must surrender the certificate for the shares forfeited to the company for cancellation;

(d) that person remains liable to the company for all sums payable by that person under the articles at the date of forfeiture in respect of those shares, including any interest (whether accrued before or after the date of forfeiture); and

(e) the directors may waive payment of such sums wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal.

(4) At any time before the company disposes of a forfeited share, the directors may decide to cancel the forfeiture on payment of all calls and interest due in respect of it and on such other terms as they think fit.

Procedure following forfeiture

62. (1) If a forfeited share is to be disposed of by being transferred, the company may receive the consideration for the transfer and the directors may authorise any person to execute the instrument of transfer.

(2) A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been forfeited on a specified date—

(a) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share; and

(b) subject to compliance with any other formalities of transfer required by the articles or by law, constitutes a good title to the share.

(3) A person to whom a forfeited share is transferred is not bound to see to the application of the consideration (if any) nor is that person's title to the share affected by any irregularity in or invalidity of the process leading to the forfeiture or transfer of the share.

(4) If the company sells a forfeited share, the person who held it prior to its forfeiture is entitled to receive from the company the proceeds of such sale, net of any commission, and excluding any amount which—

(a) was, or would have become, payable; and

(b) had not, when that share was forfeited, been paid by that person in respect of that share;

but no interest is payable to such a person in respect of such proceeds and the company is not required to account for any money earned on them.

Surrender of shares

62. (1) A member may surrender any share—

(a) in respect of which the directors may issue a notice of intended forfeiture; or

(b) which the directors may forfeit; or

(c) which has been forfeited.

(2) The directors may accept the surrender of any such share.

(3) The effect of surrender on a share is the same as the effect of forfeiture on that share.

(4) A share which has been surrendered may be dealt with in the same way as a share which has been forfeited.

Transfer and Transmission of Shares *Transfers of certificated shares*

63. (1) Certificated shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of—

(a) the transferor; and

(b) (if any of the shares is partly paid) the transferee.

(2) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.

(3) The company may retain any instrument of transfer which is registered.

(4) The transferor remains the holder of a certificated share until the transferee's name is entered in the register of members as holder of it.

(5) The directors may refuse to register the transfer of a certificated share if— (a) the share is not fully paid; or

(b) the transfer is not lodged at the company's registered office or such other place as the directors have appointed; or

(c) the transfer is not accompanied by the certificate for the shares to which it relates, or such other evidence as the directors may reasonably require to show the transferor's right to make the transfer, or evidence of the right of someone other than the transferor to make the transfer on the transferor's behalf; or

(d) the transfer is in respect of more than one class of share; or (e) the transfer is in favour of more than four transferees.

(6) If the directors refuse to register the transfer of a share, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

Transfer of uncertificated shares

64. A transfer of an uncertificated share must not be registered if it is in favour of more than four transferees.

Transmission of shares

65. (1) If title to a share passes to a transmittee, the company may only recognise

the transmittee as having any title to that share.

(2) Nothing in these articles releases the estate of a deceased member from any liability in respect of a share solely or jointly held by that member.

Transmittees' rights

66. (1) A transmittee who produces such evidence of entitlement to shares as the directors may properly require—

(a) may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person; and

(b) subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder had.

(2) But transmittees do not have the right to attend or vote at a general meeting in respect of shares to which they are entitled, by reason of the holder's death or insolvency or otherwise, unless they become the holders of those shares

Exercise of transmittees' rights 67. (1) Transmittees who wish to become the holders of shares to which they have become entitled must notify the company in writing of that wish.

(2) If a certificated share is transferred to another person, the transmittee wishes to have it transferred to the transmittee must execute an instrument of transfer in respect of it.

(3) If an uncertificated share is transferred to another person, the transmittee wishes to have it transferred to the transmittee must—

(a) procure that all appropriate instructions are given to effect the transfer, or

(b) procure that the uncertificated share is changed into certificated form and then execute an instrument of transfer in respect of it.

(4) Any transfer made or executed under this article is to be treated as if it were made or executed by the person from whom the transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

Transmittees bound by prior notices

69. If a notice is given to a member in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the member before the transmittee's name has been entered in the register of members.

Consolidation of Shares

Procedure for disposing of fractions of shares

70. (1) This article applies where—

(a) there has been a consolidation or division of shares; and (b) as a result, members are entitled to fractions of shares.

(2) The directors may—

(a) sell the shares representing the fractions to any person including the company for the best price reasonably obtainable; and

(b) in the case of a certificated share, authorise any person to execute an instrument of transfer of the shares to the purchaser or a person nominated by the purchaser; and

(c) distribute the net proceeds of sale in due proportion among the holders of the shares.

(3) Where any holder's entitlement to a portion of the proceeds of sale amounts to less than a minimum figure determined by the directors, that member's portion may be distributed to an organisation which is a charity for the purposes of the law.

(4) The person to whom the shares are transferred is not obliged to ensure that any purchase money is received by the person entitled to the relevant fractions.

(5) The transferee's title to the shares is not affected by any irregularity in or invalidity of the process leading to their sale.

Distributions

Procedure for declaring dividends

71. (1) The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.

(2) A dividend must not be declared unless the directors have made a recommendation as to

its amount. Such a dividend must not exceed the amount recommended by the directors.

(3) No dividend may be declared or paid unless it is in accordance with members' respective rights.

(4) Unless the members' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each member's holding of shares on the date of the resolution or decision to declare or pay it.

(5) If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.

(6) The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment. (7) If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

Calculation of dividends

72. (1) Except as otherwise provided by the articles or the rights attached to shares, all dividends must be—

(a) declared and paid according to the amounts paid up on the shares on which the dividend is paid; and

(b) apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid.

(2) If any share is issued on terms providing that it ranks for dividend as from a particular date, that share ranks for dividend accordingly.

(3) For the purposes of calculating dividends, no account is to be taken of any amount which has been paid up on a share in advance of the due date for payment of that amount.

Payment of dividends and other distributions

73. (1) Where a dividend or other sum which is payable in respect of a share, it must be paid by one or more of the following means—

(a) transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide; or

(b) sending a cheque made payable to the distribution recipient by post to the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide; or

(c) sending a cheque made payable to such person by post to such person as the distribution recipient has specified either in writing or as the directors may otherwise decide; or

(d) any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.

(2) In the articles, "the distribution recipient" means, in respect of a dividend or other sum which is payable—

(a) the holder of the share; or

(b) if the share has two or more joint holders, whichever of them is named first in the register of members; or

(c) if the holder is no longer entitled to the share by reason of death or insolvency, or otherwise by operation of law, the transmittee.

Deductions from distributions in respect of sums owed to the company

74. (1) If—

(a) a share is subject to the company's lien; and

(b) the directors are entitled to issue a lien enforcement notice in respect of it;

they may, instead of issuing a lien enforcement notice, deduct from any dividend or other sum payable in respect of the share any sum of money which is payable to the company in respect of that share to the extent that they are entitled to require payment under a lien enforcement notice.

(2) Money so deducted must be used to pay any of the sums payable in respect of that share.

(3) The company must notify the distribution recipient in writing of—

(a) the fact and amount of any such deduction; and

(b) any non-payment of a dividend or other sum payable in respect of a share resulting from any such deduction; and

(c) how the money deducted has been applied.

No interest on distributions

75. The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

(a) the terms on which the share was issued; or

(b) the provisions of another agreement between the holder of that share and the company.

Unclaimed distributions

76. (1) All dividends or other sums which are—

(a) payable in respect of shares; and

(b) unclaimed after having been declared or become payable,

may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

(2) The payment of any such dividend or other sum into a separate account does not make the company a trustee in respect of it.

(3) If—

(a) twelve years have passed from the date on which a dividend or other sum became due for payment; and

(b) the distribution recipient has not claimed it;

the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company.

Non-cash distributions

77. (1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets

of shares equivalent or other value securities (including, in any without limitation, company).

(2) If the shares in respect of which such a non-cash distribution is paid are uncertificated, any shares in the company which are issued as a non-cash distribution in respect of them must be uncertificated.

(3) For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution—

(a) fixing the value of any assets;

(b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; (c) vesting any assets in trustees.

Waiver of distributions

78. Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if—

(a) theshare has more than one holder; or

(b) more than one person is entitled to the share, whether by reason of the death or insolvency of one or more joint holders, or otherwise;

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

Capitalisation of profits

Authority to capitalise and appropriation of capitalised sums

79. (1) Subject to the articles, the directors may, if they are so authorised by an ordinary resolution—

(a) decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and

(b) appropriate any sum which they so decide to capitalise (a "capitalised sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the

"persons entitled") and in the same proportions.

(2) Capitalised sums must be applied— (a) on behalf of the persons entitled; and

(b) in the same proportions as a dividend would have been distributed to them.

(3) Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.

(4) A capitalised sum which was appropriated from profits available for distribution may be applied—

(a) in or towards paying up any amounts unpaid on existing shares held by the persons entitled; or

(b) in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.

(5) Subject to the articles the directors may—

(a) apply capitalised sums in accordance with sub-articles (3) and (4) partly in one way and partly in another; and

(b) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and

(c) authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

Part 5: Miscellaneous Provisions

Communications

Means of communication to be used

80. (1) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Act provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company.

(2) Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

(3) A director may agree with the company that notices or documents sent to that director in particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

Failure to notify contact details

81. (1) If—

(a) the company sends two consecutive documents to a member over a period of at least 12 months; and

(b) each of those documents is returned undelivered, or the company receives notification that it has not been delivered;

that member ceases to be entitled to receive notices from the company.

(2) A member who has ceased to be entitled to receive notices from the company becomes entitled to receive such notices again by sending the company—

(a) a new address to be recorded in the register of members; or

(b) if the company has agreed that the member should use a means of communication other than sending things to such an address, the information that the company needs to use that means of communication effectively.

Administrative arrangements Company seals

82. (1) Any common seal may only be used by the authority of the directors.

(2) The directors may decide by what means and in what form any common seal or securities seal is to be used.

(3) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

(4) For the purposes of this article, an authorised person is—

(a) any director of the company; or

(b) the company secretary; or

(c) any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

(5) If the company has an official seal for use abroad, it may only be affixed to a document if its use on that document, or documents of a class to which it belongs, has been authorised by a decision of the directors.

(6) If the company has a securities seal, it may only be affixed to securities by the company secretary or a person authorised to apply it to securities by the company secretary.

(7) For the purposes of the articles, references to the securities seal being affixed to any document include the reproduction of the image of that seal on or in a document by any mechanical or electronic means which has been approved by the directors in relation to that document or documents of a class to which it belongs.

Destruction of documents

83. (1) The company is entitled to destroy—

(a) all instruments of transfer of shares which have been registered, and all other documents on the basis of which any entries are made in the register of members, from six years after the date of registration; and

(b) all dividend mandates, variations or cancellations of dividend mandates, and notifications of change of address, from two years after they have been recorded; and

(c) all share certificates which have been cancelled from one year after the date of the cancellation; and

(d) all paid dividend warrants and cheques from one year after the date of actual payment; and

(e) all proxy notices from one year after the end of the meeting to which the proxy notice relates.

(2) If the company destroys a document in good faith, in accordance with the articles, and without notice of any claim to which that document

may be relevant, it is conclusively presumed in favour of the company that—

(a) entries in the register purporting to have been made on the basis of an instrument of transfer or other document so destroyed were duly and properly made; and

(b) any instrument of transfer so destroyed was a valid and effective instrument duly and properly registered; and

(c) any share certificate so destroyed was a valid and effective certificate duly and properly cancelled; and

(d) any other document so destroyed was a valid and effective document in accordance with its recorded particulars in the books or records of the company.

(3) This article does not impose on the company any liability which it would not otherwise have if it destroys any document before the time at which this article permits it to do so.

(4) In this article, references to the destruction of any document include a reference to its being disposed of in any manner.

No right to inspect accounts and other records

84. Except as provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a member.

Provision for employees on cessation of business

85. The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

Directors' Indemnity and Insurance

Indemnity

86. (1) Subject to sub-article (2), a relevant director of the company may be indemnified out of the company's assets against—

(a) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company;

(b) any other liability incurred by that director or an associated company;

(2) This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Act or by any other provision of law.

(3) In this article—

(a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and

(b) a "relevant director" means any director or former director of the company or an associated company.

Insurance

87. (1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.

(2) In this article—

(a) a "relevant director" means any director or former director of the company or an associated company;

(b) a "relevant loss" means any loss or liability which has been or may be incurred by a relevant director in connection with that director's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company;

(c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

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Part 1: interpretation and limitation of liability

Definitions

1. (1) In the articles, unless the context requires otherwise—

"articles" means the company's articles of association;

"insolvency" includes individual insolvency proceedings in a jurisdiction other than Zimbabwe which have an effect similar to that of insolvency;

"chairperson" has the meaning given in article 12;

"chairperson of the meeting" has the meaning given in article 39;

"Act" means the Companies and Other Business Entities Act [*Chapter: 24:31*];

"director" means a director of the company, and includes any person occupying the position of director, by whatever name called;

"distribution recipient" has the meaning given in article 31;

"document" includes, unless otherwise specified, any document sent or supplied in electronic form;

"fully paid" in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;

"holder" in relation to shares means the person whose name is entered in the register of members as the holder of the shares;

"instrument" means a non-electronic document;

"ordinary resolution" means a resolution other than a special resolution;

"paid" means paid or credited as paid;

"participate", in relation to a directors' meeting, has the meaning given in article 10;

"proxy notice" has the meaning given in article 45;

"shareholder" means a person who is the holder of a share;

"shares" means shares in the company;

"special resolution" has the meaning given in section 175 of the Act;;

"subsidiary" has the meaning given in section 185 of the Act;

"transmittee" means a person entitled to a share by reason of the death or insolvency of a shareholder or otherwise by operation of law;

"writing" means the representation or reproduction of words, symbols or other information in a

visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

(2) Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Act as in force on the date when these articles become binding on the company.

Liability of members

2. The liability of the members is limited to the amount, if any, unpaid on the shares held by them.

Part 2: directors

DIRECTORS' POWERS AND RESPONSIBILITIES

Directors' general authority

3. Subject to the articles, the directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company.

Shareholders' reserve power

4. (1) The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

Directors may delegate

5. (1) Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles— (a) to such person or committee; and

(b) by such means (including by power of attorney); and

(c) to such an extent; and

(d) in relation to such matters or territories; and

(e) on such terms and conditions; as they think fit.

(2) If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.

(3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

Committees

6. (1) Committees of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.

(2) The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

DECISION-MAKING BY DIRECTORS

Directors to take decisions collectively

7. (1) The general rule about decision-making by directors is that any decision of the directors must be either a decision taken in accordance with article 8.

(2) If—

(a) the company has only one director; and

(b) no provision of the articles requires it to have more than one director, the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

Unanimous decisions

8. (1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter.

(2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.

(3) References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.

(4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting.

Calling a directors' meeting

9. (1) Any director may call a directors' meeting by giving notice of the meeting to the directors

or by authorising the company secretary (if any) to give such notice.

(2) Notice of any directors' meeting must indicate—

(a) its proposed date and time; and

(b) where it is to take place; and

(c) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

(3) Notice of a directors' meeting must be given to each director, but need not be in writing.

(4) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

Participation in directors' meetings

10. (1) Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when—

(a) the meeting has been called and takes place in accordance with the articles; and

(b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

(2) In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.

(3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

Quorum for directors' meetings

11. (1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

(2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must never be less than two, and unless otherwise fixed it is two.

(3) If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision—

(a) to appoint further directors; or

(b) to call a general meeting so as to enable the shareholders to appoint further directors.

Chairing of directors' meetings

12. (1) The directors may appoint a director to chair their meetings.

(2) The person so appointed for the time being is known as the chairperson.

(3) The directors may terminate the chairperson's appointment at any time.

(4) If the chairperson is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

Casting vote

13. (1) If the numbers of votes for and against a proposal are equal, the chairperson or other director chairing the meeting has a casting vote.

(2) But this does not apply if, in accordance with the articles, the chairperson or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

Conflicts of interest

14. (1) If a director proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in the decision-making process for quorum or voting purposes.

(2) But if sub-article (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in the decision-making process for quorum and voting purposes.

(3) This sub-article applies when—

(a) the company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in the decision-making process; or

(b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(c) the director's conflict of interest arises from a permitted cause.

(4) For the purposes of this article, the following are permitted causes— (a) a guarantee given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries; and

(b) subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such shares or securities; and

(c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

(5) For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting. (6) Subject to sub-article (7), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairperson whose ruling in relation to any director other than the chairperson is to be final and conclusive.

(7) If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairperson, the question is to be decided by a decision of the directors at that

meeting, for which purpose the chairperson is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

Records of decisions to be kept

15. The directors must ensure that the company keeps a record, in writing, for at least 8 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

Directors' discretion to make further rules

16. Subject to the articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

Appointment of Directors

Methods of appointing directors

17. (1) Any person who is willing to act as a director, and is permitted by law to be a director, may be appointed by—

(a) by ordinary resolution; or

(b) by a decision of the directors.

(2) In any case where, as a result of death, the company has no shareholders and no directors, the personal representatives of the last shareholder have the right, by notice in writing, to appoint a person to be a director.

(3) For the purposes of sub-article (2), where 2 or more shareholders die in circumstances rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder.

Termination of director's appointment

18. A person ceases to be a director as soon as—

(a) that person ceases to be a director by virtue of any provision of the Act or is prohibited from being a director by law; or

(b) on the day on which the person is declared to be insolvent by a court; or

(c) a composition is made with that person's creditors generally in satisfaction of that person's debts; or

(d) a registered medical practitioner who is treating that person gives a written opinion to the company stating that the person has become physically or mentally incapable of acting as a director and may remain so for more than three months; or

(e) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have; or

(f) notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms.

Directors' remuneration

19. (1) Directors may undertake any services for the company that the directors decide.

(2) Directors are entitled to such remuneration as the directors determine—

(a) for their services to the company as directors; and

(b) for any other service which they undertake for the company.

(3) Subject to the articles, a director's remuneration may—

(a) take any form; and

(b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

(4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.

(5) Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

Directors' expenses

20. The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at—

(a) meetings of directors or committees of directors;

(b) general meetings, or

(c) separate meetings of the holders of any class of shares or of debentures of the company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

Part 3: Shares and Distributions

SHARES

All shares to be fully paid up

21. (1) No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the company in consideration for its issue.

(2) This does not apply to shares taken on the formation of the company by the subscribers to the company's memorandum.

Powers to issue different classes of share

22. (1) Subject to the articles, but without prejudice to the rights attached to any existing share, the company may issue shares with such rights or restrictions as may be determined by ordinary resolution.

(2) The company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.

Company not bound by less than absolute interests

23. Except as required by law, no person is to be recognised by the company as holding any share upon any trust, and except as otherwise required by law or the articles, the company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

Share certificates

24. (1) The company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.

(2) Every certificate must specify—

(a) in respect of how many shares, of what class, it is issued; and

(b) the nominal value of those shares; and

(c) that the shares are fully paid; and

(d) any distinguishing numbers assigned to them.

(3) No certificate may be issued in respect of shares of more than one class.

(4) If more than one person holds a share, only one certificate may be issued in respect of it.

(5) Certificates must—

(a) have affixed to them the company's common seal; or (b) be otherwise executed in accordance with the Act.

[*If a company is a registered user of the electronic registry, it may issue uncertificated shares, that is to say, shares in dematerialised form, subject to the conditions of the issuance of such shares in section 153 of the Act.*]

Replacement share certificates

25. (1) If a shareholder's certificate issued in respect of a shares is—

(a) damaged or defaced; or

(b) said to be lost, stolen or destroyed;

that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.

(2) A shareholder exercising the right to be issued with such a replacement certificate—

(a) may at the same time exercise the right to be issued with a single certificate or separate certificates; and

(b) must return the certificate which is to be replaced if it is damaged or defaced; and

(c) must pay a fee of 25 United States cents per certificate; and (d) must comply with such conditions as to evidence and indemnity as the directors may determine.

[*If a company is a registered user of the electronic registry, it may issue replacement uncertificated shares, that is to say, shares in dematerialised form, subject to the conditions of the issuance of such shares in section 153 of the Act.*] *Share transfers*

26. (1) Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor.

(2) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.

(3) The company may retain any instrument of transfer which is registered.

(4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.

(5) The directors may refuse to register the transfer of a share, and if they do so, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

[*If a company is a registered user of the electronic registry, it may transfer uncertificated shares, otherwise than by instrument, subject to the conditions of the transfer of such shares in section 153 of the Act.*]

Transmission of shares

27. (1) If title to a share passes to a transmittee, the company may only recognise the transmittee as having any title to that share.

(2) A transmittee who produces such evidence of entitlement to shares as the directors properly require may—

(a) subject to the articles, choose either to become the holder of those shares or to have them transferred to another person; and

(b) subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder had.

(3) But transmittees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or insolvency or otherwise, unless they become the holders of those shares.

Exercise of transmittees' rights

28. (1) Transmittees who wish to become the holders of shares to which they have become entitled must notify the company in writing of that wish.

(2) If the transmittee wishes to have a share transferred to another person, the transmittee must execute an instrument of transfer in respect of it.

(3) Any transfer made or executed under this article is to be treated as if it were made or executed by the person from whom the

transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

Transmittees bound by prior notices

29. If a notice is given to a shareholder in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the shareholder before the transmittee's name has been entered in the register of members.

Dividends and Other Distributions

Procedure for declaring dividends

30. (1) The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.

(2) A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.

(3) No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.

(4) Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.

(5) If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.

(6) The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment. (7) If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

Payment of dividends and other distributions

31. (1) Where a dividend or other sum which is payable in respect of a share, it must be paid by the following means—

(a) transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;

(b) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;

(c) sending a cheque made payable to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or

(d) any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.

(2) In the articles, "the distribution recipient" means, in respect of a sum of a share for which a dividend is payable—

(a) the holder of the share; or

(b) if the share has two or more joint holders, whichever of them is named first in the register of members; or

(c) if the holder is no longer entitled to the share by reason of death or insolvency, or otherwise by operation of law, the transmittee.

No interest on distributions

32. The company may not pay interest on any dividend in respect of a share unless otherwise provided by—

(a) the terms on which the share was issued, or

(b) the provisions of another agreement between the holder of that share and the company.

Unclaimed distributions

33. (1) All dividends or other sums which are—

(a) payable in respect of shares; and

(b) unclaimed after having been declared or become payable;

may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

(2) The payment of any such dividend or other sum into a separate account does not make the company a trustee in respect of it.

(3) If—

(a) eight years have passed from the date on which a dividend or other sum became due for payment; and

(b) the distribution recipient has not claimed it;

the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company.

Non-cash distributions

34. (1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).

(2) For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution—

(a) fixing the value of any assets; and

(b) paying cash to any recipient on the basis of that value in order to adjust the rights of recipients; and (c) vesting any assets in trustees.

Waiver of distributions

35. Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if—

(a) the share has more than one holder; or

(b) more than one person is entitled to the share, whether by reason of the death or insolvency of one or more joint holders, or otherwise;

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

Capitalisation of profits

Authority to capitalise and appropriation of capitalised sums

36. (1) Subject to the articles, the directors may, if they are so authorised by an ordinary resolution—

(a) decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and

(b) appropriate any sum which they so decide to capitalise (a "capitalised sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions.

(2) Capitalised sums must be applied—

(a) on behalf of the persons entitled; and

(b) in the same proportions as a dividend would have been distributed to them.

(3) Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.

(4) A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.

(5) Subject to the articles the directors may—

(a) apply capitalised sums in accordance with sub-articles (3) and (4) partly in one way and partly in another; and

(b) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and

(c) authorise any person to enter into an agreement with the company on behalf of all the persons entitled

which is binding on them in respect of the allotment of shares and debentures to them under this article.

Part 4: decision-making By Shareholders

ORGANISATION OF GENERAL MEETINGS

Attendance and speaking at general meetings

37. (1) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

(2) A person is able to exercise the right to vote at a general meeting when—

(a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and

(b) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it. (4) In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.

(5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them. *Quorum for general meetings*

38. No business other than the appointment of the chairperson of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

Chairing general meetings 39. (1) If the directors have appointed a chairperson, the chairperson shall chair general meetings if present and willing to do so.

(2) If the directors have not appointed a chairperson, or if the chairperson is

unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start—

(a) the directors present; or

(b) (if no directors are present), the meeting;

must appoint a director or shareholder to chair the meeting, and the appointment of the chairperson of the meeting must be the first business of the meeting.

(3) The person chairing a meeting in accordance with this article is referred to as "the chairperson of the meeting".

Attendance and speaking by directors and non-members

40. (1) Directors may attend and speak at general meetings, whether or not they are shareholders.

(2) The chairperson of the meeting may permit other persons who are not—

(a) shareholders of the company; or

(b) otherwise entitled to exercise the rights of shareholders in relation to general meetings;

to attend and speak at a general meeting.

Adjournment

41. (1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairperson of the meeting must adjourn it.

(2) The chairperson of the meeting may adjourn a general meeting at which a quorum is present if—

(a) the meeting consents to an adjournment; or

(b) it appears to the chairperson of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

(3) The chairperson of the meeting must adjourn a general meeting if directed to do so by the meeting.

(4) When adjourning a general meeting, the chairperson of the meeting must— (a) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors; and

(b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

(5) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given)—

(a) to the same persons to whom notice of the company's general meetings is required to be given; and

(b) containing the same information which such notice is required to contain.

(6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place. *Voting at general meetings*

Voting: general

42. A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

Errors and disputes

43. (1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

(2) Any such objection must be referred to the chairperson of the meeting, whose decision is final.

Poll votes

44. (1) A poll on a resolution may be demanded—

(a) in advance of the general meeting where it is to be put to the vote, or

(b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

(2) A poll may be demanded by— (a) the chairperson of the meeting; or

(b) thedirectors; or

(c) two or more persons having the right to vote on the resolution; or

(d) a person or persons representing not less than one tenth of the total voting rights of all the shareholders having the right to vote on the resolution.

(3) A demand for a poll may be withdrawn if—

(a) thepoll has not yet been taken; and

(b) thechairperson of the meeting consents to the withdrawal.

(4) Polls must be taken immediately and in such manner as the chairperson of the meeting directs.

Content of proxy notices

45. (1) Proxies may only validly be appointed by a notice in writing (a "proxy notice") which—

(a) states the name and address of the shareholder appointing the proxy; and

(b) identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed; and

(c) is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and

(d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.

(2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

(3) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

(4) Unless a proxy notice indicates otherwise, it must be treated as—

(a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and

(b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

Delivery of proxy notices

46. (1) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.

(2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.

(3) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

(4) If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

Amendments to resolutions

47. (1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—

(a) notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairperson of the meeting may determine); and

(b) the proposed amendment does not, in the reasonable opinion of the chairperson of the meeting, materially alter the scope of the resolution.

(2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—

(a) the chairperson of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and

(b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

(3) If the chairperson of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairperson's error does not invalidate the vote on that resolution.

Part 5: Administrative Arrangements

Means of communication to be used

48. (1) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Act provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company.

(2) Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

(3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

Company seals

49. (1) Any common seal may only be used by the authority of the directors. (2) The directors may decide by what means and in what form any common seal is to be used.

(3) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

(4) For the purposes of this article, an authorised person is—

(a) any director of the company;

(b) the company secretary (if any); or

(c) any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

No right to inspect accounts and other records

50. Except as provided by law or by an ordinary resolution of the directors or the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a shareholder.

Provision for employees on cessation of business

51. The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

Directors' Indemnity and Insurance

Indemnity

52. (1) Subject to sub-article (2), a relevant director of the company may be indemnified out of the company's assets against—

(a) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company;

(b) any liability incurred by that director in connection with the activities of the company or an associated company in its capacity as a trustee of a pension scheme (as defined in section 84(6) of the Act),

(c) any other liability incurred by that director as an officer of the company or an associated company.

(2) This article does not authorise any indemnity which would be prohibited or rendered void by

any provision of the Act or by any other provision of law.

(3) In this article—

(a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and

(b) a "relevant director" means any director or former director of the company or an associated company.

Insurance

53. (1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.

(2) In this article—

(a) a "relevant director" means any director or former director of the company or an associated company;

(b) a "relevant loss" means any loss or liability which has been or may be incurred by a relevant director in connection with that director's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company; and

(c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

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PART 1: INTERPRETATION AND LIMITATION OF LIABILITY

Definitions

1. (1) In the articles, unless the context requires otherwise— "articles" means the company's articles of association;

"chairperson" has the meaning given in article 12;

"chairperson of the meeting" has the meaning given in article 25;

"Act" means the Companies and Other Business Entities Act [*Chapter 24:31*];

"director" means a director of the company, and includes any person occupying the position of director, by whatever name called;

"document" includes, unless otherwise specified, any document sent or supplied in electronic form;

"insolvency" includes in relation to an individual a proceedings in jurisdiction other than Zimbabwe which have an effect similar to that of insolvency;

"member" has the meaning given in section 76(b) of the Act;

"ordinary resolution" has the meaning given in section 175(4) of the Act;

"participate", in relation to a directors' meeting, has the meaning given in article 10;

"proxy notice" has the meaning given in article 31;

"special resolution" has the meaning given in section 175 of the Act;

"subsidiary" has the meaning given in section 185 of the Act; and

"writing" means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

(2) Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Act as in force on the date when these articles become binding on the company.

Liability of members

2. The liability of each member is limited to $1,00, being the amount that each member undertakes to contribute to the assets of the company in the event of its being wound up while a member or within one year after he is a member, he ceases to be a member, for—

(a) payment of the company's debts and liabilities contracted before he ceases to be a member; and

(b) payment of the costs, charges and expenses of winding up, and (c) adjustment of the rights of the contributories among themselves. PART 2

DIRECTORS

Directors' Powers and Responsibilities *Directors' general authority*

3. Subject to the articles, the directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company.

Members' reserve power

4. (1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

Directors may delegate

5. (1) Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles— (a) to such person or committee;

(b) by such means (including by power of attorney);

(c) to such an extent;

(d) in relation to such matters or territories; and

(e) on such terms and conditions; as they think fit.

(2) If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.

(3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

Committees

6. (1) Committees of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.

(2) The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

DECISION-MAKING BY DIRECTORS

Directors to take decisions collectively

7. (1) The general rule about decision-making by directors is that any decision of the directors must be either a majority decision taken in accordance with a meeting or a decision taken in accordance with article 8.

(2) If—

(a) the company only has one director, and

(b) no provision of the articles requires it to have more than one director, the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

Unanimous decisions

8. (1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter.

(2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.

(3) References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.

(4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting.

Calling a directors' meeting

9. (1) Any director may call a directors' meeting by giving notice of the meeting to the

directors or by authorising the company secretary (if any) to give such notice.

(2) Notice of any directors' meeting must indicate—

(a) its proposed date and time; and

(b) where it is to take place; and

(c) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

(3) Notice of a directors' meeting must be given to each director, but need not be in writing.

(4) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

Participation in directors' meetings

10. (1) Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when—

(a) the meeting has been called and takes place in accordance with the articles; and

(b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

(2) In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.

(3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

Quorum for directors' meetings

11. (1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

(2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must never be less than two, and unless otherwise fixed it is two.

(3) If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision—

(a) to appoint further directors; or

(b) to call a general meeting so as to enable the members to appoint further directors.

Chairing of directors' meetings

12. (1) The directors may appoint a director to chair their meetings.

(2) The person so appointed for the time being is known as the chairperson.

(3) The directors may terminate the chairperson's appointment at any time.

(4) If the chairperson is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

Casting vote

13. (1) If the numbers of votes for and against a proposal are equal, the chairperson or other director chairing the meeting has a casting vote.

(2) But this does not apply if, in accordance with the articles, the chairperson or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

Conflicts of interest

14. (1) If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in the decision-making process for quorum or voting purposes.

(2) But if sub-article (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in the decision-making process for quorum and voting purposes.

(3) This paragraph applies when—

(a) the company by ordinary resolution disapplies the provision of the

articles which would otherwise prevent a director from being counted as participating in the decision-making process; or

(b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(c) the director's conflict of interest arises from a permitted cause.

(4) For the purposes of this article, the following are permitted causes—

(a) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;

(b) subscription, or an agreement to subscribe, for securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such securities;

(c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

(5) For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting.

(6) Subject to sub-article (7), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairperson whose ruling in relation to any director other than the chairperson is to be final and conclusive.

(7) If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairperson, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairperson is not to be counted as participating in the meeting (or that part

of the meeting) for voting or quorum purposes.

Records of decisions to be kept

15. The directors must ensure that the company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

Directors' discretion to make further rules

16. Subject to the articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

APPointment of Directors

Methods of appointing directors

17. (1 Any person who is willing to act as a director, and so, may be appointed to be a director— (a) by ordinary resolution; or

(b) by a decision of the directors.

(2) In any case where, as a result of death, the company has no members and no directors, the personal representatives of the last member to have died have the right, by notice in writing, to appoint a person to be a director.

(3) For the purposes of paragraph (2), where 2 or more members die in circumstances rendering it uncertain who was the last to die, a younger member is deemed to have survived an older member.

Termination of director's appointment

18. A person ceases to be a director as soon as—

(a) that person ceases to be a director by virtue of any provision of the Act or is prohibited from being a director by law; or

(b) a liquidation order is made against that person; or

(c) a composition is made with that person's creditors generally in satisfaction of that person's debts; or

(d) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more

than three months; or

(e) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have; or

(f) notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms.

Directors' remuneration

19. (1) Directors may undertake any services for the company that the directors decide.

(2) Directors are entitled to such remuneration as the directors determine—

(a) for their services to the company as directors; and

(b) for any other service which they undertake for the company.

(3) Subject to the articles, a director's remuneration may—

(a) take any form; and

(b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

(4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.

(5) Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

Directors' expenses

20. The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at—

(a) meetings of directors or committees of directors; or

(b) general meetings; or

(c) separate meetings of the holders of debentures of the company; or otherwise in

connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

PART 3

MEMBERS

BECOMING AND CEASING TO BE A MEMBER

Applications for membership

21. No person shall become a member of the company unless—

(a) that person has completed an application for membership in a form approved by the directors; and

(b) the directors have approved the application.

Termination of membership

22. (1) A member may withdraw from membership of the company by giving 7 days' notice to the company in writing.

(2) Membership is not transferable.

(3) A person's membership terminates when that person dies or ceases to exist.

ORGANISATION OF GENERAL MEETINGS

Attendance and speaking at general meetings

23. (1) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

(2) A person is able to exercise the right to vote at a general meeting when—

(a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and

(b) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

(4) In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.

(5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them. *Quorum for general meetings*

24. No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

Chairing general meetings 25.(1) If the directors have appointed a chairperson, the chairperson shall chair general meetings if present and willing to do so.

(2) If the directors have not appointed a chairperson, or if the chairperson is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start—

(a) the directors present; or

(b) (if no directors are present), the meeting;

must appoint a director or member to chair the meeting, and the appointment of the chairperson of the meeting must be the first business of the meeting.

(3) The person chairing a meeting in accordance with this article is referred to as "the chairperson of the meeting".

Attendance and speaking by directors and non-members

26. (1) Directors may attend and speak at general meetings, whether or not they are members.

(2) The chairperson of the meeting may permit other persons who are not members of the company to attend and speak at a general meeting.

Adjournment

27. (1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairperson of the meeting must adjourn it.

(2) The chairperson of the meeting may adjourn a general meeting at which a quorum is present if—

(a) themeeting consents to an adjournment; or

(b) it appears to the chairperson of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

(3) The chairperson of the meeting must adjourn a general meeting if directed to do so by the meeting.

(4) When adjourning a general meeting, the chairperson of the meeting must—

(a) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors; and

(b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

(5) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given)—

(a) to the same persons to whom notice of the company's general meetings is required to be given; and

(b) containing the same information which such notice is required to contain.

(6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

VOTING AT GENERAL MEETINGS

Voting: general

28. A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

Errors and disputes

29.(1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

(2) Any such objection must be referred to the chairperson of the meeting whose decision is final.

Poll votes

31. (1) A poll on a resolution may be demanded—

(a) in advance of the general meeting where it is to be put to the vote; or

(b) at a general meeting, either before or immediately after a show of hands on that resolution is declared.

(2) A poll may be demanded by— (a) the chairperson of the meeting; or

(b) the directors; or

(c) two or more persons having the right to vote on the resolution; or

(d) a person or persons representing not less than one tenth of the total voting rights of all the members having the right to vote on the resolution.

(3) A demand for a poll may be withdrawn if—

(a) the poll has not yet been taken; and

(b) the chairperson of the meeting consents to the withdrawal.

(4) Polls must be taken immediately and in such manner as the chairperson of the meeting directs.

Content of proxy notices

32. (1) Proxies may only validly be appointed by a notice in writing (a "proxy notice") which—

(a) states the name and address of the member appointing the proxy; and

(b) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed; and

(c) is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the directors may determine; and

(d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.

(2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

(3) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

(4) Unless a proxy notice indicates otherwise, it must be treated as—

(a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and

(b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

Delivery of proxy notices

33. (1) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.

(2) An appointment under a proxy notice may be revoked by delivering a notice in writing given to the company by or on behalf of the person by whom or on whose behalf the proxy notice was given.

(3) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

(4) If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the

authority of the person who executed it to execute it on the appointor's behalf.

Amendments to resolutions

34. (1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—

(a) notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairperson of the meeting may determine), and

(b) the proposed amendment does not, in the reasonable opinion of the chairperson of the meeting, materially alter the scope of the resolution.

(2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—

(a) the chairperson of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and

(b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

(3) If the chairperson of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairperson's error does not invalidate the vote on that resolution.

PART 4

ADMINISTRATIVE ARRANGEMENTS

Means of communication to be used

35. (1) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Act provides for documents or information which are authorised or

required by any provision of that Act to be sent or supplied by or to the company.

(2) Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

(3) A director may agree with the company that notices or documents sent to that director in particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

Company seals

36. (1) Any common seal may only be used by the authority of the directors. (2) The directors may decide by what means and in what form any common seal is to be used.

(3) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

(4) For the purposes of this article, an authorised person is—

(a) any director of the company; or

(b) the company secretary (if any); or

(c) any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

No right to inspect accounts and other records

37. Except as provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a member.

Provision for employees on cessation of business

38. The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former

director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

DIRECTORS' INDEMNITY AND INSURANCE

Indemnity

39. (1) Subject to sub-article (2), a relevant director of the company may be indemnified out of the company's assets against—

(a) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company,

(b) any liability incurred by that director in connection with the activities of the company or an associated company in its capacity as a trustee of a pension scheme (as defined in section 84(6) of the Act),

(c) any other liability incurred by that director as an officer of the company or an associated company.

(2) This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Act or by any other provision of law.

(3) In this article—

(a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and

(b) a "relevant director" means any director or former director of the company or an associated company.

Insurance

40. (1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.

(2) In this article—

(a) a "relevant director" means any director or former director of the company or an associated company;

(b) a "relevant loss" means any loss or liability which has been or may be incurred by a relevant director in connection with that director's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company;

(c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

TABLE D: MODEL BY-LAWS FOR PRIVATE BUSINESS CORPORATIONS

INDEX TO THE BY-LAWS

By-laws

1. Members of PBC.
2. Principal place of business of PBC. 3. Purpose and powers of PBC.
4. Members' percentage interests and admission of new members.
5. Members' contributions to PBC's capital.
6. Members' voting and decisions. 7. Managers and agents of PBC.
8. Distributions.
9. Sale or other transfer of member's interest
10. Accounting and financial matters
11. Termination of membership.

The persons listed in By-Law 1 below (the "Members") adopt this agreement as the by-laws of_____ ("PBC") registered under the Companies and Other Business Entities Act (the "Act"). *Members of PBC*

1. The following persons are all of the Members of the PBC registered on the ----------:

[*State below the full name of each Member and the member's identity particulars*]

_____

_

_____

_____

…….*more or fewer lines as needed*]

Principal place of business of PBC

2. The PBC's principal place of business is:

Purpose and powers of PBC 3.

The business purpose of the PBC is:

_____et c.

[*state this to the extent desired*]

and to carry on any other lawful business or activity relating to the foregoing. The PBC shall have the power to do acts necessary or proper for that purpose.

Members' percentage interests and admission of new members

4. (1) The percentage interest of each Member in the PBC is:

Name: _____: ____%

Name:_____: ____% Name: _____: ____%

[.*more or fewer lines as needed*]

(2) Each member's interest at any time will be that member's then-current percentage of the total amounts which all members have paid in to the PBC's capital in exchange for an interest.

(3) A person shall be admitted as a member of the PBC after its formation only—

(a) with the unanimous consent of the members; or

(b) after the death of a member, as a result of the nomination by that member of a person to be his or her successor to his or her interest.

Members' contributions to PBC's capital

5. (1) A member's payment into the PBC for the member's interest may be in money, in other tangible or intangible property, in services already performed for the PBC, or in a binding obligation to contribute money or property.

(2) The percentage interest to be issued to a member for non-monetary contributions shall be determined by agreement of the members.

(3) If a member's contribution is other than in money, an agreed dollar value of that contribution may be stated.

Members' voting and decisions

6. (1) Members of a private business corporation shall (in addition to the meetings they are obliged to hold under the Act) hold at least one regular meeting each year, no later than six months after the end of the PBC's financial year.

(2) Any member of the PBC may at any time convene a special meeting by giving all members reasonable notice, not necessarily in writing, of the time and place and purpose of the meeting:

Provided that the time of the meeting shall be at least seven days from the date when the meeting is notified to all members. and the place of the meeting shall be reasonably convenient for the attendance of members.

(3) At any meeting of members of the PBC—

(a) to constitute a quorum, there shall be present in person or by proxy, not necessarily in writing, members whose interests exceed fifty *per centum* of the total members' interests;

(b) the chairperson of the meeting shall be the member elected as chairperson of the PBC or, if no member has been so elected or he or she is not present, the meeting shall elect its own chairperson;

(c) the chairperson shall not have a casting vote;

(d) each member shall have a vote corresponding with the percentage of his or her interest.

(4) The secretary at every meeting of the PBC (who may or may not be a member) shall take the minutes of all proceedings of the meeting, and any such minutes, if purporting to be signed by the chairperson of the meeting or of the next succeeding meeting, shall be evidence of the proceedings and evidence that the meeting was properly convened and conducted.

(5) The minutes need not be a verbatim report of the proceedings but must specify which members

were in attendance at the meeting concerned, the issues voted on and the results of each vote.

(6) A resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at meetings of members shall, with effect from the date of the last signature, which date shall be recorded on the signed document, be as valid and effective as if it had been passed at a meeting of members duly convened and held in terms of this by-law.

Managers and agents of PBC

7. (1) Subject to subsection (2), all members of the PBC shall be agents and managers of the PBC.

(2) The members may agree to appoint one or more managers and agents of the PBC, whose functions and powers will be embodied in a written agreement between the PBC and the managers and agents concerned.

Distributions

8. (1) A PBC may make distributions to its members at any time with the consent of members whose interests exceed fifty *per centum* of the total members' interests (2) Any distributions to members shall be made to them in proportion to their percentage interests.

(3) When a member becomes entitled to receive a distribution, that member becomes a creditor of the PBC with respect to the distribution

Sale or other transfer of member's interest

9. (1) Except by way of succession contemplated under By-Law 4(3)(b), a member may not sell or transfer his or her interest unless—

(a) the interest has been offered to the PBC first and (b) if members; the PBC or its members do not buy the interest, the other members unanimously agree to its transfer to another person.

(2) A transfer of an interest does not by itself cause the transferee to become a member of the

PBC. If a transferee does not become a member in accordance with By-Law 4, the transfer shall be an assignment only of the transferor's rights to distributions from the PBC, and the transferor shall continue to be a member with the other rights of a member and all duties and obligations of a member.

Accounting and financial matters

10. (1) The PBC shall keep accounting records which are necessary and sufficient to present fairly its business, state of affairs, transactions and financial position. This shall include records which show—

(a) the PBC's assets and liabilities, income, undistributed income, and any revaluations of fixed assets; and

(b) cash received and paid out in sufficient detail to enable the nature of the transactions and, except in the case of cash sales, the names of the parties to the transactions, to be identified; and

(c) goods purchased and sold on credit and services received and rendered on credit, in sufficient detail to enable the nature of those goods or services and the parties to the transactions to be identified; and

(d) all contributions by members, distributions to members, any loans to or from members and payments made thereunder, and all payments to members for any reason.

(2) Accounting records shall be kept at the principal place of business or the registered office of the PBC; shall be kept in such a manner as to provide adequate precautions against falsification and to facilitate the discovery of any falsification; and shall be open and available at all reasonable times for inspection by any member.

(3) In addition to the financial accounts stated above, the PBC shall comply with the requirements of any bank or other financial institution, and with all other laws and regulations including such of the financial accounting and reporting requirements and standards of the Public Accountants and Auditors Board under the Public Accountants and Auditors Act as may be applicable with respect to that PBC or its financial accounts and reporting.

Termination of membership

11. (1) A person shall cease to be a member of the PBC upon any of the following events—

(a) death or insolvency as provided for in the Act; or

(b) voluntary withdrawal as provided for in subsection (2); or

(c) expulsion as provided for in subsection (4);

(d) transfer of all of the person's interest to another person who becomes a member as provided for in these By-Laws, or to another existing member, as provided for in these By-Laws.

(2) A member of the PBC has the right at any time by withdraw as a member at his or her withdrawal giving written notice of registered office with to the PBC at its other members. The copies sent to all withdrawal shall be effective on the PBC's receipt of the notice or on such later date as may be stated in the notice.

(3) A member who withdraws in good standing with the PBC is entitled to receive from the within a reasonable time after ceasing PBC, a member, the fair value of his or her to be a interest as of the date of ceasing member. Any such payment shall be considered a distribution subject to the restrictions on distributions stated in By-Law 8.

(4) A member may be expelled by the unanimous vote of the other members if the member wrongfully damaged the PBC or other members, wilfully or persistently violated the PBC's Incorporation Statement or By-Laws or duties of the member, or engaged in conduct that makes it impossible to carry on the PBC's business with the member.

(5) A member who is expelled from the PBC is entitled to receive after ceasing to be a member, the fair value of his or her interest as of the date of ceasing to be a member, minus the value of any damages assessed that member may have caused the PBC. Any such

payment shall be considered a distribution subject to the restrictions on distributions stated in By-Law 8. Any dispute as to whether damages are payable or their extent shall be determined by arbitration in accordance with the Arbitration Act.

SEVENTH SCHEDULE (**Section 282**)

User Agreement

Scope and Purpose of User Agreement

1. (1). This User Agreement ("Agreement") enables the user to (*tick applicable*):

(a) have access to the electronic registry as a researcher ☐;

(b) to engage in company registration work and/or notarial practice ; ☐;

(c) to engage in company registration work as a self-actor ☐

(2) This Agreement governs access to, and the use and disclosure of data in, the electronic registry.

Interpretation

2. Unless the context otherwise requires, any word or phrase used in this Agreement which has been defined in the Companies and other Business Entities Act ("the Act") shall bear the same meaning when used in this Agreement.

Electronic Registry User Agreement Training Course

3. The Registered User agrees (if he or she has not already completed such course) to complete at his or her own expense the Electronic Registry User Agreement Training Course prescribed by the Registrar as a condition for the continuance of this Agreement, and such additional courses in connection with the use of the electronic registry as the Registrar may from time to time prescribe.

Interconnectivity requirements

4. The Registered User shall—

(a) use the computer equipment and facilities of a class or kind specified in regulations made in terms of **section 301** of the Act or of the description specified in the annexure hereto;

(b) affix a digital signature that is compliant with the requirements of **section**

284 (1) of the Act to any electronic communication or record in such a manner as may be directed by the Registrar

(c) allow reasonable access to the computer system of the Registered User by the Registrar for such verification and audit purposes as by the Act and this Agreement may be required or expedient;

(d) keep such electronic records in the manner and for such period as by the direction and in the opinion of the Registrar are necessary or convenient to be kept in connection with the proper functioning of the electronic Registry

Confidentiality and security

5. (1) This Agreement prohibits the Registered User from releasing, disclosing, publishing, or presenting any individually identifying information obtained under its terms except—

(a) in the normal course of company registration work or notarial practice; or

(b) with the consent of the individual concerned; or

(c) to such extent as may be prescribed under regulations made in terms of **section 301** of the Act.

(2) No person other than the Registered User or his or her authorised agents (whose names and other relevant particulars in advance to the Registrar) shall be notified or have access to the electronic registry.

(3) The Registered User hereby acknowledges that he or she is aware of the provisions of **section 291** ("Restrictions on disclosure of information") of the Act.

Integrity of electronic registry data

6. (1) The Registered User or his or her authorised agents undertake that, in accessing or obtaining any records by means of the electronic registry, every precaution shall be taken to ensure the integrity of such records against

unauthorised alteration or damage or unauthorised access by persons who are not registered users.

(2) The Registered User hereby acknowledges that he or she is aware of the provisions of **section 290** ("Unlawful uses of computer systems") of the Act.

Electronic signatures and passwords

7. (1) If or to the extent that the Registrar does not allocate to the Registered User any digital signature or password for accessing and using the electronic registry, the Registered User shall without delay give notice to the Registrar of every electronic signature and password to be used by the registered user for the purpose of accessing and using the electronic registry, and the registered user undertakes that no other electronic signature and password than the ones referred to in this clause shall be used by him or her for that purpose.

(2) The Registered User undertakes that every precaution shall be taken to ensure that every electronic signature and password referred to in sub-clause (1) is protected against unauthorised access by or disclosure to persons who are not his or her authorised agents.

(3) The Registered User hereby acknowledges that he or she is aware of the provisions of **section 287** ("Obligations, indemnities and presumptions with respect to digital signatures") of the Act.

Use of electronic registry data for gain

8. This Agreement prohibits a Registered User from releasing, disclosing, publishing, or presenting any information obtained from the electronic registry for gain except—

(a) in the normal course of company registration work or notarial practice; or

(b) to such extent and under such conditions as may be prescribed under regulations made in terms of **section 301** of the Act

Commencement, Term and Renewal of Agreement

9. (1) A non-refundable application fee of such amount as shall be prescribed under regulations made in terms of **section 301** of the Act must be paid before the registered user may access the electronic registry.

(2) This agreement expires on the 31st December of every year but is automatically renewable (subject to previous compliance with its terms) upon

payment of a non-refundable renewal fee of such amount as shall be prescribed under regulations made in terms of **section 301** of the Act.

Breach and termination of Agreement

10. (1) Any violation of the terms of this Agreement, or the happening of event specified in **section 283**(4) of the Act, shall be grounds for the immediate termination of this Agreement.

(2) The Registrar shall determine, on reasonable grounds—

(a) whether a registered user has violated any term of the Agreement; (b) what actions, if any, are necessary to remedy a violation of this Agreement, and the Registered User shall comply with pertinent instructions from Registrar

(3) Actions taken by Registrar may include but not be limited to—

(a) theimposition of a civil penalty payable to and forming past of the funds of the Registrynot exceeding five United States dollars for every day that the registered user fails to comply with an instruction of the Registrar after being notified of it (provided that the amount of such penalty shall not accumulate so as to exceed nine hundred United States dollars, at which point the Registrar must terminate this Agreement or take other action to enforce this Agreement);

(b) providing notice of the termination or violation to affected parties and prohibiting Registered User from accessing the electronic registry in the future

Material changes

11. Any material changes to the particulars furnished by a registered user in his or her application to become a registered user or in the particulars furnished below shall be promptly notified the Registrar, and in any event within seven days from the change having occurred or been made.

Signed: .....

Date: .....

Print or Type Name: .....

Title:.....

Organization: .....

Address: .....

Address: .....

Phone (land and/or cell): ..... Fax: .....

E-mail: .....

EIGHTH SCHEDULE (Section 104)

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 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 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 or her agreeing to subscribe for, or of his or her 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.

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 was given or, if given as such, the existing members or debenture holders 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 or her 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 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 or her name and address, or to any partnership, syndicate or other association of which he or she 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 her or to it in cash or shares or otherwise by any person either to induce him or her to become, or to qualify him as, a director or otherwise for services rendered by him or her 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

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 years immediately preceding the prospectus, giving particulars of each such class of shares on which dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any of those 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 members subsidiaries, so far as they concern 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 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 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 the 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 paragraph 18(3) 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, 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 business 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 period shall 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 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

NINTH SCHEDULE (Section 18 (4) and (5))

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 respect of which the document is to be furnished or notice given took place	*Penalty to be paid*
(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

TENTH SCHEDULE (Section 303 (a))

Form For re-registration oF Companies and pBCs Application

for reregistration of a company or

PBC Document No:

(for office use only)

Please note that the information in this form must be either typewritten or printed. It must not be handwritten. If there is insufficient space on the form to supply the information required, attach a separate sheet containing the information set out in the prescribed format.

1. According to section 303(a) of the new Companies and Other Business Entities Act every existing Company or PBC must re-register within 12 months of the date of commencement of the Act ending on ….. The effect of failing to re-register is that the existing company or PBC will be struck off the register with effect from ……, in

accordance with section 303(a) of the new Act, and will no longer be able to carry on business as a company unless it registers as a new company or PBC under the new Act after that date.

2. A company or PBC must re-register under its original name without prejudice to its right after re-registration to change their name if they so wish under section 26 of the new Act.

3. Together with this form a fee of $20 must be paid which will also cover the fee for the annual return referred to in paragraph 6.

4. Particulars of existing company and directors

Type of company (if not a PBC):

(Public, private, cooperative, Limited by guarantee or foreign)

Company name or PBC name:

Company or PBC No.:

Address of existing registered office:

Postal address and email address to which communications from the Registrar may be sent:

Directors (or Members in the case of PBC)

Name and Date of Birth* *Please *give surname in BLOCK letters followed by first name(s)*.

ID Number/Passport Number

Residential address and Email

Shares (or percentage Interests in the case of PBC)

The total number of shares in the company is: [*enter nil, if the company does not have a share capital*] or percentage interests held by each PBC member

The rights, privileges, limitations and conditions that will attach to the shares of the company on reregistration are:

5. *Memorandum and Articles of Association/Incorporation Statement*

You must lodge a new Memorandum of association and new Articles of association (or Incorporation Statement) in conformity with the new Act together with this form. Doing so does not mean that there is any break in that continuity of your company or PBC from the time of its original incorporation or registration.

If you do not wish to lodge new articles of association or incorporation on statement please indicate in the space below which table of the model articles or bylaws in the fifth schedule do you proposes to adopt for your company or PBC

Place a tick ✓in the appropriate box

☐ Table A Model Articles for Public Companies

☐ Table B Model Articles for Private companies limited by shares ☐ Table C Model Articles for Private Companies limited by guarantee ☐ Table D Model By-laws for PBC.

6. Annual Return

Together with this re-registration form you must lodge a new annual return form in accordance with the Fourth Schedule. The date of lodgement will be the date every year by which you must lodge future annual returns.

7. Object of re-registration

The object of re-registration under section 303 (9) is to establish a new and up-dated register of companies and private business corporations; and to expunge apparently defunct business entities from the register.

No company or private business corporation may change its name, address, registered office, directorship or its share structure or do any other thing affecting its rights and liabilities and those of its members under the guise of re-registration, without prejudice however to its right to make such changes in accordance with the formalities prescribed in this Act, before, after or together with re-registration.

Signature of Company Secretary:

Name of above person(s) (*in full*):

Date:

Telephone (*if different from given above*):

E-mail Address of the Company Secretary (*if different from given above*):