


COMPANIES ACT CHAPTER 24-03



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COMPANIES ACT

Acts 47/1951, 46/1953, 20/1959 (Federal), 29/1959 (s. 144), 38/1963 (Federal), 22/1964 (s. 54), 38/1964 (s. 25), 28/1970, 33/1972, 27/1973 (s. 98), 39/1973 (ss. 17 and 52), 21/1975; 41/1977, 41/1978 (s. 16), 17/1979 (s. 11),

15/1981, 20/1981, 29/1981, 31/1983 (s. 13), 11/1991 (s. 15), 23/1991, 6/1993, 15/1993 (s. 63), 23/1994, 12/1997 (s. 16); 16/1998 (s. 70); 22/1998 (s. 6), 9/1999 (s.), 22/2001, 14/2002, 17/2004; 5/2006; R.G.N.s 198/1959, 403/1959, 153/1963, 386/1964, 217/1970, 141/1971, 298/1974, 1119/1975, 1135/1975; S.I.s 26/1986, 127/1986,

219/1986, 333/1992, 416/1992, 15/1993, 123/1996, 219/1996, 112/2007, 23/2009

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

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

1 Short title

PART I

PRELIMINARY

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

2 Interpretation

In this Act—

“accounts” includes a company’s group accounts, whether prepared in the form of accounts or not;

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

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

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

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

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

“contributory” has the meaning given to it by section two hundred and two; “co-operative company” has the meaning given it by section thirty-six;

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

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

“debenture” includes debenture stock or bonds;

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

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

“equity share capital” has the meaning given to it by subsection (6) of section one hundred and forty-three; “existing company” has the meaning given to it by subsection (1) of section four;

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

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

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

“foreign country” means any state or territory other than Zimbabwe; “foreign language” means any language other than English;

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

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

“judicial manager” includes a provisional judicial manager and a final judicial manager;

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

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

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

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

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

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“officer”, in relation to a company, includes a director, manager or secretary;

“officer who is in default” has the meaning given to it by subsection (2) of section three hundred and forty; “ordinary resolution” has the meaning given to it by subsection (4) of section one hundred and thirty-three; “petition” means an application to the court made in the appropriate form prescribed in rules of court; “prescribed” means prescribed by rules or regulations made under section three hundred and fifty-nine or

three hundred and sixty, as the case may be;

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

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

“private company” has the meaning given to it by section thirty-three;

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

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

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

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

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

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

“repealed laws” means the laws specified in the Second Schedule;

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

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

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

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

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

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

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

“winding-up order” means any order whereby a company is placed under liquidation or under provisional liquidation when such order for provisional liquidation has not been set aside;

“Zimbabwe Stock Exchange”

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

3 Non-application of Act to certain institutions

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

(2) This Act shall not be construed as applying to— (a) a trade union or an employers' organization; or

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

(3) In this section—

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

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

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

4 Application of Act to existing companies and savings

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

Provided that—

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

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

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

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

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

5 Registrar and offices for registration of companies

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

(2) There shall be—

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

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

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

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

PART II

INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO

Prohibition of Partnership Exceeding Twenty Members

6 Prohibition of association or partnership exceeding twenty persons

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

Provided that an association, syndicate or partnership which—

- (a) consists solely of persons who are members of a designated profession or calling; and
- (b) is formed for the purpose of practising or carrying on in Zimbabwe that designated profession or calling; may consist of more than twenty persons.

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

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

Memorandum of Association

7 Mode of forming company

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

- (a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them, in this Act termed a company limited by shares; or
- (b) if a licence is granted in terms of section twenty-six, a company having no share capital but having the liability of its members limited by the memorandum to such amount as the

members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up, in this Act termed a company limited by guarantee.

8 Memorandum of company

(1) In the case of a company limited—

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

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

A. in the case of a private company, the term "(Private)" as the penultimate word;

B. in the case of a co-operative company, the word "Co-operative" or the abbreviation "Co-op";

(ii) the objects of the company;

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

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

(b) by guarantee, the memorandum shall be in the English language and must state —

(i) the name of the company;

(ii) the objects of the company;

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

(iv) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member for payment of the debts and liabilities of the company contracted before he ceases to be a member and of the costs, charges and expenses of the winding up and for the adjustment of the rights of the contributors among themselves such amount as may be required, not exceeding a specified amount.

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

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

Provided that where the subscriber is—

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

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

(c) a minor, the guardian;

as the case may be, shall indicate in their handwriting the number of shares taken.

[Proviso inserted by Act 5 of 2006]

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

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

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

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

9 Capacity and powers of company

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

10 Effect of statement of objects

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

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

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

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

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

11 No constructive notice of company's documents

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

12 Presumption of regularity

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

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

(b) that every person described in the company's register of directors and secretaries, or in any return delivered to the Registrar by the company in terms of section one hundred and eighty-seven, as a director, manager or secretary of the company, has been duly appointed and has authority to exercise the functions customarily exercised by a director, manager or secretary, as the case may be, of a company carrying on business of the kind carried on by the company;

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

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

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

Provided that—

- (i) a person shall not be entitled to make such assumptions if he has actual knowledge to the contrary or if he ought reasonably to know the contrary;
- (ii) a person shall not be entitled to assume that any one or more of the directors of the company have been appointed to act as a committee of the board of directors or that an officer or agent of the company has the company's authority merely because the company's articles provide that the authority to act in the matter may be delegated to a committee or to an officer or agent.

13 Liability not affected by fraud

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

14 Signing of memorandum

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

Provided that where the subscriber is—

- (a) a company, association, syndicate or other corporate body, a director of the company or the authorised representative of any other corporate body; or
- (b) a partnership, one of the partners; or
- (c) a minor, the guardian;

as the case may be, shall sign the memorandum.

[Proviso inserted by Act 5 of 2006]

15 Restriction on alteration of memorandum

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

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

(1) A company may by special resolution—

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

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

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

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

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

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

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

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

Provided that an application shall not be made by any person who has consented to or voted in favour of the alteration.

(4) An application under this section shall be made within one month after the date on which the resolution altering the condition contained in the memorandum or the company's objects, as the case may be, was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(5) On an application under this section the court may make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may, if it

thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

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

(6) The debentures entitling the holders to object to alterations of a company's objects shall be any debentures secured by notarial bond which were issued or first issued before the 1st April, 1952, or form part of the same series as any debentures so issued, and a special resolution altering the company's objects shall require the same notice to the holders of any such debentures as to members of the company. In default of any provisions regulating the giving of notice to any such debenture holders, the company's articles regulating the giving of notice to members shall apply.

(7) In the case of a company which is, by virtue of a licence from the Minister, exempt from the obligation to use the word "Limited" as part of its name, a resolution altering the company's objects shall require the same notice to the Minister as to members of the company, and where such a company alters its objects the Minister, unless he sees fit to revoke the licence, may vary the licence by making it subject to such conditions and regulations as he thinks fit, in place of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.

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

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

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

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

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

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

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

(10) The validity of an alteration of a company's memorandum with respect to the objects of the company shall not be questioned on the ground that it was not authorized by subsection

(1) except in proceedings taken for the purpose, whether under this section or otherwise, before the expiration of one month after the date of the resolution in that behalf; and where any such proceedings are taken otherwise than under this section, subsections

(8) and (9) shall apply in relation thereto as if they had been taken under this section and as if an order declaring the alteration invalid were an order cancelling it and as if an order dismissing the proceedings were an order confirming the alteration.

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

Articles of Association

17 Articles prescribing regulations for companies

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

18 Application of Table A and void provisions

(1) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule. (2) In the case of a company limited—

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

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

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

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

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

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

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

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

19 Form and signature of articles

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

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

20 Alteration of articles

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

Registration

21 Registration of memorandum and articles

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

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

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

22 Effect of registration and use of seal

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

(2) From the date of incorporation, the subscribers to the memorandum, together with such other persons as may from time to time also become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company, and having perpetual succession, but with such

liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

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

23 Conclusiveness of certificate of incorporation

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

Provisions with Respect to Names of Companies

24 Prohibition of undesirable name

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

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

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

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

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

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

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

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

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

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

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

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

(b) he considers to be in conflict with the provisions of this section or undesirable for any other reason;

he may order the company in writing to change its name, and the company shall thereupon do so within a period of six weeks from the date of the written order or such longer period as the Registrar may see fit to allow:

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

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

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

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

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

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

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

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

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

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

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

25 Change of name

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

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

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

(3) Upon the production by a company to the Registrar of Deeds or a mining commissioner or other officer proper for the registration of deeds or mining titles of a certificate by the Registrar in terms of subsection (2), together with the relevant documents and application in writing, and on payment of the prescribed fees, such

Registrar of Deeds, mining commissioner or other officer shall make in his registers all such alterations as are necessary by reason of the changed name and shall endorse the change of name on the said documents.

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

26 Power to dispense with "Limited" in certain cases

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

(2) The association, upon such registration, shall enjoy all the privileges of a company and be subject to all the obligations thereof, except those of using the word "Limited" as any part of its name and of complying with sections sixty -five, sixty-six, seventy-one, one hundred and fourteen, one hundred and twenty-three, one hundred and twenty-four, one hundred and forty-nine and one hundred and seventy-one.

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

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

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

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

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

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

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

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

General Provisions with Respect to Memorandum and Articles

27 Effect of memorandum and articles

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

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

28 Copies of memorandum and articles to be given to members

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

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

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

29 Copies of memorandum and articles to embody alterations

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

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

30 Definition of member

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

Membership of Company

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

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

31 Membership of holding company

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

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

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

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

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

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

33 Definition of private company

Private Companies

(1) The expression "private company" means a company other than a co-operative company, which by its ar- ticles—

(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 co m- pany and persons who, having been formerly in the employment of the company, were while in that e m- ployment and have continued, after the determination of that employment, to be members of the company; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

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

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

34 Consequences of default in complying with conditions for private company

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

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

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

(1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section thirty-three, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of one month after the said date, remove the term “(Private)” from its name and deliver

to the Registrar for registration a statement in lieu of prospectus in the form and containing the particulars set out in Part I of the Third Schedule and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule:

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

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

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

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

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

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

Co-operative Companies

36 Definition of co-operative company

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

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

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

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

(b) by its articles—

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

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

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

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

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

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

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

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

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

37 Co-operative company to maintain reserve fund

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

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

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

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

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

39 Voting rights of members of co-operative company

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

Provided that—

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

(ii) if a co-operative company has been permitted by the Minister, in terms of section forty-one to form a subsidiary co-operative company or to acquire another co-operative

company as its subsidiary the first-mentioned co-operative company shall be entitled to exercise in respect of the conduct of the affairs of the subsidiary such number or percentage of the total votes accorded to all members of the subsidiary which does not exceed such number or percentage as may be specified by the Minister from time to time;

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

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

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

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

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

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

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

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

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

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

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

(ii) the date of registration of such shares in the name of the present holders;

whichever of such cases may be provided for in relation to any particular circumstances in the articles of the co-operative:

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

41 Subsidiary co-operative company

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

42 Special method for reduction of share capital

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

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

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

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

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

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

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

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

(2) Whenever any produce or livestock or any part thereof is delivered to a co-operative company by a member thereof in accordance with its articles or a contract referred to in subsection (1) for the purpose of disposal to or through the co-operative company or its agents, whether statutory bodies or otherwise, no creditor of the member delivering the same may attach or charge such produce or livestock or part thereof or the proceeds of the sale thereof that remain under the control of the co-operative company.

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

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

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

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

45 Company ceasing to be a co-operative company

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

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

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

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

Private business corporations

46 Conversion of private business corporation into company

(1) In this section—

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

(2) A private business corporation that wishes to convert to a company shall deliver to the Registrar— (a) an application in the prescribed form signed by all its members; and

(b) all documents necessary for the formation of a company under this Act.

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

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

Contracts, etc.

47 Ratification of contracts

Any contract made in writing by a person professing to act as agent or trustee for a company not yet formed, incorporated or registered shall be capable of being ratified or adopted by or otherwise made binding upon and

enforceable by such company after it has been duly registered as if it had been duly formed, incorporated and registered at the time when the contract was made, if—

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

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

48 Form of contracts

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

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

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

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

49 Promissory notes and bills of exchange

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

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

50 Execution of deeds in external countries

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

51 Official seal for use in foreign countries

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

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

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

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

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

52 Authentication of documents

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

PART III

SHARE CAPITAL AND DEBENTURES

53 Dating of prospectus

Prospectus

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) This section shall not apply to—

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

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

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

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

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

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

(a) the number and description of the shares or debentures concerned; (b) the name and date of registration of the company;

(c) the general nature of the main business or proposed main business of the company;

(d) the names of the directors or proposed directors.

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

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

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

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

(a) he has giv en and has not, before deliv ery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is i n- cluded; and

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

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

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

56 Registration of prospectus

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

(a) any consent to the issue of the prospectus required by section fifty-five from any person as an expert; and (b) in the case of a prospectus issued generally, also—

(i) a copy of any contract required by paragraph 14 of the Fourth Schedule to be stated in the pro- spectus 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 hav e, 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 a d- justments and giving the reasons therefor.

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

translation of the contract or a copy embodying a certified translation of the parts in a foreign language, as the case may be.

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

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

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

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

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

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

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

(7) If a prospectus is issued—

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

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

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

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

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

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

58 Civil liability for mis-statements in prospectus

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

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

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

(c) every person being a promoter of the company; and

(d) every person who has authorized the issue of the prospectus: Provided that—

(i) where, under section fifty-five, the consent of a person is required to the issue of a prospectus and he has

given that consent, he shall not by reason of his having given it be liable under this subsection as a person who has authorized the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert;

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

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

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

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

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

(d) that—

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

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

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

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

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

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

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

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

(4) Where—

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

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

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

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

59 Criminal liability for mis-statements in prospectus

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

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

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

60 Underwriting contract and affidavit to be delivered to Registrar

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

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

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

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

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

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

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

(1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and this Act shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise in respect thereof.

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

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

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

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

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

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

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

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

62 Interpretation of provisions relating to prospectus

In this Act—

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

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

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

63 Construction of references to offering shares or debentures to public

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

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

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

(b) provisions of this Act relating to private companies shall be construed accordingly.

64 Restrictions on offering shares for subscription or sale

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

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

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

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

(b) invite offers from the public or any member of the public to purchase any shares;

and no person shall issue, distribute or publish any material which in its form and context is calculated to be understood as an offer or invitation as aforesaid unless the offer, invitation or material is accompanied either by a prospectus complying with this Act or by a written statement containing the particulars required by this section to be included therein.

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

Provided that this subsection shall not apply—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) originally issued by the company; and

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

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

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

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

(6) In this section, unless the context otherwise requires, the expression "offer" includes an invitation to make an offer, the expression "shares" means the shares of a company, whether a company within the meaning of this Act or not, and includes debentures and units, and the expression "unit" means any right or interest, by whatever name called, in a share, and for the purposes of this section a person shall not, in relation to a company, be

regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company.

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

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

Allotment

65 Prohibition of allotment unless minimum subscription received

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

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

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

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

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

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

(5) If the conditions aforesaid have not been complied with on the expiration of sixty days after the first issue of the prospectus, all money received from applicants for shares shall

forthwith be repaid to them without interest and, if any such money is not so repaid within seventy days after the issue of the prospectus. the directors of the company shall be guilty of an offence and liable to a fine not exceeding level ten and, further, shall be jointly and severally liable to repay that money with interest at the rate prescribed in the Prescribed Rate of Interest Act [Chapter 8:10] from the expiration of the seventieth day:

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

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

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

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

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

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

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

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

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

(5) Where a statement in lieu of prospectus delivered to the Registrar under subsection (2) includes any untrue statement, any person who authorized the delivery of the statement in lieu of prospectus for registration shall

be guilty of an offence and liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment, unless he proves either that the untrue statement was immaterial or that he had reasonable grounds to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

(6) For the purposes of this section—

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

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

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

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

67 Effect of irregular allotment

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

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

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

68 Allotment voidable if application form not attached to prospectus

Where an application form is required by section fifty-four to be attached to a prospectus, every allotment of shares or debentures made otherwise than in pursuance of an application form which was attached to a prospectus as required by subsection (3) of section fifty-four

shall be voidable at the instance of the allottee within one month after allotment, unless it is shown that the allottee at the time of his application was in fact possessed of a copy of the prospectus or was aware of its contents.

69 Application for and allotment of shares

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

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

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

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

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

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

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

(6) In reckoning for the purposes of this section and of section seventy the third day after another day, any intervening day which is a Saturday or Sunday or which is a public holiday in Zimbabwe shall be disregarded and if

the third day, as so reckoned, is itself a Saturday or Sunday or a public holiday there shall for the said purposes be substituted the first day thereafter which is none of them.

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

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

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

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

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

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

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

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

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

(6) This section shall have effect—

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

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

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

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

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

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

71 Register and return as to allotments

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

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

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

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

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

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

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

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

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

Commissions and Discounts

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

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

- (a) the payment of the commission is authorized by the articles; and
- (b) the commission paid or agreed to be paid does not exceed five per centum of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less; and
- (c) the amount or rate per centum of the commission paid or agreed to be paid is—
 - (i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or
 - (ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered, before payment of the commission, to the Registrar for registration, and where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice;

and

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

(2) Save as aforesaid, no company shall apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

Issue of Shares at Premium or Discount and Redeemable Preference Shares

74 Application of share premiums

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

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

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

(b) in writing off—

(i) the company's preliminary expenses; or

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

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

75 Power to issue shares at a discount

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

Provided that—

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

- (ii) the special resolution must specify the maximum rate of discount at which the shares are to be issued;
- (iii) not less than one year must, at the date of the issue, have elapsed since the date on which the company was entitled to commence business;
- (iv) the shares to be issued at a discount must be issued within thirty days after the date on which the issue is sanctioned by the court or within such extended time as the court may allow.

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

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

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

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

76 Power to issue redeemable shares

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

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

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

77 Financing at redemption

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

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

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

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

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

(b) the current amount of the company's share premium account, including any sum transferred to that account in respect of the premiums on the new shares;

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

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

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

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

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

78 Power of company to purchase own shares

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

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

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

79 Authority required by company to purchase its own shares

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

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

(a) unless it specifies—

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

(ii) the maximum number of shares which may be acquired and the class thereof; and

(iii) the date on which the authority will expire;

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

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

80 Cession or renunciation of rights

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

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

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

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

(b) of subsection (1)—

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

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

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

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

81 Payments for rights to purchase or for release thereof

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

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

(b) the release of any obligation to purchase shares in pursuance of an authority granted in terms of section

seventy-nine;

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

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

82 Disclosure by company of purchase of own shares

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

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

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

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

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

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

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

(4) The copy of the contract or memorandum, as the case may be, required to be kept in terms of subsection

(3) shall be available for inspection, at all reasonable times, free of charge by any person.

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

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

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

83 Capital redemption reserve

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

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

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

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

84 Effect of failure by company to redeem or purchase shares

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

(a) issued shares on terms that they are or are liable to be redeemed; or (b) agreed to purchase any of its own shares;

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

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

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

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

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

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

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

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

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

(5) Where by virtue of section 109 of the Insolvency Act [Chapter 6:04] as applied by subsection (1) of section two hundred and ninety-one a creditor of a company is entitled to the payment of any interest only after payment of all other debts of the company, the company's debts and liabilities shall, for the purpose of subsection (4), include the liability to pay that interest.

Miscellaneous Provisions as to Share Capital

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

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

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

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

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

86 Reserve liability of company

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

87 Power of company to alter its share capital

(1) A company may by special resolution alter the conditions of its memorandum so as to—

(a) increase its share capital by new shares of such amount as it thinks expedient;

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

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

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

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

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

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

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

(1) If the company has—

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

(c) reconverted stock into shares; or

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

(e) redeemed any redeemable preference shares; or

(f) cancelled any shares, otherwise than in connection with a reduction of share capital under section

ninety-two;

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

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

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

89 Notice of increase of share capital

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

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

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

90 Payment of interest out of capital

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

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

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

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

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

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

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

91 Variation of rights attaching to shares

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

(2) An application under this section must be made within one month after the date on which the consent was given or the resolution was passed, as the case may be, and may be made

on behalf of the members entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

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

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

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

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

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

Reduction of Share Capital

92 Special resolution for reduction of share capital

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

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

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

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

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

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

93 Application to court to confirm order, objections by creditors

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

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

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

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

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

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

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

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

94 Order confirming reduction

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

95 Registration of order and minute of reduction

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

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

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

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

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

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

96 Liability of members in respect of reduced shares

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

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

(a) every person who was a member of the company at the date of the registration of the order for reduction and minute shall be liable to contribute for the payment of that debt or

claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and

(b) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(2) Nothing in subsection (1) shall affect the rights of the contributories among themselves.

97 Penalty for concealing name of creditor

If any officer of the company—

- (a) wilfully conceals the name of any creditor entitled to object to the reduction; or
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) aids, abets or is privy to any such concealment or misrepresentation as aforesaid;

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

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

Transfer of Shares and Debentures, Evidence of Titles, etc.

98 Nature and numbering of shares

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

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

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

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

number or otherwise, as will enable the immediately preceding holder of the shares to be identified.

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

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

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

100 Registration of transfer at request of transferor

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

101 Notice of refusal to register transfer

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

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

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

102 Transfer by executor

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

103 Duties of company with respect to issue of certificates

(1) Every company shall, within two months after the allotment of any of its shares, debentures or debenture stock, and within two months after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company, complete and have

ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

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

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

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

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

104 Certificate to be evidence of title

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

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

105 Unlawful personation

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

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

Special Provisions as to Mortgages and Debentures

106 Creation and registration of debentures

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

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

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

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

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

(5) Registration of such notarial bonds or mortgage bonds and cancellation or cession thereof in whole or in part shall be effected in accordance with the regulations and practice of the Deeds Registry relating to notarial bonds or mortgage bonds, respectively. When so registered such notarial bonds or mortgage bonds shall, as from the date of registration, subject to any prior rights arising out of any bond or debenture previously registered or out of any legal

hypothec, pledge or right of retention, operate as a first or preferential charge in respect of so much of the movable or immovable property of the company as is mentioned and described therein as bound by way of security for the fulfilment of the obligation undertaken by the company thereunder.

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

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

107 Register of mortgages and debentures and register of debenture holder

(1) Every company shall keep—

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

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

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

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

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

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

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

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

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

(6) The register of debenture holders shall, except when closed during such period or periods, not exceeding in the whole sixty days in any year, as may be specified in the articles, be open to the inspection of any creditor or member of the company but subject to such reasonable restrictions as the company may in general meeting impose so that at least two hours in each business day are appointed for inspection and the company shall furnish to any creditor or member at his request extracts from the register on payment of fifteen cents for every one hundred words or fractional part thereof required to be extracted.

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

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

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

108 Power to keep branch register of debenture holders

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

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

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

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

109 Regulations as to branch register of debenture holders

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

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept. (3) The company shall—

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

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

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

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

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

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

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

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

110 Power to re-issue redeemed debentures in certain cases

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

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

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

the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by 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, whether before, on or after the 1st April, 1952, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

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

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

111 Specific performance of contract to subscribe for debentures

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

PART IV

MANAGEMENT AND ADMINISTRATION

112 Registered office of company

Registered Office and Name

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

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

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

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

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

113 Publication of name by company

(1) Every company—

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

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

(c) shall have its name mentioned in legible characters in all business letters, notices and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all delivery notes, invoices, receipts and letters of credit of the company:

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

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

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

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

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

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

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

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

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

Restrictions on Commencement of Business

114 Restrictions on commencement of business

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

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

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

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

(c) there has been delivered to the Registrar for registration an affidavit by the secretary or one of the directors in the prescribed form that the aforesaid conditions have been complied with; and

(d) the Registrar has certified that the company is entitled to commence business.

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

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

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

(c) there has been delivered to the Registrar for registration an affidavit by the secretary or one of the directors in the prescribed form that paragraph (b) has been complied with; and

(d) the Registrar has certified that the company is entitled to commence business.

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

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

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

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

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

Register and Index of Members

115 Register and index of members

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

- (a) the names and addresses of the members, a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member;
- (b) the date at which each person was entered in the register as a member;
- (c) the date at which any person ceased to be a member:

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

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

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

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

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

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

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

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

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

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

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

116 Inspection of register and index

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

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

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

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

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

117 Power to close register

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

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

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

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

118 Power of court to rectify register

(1) If—

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

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

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

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

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

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

119 Trusts in respect of shares

(1) A company may in its discretion enter in its register the fact that any share is held in trust. (2) There shall be no obligation on any company—

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

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

120 Register to be evidence

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

Branch Register

121 Power to keep branch register in foreign countries

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

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

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

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

122 Regulations as to branch register

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

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

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

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

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

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

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

Annual Return

123 Annual return to be made by company

(1) Subject to subsection (2), every company shall make and file with the Registrar an annual return consist- ing of a summary, in the form contained in the Sixth Schedule or as near thereto as circumstances admit, specify- ing 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 secre- taries of a company and the name and address of every person appointed as an auditor of the company;

(b) the situation of the registered office of the company;

(c) the place where the register of members is kept if, under the provisions of this Act, it is not kept at the registered office of the company;

(d) the amount of the share capital of the company, and the number of the shares into which it is divided;

(e) the number of shares taken from the date of incorporation of the company up to the date of the return;

(f) the number of shares issued for cash;

(g) the number of shares issued as fully or partly paid up otherwise than in cash and the nature of the consideration given for such shares;

(h) the amount called up on each share;

(i) the total amount of calls unpaid;

(j) the total amount of the sums, if any, paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return;

(k) the total number of shares forfeited;

(l) the discount allowed on the issue of any shares issued at a discount or so much of that discount as has not been written off at the date on which the return is made.

(2) The annual return required by subsection (1) shall be filed with the Registrar within one month after the last date on which, in accordance with subsection (1) of section one hundred and twenty-five, the annual general meeting of the company should have been held:

Provided that—

- (i) if the annual general meeting of the company commenced earlier than the last date on which the annual general meeting is required by subsection (1) of section one hundred and twenty-five to have been held, the annual return shall be filed with the Registrar within one month after the date on which the annual general meeting of the company commenced;
- (ii) a company shall not be required to make and file an annual return in any year in which the company need not, under the proviso to subsection (1) of section one hundred and twenty-five, hold an annual general meeting.

(3) There shall be annexed to the annual summary—

- (a) a copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which the summary relates, including every document required by law to be annexed to the balance sheet; and
- (b) a copy, certified as aforesaid, of the report of the auditors on, and of the report of the directors accompanying, any such balance sheet:

Provided that this subsection shall not apply to a private company unless one or more members of that private company is—

- (a) a public company whether incorporated under this Act or the law of a foreign country; or
- (b) a private company which is a subsidiary, as determined in terms of section one hundred and forty-three, of a public company referred to in paragraph (a).

(4) Every private company shall send with the annual return a certificate signed by a director and the secretary stating—

- (a) that the company has not since the date of the last return or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares, stock or debentures of the company; and
- (b) the number of members of the company at the date of the certificate; and
- (c) if the number exceeds fifty, that such excess consists only of persons who, under section thirty-three, are to be excluded in reckoning the number of fifty.

(5) Every annual return filed by a company with the Registrar shall be certified under the hands of a director and the secretary of the company in the manner prescribed in the Sixth Schedule and a duplicate copy so signed shall be kept at the registered office of the company and shall be open for inspection by any person whenever the register of members is open for inspection by such person.

(6) In the case of a company keeping a branch register, where an annual return is made between the date when any entries are made in the branch register and the date when copies of those entries are received at the registered office of the company, the particulars contained in those entries so far as relevant to an annual return shall be included in the next or a subsequent annual return as may be appropriate, having regard to the particulars included in that return with respect to the company's register of members.

(7) The Registrar may from time to time require a company to transmit to him particulars of the transfer of any fully paid up share or shares and a list of the persons for the time being members of the company and of all persons who have ceased to be members since the date of the last return or, if no return has been made, since the date of the incorporation of the company.

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

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

Meetings and Proceedings

124 Statutory meeting and statutory report

(1) Save in the case of a private company, every company shall, within a period of not less than one month nor more than three months from the date at which it is entitled to commence business, hold a general meeting of its members which shall be called "the statutory meeting".

(2) The directors shall, at least fourteen days before the day on which the meeting is held, forward a certified report, in this Act referred to as "the statutory report", to every member of the company:

Provided that if the statutory report is forwarded later than is required by this subsection it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed by all the members entitled to attend and vote at the meeting.

(3) The statutory report shall be certified by not less than two directors of the company and shall state—

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up or paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted; and

(b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid; and

(c) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company; and

(d) the names, addresses and descriptions of the directors, auditors, if any, managers, if any, and secretary of the company; and

(e) if the modification or proposed modification of any contract is to be submitted to the meeting for its information or approval, full particulars thereof.

(4) The statutory report shall, so far as it relates to the shares allotted by the company and to the cash received in respect of such shares and to the receipts and payments of the company, be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be filed with the Registrar within one month of the date on which it is so certified.

(6) The directors shall cause a list showing the names, descriptions and addresses of the members of the company and the number of shares held by them, respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, whether before, at or subsequently to the former meeting, may be passed and the adjourned meeting shall have the same power as an original meeting.

(9) If default by any director is made in complying with any provisions of this section which expressly im- pose a duty on the directors he shall be guilty of an offence and liable to a fine not exceeding level four.

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

125 Annual general meeting

(1) Subject to this section, every company shall, within the periods specified in subsection (2), hold general meetings to be known and described in the notices calling such meetings as annual general meetings of that company.

(2) Annual general meetings of a company shall be held—

(a) in the case of the first such meeting, within a period of eighteen months after the date of the incorpora- tion of the company concerned; and

(b) thereafter, within not more than six months after the end of every ensuing financial year of that com- pany; and

(c) within not more than fifteen months after the date of the last preceding such meeting of that company.

(3) The annual general meeting of a company shall deal with and dispose of all matters required in terms of this Act to be dealt with and disposed of at an annual general meeting and may deal with and dispose of such further matters as are provided for in the articles of the company and, subject to this Act, any matters capable of being dealt with by any general meeting of the company.

(4) The Registrar may, upon payment of the prescribed fee and upon application being made to him before the expiration of the period within which an annual general meeting of a company is required to be held and on good cause shown, extend that period by a period not exceeding six months:

Provided that, notwithstanding any such extension, the date for the holding of the first annual general meeting following the meeting in respect of which the extension is granted shall be determined as if such meeting had been held on the last day on which it should have been held if the extension had not been granted.

(5) If for any reason an annual general meeting of a company is not or cannot be held as specified in this sec- tion or any matter required in terms of this Act to be dealt with and disposed of at such meeting is not dealt with thereat, the Registrar may, upon payment of the prescribed fee and upon application being made to him by the company or any member or its or his legal representative—

(a) call or direct the calling of a general meeting of the company which shall be deemed to be an annual general meeting; and

(b) give such ancillary or consequential directions as he may think expedient, including directions modifying or supplementing in relation to the calling, holding and conduct of the meeting, the operation of the company's articles, and directions providing for one member or the legal representative of a member or any specified number of members present in person or by proxy to be deemed to constitute a meeting;

and any meeting called, held or conducted in accordance with any such call or direction shall for all purposes be deemed to be an annual general meeting of the company duly called, held and conducted.

(6) For the purpose of determining the date for the holding of the next succeeding annual general meeting of a company after a meeting held in pursuance of subsection (5), the proviso to subsection (4) shall apply, mutatis mutandis.

(7) Any company which fails to comply with any provision of subsection (1) or with any call or direction given by the Registrar in terms of subsection (5), and every director or officer of the company who knowingly is a party to the failure, shall be guilty of an offence and liable to a fine not exceeding level three..

(8) A company which has failed to hold an annual general meeting within the period specified in terms of subsection (2) or within any extension of such period granted in terms of subsection (4) or as may be called or directed by the Registrar in terms of subsection (5), shall, in addition to any penalty to which it may be liable in terms of subsection (7), be liable to pay to the Registrar such fees as may be prescribed for every day during which the default continues but not exceeding a maximum of twenty dollars, and the decision of the Registrar as to the number of days during which the company is in default shall be final.

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

126 Convening of extraordinary general meeting on requisition

(1) On the requisition of members of a company holding at the date of the deposit of the requisition not less than one-twentieth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company the directors of the company, notwithstanding anything in its articles, shall, within twenty-one days of the deposit of the requisition, issue a notice to members convening an extraordinary general meeting of the company for a date not less than fourteen nor more than twenty-eight days from the date of the notice:

Provided that if a special resolution is to be submitted the period of the notice shall not be less than 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 issue a notice as required by subsection (1) the requisitionists, or any of them numbering more than fifty or representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, stating the objects thereof, on twenty-one days' notice, but no meeting so convened shall be held after the expiration of three months from the said date.

(4) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(5) Any reasonable expense incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were knowingly party to the default.

(6) Any officer of the company who is knowingly a party to a default in convening a meeting as required by subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

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

127 Length of notice for calling meetings

(1) A company's annual general meeting may be called by twenty-one days' notice in writing, and a meeting of a company, other than an annual general meeting or a meeting for the passing of a special resolution, may be called by fourteen days' notice in writing or, in the case of a private company, by seven days' notice in writing; and any provision of a company's articles shall be void so far as it provides for the calling of a meeting of the company, other than an adjourned meeting, by shorter notice than that specified in this subsection.

(2) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in subsection (1) or in the company's articles, as the case may be, be deemed to have been duly called if it is so agreed—

(a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat;

(b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority holding not less than ninety-five per centum in nominal value of the shares giving a right to attend and vote at the meeting.

128 General provisions as to meetings and votes and power of court to order meeting

(1) The following provisions shall have effect in so far as the articles of a company do not make other provision in that behalf—

(a) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A;

(b) two or more members holding not less than one-tenth of the issued share capital may call a meeting;

(c) two members personally present at a meeting shall be a quorum;

(d) any member elected by the members present at a meeting may be chairman thereof;

(e) every member shall have one vote in respect of each share or each twenty dollars of stock held by him.

(2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act, or if for any other reason the court sees fit, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient, including a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(3) Any meeting called, held and conducted in accordance with an order under subsection (2) shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

129 Proxies and voting on poll

(1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint one or more persons, whether members or not, to act in the alternative as his proxy to attend and vote instead of him, and a proxy appointed to attend

and vote instead of a member shall also have the same right as the member to speak at the meeting.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll.

(3) In every notice calling a meeting of a company and on the face of every proxy form issued at the company's expense shall appear, with reasonable prominence, a statement that a member entitled to attend and vote is entitled to appoint one or more proxies to act in the alternative, to attend and vote and speak instead of him, and that a proxy need not also be a member; and if default is made in complying with this subsection as respects any meeting every officer of the company who authorizes, knowingly permits or is party to the default shall be guilty of an offence and liable to a fine not exceeding level two.

(4) Any provision contained in a company's articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than forty-eight hours before a meeting in order that the appointment may be effective thereat.

(5) If, for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer of the company who authorizes or knowingly permits or is a party to the issue as aforesaid shall be guilty of an offence and liable to a fine not exceeding level three:

Provided that an officer shall not be liable under this subsection by reason only of the issue to a member at his written request of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(6) On a poll taken at a meeting of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

(7) This section shall apply to meetings of any class of members of a company as it applies to general meetings of the company.

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

130 Procedure for compulsory adjournment

(1) If, at any meeting of a company, any member of the company who is present and entitled to vote at that meeting demands an adjournment of the meeting upon any grounds stated by him, the chairman shall put the demand to the vote of the meeting, and if a

majority of the members present personally or by proxy and entitled to vote at the meeting or if such members representing either personally or by proxy more than half of the share capital of the company represented at the meeting vote in favour of an adjournment, the chairman shall adjourn the meeting to a day seven days after the date of the meeting or, if that day is a public holiday, to the next succeeding day, other than a public holiday.

(2) When a meeting has been adjourned as aforesaid the secretary of the company shall, upon a date not later than four days after the adjournment, publish in a newspaper circulating in the district where the registered office of the company is situated, a notice stating—

- (a) the time and place to which the meeting was adjourned; and
- (b) the matter before the meeting at the time when it was adjourned; and
- (c) the ground for adjournment.

This subsection shall not apply to a private company.

(3) Any person acting as chairman of a meeting of a company who fails to comply with the requirements of subsection (1) and any secretary of a company other than a private company who fails to comply with the requirements of subsection (2) shall be guilty of an offence and liable to a fine not exceeding level three.

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

131 Representation of corporations at meeting of company and of creditors

(1) A corporation whether a company within the meaning of this Act or not, may—

(a) if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;

(b) if it is a creditor, including a holder of debentures, of another corporation, being a company within the meaning of this Act, authorize, by resolution of its directors or other governing body, such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorized as aforesaid shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member, creditor or holder of debentures of that other company.

132 Circulation of members' resolutions

(1) Subject to the following provisions, it shall be the duty of a company, on the requisition in writing of such number of members as is hereinafter specified and, unless the company otherwise resolves, at the expense of the requisitionists—

(a) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting;

(b) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under subsection (1) shall be—

(a) any number of members representing not less than one-twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition re- lates; or

(b) not less than one hundred members holding share s in the company on which there has been paid up an average sum, per member, of not less than two hundred dollars.

(3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting and notice of any such resolu- tion shall be giv en to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company:

Provided that the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

(4) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

(a) a copy of the requisition signed by the requisitionists, or two or more copies which between them co n- tain the signatures of all the requisitionists, is deposited at the registered office of the company—

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting;

(ii) in the case of any other requisition, not less than twenty-one days before the meeting;
and

(b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall also not be bound under this section to circulate any resolution or statement if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(6) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section, and for the purposes of this subsection notice shall be deemed to have been so given notwithstanding the accidental omission, in giving it, of one or more members.

(7) In the event of any default in complying with this section every officer of the company who authorizes, or knowingly permits or is party to, the default shall be guilty of an offence and liable to a fine not exceeding level five.

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

133 Definition of special resolution

(1) A resolution shall be a special resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy at a general meeting of which not less than twenty-one days' notice has been given, specifying the intention to propose the resolution as a special resolution and the terms of the resolution and at which members holding in the aggregate not less than one-fourth of the total votes of the company are present in person or by proxy.

(2) If the members present at the meeting hold less than one-fourth of the total votes of all members entitled to vote, the meeting shall stand adjourned to the same day in the following week or, if that is a public holiday, to the next succeeding day other than a public holiday. At

the adjourned meeting the members present in person or by proxy may deal with the business for which the original meeting was convened and a resolution passed by not less than three-fourths of such members shall be deemed to be a special resolution, notwithstanding that less than one-fourth of the total votes of the company are represented at such adjourned meeting.

(3) If it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than ninety-five per centum in nominal value of the shares giving that right, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given, and subsection (7) shall not apply for the purposes of this subsection.

(4) All other resolutions at a general meeting shall be called ordinary resolutions.

(5) At any meeting at which a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(6) When a poll is demanded regard shall be had in computing the majority on the poll to the number of votes cast for and against the resolution.

(7) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting shall be deemed to be duly held when the notice is given and meeting held in manner provided by the articles but subject always to the provisions of this Act.

134 Written resolutions

(1) In the case of a private company, a resolution in writing signed by all the members for the time being entitled to attend and vote on such resolution at a general meeting, or, being bodies corporate, by their duly authorized representatives, shall be as valid and effective for all purposes as if the same had been passed at a general meeting of the company duly convened and held, and if described as a special resolution shall be deemed to be a special resolution. Such resolution shall be deemed to have been passed on the date on which the same was signed by the last member to sign, and where the resolution states a date as being the date of his signature thereof by any member such statement shall be prima facie evidence that it was signed by that member on that date.

(2) Subsection (1) shall not apply to a resolution to remove an auditor or to remove a director.

135 Resolutions requiring special notice

(1) Where, in this Act or of the articles of association of a company, special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is

moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than twenty-one days before the meeting:

Provided that if, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice though not given within the time required by this subsection shall be deemed to have been properly given for the purposes thereof.

(2) If the status of any person in relation to a company will be affected by the terms of a resolution of which special notice has been given the company shall send to, or serve upon, such person a copy of such resolution and of the notice of the meeting at which it will be moved at the time when similar notice is given to the members of the company, and such person shall be entitled to speak on the resolution at the meeting before any vote is taken upon it.

(3) If default is made by a company in giving notice to its members or to any person whose status is affected as aforesaid the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level three.

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

136 Registration and copies of special resolution

(1) Within one month after the passing of any special resolution a copy of that resolution shall be transmitted to the Registrar who shall, subject to subsection (2), register that resolution and that resolution shall be of no force or effect until it is so registered:

Provided that on the registration of the special resolution that resolution shall be of force or effect from the date it was passed.

(2) The registrar may, except upon the order of the court, refuse to register any special resolution so transmitted to him if such resolution appears to him to be contrary to this Act or of the memorandum or articles of the company.

(3) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the registration of the resolution.

(4) Where articles have not been registered, a copy of every special resolution shall be transmitted to any member of the company at his request on payment of one dollar or such less sum as the company may direct.

(5) If default is made in transmitting the copy of a special resolution to the Registrar the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

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

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

137 Resolutions passed at adjourned meetings If a resolution is passed at an adjourned meeting of— (a) a company; or

(b) the holders of any class of shares in a company; or

(c) the directors of a company; the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date.

138 Minutes of proceedings of meetings of company or directors or managers

(1) Every company shall cause minutes of all proceedings of general meetings, all proceedings at meetings of its directors and, where there are managers, all proceedings at meetings of its managers, to be entered in books kept for that purpose.

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes have been made in accordance with this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers, secretaries or liquidators shall be deemed to be valid.

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

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

139 Inspection of minute books

(1) The books or copies of the books certified by a director or secretary containing the minutes of proceedings of any general meeting of a company held after the 1st April, 1952, shall be kept at the registered office of the company and shall, during business hours, subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection, be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished, within fourteen days after he has made a request in that behalf to the company, with a copy of such minutes as aforesaid certified by the secretary or a director as correct, at a charge not exceeding twenty cents for every hundred words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time the company and every officer of the company who is in default shall be guilty of an offence and liable, to a fine not exceeding level three.

(4) In the case of any such refusal or default the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall, subject to the payment of the appropriate sum, be sent to the persons requiring them.

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

140 Keeping of books of account

Accounts and Audit

(1) Every company shall cause to be kept in the English language proper books of account with respect to— (a) all sums of money received and expended by the company and the matters in respect of which the

receipt and expenditure takes place;

(b) all sales and purchases of goods by the company;

(c) the assets and liabilities of the company.

(2) For the purposes of subsection (1), proper books of account shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain transactions.

(3) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit and shall at all times be open to inspection by the directors:

Provided that if books of account are kept at a place outside Zimbabwe there shall be sent to, and kept at a place in, Zimbabwe and be at all times open to inspection by the directors such accounts and returns with respect to the business dealt with in the books of account so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding twelve months and will enable to be prepared in accordance with this Act the company's balance sheet, its profit and loss account or income and expenditure account, and any document annexed to any of those documents giving information which is required by this Act and is thereby allowed to be so given.

(4) The books of account kept in terms of this section may be destroyed after eight years from the completion of the transactions or operations to which they relate.

(5) If any director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section or has by his own wilful act been the cause of any default by the company thereunder he shall, in respect of each default and subject to section one hundred and forty-eight, be guilty of an offence and liable to a fine not exceeding level six.

(6) Subsection (3) shall not exempt a person from compliance with the Customs and Excise Act [Chapter 23:02] or any other law .

(7) A person who retains, in terms of subsection (2) of section 81 of the Income Tax Act [Chapter 23:06], a photographic reproduction of any books of account shall be deemed for the purposes of this section to have kept such books of account.

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

141 Profit and loss account and balance sheet and financial year of holding company and subsidiary

(1) The directors of a company shall cause to be made out in respect of every financial year of the company, and to be laid before the company at each annual general meeting required to be held in terms of section one hundred and twenty-four, a profit and loss account and a balance sheet as at the end of the financial year, which shall comply with section one hundred and forty-two.

(2) A holding company's directors shall ensure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiaries shall coincide with the company's own financial year.

(3) Subject to section one hundred and forty-eight, if any director of a company fails to take all reasonable steps to comply with the requirements of this section he shall be guilty of an offence and liable to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment

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

142 General provisions as to contents and form of accounts

(1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year and every profit and loss account of a company, shall give a true and fair view of the profit or loss of the company for the financial year.

(2) Subject to subsection (1), a company's balance sheet and profit and loss or income and expenditure account shall comply with any requirements that may be prescribed in regulations in regard to their form and content and any additional information to be provided by way of notes.

(3) The requirements of subsection (2) shall be without prejudice either to the general requirements of subsection (1) or to any other requirements of this Act.

(4) The Minister may, on the application or with the consent of a company's directors, modify in relation to that company any of the requirements of this Act as to the matters to be stated in a company's balance sheet or profit and loss account, except the requirements of subsection (1), for the purpose of adapting them to the circumstances of the company.

(5) Subsections (1) and (2) shall not apply to a company's profit and loss account if— (a) the company has subsidiaries; and

(b) the profit and loss account is framed as a consolidated profit and loss account dealing with all or any of the company's subsidiaries as well as the company and—

(i) complies with the requirements of this Act relating to consolidated profit and loss accounts; and

(ii) shows how much of the consolidated profit or loss for the financial year is dealt with in the accounts of the company.

(6) If a director of a company fails to take all reasonable steps to secure compliance by the company as re- spects any accounts required to be laid before the company in general meeting with the provisions of this section and with the other requirements of this Act as to the matters to be stated in accounts he shall, subject to section one hundred and forty-eight, be guilty of an offence and liable, to a fine not exceeding level three or to imprison- ment for a period not exceeding one month or to both such fine and such imprisonment.

(7) For the purposes of this Act, except where the context otherwise requires, any reference to—

(a) a balance sheet or profit and loss account shall include any note thereon or document annexed thereto giving information which is required by this Act and is thereby allowed to be so given;

(b) a profit and loss account shall be taken as including an income and expenditure account or any similar account where such form of account is appropriate and references to profit or to loss and, if the company has subsidiaries, references to a consolidated profit and loss account shall be construed accordingly.

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

143 Meaning of holding company, subsidiary and wholly owned subsidiary

(1) A company shall, subject to subsection (3), be deemed to be a subsidiary of another if, but only if— (a) that other either—

(i) is a member of it and controls the composition of its board of directors; or

(ii) holds more than half in nominal value of its equity share capital;

or

(b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary:

Provided that the first-mentioned company shall be deemed to be a subsidiary of that other if subsidiaries of that other between them hold more than one-half in nominal value of the equity share capital of the first- mentioned company or if that other and one or more of its subsidiaries between them hold more than one -half of such capital.

(2) For the purposes of subsection (1), the composition of a company's board of directors shall be deemed to be controlled by another company if that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the direc- torships; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say—

(a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such power as aforesaid; or

(b) that a person's appointment thereto follows necessarily from his appointment as director of that other company.

(3) In determining whether one company is a subsidiary of another—

(a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to paragraphs (c) and (d), any shares held or power exercisable—

(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, but only if, that other is its subsidiary.

(6) In this section, the expression "company" includes any body corporate, including a body corporate formed under the law of a foreign country, and the expression "equity share capital" means, in relation to a com-

pany, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

144 Obligation to lay group accounts before holding company

(1) Where at the end of its financial year a company has subsidiaries, accounts or statements, in this Act referred to as "group accounts", dealing as hereinafter mentioned with the state of affairs and profit or loss of the company and the subsidiaries shall, subject to subsection (2), be laid before the company in general meeting when the company's own balance sheet and profit and loss account are so laid.

(2) Notwithstanding anything in subsection (1)—

(a) group accounts shall not be required where the company is, at the end of its financial year, the wholly owned subsidiary of another company incorporated in Zimbabwe;

(b) group accounts need not deal with a subsidiary of the company if the company's directors are of the opinion that—

(i) it is impracticable, or would be of no real value to members of the company, in view of the insignificant amounts involved, or would entail expense or delay out of proportion to the value to members of the company; or

(ii) the result would be misleading or harmful to the business of the company or any of its subsidiaries; or

(iii) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking;

(c) group accounts shall not be required if the directors are of an opinion described in paragraph (b) about each of the company's subsidiaries:

Provided that—

(i) the auditor of the holding company shall in every case report on the decision of directors not to deal in group accounts with any subsidiary;

(ii) the approval of the Minister shall be required for not dealing in group accounts with a subsidiary on the ground that the result would be harmful or on the ground of the difference between the business of the holding company and that of the subsidiary.

(3) If any director of a company fails to take all reasonable steps to secure compliance as respects the company with the requirements of this section he shall, subject to section one hundred and forty-eight, be guilty of an offence and liable to a fine not exceeding level three

or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment:

Provided that he shall not be sentenced to imprisonment unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

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

145 Form and contents of group accounts

(1) The group accounts laid before a holding company shall be consolidated accounts comprising—

(a) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in the group accounts;

(b) a consolidated profit and loss account dealing with the profit or loss of the company and those subsidiaries.

(2) If the company's directors are of opinion that it is better for the purpose—

(a) of presenting the same or equivalent information about the state of affairs and profit or loss of the company and those subsidiaries; and

(b) of so presenting it that it may be readily appreciated by the company's members;

the group accounts may be prepared in a form other than that required by subsection (1) and in particular may consist of more than one set of consolidated accounts, that is to say, one set dealing with the company and one group of subsidiaries and one or more sets dealing with other groups of subsidiaries, or of separate accounts dealing with each of the subsidiaries, or of statements expanding the information about the subsidiaries in the company's own accounts, or any combination of these forms.

(3) The group accounts may be wholly or partly incorporated in the company's own balance sheet and profit and loss accounts.

(4) The group accounts laid before a company shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with thereby as a whole, so far as concerns members of the company; and in particular shall exclude inter-group balances and any profit or loss arising from transactions within the group in so far as those profits or losses may not have been realized or incurred so far as concerns members of the company.

(5) Where the financial year of a subsidiary does not coincide with that of the holding company the group accounts shall, unless the Minister on the application or with the consent of the holding company's directors other-

wise directs, deal with the subsidiary's state of affairs as at the end of its financial year ending last before that of the holding company and with the subsidiary's profit or loss for that financial year.

(6) Without prejudice to subsection (4), the group accounts, if prepared as consolidated accounts, shall comply with the requirements of the regulations referred to in subsection (2) of section three hundred and sixty so far as applicable thereto and if not so prepared, shall give the same or equivalent information:

Provided that the Minister may, on the application or with the consent of a company's directors, modify the said requirements in relation to that company for the purpose of adapting them to the circumstances of the company.

146 Accounts and auditor's report to be annexed to signed balance sheet

(1) The profit and loss account and, so far as not incorporated in the balance sheet or profit and loss account, any group accounts laid before a company in general meeting shall be annexed to the balance sheet and approved by the board of directors before the balance sheet is signed on its behalf and the auditor's report shall be attached thereto, except in the case of a private company which in terms of subsection (7) of section one hundred and fifty is not required to appoint an auditor.

(2) If any copy of a balance sheet is issued, circulated or published without having a copy annexed thereto of the profit and loss account or any group accounts required by this section to be so annexed or without having attached thereto a copy of the auditor's report as required by this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level two.

(3) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company.

(4) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level two.

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

147 Directors' report to be attached to balance sheet

(1) There shall be attached to every balance sheet laid before a company in general meeting a report by the directors with respect to the state of the company's affairs, the amount, if any, already paid or declared or which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to reserves within the meaning

of the regulations referred to in subsection (2) of section three hundred and sixty and, if directors' remuneration is to be determined at the meeting, the amount of remuneration recommended:

Provided that this subsection shall not apply to a private company unless one or more members of that private company is—

(a) a public company, whether incorporated under this Act or the law of a foreign country; or

(b) a private company which is a subsidiary, as determined in terms of section one hundred and forty-three, of a public company referred to in paragraph (a).

(2) The said report shall deal, so far as is material for the appreciation of the state of the company's affairs by its members and will not in the directors' opinion be harmful to the business of the company or of any of its subsidiaries, with any change during the financial year in the nature of the company's business or in the company's subsidiaries or in the classes of business in which the company has an interest, whether as member of another company or otherwise.

(3) If any director of a company fails to take all reasonable steps to comply with subsection (1) he shall, subject to section one hundred and forty-eight, be guilty of an offence and liable to a fine not exceeding level two:

Provided that he shall not be sentenced to imprisonment unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

148 Defence to certain charges

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

In any proceedings against a person under subsection (5) of section one hundred and forty, subsection (3) of section one hundred and forty-one, subsection (6) of section one hundred and forty-two, subsection (3) of section one hundred and forty-four or subsection (3) of section one hundred and forty-seven for failing to take all reasonable steps to comply or secure compliance by a company with the requirements referred to in the subsection under which he is so charged, it shall be a defence for him to prove that he had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty

of seeing that the requirements or provisions referred to in that subsection were complied with and was in a position to discharge that duty.

149 Right to receive copy of balance sheet and auditor's report

(1) A copy of every balance sheet, including every document required by this Act to be annexed thereto, which is to be laid before the company in general meeting, together with group accounts, if any, prepared under sections one hundred and forty-four and one hundred and forty-five and a copy of the auditor's report, shall, not less than fourteen days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company:

Provided that this subsection shall not apply to a private company unless one or more members of that private company is—

- (a) a public company, whether incorporated under this Act or the law of a foreign country; or
- (b) a private company which is a subsidiary, as determined in terms of section one hundred and forty-three, of a public company referred to in paragraph (a).

(2) Any member and any debenture holder of the company shall be entitled to be furnished on demand, without charge, with a copy of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy of the auditor's report on the balance sheet unless he shall previously have been supplied therewith.

(3) If default is made in complying with subsection (1) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level two, and if, where any person makes a demand for a document to which he is by virtue of subsection (2) entitled, default is made in complying with the demand within fourteen days after the making thereof, the company and any officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level two.

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

150 Appointment and remuneration of auditors

(1) The first auditor of a company shall be appointed by the directors within one month of the issue of the certificate that the company is entitled to commence business in the case of a company to which section one hundred and fourteen applies and, in the case of other companies, within one month of the issue of the certificate of incorporation; and an auditor so appointed shall hold office until the conclusion of the first annual general meeting:

Provided that—

(i) the company may at a general meeting remove any such auditor and appoint in his place any other person who has by special notice been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting;

(ii) if the directors fail to exercise their powers under this subsection the company in general meeting may appoint the first auditor and thereupon the said powers of the directors shall cease;

(iii) if neither the directors nor the company appoint an auditor under this subsection the Minister may on the application of any member do so.

(2) Every company shall, at each annual general meeting, appoint an auditor to hold office from the conclusion of that until the conclusion of the next annual general meeting.

(3) Where at an annual general meeting no auditor is appointed or reappointed, the Minister may appoint a person to fill the vacancy.

(4) The company shall, within one week of the Minister's power under subsection (3) becoming exercisable, give him notice of that fact and, if a company fails to give notice as required by this subsection, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level two.

(5) The directors may fill any casual vacancy in the office of auditor but while any such vacancy continues the surviving or continuing auditor, if any, may act.

(6) The remuneration of the auditor of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

For the purposes of this subsection, any sums paid by the company in respect of the auditor's expenses shall be deemed to be included in the expression "remuneration".

(7) A private company shall not be required to appoint an auditor if— (a) the number of members in such company does not exceed ten; and (b) none of the members of such company is—

(i) a public company, whether incorporated under this Act or the law of a foreign country; or

(ii) a private company which is a subsidiary, as determined in terms of section one hundred and forty-three, of a public company referred to in subparagraph (i);

and

(c) such company is not a subsidiary of a holding company which has itself appointed auditors; and (d) all the members in such company agree that an auditor shall not be appointed.

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

151 Special notice required of resolution to appoint or remove auditor

Special notice shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be reappointed.

152 Disqualifications for appointment as auditor

(1) None of the following persons shall be qualified for appointment as auditors of a company—

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- (a) an officer or servant of the company;
- (b) a person who is a partner of an officer or servant of the company;
- (c) a person who is an employer or an employee of an officer or servant of the company;
- (d) a body corporate;
- (e) a person who is an officer or servant of a body corporate which is an officer of the company;

(f) a person who by himself, or his partner or his employee, regularly performs the duties of secretary or bookkeeper to the company.

Reference in this subsection to an officer or servant shall be construed as not including reference to an audi-

(2) A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of subsec-

tion (1), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company, or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(3) Any person who acts as auditor of a company when disqualified as aforesaid shall be guilty of an offence and liable to a fine not exceeding level five.

[Section as amended by Act No. 22 of 20 01]

153 Auditor's report

(1) The auditor shall make a report to the members on the accounts examined by him and on every balance sheet, every profit and loss account and all group accounts laid before the company in general meeting during his tenure of office and the report shall contain statements as to the following matters—

(a) whether, in his opinion, the balance sheet and profit and loss account of the company, or in the case of a holding company submitting group accounts, the said accounts of the company and the group accounts are properly drawn up in accordance with this Act so as to give a true and fair view of the state of the company's affairs at the date of its balance sheet and of its profit or loss for its financial year ended on that date; or

(b) in the case of a company registered as a commercial bank, an accepting house or a finance house in terms of the Banking Act [Chapter 24:20], whether, in his opinion, the balance sheet and profit and loss account of the company or, in the case of a holding company submitting group accounts, the said accounts of the company and the group accounts are properly drawn up so as to disclose the state of the company's affairs at the date of its balance sheet and its profit or loss for its financial year ended on that date, so far as is required by the provisions of this Act applicable to the class of company concerned.

[Paragraph as amended by section 82 of Act No. 9 of 1999]

(2) The auditor shall include in his report statements which, in his opinion, are necessary if—

(a) he has not obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit;

(b) so far as appears from his examination, proper books of account have not been kept by the company;

(c) proper returns adequate for the purpose of his audit have not been received from branches not visited by him;

(d) the company's balance sheet and profit and loss account are not in agreement with the books of account and returns from branches.

(3) In the event of the auditor being unable to make such report or to make it without further qualification he shall inscribe upon or attach to the balance sheet a statement of that fact or of the nature of the qualification, as the case may be, and he shall set forth therein the facts or circumstances which prevent him from making the report or from making it without qualification.

(4) The auditor's report or any statement under subsection (3) shall, unless all the members present agree to the contrary, be read before the company in general meeting and shall, in any event, be open to inspection by any member.

154 Auditor's right of access to books and to attend general meetings

(1) Every auditor of a company shall have a right of access at all times to the books, accounts, vouchers and securities of the company and shall be entitled to require from the officers of the company such information and explanation as he thinks necessary.

(2) Every auditor of a holding company shall have a right of access to all current and former accounts of any company subsidiary thereto and shall be entitled to require from the officers of the holding or subsidiary company all such information and explanations in connection therewith as he may deem necessary.

(3) Every auditor of a company shall be entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which any member of the company is entitled to receive and to be heard at any general meeting which he attends on any part of the business of the meeting which concerns him as auditor.

155 Construction of references to documents annexed to accounts

References in this Act to a document annexed or required to be annexed to a company's accounts or any of them shall not include the directors' report or the auditor's report:

Provided that any information which is required by this Act to be given in accounts, and is thereby allowed to be given in a statement annexed, may be given in the directors' report instead of the accounts and, if any such information is so given, the report shall be annexed to the accounts and this Act shall apply in relation thereto accordingly, except that the auditor shall report thereon only so far as it gives the said information.

Inspection

156 Investigation by Registrar

(1) Where the Registrar has reasonable cause to believe that provisions of this Act relating to the submission to him of any document are not being complied with, or where he is of the opinion that any document submitted to him under this Act does not disclose the true facts or a full and fair statement of the matters to which it purports to relate, he may, by written order, call on the company concerned to produce all or any of the books of the company or to furnish in writing such information or explanation as he may specify in his order. Such books shall be produced and such information or explanation shall be furnished within such time as may be specified in the order.

(2) On receipt of an order under subsection (1) it shall be the duty of all persons who are or have been officers of the company to produce such books or to furnish such information or explanation so far as lies within their power.

(3) Any person who fails to comply with subsection (2) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment and the court may order any such person to comply with the said provisions.

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

157 Investigation of company's affairs on application of members

(1) The Minister may appoint one or more inspectors to investigate the affairs of a company and to report thereon in such manner as he may direct on the application either of not less than one hundred members or of members holding not less than one-twentieth of the issued shares of such company.

(2) The application shall be supported by such evidence as the Minister may require for the purpose of showing that the applicants have good reason for requiring the investigation and the Minister may, before appointing an inspector, require the applicants to give satisfactory security in an amount not exceeding four hundred dollars for payment of the costs of the investigation.

158 Investigation of company's affairs in other cases

Without prejudice to his powers under section one hundred and fifty-seven, the Minister—

(a) shall appoint one or more inspectors to investigate the affairs of a company and to report thereon in such manner as he directs if—

(i) the company by special resolution; or

(ii) the court by order;

declares that its affairs ought to be investigated by an inspector appointed by him; and (b) may do so, if it appears to him that there are circumstances suggesting—

(i) that its business is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members or that it was formed for any fraudulent or unlawful purpose; or

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

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

159 Power of inspectors to investigate related companies

If an inspector appointed under section one hundred and fifty-seven or one hundred and fifty-eight to investigate the affairs of a company thinks it necessary for that purpose to investigate also the affairs of any other body corporate which is or has at any relevant time been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary, he shall, with the sanction of the Minister, have power so to do and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.

160 Production of documents and evidence on investigation

(1) It shall be the duty of all officers and agents of the company and of all officers and agents of any other body corporate whose affairs are investigated by virtue of section one hundred and fifty-seven, one hundred and fifty-eight, one hundred and fifty-nine or one hundred and sixty-four, as the case may be, to produce to the inspector all books and documents of or relating to the company or, as the case may be, the other body corporate which

are in their custody or power and otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

(2) The inspector may examine on oath the officers and agents of the company or other body corporate in relation to its business and may administer an oath accordingly.

(3) If any officer or agent of the company or other body corporate refuses to produce to the inspector any book or document which it is his duty under this section so to produce, or refuses on any ground, other than that the answer may tend to incriminate him, to answer any question which is put to him by the inspector with respect to the affairs of the company or other body corporate, as the case may be, the inspector may certify the refusal under his hand to the court and the court may thereupon inquire into the case and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, sentence the offender summarily to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(4) If an inspector thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath should be so examined, he may apply to the court and the court may, if it sees fit, order that person to attend and be examined on oath before it on any matter relevant to the investigation and on any such examination—

(a) the inspector may take part therein either personally or represented by a legal practitioner; (b) the court may put such questions to the person examined as the court thinks fit;

(c) the person examined may at his own cost employ a legal practitioner, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that the court may allow the person examined such costs as in its discretion it may think fit and any costs so allowed shall be paid as part of the expense of the investigation.

(5) Notes of any examination made in terms of this section shall be taken down in writing, shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against him.

(6) In this section, any reference to officers or to agents shall include past as well as present officers or agents, as the case may be, and for the purpose of this section the expression "agents", in relation to a company or other body corporate, shall include the bankers and legal practitioners representing the company or other body corporate and any persons employed by the company or other body corporate as auditors, whether those persons are or are not officers of the company or other body corporate.

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

(1) The inspector may, and if so directed by the Minister shall, make interim reports to the Minister and on the conclusion of the investigation shall make a final report to the Minister.

(2) The Minister shall—

(a) send a copy of any report made by the inspector to the registered office of the company; and

(b) where the inspector is appointed under section one hundred and fifty-seven, furnish each applicant for the investigation, on request, with a copy of the report; and

(c) where the inspector is appointed under section one hundred and fifty-eight in pursuance of an order of court, furnish a copy to the court;

and may—

(i) furnish a copy thereof, on request and on payment of the prescribed fee, to any person who is a member of the company or of any other body corporate dealt with in the report by virtue of section one hundred and fifty-nine or whose interests as a creditor of the company or of any such other body corporate as aforesaid appear to the Minister to be affected;

(ii) cause the report to be printed and published.

162 Proceedings on inspector's report

(1) If, from any report made under section one hundred and sixty-one , it appears to the Minister that any person has, in relation to the company or any other body corporate whose affairs have been investigated by virtue of section one hundred and fifty-nine , been guilty of an offence for which he is criminally liable, the Minister shall refer the matter to the Attorney-General.

(2) If, in the case of any body corporate liable to be wound up under this Act, it appears to the Minister from any such report as aforesaid that it is expedient so to do by reason of any such circumstances as are referred to in subparagraph (i) or (ii) of paragraph (b) of section one hundred and fifty-eight, the Minister may, unless the body corporate is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable that it should be wound up or a petition for an order under section one hundred and ninety-six or both.

(3) If, from any such report as aforesaid, it appears to the Minister that proceedings ought in the public interest to be brought by any body corporate dealt with by the report for the recovery of damages in respect of any

fraud or other misconduct in connection with the promotion or formation of that body corporate or the management of its affairs, or for the recovery of any property of the body corporate which has been misapplied or wrongfully retained, the Minister may himself bring the proceedings for that purpose in the name of the body corporate.

(4) The Minister shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with any proceedings brought by virtue of subsection (3).

(5) The Minister may, on receiving any interim or final report as aforesaid, direct that the company shall not pay dividends on, or permit the exercise of any rights, including the right of transfer, attached to all or any of, the shares in the company specified in such direction and the Minister may revoke, vary or suspend any such direction, and any officer of the company who fails to comply with any such direction shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

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

163 Expenses of investigation of company's affairs

(1) The expenses of and incidental to an investigation by an inspector appointed by the Minister under this Act shall be defrayed in the first instance by the Minister, but the following persons shall, to the extent mentioned, be liable to repay the Minister—

(a) any person who is convicted on a prosecution instituted as a result of the investigation or who is ordered to pay damages or restore any property in proceedings brought by virtue of subsection (3) of section one hundred and sixty-two may, in the same proceedings, be ordered to pay the said expenses to such extent as may be specified in the order;

(b) any body corporate in whose name proceedings are brought as aforesaid shall be liable to the amount or value of any sums of property recoverable by it as a result of those proceedings;

(c) unless as a result of the investigation a prosecution is instituted—

(i) any body corporate dealt with by the report, where the inspector was appointed otherwise than of the Minister's own motion, shall be liable, except so far as the Minister may otherwise direct; and

(ii) the applicants for the investigation, where the inspector was appointed under section one hundred and fifty-seven, shall be liable to such extent, if any, as the Minister may direct;

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

(2) The report of an inspector appointed otherwise than of the Minister's own motion may, if he thinks fit, and shall, if the Minister so directs, include a recommendation as to the directions, if any, which he thinks appropriate, in the light of his investigation, to be given under paragraph (c) of subsection (1).

(3) For the purpose of this section, any costs or expenses incurred by the Minister in or in connection with proceedings brought by virtue of subsection (3) of section one hundred and sixty-two, including expenses incurred by virtue of subsection (4) thereof, shall be treated as expenses of the investigation giving rise to the proceedings.

(4) Any liability to repay the Minister imposed by paragraphs (a) and (b) of subsection (1) shall, subject to satisfaction of the Minister's right to repayment, be a liability also to indemnify all persons against liability under paragraph (c) thereof, and any such liability imposed by the said paragraph (a) shall, subject as aforesaid, be a liability also to indemnify all persons against liability under the said paragraph (b); and any person liable under the said paragraph (a) or (b) or either subparagraph of the said paragraph (c) shall be entitled to contribution from any other person liable under the same paragraph or subparagraph, as the case may be, according to the amount of their respective liabilities thereunder.

(5) The expenses to be defrayed by the Minister under this section shall, so far as not recovered thereunder, be paid out of moneys appropriated for the purpose by Act of Parliament.

164 Appointment and powers of inspectors to investigate ownership of company

(1) The Minister may, with or without an application by members of the company, appoint one or more inspectors to investigate and report on the membership of any company and otherwise with respect to the company for the purpose of determining the true persons who are or have been financially interested in the success or failure of the company or able to control or materially to influence the policy of the company and may determine the limits, conditions and methods of such investigation.

(2) The expenses of any investigation under subsection (1) shall be defrayed by the Minister out of moneys appropriated for the purpose by Act of Parliament.

165 Power to require information as to persons interested in shares or debentures

(1) Where it appears to the Minister that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, he may require any person whom he has reasonable cause to believe—

(a) to be or to have been interested in those shares or debentures; or

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

to give him any information which he has or can reasonably be expected to obtain as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture if he has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.

(3) Any person who fails to give any information required of him under this section or who, in giving any such information, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

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

166 Power to impose restrictions on shares and debentures

(1) Where, in connection with an investigation under section one hundred and sixty-four or one hundred and sixty-five, it appears to the Minister that there is difficulty in finding out the relevant facts about any shares, whether issued or to be issued, and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Act, he may, by order, direct that the shares shall until further ordered be subject to the restrictions imposed by this section.

(2) So long as any shares are directed to be subject to the restrictions imposed by this section—

(a) any transfer of those shares or, in the case of unissued shares, any transfer of the right to be issued therewith and any issue thereof, shall be void;

(b) no voting rights shall be exercisable in respect of those shares,

(c) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof;

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

(3) Where the Minister makes an order directing that shares shall be subject to the said restrictions or refuses to make an order directing that shares shall cease to be subject thereto, any person aggrieved thereby may apply to the court and the court may, if it sees fit, direct that the shares shall cease to be subject to the said restrictions and may make such order as to costs as it deems fit.

(4) Any order, whether of the Minister or of the court, directing that shares shall cease to be subject to the said restrictions which is expressed to be made with a view to permitting a transfer of those shares may continue the restrictions mentioned in paragraphs (c) and (d) of subsection (2) either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

(5) Any person who—

(a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to the said restrictions or of any right to be issued with any such shares; or

(b) votes in respect of any such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or

(c) being the holder of any such shares, fails to notify of their being subject to the said restrictions any person whom he does not know to be aware of that fact but does know to be entitled, apart from the said restrictions, to vote in respect of those shares whether as holder or proxy;

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

(6) Where shares in any company are issued in contravention of the said restrictions the company shall be guilty of an offence and liable to a fine not exceeding level ten.

(7) This section shall apply in relation to debentures as it applies in relation to shares.

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

167 Saving for legal practitioners and bankers

Nothing in this Act shall require disclosure to the Minister or to an inspector appointed by him—

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

(b) by a company's bankers as such of any information as to the affairs of any of their customers other than the company.

168 Inspector's report to be evidence

A copy of any report of any inspector appointed under this Act shall be admissible in any legal proceeding as evidence of the opinion of the inspector in relation to any matter contained in the report.

Directors and Other Officers

169 Directors and secretary

(1) Every company shall have not less than two directors, other than alternate directors, at least one of whom shall be ordinarily resident in Zimbabwe.

(2) Every company shall have at least one secretary ordinarily resident in Zimbabwe.

(3) Every person signing the memorandum of a company shall, until other directors are appointed, be deemed to be a director of the company and be liable for all the duties and obligations of a director:

Provided that where a person signs the memorandum, whether as agent or otherwise, on behalf of some other person who is not qualified to be a director of the company, the first-mentioned person shall be deemed to be a director.

(4) Where subsection (1) or (2) are not complied with in relation to any company, each director of that company shall, unless he satisfies the court that he took all reasonable steps that were available to him to secure compliance with the relevant provisions, be guilty of an offence and liable to a fine not exceeding level three.

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

170 Validity of acts of directors

The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

171 Restrictions on appointment or advertisement of director

(1) This section shall not apply to—

(a) an association licensed under section twenty-six; or (b) a private company; or

(c) a company which was a private company before becoming a public company; or

(d) a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company was entitled to commence business.

(2) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in the list to be lodged in terms of subsection (4) or in any prospectus issued by or on behalf of the company, or in relation to an intended company or in any statement in lieu of prospectus lodged by or on behalf of the company, unless, before the lodging of the list or registration of the articles or the publication of the prospectus, or the lodging of the statement in lieu of prospectus, as the case may be, he has himself or by his agent authorized in writing—

(a) signed and lodged with the Registrar a consent in writing to act as such director; and

(b) either signed the memorandum of association for a number of shares not less than his qualification, if any, or signed and lodged with the Registrar a contract in writing to take from the company and pay for his qualification shares, if any.

(3) The share qualification mentioned in subsection (2) means a share qualification required on appointment to the office of director or within a period determined by reference to the time of appointment and the words "qualification shares" shall be construed accordingly.

(4) When application is made under section twenty-one for registration of the memorandum and of the articles, if any, of a company the applicant shall lodge with the Registrar a list, in the prescribed form, of the persons, if any, not being less than two, with their full names, addresses and occupations, who have consented to be directors of the company and, upon such registration, the persons who have so consented shall, until other directors are appointed, be deemed to be the directors of the company and liable for all the duties and obligations of a director.

(5) For the purposes of subsection (4), a person who, having consented to be a director, has before the lodging of the list with the Registrar withdrawn his consent by notice in writing lodged with the Registrar, shall be deemed to be a person who has not so consented.

172 Share qualifications of directors

(1) Without prejudice to the restrictions imposed by section one hundred and seventy-one, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification and who is not already qualified, to obtain his qualification within two months after his appointment or such shorter time as may be fixed by the articles.

(2) The office of director of a company shall be vacated if the director does not, within two months from the date of his appointment or within such shorter time as may be fixed by the articles, obtain his qualification or if, after the expiration of the said period or shorter time, he ceases at any time to hold his qualification.

(3) A person vacating office under this section shall be incapable of being reappointed director of the company until he has obtained his qualification.

(4) If, after the expiration of the said period or shorter time, any unqualified person acts as a director of the company he shall be guilty of an offence and liable to a fine not exceeding level seven or imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

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

173 Disqualification for appointment as director

(1) Any of the following persons shall be disqualified from being appointed a director of a company— (a) a body corporate;

(b) a minor or any other person under legal disability:

[Paragraph as amended by section 32 of Act No. 14 of 2004]

(c) except with the leave of the court, any person who has at any time been adjudged or otherwise declared insolvent or bankrupt under a law in force in Zimbabwe or any other country, and has not been rehabilitated or discharged;

[Paragraph as substituted by section 32 of Act No. 14 of 2004]

(d) save with the leave of the court, any person who has at any time been convicted, whether in Zimbabwe or elsewhere, of theft, fraud, forgery or uttering a forged document or perjury and has been sentenced therefor to serve a term of imprisonment without the option of a fine or to a fine exceeding level five;

(e) any person who is the subject of any order under this Act disqualifying him as a director;

(f) save with the leave of the court, any person removed by a competent court from an office of trust on account of misconduct.

(2) A director of any company shall cease to hold office as such if—

(a) he has at any time been or is adjudged or otherwise declared insolvent or bankrupt under a law in force in Zimbabwe or any other country, whether before or after the date of commencement of the General Laws Amendment (No. 2) Act, 2002; or

(b) he is convicted, whether in Zimbabwe or elsewhere, of theft, fraud, forgery or uttering a forged document or perjury and has been sentenced therefor to serve a term of imprisonment without the option of a fine or to a fine exceeding level five; or

(c) he is removed by the court from any office of trust on account of misconduct.

[Subsection as amended by Act No. 14 of 2002]

(3) If any person who is disqualified under this section from being or continuing to be a director of any company directly or indirectly takes part in or is concerned in the management of any company he shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) Nothing in this section shall be deemed to prevent a company from applying under its regulations any further disqualification for the appointment of, or the retention of office by, a director.

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

173A Qualifications for appointment as secretary of public company

(1) The directors of every public company shall take reasonable steps to ensure that the company's secretary is a person who is qualified in terms of subsection (2) and has the requisite knowledge and experience to discharge the functions of secretary of the company.

(2) Subject to section one hundred and seventy-three B, a person shall be qualified to hold office as secretary of a public company if—

(a) immediately before the date of commencement of the General Laws Amendment (No. 2) Act, 2002, he held office as secretary or deputy or assistant secretary of the company; or

(b) for at least three of the five years immediately before his appointment as secretary, he held office as secretary of a public company; or

(c) he is registered or entitled to be registered as a chartered accountant under the Chartered Accountants Act [Chapter 27:02]; or

(d) he is registered or entitled to be registered as a chartered secretary under the Chartered Secretaries (Private) Act [Chapter 27:03]; or

(e) he is registered or entitled to be registered as a legal practitioner under the Legal Practitioners Act [Chapter 27:07]; or

(f) he is registered or entitled to be registered as a public accountant or public auditor under the Public Accountants and Auditors Act [Chapter 27:12]; or

(g) he holds such other qualification as may be prescribed in regulations.

[Section inserted by section 32 of Act No. 14 of 2002]

173B Disqualification for appointment as secretary of any company

(1) The following persons shall be disqualified from being appointed as secretary of a company— (a) a minor or any other person under legal disability;

(b) except with the leave of the court, any person who has at any time been adjudged or otherwise declared insolvent or bankrupt under a law in force in Zimbabwe or any other country, and has not been rehabilitated or discharged;

(c) except with the leave of the court, any person who has at any time been convicted, whether in Zimbabwe or elsewhere, of theft, fraud, forgery or uttering a forged document or perjury and has been sentenced for that offence to imprisonment without the option of a fine or to a fine exceeding level five;

(d) except with the leave of the court, any person who has been removed by a competent court from an office of trust on account of misconduct.

(2) A secretary of a company shall cease to hold office as such if—

(a) he has at any time been or is adjudged or otherwise declared insolvent or bankrupt under a law in force in Zimbabwe or any other country, whether before or after the date of commencement of the General Laws Amendment (No. 2) Act, 2002; or

(b) he is convicted, whether in Zimbabwe or elsewhere, of theft, fraud, forgery or uttering a forged document or perjury and has been sentenced therefor to serve a term of imprisonment without the option of a fine or to a fine exceeding level five; or

(c) he is removed by a competent court from any office of trust on account of misconduct.

(3) If a person who is disqualified under this section from being or continuing to be a secretary of any company directly or indirectly takes part in or is concerned in the management of any company, he shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) Nothing in this section shall be deemed to prevent a company from applying under its regulations any further disqualification for the appointment of, or the retention of office by, a secretary.

[Section inserted by section 32 of Act No. 14 of 2002

174 Appointment of directors to be voted on individually

(1) At a general meeting of a company other than a private company a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution moved in contravention of subsection (1) shall be void, whether or not its being so moved was objected to at the time:

Provided that—

(i) this subsection shall not be taken as excluding the operation of section one hundred and seventy;

(ii) where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment shall apply.

(3) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

175 Removal of directors

(1) A company may, by resolution of which special notice has been given, remove a director before the expiration of his period of office notwithstanding anything in its articles or in any agreement between it and him:

Provided that this subsection shall not, in the case of a private company, authorize the removal of a director holding office for life on the 1st January, 1952, whether or not subject to retirement under an age limit by virtue of the articles or otherwise.

(2) Where the director concerned makes, with respect to the intended resolution, representations in writing to the company, not exceeding one thousand words, and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so—

(a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent;

and if a copy of the representations is not sent as aforesaid because it was received too late or because of the company's default, the director may, without prejudice to his right to be heard orally, require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any

other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

(3) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(4) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.

(5) Nothing in this section shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

176 Prohibition of tax-free payments to directors

(1) It shall not be lawful for a company to pay a director remuneration, whether as director or otherwise, free of any taxation in respect of income, or otherwise calculated by reference to or varying with the amount of such taxation or with the rate of taxation on incomes, except under a contract which was in force on the 1st January, 1952, and provides expressly, and not by reference to the articles, for payment of remuneration as aforesaid.

(2) Any provision contained in a company's articles or in any contract other than such a contract as aforesaid, or in any resolution of a company or a company's directors, for payment to a director of remuneration as aforesaid shall have effect as if it provided for payment, as a gross sum subject to taxation, of the net sum for which it actually provides.

177 Prohibition of loans to directors

(1) It shall not be lawful for a company to make a loan to any person who is its director or a director of its holding company or to enter into any guarantee or provide any security in connection with a loan made to such a person as aforesaid by any other person:

Provided that nothing in this section shall apply—

(a) subject to subsection (2), to anything done to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or

(b) in the case of a company whose ordinary business includes the lending of money or the giving of guar- antees 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 priv ate company, which is not a subsidiary company, with the consent of members holding at least nine-tenths of the issued share capital; or

(d) to the making of a loan to a director with a view to enabling him to purchase or subscribe for fully paid shares in the company to be held by him or in trust for him, if the loan is made in accordance with sec- tion seventy-three.

(2) Paragraph (a) of the proviso to subsection (1) shall not authorize the making of any loan or the entering into any guarantee or the provision of any security, except—

(a) with the prior approval of the company given at a general meeting at which the purposes of the expendi- ture and the amount of the loan or the extent of the guarantee or security, as the case may be, are di s- closed; 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 authoriz- ing the making of the loan or the entering into the guarantee or the provision of the security shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

(4) In the event of any default in complying with subsection (1) every officer of the company who is in de- fault shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

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

178 Approval of company requisite for payment by it to director for loss of office

It shall not be lawful for a company to make to any director of the company any payment by way of compen- sation for loss of office or as consideration for or in connection with his retirement from office, without full particulars with respect to the proposed payment, including the amount thereof, being disclosed to members of the company and the proposal being approved by the company in general meeting.

179 Approval of company requisite for payment in connection with transfer of its property to director for loss of office

(1) It shall not be lawful, in connection with the transfer of the whole or any part of the undertaking or property of a company, for any payment to be made by any person to any director of the company by way of compensation for loss of office or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal approved by the company in general meeting.

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

180 Duty of director to disclose payments for loss of office, made in connection with transfer of shares in company

(1) Where, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from—

- (a) an offer made to the general body of shareholders; or
- (b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company; or
- (c) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the company; or
- (d) any other offer which is conditional on acceptance to a given extent;

a payment is to be made to a director of the company by way of compensation for loss of office or as consideration for or in connection with his retirement from office, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(2) If—

- (a) any such director fails to take reasonable steps as aforesaid; or
- (b) any person who has been properly required by any such director to include the said particulars in or send them with any such notice as aforesaid fails so to do;

such director or such person, as the case may be, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(3) If—

(a) the requirements of subsection (1) are not complied with in relation to any such payment as is therein mentioned; or

(b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of the said shares;

any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

(4) Where the shareholders referred to in paragraph (b) of subsection (3) are not all the members of the company and no provision is made by the articles for summoning or regulating such a meeting as is mentioned in that paragraph, this Act and of the company's articles relating to general meetings of the company shall, for that purpose, apply to the meeting either without modification or with such modifications as the Minister on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

(5) If at a meeting summoned for the purpose of approving any payment as required by paragraph (b) of subsection (3) a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall be deemed for the purposes of that subsection to have been approved.

181 Provisions supplementary to sections 178, 179 and 180

(1) Where in proceedings for the recovery of any payment as having, by virtue of subsections (1) and (2) of section one hundred and seventy-nine or subsections (1) and (3) of section one hundred and eighty, been received by any person in trust it is shown that—

(a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question or within one year before or two years after that agreement or the offer leading thereto; and

(b) the company or any person to whom the transfer was made was privy to that arrangement;

the payment shall be deemed, except in so far as the contrary is shown, to be one to which the subsections apply.

(2) If, in connection with any such transfer as is mentioned in section one hundred and seventy-nine or one hundred and eighty—

(a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares; or

(b) any valuable consideration is given to any such director; the excess or the money value of the consideration, as the case may be, shall, for the purposes of that section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(3) References in section one hundred and seventy-eight, one hundred and seventy-nine or one hundred and eighty to payments made to any director of a company by way of compensation for loss of office or as consideration for or in connection with his retirement from office do not include any bona fide payment by way of damages for breach of contract or by way of pension in respect of past services and for the purposes of this subsection the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in section one hundred and seventy-nine or one hundred and eighty shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are therein mentioned or with respect to any other like payments made or to be made to the directors of a company.

182 Register of directors' share holdings

(1) Every company, other than a private company, shall keep a register showing as respects each director of the company the number, description and amount of any shares in or debentures of the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company, which are held by or in trust for him or of which he has any right to become the holder, whether on payment or not:

Provided that the register need not include shares in any body corporate which is the wholly owned subsidiary of another body corporate.

(2) Where any shares or debentures fail to be or cease to be recorded in the said register in relation to any director by reason of a transaction entered into after the 1st April, 1952, and while he is a director, the register shall also show the date of, and price or other consideration for, the transaction:

Provided that where there is an interval between the agreement for any such transaction and the completion thereof, the date shall be that of the agreement.

(3) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him in the said register shall, if he so requires, be indicated in the register.

(4) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of or put upon inquiry as to, the rights of any person in relation to any shares or debentures.

(5) The said register shall, subject to this section, be kept at the company's registered office and shall be open to inspection during business hours, subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection, as follows—

(a) during the period beginning fourteen days before the date of the company's annual general meeting and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company; and

(b) during that or any other period it shall be open to the inspection of any person acting on behalf of the Minister.

In computing the fourteen days and the three days mentioned in this subsection any day which is a Saturday or Sunday or public holiday shall be disregarded.

(6) The Registrar may at any time require a copy of the said register or any part thereof.

(7) The said register shall be produced at the commencement of the company's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.

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

(9) If default is made in complying with subsection (5) or (7) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level three, and the court, including the court convicting, may by order compel an immediate inspection of the register.

(10) In this section—

(a) any person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director of the company; and

(b) a director of a company shall be deemed to hold, or to have an interest or right in or over, any shares or debentures if a body corporate other than the company holds them or has that interest or right in or over them, and—

(i) that body corporate or its directors are accustomed to act in accordance with his directions or instructions; or

(ii) he is entitled to exercise or control the exercise of one-third or more of the voting power at any general meeting of that body corporate.

(11) It shall be the duty of every director of a company and of every person deemed to be a director under paragraph (a) of subsection (10) to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section. Any such notice shall be in writing and if it is not given at a meeting of directors the person giving it shall take reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given. Any person who makes default in complying with this subsection shall be guilty of an

offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

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

183 Prohibition of allotment of shares to directors save on same terms as to all members, and restriction on sale of undertakings by directors

(1) Notwithstanding anything in the articles, the directors of a company shall not be empowered, without the approval of the company in general meeting—

(a) to issue or allot reserve shares or new shares to any director or his nominee save in so far as they are issued or allotted to him or to such nominee as a member on the same terms and conditions as have been simultaneously offered in respect of the said issue or allotment of shares to all the members of the company in proportion to their existing holdings;

(b) to dispose of the undertaking of the company or of the whole or the greater part of the assets of the company.

(2) No resolution of the company shall be effective as approving of the differential issue or allotment of shares to a director or of a disposal in terms of paragraph (b) of subsection (1) unless it authorizes, in terms, the specific transaction proposed by the directors.

184 Particulars in accounts of directors' salaries and pensions

(1) In any accounts of a company laid before it in general meeting or in a statement annexed thereto there shall, subject to and in accordance with this section, be shown so far as the information is contained in the company's books and papers or the company has the right to obtain it from the persons concerned—

- (a) the aggregate amount of the directors' emoluments; and
- (b) the aggregate amount of directors' or past directors' pensions; and
- (c) the aggregate amount of any compensation to directors or past directors in respect of loss of office. (2) The amount to be shown under paragraph (a) of subsection (1)—

(a) shall include any emoluments paid to or receivable by any person in respect of his services as director of the company or in respect of his services, while director of the company, as director of any subsidiary thereof or otherwise in connection with the management of the affairs of the company or any subsidiary thereof; and

(b) shall distinguish between emoluments in respect of services as director, whether of the company or its subsidiary, and other emoluments;

and for the purposes of this section the expression "emoluments", in relation to a director, includes fees and percentages, any sums paid by way of expenses allowance in so far as those sums are deemed under any law to be taxable income of the recipient, any contribution paid in respect of him under any pension scheme and the estimated money value of any other benefits received by him otherwise than in cash.

- (3) The amount to be shown under paragraph (b) of subsection (1)—

(a) shall not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions thereunder are substantially adequate for the maintenance of the scheme, but save as aforesaid shall include any pension paid or receivable in respect of any such services of a director or past director of the company as are mentioned in subsection (2), whether to or by him or, on his nomination or by virtue of dependence on or other connection with him, to or by any other person; and

(b) shall distinguish between pensions in respect of services as director, whether of the company or its subsidiary, and other pensions;

and for the purposes of this section the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment and the expression "pension scheme" means a scheme for the provision of pensions in respect of services as director or otherwise which is maintained in whole or in part by means of contributions, and the expression "contribution", in relation to a pension scheme, means any payment, including an insurance premium, paid for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions will or may become payable under the scheme, except that it does not include any payment in respect of two or more persons if the amount paid in respect of each of them is not ascertainable.

- (4) The amount to be shown under paragraph (c) of subsection (1)—

(a) shall include any sums paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while director of the company or on or in connection with his ceasing to be a director of the company, of any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary thereof; and

(b) shall distinguish between compensation in respect of the office of director, whether of the company or its subsidiary, and compensation in respect of other offices;

and for the purposes of this section references to compensation for loss of office shall include sums paid as consideration for or in connection with a person's retirement from office.

(5) The amounts to be shown under each paragraph of subsection (1)— (a) shall include all relevant sums paid by or receivable from—

- (i) the company; and
- (ii) the company's subsidiaries; and
- (iii) any other person;

except sums to be accounted for to the company or any of its subsidiaries or, by virtue of section one hundred and eighty, to past or present members of the company or any of its subsidiaries or any class of those members; and

(b) shall distinguish, in the case of the amount to be shown under paragraph (c) of subsection (1), between the sums respectively paid by or receivable from the company, the company's subsidiaries and persons other than the company and its subsidiaries.

(6) The amounts to be shown under this section for any financial year shall be the sums receivable in respect of that year, whenever paid, or, in the case of sums not receivable in respect of a period, the sums paid during that year so, however, that where—

(a) any sums are not shown in the accounts for the relevant financial year on the ground that the person receiving them is liable to account therefor as mentioned in paragraph (a) of subsection (5), but the liability is thereafter wholly or partly released or is not enforced within a period of two years; or

(b) any sums paid by way of expenses allowance are included in the recipient's taxable income after the end of the relevant financial year;

those sums shall, to the extent to which the liability is released or not enforced or they are included as aforesaid, as the case may be, be shown in the first accounts in which it is

practicable to show them or in a statement annexed thereto and shall be distinguished from the amounts to be shown therein apart from this provision.

(7) Where it is necessary so to do for the purpose of making any distinction required by this section in any amount to be shown thereunder, the directors may apportion any payments between the matters in respect of which they have been paid or are receivable in such manner as they think appropriate.

(8) If in the case of any accounts the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report thereon, so far as they are reasonably able to do so, a statement giving the required particulars.

(9) In this section any reference to a company's subsidiary—

(a) in relation to a person who is or was, while a director of the company, a director also, by virtue of the company's nomination, direct or indirect, of any other body corporate, shall, subject to paragraph (b), include that body corporate, whether or not it is or was in fact the company's subsidiary; and

(b) shall, for the purposes of subsections (2) and (3), be taken as referring to a subsidiary at the time the services were rendered and, for the purposes of subsection (4), be taken as referring to a subsidiary immediately before the loss of office as director of the company.

(10) It shall be the duty of every director of a company and of every person who has at any time during the preceding two years been a director to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section; and if he makes default in complying with such duty he shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment..

[Section as amended by Act No. 22 of 200 1]

185 Particulars in accounts of loans to officers

(1) Save in the case of private companies, the accounts which, in pursuance of this Act, are to be laid before every company in general meeting shall, subject to this section, contain particulars showing—

(a) the amount of any loans which during the period to which the accounts relate have been made by the company or by any subsidiary company or by any other person under a guarantee from or on a security provided by the company or such subsidiary to any director or other officer of the company, including any such loans which were repaid during the said period;

(b) the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof.

(2) With respect to loans subsection (1) shall not apply—

(a) in the case of a company or a subsidiary thereof the ordinary business of which includes the lending of money, to a loan made by the company or the subsidiary in the ordinary course of its business; or

(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 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 other officer of the company made before he became a director or officer, as it applies to a loan to a director or officer of the company.

(4) If in the case of any such accounts as aforesaid provisions of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(5) References in this section to a subsidiary shall be taken as referring to a subsidiary at the end of the company's financial year, whether or not a subsidiary at the date of the loan.

(6) It shall be the duty of every director and of every other officer of a company and of every person who had, at any time within the previous two years, been a director or officer to give notice to the company of any such matters relating to himself as may be necessary for the purposes of this section; and if he makes default in complying with such duty he shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

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

186 Disclosure by directors of interests in contracts

(1) Subject to this section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature and full extent of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract, the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering

into the contract is first taken into consideration or, if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(3) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made:

Provided that—

(i) there is stated in the said notice the nature and extent of the interest of the said director in such company or firm;

(ii) at the time the question of confirming or entering into any such contract is first taken into consideration, the extent of his interest in such company or firm is not greater than is stated in the notice;

(iii) no such general notice shall be of any effect unless either it is given at a meeting of the directors or the director giving the notice takes all reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given;

(iv) such a general notice shall not be effective beyond the date of the annual general meeting next after the date of the notice, but may from time to time be renewed.

(4) Any director who fails to comply with this section shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

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

187 Register of directors and secretaries

(a1) In this section— “identity document” means-

(i) a document issued to a person in terms of section 7(1) or (2) of the National Registration Act [Chapter 10:17] or a passport or drivers' licence issued by the Government of Zimbabwe; or

(ii) any passport, identity document or driver's licence issued by a foreign government.

[Subsection inserted by Act 5 of 2006]

(1) Every company shall keep at the office at which the register of members of the company is kept a register of its directors and secretaries.

(2) The said register shall contain with respect to each director his or her present first name and surname, any former first name and surname, an identification reference number appearing in his or her identity document, his or her full residential or business address and postal address, his or her nationality and particulars of any other directorships held by him or her:

Provided that it shall not be necessary for the register to contain particulars of directorships held by a director in companies of which the company is the wholly owned subsidiary or which are the wholly owned subsidiaries

either of the company or another company of which the company is the wholly owned subsidiary, and for the purposes of this proviso the expression "company" shall include any body corporate incorporated in Zimbabwe.

[Subsection substituted by Act 5 of 2006]

(3) The said register shall contain the following particulars with respect to the secretary, that is to say—

(a) in the case of an individual, his or her present first name and surname, any former first name and sur- name, an identification reference number appearing in his or her identity document and his or her full residential address or business and postal addresses; and

[Subparagraph substituted by Act 5 of 2006]

(b) in the case of a corporation, partnership or other association, its name and registered or principal office. (4

) The company shall, within the periods respectively mentioned in subsection (5), deliver to the Registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register and of the date of any such change:

Provided that, except when making its annual return in terms of section one hundred and twenty-three, it shall not be necessary for a company to deliver to the Registrar a notification of any change in the particulars of direc- torships held by any of its directors in any other company.

(5) The period within which the return or notification referred to in subsection (4) is to be delivered to the Registrar shall be one month after the incorporation of the company or the date on which the change is notified to the company, as the case may be.

(6) It shall be the duty of every director and secretary of a company to furnish the company with all particulars required for inclusion in the said register, including any addition to or alteration or other change in any such particulars, and any director or secretary who neglects or fails without reasonable excuse to furnish the company with any particulars so required within seven days after demand made by the company, or who furnishes the company with any particular which is incorrect in any respect, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

(7) The resignation of a director or a secretary shall not relieve him of his duties as director or secretary, as the case may be, under this Act or under the articles of the company unless the director or secretary, having notified the Registrar and the company of his resignation, had reasonable ground to believe that the company would comply with subsection (4).

(8) The register to be kept under this section shall, during business hours, subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection, be open to the inspection of any member of the company without charge, and of any other person on payment of twenty cents or such less sum as the company may prescribe for each inspection.

(9) The company shall, on application, furnish any person with a copy or extract from such register on payment of twenty-five cents or such less sum as the company may prescribe for every hundred words or part thereof of the required copy or extract or afford to such person adequate facilities for making such copy or extract.

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

(10) Subject to subsection (11), if default is made in complying with subsection (1), (2), (3) or (4) the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

(11) If any inspection under this section is refused the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level three and the court may, by order, compel an immediate inspection of the register subject to the payment of the proper sum.

(12) For the purposes of this section—

(a) a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company;

(b) in the case of a peer or person usually known by a title different from his surname the expression "sur- name" means that title;

(c) references to a former first name or surname do not include-

(i) in the case of a peer or a person usually known by a British title different from his or her sur- name, the name by which he or she was known previous to the adoption of or succession to the title; or

(ii) in the case of any person, a former first name or surname where the name or surname was changed or disused before the person bearing the name attained the age of eighteen years;

(iii) in the case of a married woman, the name or surname by which she was known previous to the marriage.

[Subparagraph substituted by Act 5 of 2006]

188 Particulars of directors in trade catalogues and circulars

(1) Every company shall, in all business letters on or in which the company's name appears and which are issued or sent by the company to any person, state in legible characters with respect to every director his present Christian names or the initials thereof and present surname.

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

(3) For the purposes of subsection (1)—

"business letter" includes any quotation or order form but does not include any invoice, statement, delivery note, packing note or similar document.

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

189 Directors may have regard to interests of employees

In the exercise of their functions, the directors of a company may have regard to the interests and welfare of the company's employees and the dependants of those employees, as well as the interests of the company's members.

Avoidance of Provisions in Articles or Contract Relieving Officers from Liability

190 Provisions as to liability of officers and auditors

Subject as hereinafter provided, any provisions, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any officer of the company or any person employed by the company as auditor from, or indemnifying him against, any liability which by law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void:

Provided that—

- (i) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force;
- (ii) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section three hundred and forty-nine in which relief is granted to him by the court.

Arrangements and Reconstruction

191 Power to compromise with creditors and members

(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the court may, on the application of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by duly authorized agent or proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or class of creditors or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) shall have no effect until a copy of the order certified by the registrar of the court, together with a copy of the deed of compromise or arrangement, as the case may be, has been delivered to the Registrar for registration and a copy of every

such order shall be annexed to every copy of the memorandum of the company issued after the order has been made.

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

(5) In this section the expression "company" means any company or foreign company liable to be wound up under this Act and the expression "arrangement" includes a reorganization of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

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

192 Information as to compromise with creditors and members

(1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section one hundred and ninety-one, there shall—

(a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and

(b) in every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain one copy each of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(4) Where a company makes default in complying with any requirement of this section every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment, and for the purpose of this subsection any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company:

Provided that a person shall not be liable under this subsection if that person shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

(5) It shall be the duty of any director of the company and of any trustee for debenture holders of the company to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section and any person who makes default in complying with this subsection shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

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

193 Provisions for facilitating reconstruction and amalgamation of companies

(1) Where an application is made to the court under section one hundred and ninety -one for the sanctioning of a compromise or arrangement proposed between a company and any such amalgamation of persons as are mentioned in that section and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies and that under the scheme the whole or any part of the undertaking, or the property of any company concerned in the scheme, in this section referred to as "a transferor company", is to be transferred to another company, in this section referred to as "the transferee company", the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters—

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(d) the dissolution, without winding up, of any transferor company;

(e) the provisions to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement;

(f) such incidental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company and, in the case of any property, if the order so directs, freed from any pledge or hypothecation which is, by virtue of the compromise or arrangement, to cease to have effect.

The transfer under this subsection of any immovable property or mining claims shall be made in accordance with any law governing the transfer thereof.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a copy thereof certified by the registrar of the court, together with a copy of the deed of compromise or

arrangement, as the case may be, to be delivered to the Registrar for registration within one month after the making of the order, and if default is made in complying with this subsection the company and every officer of the company who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

(4) In this section the expression "property" includes property, rights and powers of every description and the expression "liabilities" includes duties.

(5) Notwithstanding subsection (5) of section one hundred and ninety-one, the expression "company" in this section does not include any company other than a company within the meaning of this Act.

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

194 Power to acquire shares of members dissenting from scheme or contract approved by majority

(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company, in this section referred to as "the transferor company", to another company, whether a company within the meaning of this Act or not, in this section referred to as "the transferee company", has, within four months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary, the transferee company

may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting member that it desires to acquire his shares, and when such notice is given the transferee company shall, unless on an application made by the dissenting member within one month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving members are to be transferred to the transferee company:

Provided that where shares in the transferor company of the same class or classes as the shares whose transfer is involved are already held as aforesaid to a value greater than one-tenth of the aggregate of their value and that of the shares, other than those already held as aforesaid, whose transfer is involved, the foregoing provisions of this subsection shall not apply unless—

(a) the transferee company offers the same terms to all holders of the shares, other than those already held as aforesaid, whose transfer is involved or, where those shares include shares of different classes, of each class of them; and

(b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares, other than those already held as aforesaid, whose transfer is involved, are not less than three - fourths in number of the holders of those shares.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include nine-tenths in value of the shares in the first-mentioned company or of any class of those shares, then—

(a) the transferee company shall within one month from the date of the transfer, unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement, give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and

(b) any such holder may within three months from the giving of the notice to him require the transferee company to acquire the shares in question;

and where a member gives notice under paragraph (b) with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving members were transferred to it, or on such other terms as may be agreed or as the court on the application of either the transferee company or the member thinks fit to order.

(3) Where a notice has been given by the transferee company under subsection (1) and the court has not, on an application made by the dissenting member, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given or, if an application to the court by the dissenting member is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the member by any person appointed by the transferee company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(4) Any sums received by the transferor company under this section shall be paid into a separate bank account and any such sums and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(5) In this section the expression “dissenting member” includes a member who has not assented to the scheme or contract and any member who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

Minorities

195 Meaning of “member” and “company” in sections 196 to 198

(1) In sections one hundred and ninety-six, one hundred and ninety-seven and one hundred and ninety-eight—

“member” includes a person who is not a member of the company but to whom shares in the company have been transferred or transmitted by operation of law .

(2) In sections one hundred and ninety-seven and one hundred and ninety-eight—
“company” includes a body corporate referred to in section one hundred and fifty-nine.

196 Order on application of member

(1) A member of a company may apply to the court for an order in terms of section one hundred and ninety-eight on the ground that the company’s affairs are being or have been conducted in a manner which is oppressive or unfairly prejudicial to the interests of some part of the members, including himself, or that any actual or proposed act or omission of the company, including an act or omission on its behalf, is or would be so oppressive or prejudicial.

197 Order on application of Minister

(1) If in the case of any company—

(a) the Minister has received a report under section one hundred and sixty-one; and

(b) it appears to him that the company's affairs are being or have been conducted in a manner which is oppressive or unfairly prejudicial to the interests of some part of the members, or that any actual or proposed act or omission of the company, including an act or omission on its behalf, is or would be so oppressive or prejudicial;

he may, in addition to or instead of applying under subsection (2) of section one hundred and sixty-two for the winding up of the company, apply to the court for an order in terms of section one hundred and ninety-eight.

198 Powers of court in applications under sections 196 and 197

(1) If the court is satisfied that an application under section one hundred and ninety-six or one hundred and ninety-seven is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2) Without prejudice to the generality of subsection (1), the court's order may— (a) regulate the conduct of the company's affairs in the future;

(b) require the company to refrain from doing or continuing an act complained of by the applicant or to do an act which the applicant has complained it has omitted to do;

(c) authorize civil proceedings to be brought in the name and on behalf of the company by such person or persons as the court may direct;

(d) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.

(3) If an order under this section prohibits a company from altering its memorandum or articles, the company shall not have power without leave of the court to make any such alteration.

(4) Any alteration in the company's memorandum or articles made by virtue of an order under this section shall be of the same effect as if duly made by resolution of the company.

(5) A copy of an order under this section altering or giving leave to alter a company's memorandum or articles, certified by the registrar of the court shall, within fourteen days from the making of the order or such longer period as the court may allow, be delivered by the company to the Registrar for registration.

(6) If a company makes default in complying with subsection (5), the company and every officer of it who is in default shall be guilty of an offence and liable to a default fine not exceeding level one.

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

PART V

WINDING UP AND JUDICIAL MANAGEMENT

199 Modes of winding up

Preliminary

(1) The winding up of a company may be either— (a) by the court; or
(b) voluntary.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company by either of those modes.

200 Jurisdiction of Master

(1) For the purposes of the winding up or judicial management of companies, the Master shall have the jurisdiction conferred on him by this Part.

(2) Where in terms of any provision of this Act any account, statement of affairs, notice, receipt, book or other document is required to be filed or lodged with, or submitted to, the Master or the Master's office, such account, statement of affairs, notice, receipt, book or other document shall be so filed or lodged with, or submitted to, the office of the Master in Harare or the office of the Assistant Master in Bulawayo:

Provided that the Master may direct in a particular case that such account, statement of affairs, notice, receipt, book or other document be so filed or lodged with, or submitted to, one or other of such offices.

Contributories

201 Liability as contributories of present and past members

In the event of a company being wound up, every present and past member shall, subject to this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up and for the adjustment of the rights of the contributories among themselves, subject to the following qualifications—

- (a) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;
- (b) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
- (c) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;
- (d) a past member shall not be liable to contribute unless at the commencement of the winding up there is unsatisfied debt or liability of the company contracted before he ceased to be a member;
- (e) a past member shall not be liable to contribute unless it appears to the court that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (f) a past member shall not be liable to contribute in respect of any debt or liability of the company other than a debt or liability contracted before he ceased to be a member and unsatisfied at the commencement of the winding up or in respect of the costs, charges and expenses of the winding up, except in so far as these have been occasioned by the necessity of recovering a contribution from him under this section;
- (g) a past member shall not be liable to contribute in respect of the adjustment of the rights of the contributories among themselves;
- (h) anything in this section to the contrary notwithstanding, no transfer of shares improperly issued as fully or partly paid up shall relieve the transferor of any liability which he would have had to contribute in respect of the amount improperly credited as paid on the shares had he

not transferred them; but in so far as the present member is liable to contribute in respect of the amount improperly credited, such liability shall be a joint and several liability of such transferor and the present member;

(i) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted or whereby the funds of the company are alone made liable in respect of the policy or contract;

(j) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories amongst themselves.

202 Definition of "contributory"

The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up and, for the purposes of all proceedings for determining and all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

203 Nature of liability of contributory

The liability of a contributory shall constitute a debt accruing from him at the time when his liability commenced but payable at the times when calls are made for enforcing the liability.

204 Contributories in case of death or insolvency

(1) If a contributory dies before or after he has been placed on the list of contributories then—

(a) his executors shall, as such, be placed on the list of contributories in his stead and be liable accordingly; or

(b) if his estate has passed into the hands of his heirs or legatees they shall be liable for his contribution to such extent and in such proportions as they would, by law, respectively be liable for debts of the estate payable but unprovided for at the time of distribution thereof and shall be placed on the list of contributories accordingly.

(2) If a contributory becomes insolvent or assigns his estate under the law relating to insolvent estates, either before or after he has been placed on the list of contributories, then—

(a) his trustee in insolvency or his assignee, as the case may be, shall represent him for all the purposes of the winding up and shall be a contributory accordingly; and

(b) there may be proved against the estate of the insolvent or of the debtor who has assigned his estate the estimated value of his liability to future calls, as well as calls already made.

Definition of Inability to Pay Debts

205 When company deemed unable to pay its debts

A company shall be deemed to be unable to pay its debts—

(a) if a creditor, by cession or otherwise, to whom the company is indebted in a sum exceeding one hundred dollars then due, has served on the company a demand requiring it to pay the sum so due by leaving the demand at its registered office and if the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or

(b) if the execution or other process issued, on a judgment, decree or order of any competent court in favour of a creditor, against the company is returned by the Sheriff or messenger with the endorsement that no assets could be found to satisfy the debt or that the assets found were insufficient to do so; or

(c) if it is proved to the satisfaction of the court that the company is unable to pay its debts and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

Winding Up by the Court

206 Circumstances in which company may be wound up by court

A company may be wound up by the court—

(a) if the company has by special resolution resolved that the company be wound up by the court; (b) if default is made in lodging the statutory report or in holding the statutory meeting;

(c) if the company does not commence its business within a year from its incorporation or suspends its business for a whole year;

(d) if the company ceases to have any members;

(e) if seventy-five per centum of the paid-up share capital of the company has been lost or has become useless for the business of the company;

(f) if the company is unable to pay its debts;

(g) if the court is of opinion that it is just and equitable that the company should be wound up.

207 Petition for winding up company

(1) An application to the court for the winding up of a company shall be by petition presented, subject to this section, by the company or by any creditor or creditors, including any contingent or prospective creditor or creditors, contributory or contributories or by all or any of those parties together or separately or, in a case falling within subsection (2) of section one hundred and sixty-two , by the Minister accompanied, save in the case of a petition by the Minister, by a certificate of the Master, Assistant Master or a magistrate that due security has been found for payment of all fees and charges necessary for the prosecution of all proceedings until the appointment of a liquidator:

Provided that—

(i) a contributory shall not be entitled to present a petition for winding up a company unless— (a) the number of members of the company is reduced below two; or

(b) the shares in respect of which he is a contributory, or some of them, were originally allotted to him or have been held by him and registered in his name for at least six months during the eighteen months before the commencement of the winding up or have devolved upon him through the death of a former holder;

(ii) a petition for winding up a company on the ground of default in lodging the statutory report or in holding the statutory meeting shall not be presented by any person except a member, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held;

(iii) the court shall not grant a petition for winding up a company by a contingent or prospective creditor until a prima facie case for winding up has been established to the satisfaction of the court.

(2) Where a company is being wound up voluntarily, a petition may be presented by the Master or by any other person authorized in that behalf under subsection (1) but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

208 Powers of court on hearing petitions

(1) On hearing the petition the court may dismiss it with or without costs or adjourn the hearing conditionally or unconditionally or make any interim order or any other order that it deems just, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.

(2) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it is of the opinion—

(a) that the petitioners are entitled to relief either by winding up the company or by some other means; or

(b) that in the absence of any other remedy it would be just and equitable that the company should be wound up;

shall make a winding-up order, unless it is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3) Where the petition is presented on the ground of default in delivering the statutory report to the Registrar or in holding the statutory meeting, the court may—

(a) instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held; and

(b) order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

209 Court may stay or restrain proceedings against company

At any time after the presentation of a petition for winding up and before a winding-up order has been made, the company or any creditor or contributory may—

(a) where any action or proceeding by or against the company is pending in any court of law in Zimbabwe, apply to such court for a stay of proceedings therein;

(b) where any other action or proceeding is being or about to be instituted against the company, apply to the court to which the petition for winding up has been presented for an order restraining further proceedings in the action or proceeding;

and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

210 Commencement of winding up by court

(1) Where, before the presentation of a petition for the winding up of a company by the court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution.

(2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

(3) Where the court adjourns the hearing of an application for the winding up of a company by the court, the applicant shall, unless the court orders to the contrary, advertise the application and the adjournment in the Ga- zette.

211 Court may adopt proceedings of voluntary winding up

Where a company is being wound up voluntarily and an order is made for its winding up by the court, the court may, if it thinks fit, by the same or any subsequent order, confirm all or any of the proceedings in the voluntary winding up.

212 Effect of winding-up order

Consequences of Winding-Up Order

An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if the petition had been presented by all creditors and contributories jointly.

213 Action stayed and avoidance of certain attachments, executions and dispositions and alteration of status

In a winding up by the court—

(a) no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose;

(b) any attachment or execution put in force against the assets of the company after the commencement of the winding up shall be void;

(c) every disposition of the property, including rights of action, of the company and every transfer of shares or alteration in the status of its members, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

214 Transmission of winding-up order to certain officers

(1) The registrar of the court shall forthwith transmit a copy of every provisional and final winding-up order and of every order amending or setting aside the same to the Registrar, Master and Sheriff and—

(a) in respect of any immovable property within Zimbabwe which appears to be an asset of the company, to the Registrar of Deeds; and

(b) in respect of any interest in minerals within Zimbabwe which appears to be an asset of the company, to the Secretary of the Ministry responsible for mines; and

(c) to the messenger of every magistrates court by the order whereof it appears that property of the company is under attachment:

Provided that when the assets of the company are under four hundred dollars in value, and the court so orders, the movable assets may remain in the custody of such person as the court may order upon such terms as to security as the court may direct and in that case it shall not be necessary to transmit a copy of any order to the Sheriff or any messenger.

(2) Upon receipt by the Registrar of Deeds of a winding-up order he shall enter a caveat against the transfer of any immovable property or the cancellation or cession of any bond registered in the name of or belonging to the company.

(3) Upon the receipt by the Secretary of the Ministry responsible for mines of a winding-up order he shall cause a caveat to be entered against the transfer of any interest whatsoever in minerals or the cancellation or cession of any bond registered in the name of or belonging to the company.

(4) Every such public officer concerned shall register every copy of an order transmitted to him and note thereon the day and hour when it is received.

(5) Upon receipt of a copy of any winding-up order the Master shall give notice thereof in the Gazette.

215 Statement of company's affairs to Master

(1) Where the court has made a winding-up order there shall be made and submitted to the Master a statement in duplicate as to the affairs of the company in the prescribed form, if any, showing, as at the date of the winding-up order or such other convenient date as the Master shall allow, the particulars of its assets, debts and liabilities, the names, addresses and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as the Master may require. The Master shall transmit the duplicate of such statement to the liquidator on his appointment.

(2) The statement shall be submitted and verified by affidavit by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary of the company or by such of the persons hereinafter in this subsection mentioned as the Master may require to submit and verify the statement, that is to say, persons—

(a) who are or have been officers of the company;

(b) who have taken part in the formation of the company at any time within one year before the relevant date;

(c) who are in the employment of the company or have been in the employment of the company within the said year and are in the opinion of the Master capable of giving the information required;

(d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the date of the order or within such extended time as the Master or the court may for special reasons allow.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed and shall be paid out of the assets of the company such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Master may consider reasonable.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section he shall be guilty of an offence and liable to a default fine not exceeding level two.

(6) Any person shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section and to a copy thereof or extract therefrom.

Where the court has made a winding-up order the Master may, if he thinks fit, make a report to the court, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any director or other officer of the company in relation to the

company or its creditors since the formation thereof and any other matters which in his opinion it is desirable to bring to the notice of the court.

Provisions Specially Applicable in Winding Up by Court

217 Application of sections

Sections two hundred and eighteen to two hundred and forty-one shall apply in relation to the winding up of a company by the court.

218 Custody of property and appointment of liquidator

(1) In conducting the proceedings in a winding up by the court the Master shall, subject to sections two hundred and nineteen and two hundred and seventy-four, appoint a liquidator or liquidators.

(2) On a winding-up order being made or thereafter when, for whatever cause, there is no person acting as liquidator of the company—

(a) all the property of the company shall be deemed to be in the custody or control of the Master until a liquidator or provisional liquidator is appointed and is capable of acting as such;

(b) subject to section two hundred and seventy-four, the Master may appoint any fit person or shall appoint any person whom the court has directed to be appointed as a provisional liquidator of the company to hold office until the appointment of a liquidator, and may, or shall, as so ordered by the court, restrict his powers by the terms of his letter of appointment.

(3) When a vacancy occurs in the office of liquidator the Master shall fill the vacancy by making an appointment under section two hundred and nineteen and two hundred and seventy-four.

(4) Where no name of any person has been submitted to the Master for appointment as liquidator as a result of the summoning of a meeting of creditors or contributories in terms of section two hundred and twenty-one the Master may—

(a) appoint any fit person as the liquidator of the company and may authorize such liquidator to exercise such of the powers set out in subsection (2) of section two hundred and twenty-one as the Master may think fit; or

(b) authorize the provisional liquidator of the company to sell the assets of the company and, after paying the costs of liquidation, to lodge any surplus in the Guardian's Fund.

219 Meetings of creditors and contributories

(1) When a final winding-up order has been made by the court, the Master shall summon separate meet- ings—

(a) of the creditors of the company for the proof of claims against the company and for the purpose of determining the person or persons whose names shall be submitted for appointment as liquidator or liq- uidators; and

(b) of the contributories of the company for the purpose of determining the person or persons whose names shall be submitted for appointment as liquidator or liquidators.

(2) Where in regard to the said appointment there is no difference between the determinations of the meet- ings of the creditors and contributories or where there is a determination of the meeting of the creditors only or of the meeting of the contributories only, the Master may make any appointment required to give effect to any such determination.

(3) Where there is a difference between the determinations of the meetings of the creditors and of the contri- butories, the Master shall call a joint meeting of the creditors and contributories with a view to reaching an agree- ment and, if no agreement is reached, the Master shall make such appointment as he may think fit. Any such appointment shall be subject to an appeal within fourteen days to a judge in chambers, made by the creditors or contributories or both. On any such appeal the judge may make such order thereon and as to costs as he may think fit.

(4) Meetings of creditors and contributories shall, unless otherwise in this Act specially provided, be co n- vened and held in the manner prescribed in the rules framed under section three hundred and fifty-nine.

(5) Where the provisional liquidator of a company has been authorized in terms of paragraph (b) of subsec- tion (4) of section two hundred and eighteen to sell the assets of the company any creditor of the company may, upon tendering to the provisional liquidator such sum as the Master may fix to cover the costs of calling a meeting of creditors and the fee of the provisional liquidator, request the provisional liquidator to summon a meeting of creditors for the purpose of proving his claim against the company and submitting the name of some person to the Master for appointment as liquidator of the company.

(6) Where a request has been made to him in terms of subsection (5) and the sum referred to in that subsec- tion has been tendered to him, the provisional liquidator shall summon a meeting of creditors which shall be deemed to be summoned in terms of paragraph (a) of subsection (1).

220 Proof of claim

(1) All claims against a company being wound up by the court shall be proved at a meeting of creditors called and held as nearly as possible in the manner provided by the law relating to insolvent estates for the proof of claims against an insolvent estate and subject to section two hundred and eighty-nine.

(2) The Master, on the application of the liquidator, may fix a time or times within which creditors of the company are to prove their claims or to be excluded from the benefit of any distribution under any account lodged with the Master before those debts are proved.

221 Powers of liquidator

(1) The liquidator in a winding up by the court shall have the following powers—

(a) to execute in the name and on behalf of the company all deeds, receipts and other documents and for that purpose to use the company's seal;

(b) to prove a claim in the estate of any contributory or debtor and receive payment in full or a dividend in respect thereof;

(c) to draw , accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, but so as not, except with the leave of the court or the authority mentioned in subsection

(4) or for the purpose of carrying on the business of the company in terms of paragraph (e) of subsection (2), to impose any additional liability upon the company.

(2) The liquidator shall have power, with the leave of the court or with the authority mentioned in subsection

(4) or in paragraph (a) of subsection (4) of section two hundred and eighteen—

(a) to bring or defend in the name and on behalf of the company any action or other legal proceeding of a civil nature and, subject to any law relating to criminal procedure, any criminal proceeding:

Provided that immediately upon the appointment of a liquidator or a provisional liquidator the Master may authorize upon such terms as he thinks fit legal proceedings for the recovery of any out-standing accounts, the collection of which appears to him to be urgent;

(b) to agree to any offer of composition made to the company by any debtor or contributory and take any reasonable part of the debt in discharge of the whole or give reasonable time, regard being had to section two hundred and seventy-nine;

(c) to compromise or admit any claim or demand against the company, including an unliquidated claim;

(d) to submit to the determination of arbitrators any dispute concerning the company or any claim or demand by or upon the company;

(e) to carry on or discontinue any part of the business of the company in so far as may be necessary for the beneficial winding up thereof:

Provided that if necessary the liquidator may carry on or discontinue the same before he has obtained the leave of the court or the authority aforesaid, but it shall not then be competent for him as between himself and the creditors or contributories to charge the winding up with the cost of any goods purchased by him unless the same have been necessary for the immediate purpose of carrying on the business and there are funds available for payment of the same after providing for the cost of winding up or unless the court otherwise orders;

(f) in the case of a company unable to pay its debts, to elect to adopt or to abandon any contract entered into by the company before the commencement of the winding up to buy or receive in exchange any immovable property, transfer of which has not been effected in favour of the company:

Provided that—

(i) if the liquidator does not make his election within six weeks after being required in writing to do so, the person entitled under the contract may apply by motion to the court for cancellation of the contract and delivery of possession of the immovable property and the court may make such order as it thinks fit;

(ii) nothing in this paragraph contained shall affect any concurrent claim against the company for damages for non-fulfilment of the contract;

(g) to terminate any lease entered into by the company as lessee by notice in writing to the lessor, subject however to the following terms and conditions—

(i) nothing in this paragraph contained shall affect any claim by the lessor against the company for damages he may have sustained by reason of the non-performance of the terms of the lease;

(ii) if the liquidator does not, within three months of his appointment, notify the lessor that he is prepared to continue the lease on behalf of the company he shall be deemed to have terminated the lease at the end of such three months;

(iii) the rent due under any lease so terminated from the date of the commencement of the winding up to the termination of the lease by the liquidator shall be included in the costs of administration;

(iv) the fact that a lease has been terminated by the liquidator shall deprive him of any right to compensation for improvements made during the period of the lease;

(h) to sell, by public auction or otherwise, deliver or transfer the movable and immovable property of the company.

(3) He shall have power, with the leave of the court, to raise money on the security of the assets of the company or to do any other thing which the court may consider necessary for winding up the affairs of the company and distributing its assets.

(4) He may, with the authority of a resolution of creditors and contributories, duly passed at a joint meeting thereof, do any act or exercise any power for which he is not by this Act expressly required to obtain leave of the court.

222 Exercise of liquidator's powers

(1) The liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company, take into account any directions that may be given by resolution of the creditors or resolution of the contributories at any general meeting.

(2) In regard to any matter which has been submitted by the liquidator for the directions of creditors and contributories in general meeting, but as to which no directions have been given or as to which there is a difference between the directions of creditors and contributories, the liquidator may apply to the court for directions and the court shall decide the matter and may make such order therein as it shall think fit.

(3) Any person aggrieved by any act or decision of the liquidator may apply to the court after notice of motion to the liquidator and therein the court may make such order as it thinks

223 Control by Master over liquidator

(1) The Master shall take cognizance of the conduct of liquidators of companies which are being wound up by the court and if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by law or otherwise with respect to the performance of his duties, or if any complaint is made to the Master by any creditor or contributory in regard thereto, the Master shall inquire into the matter and take such action thereon as he may think expedient.

(2) The Master may at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding up in which such liquidator is engaged and may, if he thinks fit, examine such liquidator or any other person on oath concerning the winding up.

(3) The Master may also direct an investigation to be made of the books and vouchers of the liquidator.

(4) Any expenses incurred by the Master in carrying out any provisions of this section shall be part of the costs of the winding up, but the court may order the liquidator to pay such expenses to the company de bonis propriis.

224 Banking account

(1) Immediately after his appointment the liquidator of a company which is being wound up by the court shall open an account, in the name of the company in liquidation, with a bank within Zimbabwe and shall deposit therein to the credit of the company from time to time all moneys received by him on its behalf. All cheques or orders which may be drawn upon the account shall contain the name of the payee and the cause of payment and shall be drawn to order and signed by the liquidator or by his agent.

(2) Immediately after opening the account the liquidator shall give the Master written particulars of the bank and the branch of the bank with which the account has been opened and he shall not, without the written permission of the Master, transfer the account from that branch.

(3) The Master and any surety for the liquidator or any person authorized by such surety shall have the same right to information in regard to the account as the liquidator himself possesses and may examine all vouchers in relation thereto whether in the hands of the bank or of the liquidator.

(4) The Master may, after notice to the liquidator, direct the manager of the said branch of the bank in writing to pay into the Guardian's Fund all moneys standing to the credit of the account at the time of the receipt, by the said manager, of that direction and all moneys which may thereafter be paid into the account and the said manager shall carry out such direction.

(5) If any liquidator, without lawful excuse, retains any sum of money belonging to the company exceeding forty dollars or knowingly permits his co-liquidator to retain such a sum of money longer than the earliest day after its receipt on which it was reasonable for him or his co-liquidator to pay the money into the bank or uses or knowingly permits his co-liquidator to use any assets of the company except for the benefit thereof he shall, in addition to any other penalty to which he may be liable, be liable to pay to the company an amount not exceeding double the sum so retained or double the sum of the assets so used.

The amount which the liquidator is so liable to pay may be recovered by action in any competent court at the instance of his co-liquidator, the Master or any creditor or contributory.

225 Release of liquidator

(1) When the liquidator of a company which is being wound up by the court has realized all the assets of the company and has distributed a final dividend, if any, to the creditors and adjusted the rights of the contributories

among themselves and made a final return, if any, to the contributories, he may apply to the Master for his release and upon such liquidator giving, by advertisement in the Gazette, not less than three weeks' prior notice of his application, the Master shall take into consideration any objection to the release of the liquidator lodged by any creditor, contributory or other person interested and upon consideration of the objections, if any, the Master may either grant or withhold the release.

(2) The release of the liquidator by the Master shall discharge the liquidator from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such release may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(3) Where the liquidator has not previously resigned or been removed his release shall operate as a removal of him from his office.

226 Remuneration of liquidator

(1) In a winding up by the court every liquidator shall be entitled to a reasonable remuneration for his services, to be taxed by the Master according to the table of fees mentioned in the Seventh Schedule:

Provided that—

- (i) the Master may for good cause reduce or increase his remuneration;
- (ii) the Master may disallow his remuneration either wholly or in part on account of any failure or delay in the discharge of his duties.

(2) No person who employs or is a fellow employee of or is in the ordinary employment of the liquidator shall be entitled to receive any remuneration out of the assets of the company for services rendered in the winding up, and no liquidator shall be entitled, either by himself or by his partner, to receive out of the assets of the company any remuneration for his services except the remuneration to which under this Act he is entitled.

General Powers of Court in Case of Winding Up by Court

227 Court may stay or set aside winding up

The court may at any time after the making of an order for winding up, on the application of the liquidator or of any creditor or contributory and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed or set aside, make an order staying or setting aside the proceedings on such terms and conditions as the court deems fit.

228 Settlement of list of contributories

(1) As soon as may be after making a winding-up order, the court shall settle a list of contributories with power to rectify the register of members in all cases where such rectification is required in pursuance of this Act:

Provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories directly and persons who are contributories as being representatives of or liable for the debts of others.

229 Requiring delivery of property

The court may, at any time after making a winding-up order, require any contributor y for the time being settled on the list of contributories and any trustee, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any money, property or books and papers in his hands to which the company is prima facie entitled.

230 Ordering payment of debt by contributory

(1) The court may, at any time after making a winding-up order, make an order on any contributory settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any moneys payable by him or the estate by virtue of any call in pursuance of this Act.

(2) When all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

231 Making calls and ordering payment

(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories settled on the list of the contributories to

the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

232 Ordering payment into bank

(1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into a bank, to be named by the court, to the account of the liquidator instead of to the liquidator and such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into a bank as aforesaid in the event of a winding up by the court shall be subject in all respects to the orders of the court.

233 Order on contributory conclusive evidence

(1) An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in such order shall be taken prima facie as truly stated as against all persons and in all proceedings whatsoever.

234 Court to adjust rights of contributories

The court shall adjust the rights of the contributories among themselves and apportion any surplus among the persons entitled thereto.

235 Inspection of books by creditors and contributories

(1) The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

(2) Nothing in subsection (1) shall be taken to exclude or restrict any statutory rights of a department of the State or of a person acting under the authority of a department of the State.

236 Dissolution of company

(1) When the affairs of a company have been completely wound up, the court shall, upon the application of the Master, make an order that the company be dissolved from the date of the order and the company shall be dissolved accordingly.

(2) A copy of the order shall forthwith be transmitted by the registrar of the court—

(a) to the Registrar who shall forthwith enter in his register a note of the dissolution of the company and shall publish notice thereof in the Gazette; and

(b) to the Master.

(3) An application made by the Master under subsection (1) may be by way of a report submitted to the court through the registrar thereof.

(4) Notwithstanding any dissolution in terms of this section, in the event of any property thereafter becoming available which would have accrued to the company if not dissolved the Master shall give instructions for the realization thereof and for the distribution of the proceeds, less the cost of realization and distribution, to such persons as would have been entitled thereto in the winding up; and the same shall apply to any moneys becoming so available.

237 Summoning persons suspected of having property of company

(1) The court may, after it has made a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(2) The court may examine him on oath, either orally or by written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company; but where he claims any lien on books or papers produced by him, the production shall be without prejudice to such lien and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, fails to come before the court at the time appointed without reasonable excuse, made known to the court at the time of its sitting and allowed by it, the court may cause him to be apprehended and brought before the court for examination.

238 Ordering public examination of promoters and directors

(1) When an order has been made for winding up a company by the court and the Master has made a report under this Act, showing that in his opinion a fraud has been committed by

any person in the promotion or formation of the company or by a director or officer of the company in relation to the company or any creditor thereof since its formation, the court may direct that any person who has taken part in the promotion or formation of the company or has been a director or officer of the company shall attend before the court on a day appointed by the court for that purpose and be publicly examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as director or officer thereof.

(2) The Master may take part in the examination and for that purpose may employ a legal practitioner.

(3) The liquidator and any creditor or contributory may also take part in the examination, either personally or represented by a legal practitioner.

(4) The person examined shall be examined on oath and shall answer all such questions as the court may put or allow to be put to him, notwithstanding that any answer may tend to incriminate him.

(5) A person ordered to be examined under this section shall, before his examination, be furnished at his request with a copy of the Master's report and may at his own cost employ a legal practitioner, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that if he is, in the opinion of the court, exculpated from any charges made or suggested against him the court may allow him such costs as in its discretion it may think fit.

(6) Notes of the examination shall be taken down in writing and shall be read over to or by and signed by the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

239 Arrest of absconding contributory

The court, at any time before or after making a winding-up order, on proof that there is reason to believe that a contributory is about to quit Zimbabwe or otherwise to abscond or to remove or conceal any property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and movable property to be seized, and him and them to be safely kept until such time as the court may order.

240 Powers to be cumulative

Any powers by this Act conferred on the court shall be deemed to be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor

of the company or the estate of any contributory or debtor for the recovery of any call or other sums.

Appeal from Orders

241 Appeal from any order

An appeal from any order or decision made or given for or in the winding up of a company by the court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court in cases within its ordinary jurisdiction.

Voluntary Winding Up of Company

242 Circumstances in which company may be wound up voluntarily

A company may be wound up voluntarily—

(a) when the period, if any, fixed for the duration of the company by the articles expires or the event, if any, occurs on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

(b) if the company resolves by special resolution that the company be wound up voluntarily.

243 Notice of resolution for voluntary winding up

(1) In this section—

“workers' committee” means a workers' committee appointed or elected in terms of Part VI of the Labour Relations Act [Chapter 28:01].

(2) A resolution for the voluntary winding up of a company shall not be deemed to have been passed unless the company has given not less than four weeks' notice of the resolution—

(a) to the Registrar of Labour Relations referred to in section 121 of the Labour Relations Act [Chapter 28:01]; and

(b) to the company's workers' committee or, where the company has no workers' committee, to the company's employees:

Provided that this subsection shall not apply in relation to a company all of whose employees are officers or members of the company.

(3) Where a company has passed a resolution for its voluntary winding up it shall—

(a) within two weeks after passing the resolution, give written notice of it to the Master and the Registrar; and

(b) within one month after passing the resolution—

(i) publish notice of it in the Gazette; and

(ii) where the company holds a registered interest in immovable property in Zimbabwe, give written notice of the resolution to the Registrar of Deeds; and

(iii) where the company holds a right to minerals which is registered in terms of the Mines and Minerals Act [Chapter 21:05], give written notice of the resolution to the officer responsible for registering the right in terms of that Act.

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

[Subsection amended by Act 22 of 2001]

(5) For the purposes of subsection (4), the liquidator of a company shall be deemed to be an officer of the company.

[Section as substituted by Act 22 of 1998]

244 Investigation into winding up of company

(1) In this section—

“investigator” means a person appointed to conduct an investigation in terms of subsection (2).

(2) If the Minister has reason to believe that—

(a) a resolution for the voluntary winding up of a company has been passed primarily for the purpose of avoiding any provision of the Labour Relations Act [Chapter 28:01] regarding the termination of employees' contracts of service or the payment of benefits to employees on the termination of their service; or

(b) the voluntary winding up of a company will deprive any of the company's employees unfairly of the benefits they would otherwise receive on the termination of their employment with the company;

the Minister may, within four weeks after the passing of the resolution for the company's voluntary winding up, appoint a person to—

(i) conduct an investigation into the affairs of the company; and

(ii) report to him in regard to the matters referred to in paragraphs (a) and (b); and

(iii) mediate in any dispute between the company and any of its employees regarding the termination of their employment; and

(iv) examine the possibility of a take over of the company by the company's employees and the possible financial arrangements to facilitate the take over.

(3) Section one hundred and sixty shall apply, mutatis mutandis, in relation to an investigation carried out by an investigator in terms of this section.

(4) An investigator shall report to the Minister his findings and, where appropriate, the result of his mediation in any dispute, within six weeks after his appointment.

(5) If, on receipt of an investigator's report, the Minister considers that—

(a) the resolution for the voluntary winding up of the company concerned was passed for a purpose referred to in paragraph (a) of subsection (2), he may, within two weeks after the report was submitted to him, refer it to the Registrar of Labour Relations referred to in section 121 of the Labour Relations Act [Chapter 28:01];

(b) any settlement which the investigator has negotiated between the company concerned and its employees, including a take over by the employees, should be made binding, he may, within two weeks after the report was submitted to him, direct the company to take all necessary steps, subject to this Act, to ensure that the settlement is implemented by the company's liquidator;

(c) any dispute between the company and its employees regarding the termination of their employment should be submitted to arbitration, he may, within two weeks after the report was submitted to him, refer the parties to the dispute to arbitration in terms of the Arbitration Act [Chapter 7:15];

and the company shall comply with any directions the Minister may give it in this regard.

[Section substituted by Act 22 of 1998]

244A Commencement of voluntary winding up

The voluntary winding up of a company shall be deemed to commence—

(a) four weeks after the resolution for the company's voluntary winding up was passed, unless the Minister has appointed a person to investigate the company's affairs in terms of section two hundred and forty-four;

(b) where the Minister has appointed a person to investigate the company's affairs in terms of section two hundred and forty-four—

- (i) eight weeks after the person's appointment, unless the Minister has referred parties to arbitration in terms of paragraph (c) of subsection (5) of section two hundred and forty-four; or
- (ii) upon the final conclusion of the arbitration, where the Minister has referred parties to arbitration in terms of paragraph (c) of subsection (5) of section two hundred and forty-four.

[Section inserted by Act 22 of 1998]

245 Effect of voluntary winding up on business and status of company

When a company is wound up voluntarily the company shall, from the commencement of the winding up, cease to carry on its business, except in so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything in its articles, continue until it is dissolved.

Provision and Effect of Security for Payment of Debts

246 Provision and effect of security

(1) If it is proposed to wind up a company voluntarily, the directors of the company may, prior to the date of the notices of the meeting at which the resolution for the winding up of the company is to be proposed, furnish security to the satisfaction of the Master for the payment of the debts of the company within a period not exceeding twelve months from the commencement of the winding up and may recover from the company any costs reasonably incurred by them in furnishing such security:

Provided that the Master may dispense with such security if—

(a) a majority of the directors of the company furnish him with a sworn statement supported by a certificate from the auditors of the company that the company has no liabilities; or

(b) each of the directors of the company furnishes him with a sworn statement that the company has no liabilities.

(2) A winding up in the case of which such security has been furnished or dispensed with in accordance with subsection (1) is in this Act referred to as a "members' voluntary winding up" and a winding up in the case of which security has neither been furnished nor dispensed with as aforesaid is in this Act referred to as "a creditors' voluntary winding up".

Provisions Specially Applicable to Members' Voluntary Winding Up

247 Application of sections

Sections two hundred and forty-eight to two hundred and fifty shall apply in relation to a members' voluntary winding up.

248 Appointment, powers and remuneration of liquidator

(1) The company in general meeting shall, subject to section two hundred and seventy-four, appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company and may fix the remuneration to be paid to him or them and if the company fails to fix the remuneration of the liquidator section two hundred and twenty-six shall apply.

(2) On the appointment of a liquidator in terms of subsection (1) all the powers of the directors shall cease except so far as the liquidator or the company in general meeting sanctions their continuance.

(3) The liquidator may, without the sanction of the court, exercise all the powers given by section two hundred and twenty-one in general meeting.

249 Power to fill vacancy in office of liquidator

(1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to section two hundred and forty-eight, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or by the continuing liquidator or liquidators, if any.

(3) The meeting shall be held in the manner prescribed by the articles or in such manner as may, on application by any contributory or by the continuing liquidator or liquidators, be determined by the court.

250 Liquidator may accept shares as consideration for sale of property of company

(1) Where a company is proposed to be or is being wound up voluntarily and the whole or part of its business or property is proposed to be transferred or sold to another company, whether registered under this Act or not, in this section called the transferee company, the liquidator of the first-mentioned company, in this section called the transferor company, may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement made in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company, who did not vote in favour of the special resolution, expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration under the Arbitration Act [Chapter 7:02].

(4) If the liquidator elects to purchase the member's interest, the purchase price shall be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order is made

within a year for winding up the company by the court, the special resolution shall not be valid unless sanctioned by the court.

Provisions Specially Applicable to Creditors' Voluntary Winding Up

251 Application of sections

Sections two hundred and fifty-two to two hundred and fifty-four shall apply in relation to a creditors' voluntary winding up.

252 Meeting of creditors and appointment of liquidator

(1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause not less than seven days' notice of the meeting of the creditors to be advertised once in the Gazette and once at least in a newspaper circulating in the district where the registered office or principal place of business of the company is situated.

(3) The directors of the company shall—

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid; and

(b) appoint one of their number to preside at the said meeting and it shall be his duty to do so.

(4) If the meeting of the company, at which the resolution for voluntary winding up is to be proposed, is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(5) If default is made—

(a) by the company in complying with subsection (1) or (2);

(b) by any director of the company in complying with subsection (3);

the company or director, as the case may be, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(6) The creditors and the company at their respective meetings mentioned in this section may nominate a person to be liquidator, subject to section two hundred and seventy-four, for the purpose of winding up the affairs and distributing the assets of the company and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, subject to the provisions of section two hundred and seventy-four as aforesaid, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator, subject to the provisions of section two hundred and seventy-four as aforesaid:

Provided that, in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors, and the court may thereupon make such order as it thinks fit.

(7) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the creditors in a creditors' voluntary winding up, the vacancy shall be filled in the same manner as is provided in subsection (6).

(8) Section two hundred and twenty-six shall apply to every liquidator appointed in a creditors' voluntary winding up.

253 Powers of liquidator

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

(1) All the powers of the directors shall cease except so far as the liquidator or the creditors of the company sanction their continuance.

(2) The liquidator may, without the sanction of the court and without requiring the authority of the contribu- tories, exercise all powers given by section two hundred and twenty-one to the liquidator in a winding up by the court, subject to such directions as may be given by the creditors.

254 Application of section 250

Section two hundred and fifty shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up with the modification that the powers of the liquidator under the said section shall not be exercised save with the consent of three-fourths in number and according to the value of their claims, of the creditors present or represented at a meeting called by the liquidator for that purpose and of which at least four- teen days' notice has been given, or with the sanction of the court.

Provisions Applicable to Both Modes of Voluntary Winding Up

255 Application of sections

Sections two hundred and fifty-six to two hundred and sixty-five shall apply in relation to both modes of vol- untary winding up.

256 Consequences of voluntary winding up

The following consequences shall ensue on the voluntary winding up of a company—

(a) the property of the company shall, subject to section two hundred and ninety-one and unless the articles otherwise provide, be distributed amongst the members according to their rights and interests in the company;

(b) the liquidator may exercise the powers of the court under this Act of settling a list of contributories and of making calls and shall adjust the rights of the contributories among themselves;

(c) the list of the contributories shall be prima facie evidence of the liability of the persons named therein to be contributories;

(d) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment or, in default of such determination, by any number not less than two;

(e) if from any cause whatever there is no liquidator acting, the Master may, on the application of a contributory or creditor, and subject to section two hundred and seventy-four, appoint a provisional liquidator.

257 Avoidance of transfers after commencement of winding up

In a voluntary winding up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.

258 Notice by liquidator of his appointment

Every person appointed liquidator, whether alone or jointly with any other person or persons, in a voluntary winding up shall, within seven days after his appointment, lodge with the Master a notice of his appointment in the prescribed form.

If he fails to comply with the requirements of this section he shall be guilty of an offence and liable to a default fine not exceeding level one.

259 Proof of claims

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

(1) In a voluntary winding up, all claims against the company shall be proved to the satisfaction of the liquidator, by affidavit, as nearly as may be in the form and containing the particulars prescribed by rules made under section three hundred and fifty-nine and, if the claim is rejected by the liquidator, the claimant may apply to the court by motion to set aside the rejection.

(2) The liquidator may, with the approval of the Master, fix a time or times within which creditors of the company are to prove their claims or to be excluded from any distribution under any account lodged with the Master before those claims are proved.

260 Arrangement, when binding on company and creditors

(1) Any arrangement entered into between a company about to be, or being, wound up voluntarily and its creditors shall, subject to any right of review under subsection (2), be binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by three-fourths in value of the creditors present or represented at a meeting duly called by the liquidator for that purpose.

(2) Any creditor or contributory may, within one month from the completion of the arrangement, bring it under review by the court and the court may thereupon, as it thinks fit, amend, set aside or confirm the arrangement.

261 Meetings of creditors and contributories

In a voluntary winding up, meetings of creditors and contributories shall, unless otherwise in this Act specially provided, be convened and held in the manner prescribed by rules made under section three hundred and fifty-nine.

262 Power to apply to court

(1) Where a company is being wound up voluntarily, the liquidator or any contributory or creditor of the company may apply to the court to determine any question arising in the winding up or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the court thinks fit or may make such other order on the application as the court thinks fit.

263 Duty of liquidator to call meetings of company and creditors

(1) Where a company is being wound up voluntarily, the liquidator may summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or for any other purposes he may think fit.

(2) In the event of the winding up continuing for more than six months, the liquidator shall summon a general meeting of the company and a meeting of creditors each to be held within one month after the expiration of the first six months from the commencement of the winding up and within one month after the expiration of each succeeding period of six

months and shall lay before the meetings an account of his acts and dealings and of the progress of the winding up during the preceding period of six months.

(3) If the liquidator fails to comply with subsection (2) he shall be guilty of an offence and liable to a default fine not exceeding level one.

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

264 Notice to Registrar of confirmation of final account

(1) Immediately after the confirmation of the final account the Master shall give notice thereof in writing to the Registrar, who shall forthwith register it, and on the expiration of three months from the registration of the notice the company shall be deemed to be dissolved, but without prejudice to the duties of the liquidator or the powers of the Master under sections two hundred and eighty-four and two hundred and eighty-five:

Provided that—

(i) the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit;

(ii) notwithstanding any dissolution as aforesaid, in the event of any property thereafter becoming available the Master shall give instructions for the realization thereof and the distribution of the proceeds, less the cost of realization and distribution, to such persons as would have been entitled thereto in the winding up; and the same shall apply to any moneys becoming so available.

(2) The Registrar shall from time to time cause to be published in the Gazette notice of the names of the companies which are deemed in terms of subsection (1) to be dissolved.

265 Savings of rights of creditors and contributories

The voluntary winding up of a company shall not bar the right of any creditor or contributory at any time before its dissolution to have it wound up by the court, but, in the case of an application by a contributory, the court shall be satisfied that the rights of the contributory will be prejudiced by a voluntary winding up.

Provisions Applicable to Every Mode of Winding Up Company Unable to Pay its Debts

266 Application of sections

Sections two hundred and sixty-seven to two hundred and seventy shall apply in relation to a company being wound up and unable to pay its debts.

267 Summoning directors and others to attend meetings of creditors

(1) In every winding up of a company unable to pay its debts, all the directors of the company, including, if the Master so directs, any person who has been a director within a period of six months preceding the date on which the winding up commenced, shall, if required so to do by the Master in writing, attend the first and second meetings of creditors and every adjourned first and second such meetings.

The directors shall also attend any subsequent meeting of creditors if required to do so by written notice from the liquidator.

(2) The Master or other officer in the Public Service who is to preside or presides at any meeting of creditors may summon any person who is known or, on reasonable grounds, believed to be in possession of any property which belongs or belonged to the company or to be indebted to the company or any person who, in the opinion of the Master or such other officer, may be able to give any material information concerning the company or its affairs, whether before or after the commencement of the winding up, to appear at such meeting or adjourned meeting for the purpose of being interrogated under section two hundred and sixty-eight.

(3) The Master or such other officer may also summon any person who is known or, upon reasonable grounds, believed to have in his possession or custody or under his control any book or document containing any such information as is mentioned in subsection (2) to produce that book or document or an extract therefrom at any such meeting of creditors.

(4) Any person summoned by the Master or other officer in terms of subsection (2) or (3) who fails without valid excuse—

(a) to attend any meeting to which he has been so summoned; or

(b) to produce any book or document or extract from any book or document in his possession or custody or under his control;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

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

268 Examination of directors and others at meeting of creditors

(1) At any meeting of creditors of a company wound up and unable to pay its debts, the Master or other officer in the Public Service presiding thereat may call and administer the oath to any director and any other person present at the meeting who was or might have been summoned in terms of subsection (2) of section two hundred and sixty-seven, and the Master, such other officer, the liquidator and any creditor who has proved a claim against the

company or the agent of any of them may interrogate a person so called and sworn concerning all matters relating to the company or its business or affairs, whether before or after the commencement of the winding up and concerning any property belonging to the company:

Provided that the presiding officer shall disallow any question which is irrelevant and may disallow any question which would prolong the interrogation unnecessarily.

(2) In connection with the production of any book or document in compliance with the summons issued under subsection (3) of section two hundred and sixty-seven, or at an interrogation of a person under subsection (1), the law relating to privilege as applicable to a witness summoned to produce a book or document or giving evidence in a court of law shall apply:

Provided that a banker at whose bank the company in question keeps or at any time kept an account shall be obliged to produce, if summoned to do so under subsection (3) of section two hundred and sixty-seven, any cheque, promissory note or bill of exchange in his possession which was drawn or accepted by the company within one year before the commencement of the winding up, or if any cheque, promissory note or bill of exchange so drawn is not available, then any record of the payment, date of payment and amount of that cheque, promissory note or bill of exchange which may be available to him or a copy of such a record and, if called upon to do so, to give any other information available to him in connection with such cheque, promissory note or bill of exchange or the account of the company.

(3) The presiding officer shall reduce to writing or cause to be reduced to writing the statement of any person giving evidence under this section.

(4) Any evidence given under this section shall be admissible in any proceedings instituted against the person who gave evidence.

(5) Any person called upon to give evidence under this section may be represented at his interrogation by an accountant or by a legal practitioner.

(6) Any person summoned to attend a meeting of creditors for the purpose of being interrogated under this section, other than the directors or other officers of the company, shall be entitled to such witness fees, to be paid out of the funds of the company, as he would be entitled to if he were a witness in any civil proceedings in a magistrates court.

(7) If any director or other officer of the company is called upon to attend any meeting of creditors he shall, if the Master so approves and subject to a right of appeal to the court, be entitled to an allowance out of the funds of the company to defray his necessary expenses in connection with such attendance.

(8) Any person interrogated under this section who refuses, on any ground other than that the answer may tend to incriminate him, to answer any question, save any question which the

presiding officer may see fit to disallow, put to him shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

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

269 Voidable and undue preferences

(1) Every disposition of its property which, if made by an individual, could for any reason be set aside in the event of his insolvency may, if made by a company, be set aside in the event of the company being wound up and unable to pay its debts and the law relating to insolvent estates shall apply, mutatis mutandis, to any such disposition.

(2) For the purposes of subsection (1), the event which shall be deemed to correspond with the sequestration order in the case of an individual shall be—

(a) in the case of a winding up by the court, the presentation of the petition, unless that winding up has superseded a voluntary winding up, when it shall be the passing of the resolution to wind up the company;

(b) in the case of a voluntary winding up, the passing of the resolution to wind up the company.

(3) Any cession or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

270 Application of certain provisions of the law relating to insolvent estates

In the case of every winding up of a company unable to pay its debts—

(a) the law relating to insolvent estates shall, in so far as they are applicable, apply, mutatis mutandis, with respect to any matter not specially provided for in this Act;

(b) a secured creditor and the liquidator shall have the same right respectively to take over such creditor's security as a secured creditor and a trustee would have under the law relating to insolvent estates;

(c) the cession of a book debt shall only be valid against a liquidator in the same circumstances in which it would, in terms of the provisions of the law relating to insolvent estates, be valid against a trustee.

Provisions Applicable to Every Mode of Winding Up

271 Application of sections

Sections two hundred and seventy-two to two hundred and ninety-eight shall apply in relation to every company being wound up by whatever mode.

272 Persons disqualified for appointment as liquidator

(1) No person shall be elected or appointed a liquidator of a company that is being wound up unless he is registered in terms of the Estate Administrators Act [Chapter 27:20]:

Provided that an unregistered person may be appointed a provisional liquidator by the court in terms of section two hundred and eight.

(1a) The following persons shall be disqualified from being elected or appointed a liquidator of a company that is being wound up—

- (a) a person who does not reside in Zimbabwe;
- (b) a person declared under subsection (2) of section two hundred and seventy-three to be incapacitated for appointment as liquidator while such incapacity lasts;
- (c) a person who is the subject of an order under this Act disqualifying him as a director of any company; (d) a person who has, by reason of misconduct, been removed by the court from an office of trust;
- (e) a person who, in order to exercise any influence upon his election as liquidator of the company, has—
 - (i) procured or allowed the wrongful insertion or omission of the name of any person in or from any list or schedule required by this Act; or
 - (ii) procured or allowed the wrongful or inaccurate statement of the claim of any creditor or contributory; or
 - (iii) directly or indirectly given or agreed to give any person any consideration; or
 - (iv) offered or agreed with any person to abstain from investigating any transactions of or relating to the company or of any of its officers; or
 - (v) split any claim, or allowed the splitting of any claim, in such a manner as to increase the number or value of votes of the person whose claim has been so split;
- (f) a person who at any time during the twelve months immediately preceding the date of sequestration acted as the bookkeeper, accountant or auditor of the company.

[Subsection substituted by section 70 of Act No. 16 of 1998]

(2) Any person who, in order to obtain or in return for the vote of any creditor or contributory or in order to exercise any influence upon his election as a liquidator of a company, does any

of the acts mentioned in subpara- graph (i), (ii), (iii), (iv) or (v) of paragraph (e) of subsection (1a) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 70 of Act No. 16 of 1998]

(3) Any person who procures or tries to procure the appointment as liquidator of any person, knowing that such person is disqualified for such appointment under the terms of subsection (1), shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

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

273 Power of court to declare person disqualified from being liquidator or to remove liquidator

(1) The court, on the application of the Master or person having an interest in the winding up—

(a) may declare that any person proposed or appointed as liquidator is disqualified under section two hundred and seventy-two from holding the office and, if he has been appointed, may remove him therefrom;

(b) may remove any liquidator from his office upon any of the following grounds—

(i) absence from Zimbabwe, ill-health or any other factor tending to interfere with the performance of his duties as liquidator;

(ii) that he has accepted or offered or agreed to accept or has solicited from any auctioneer, agent or other person employed on behalf of the company any share of the commission or remuneration or of any other benefit whatever accruing to such auctioneer, agent or other person;

(iii) misconduct, including any failure to satisfy a lawful demand of the Master or of a commissioner appointed by the court;

(iv) failure to perform any of the duties imposed on him by this Act;

(v) any other good cause.

(2) The court may, in respect of any person removed by it—

(a) under paragraph (a) of subsection (1) as a person disqualified for reasons set out in paragraph (e) of subsection (1a) of section two hundred and seventy-two; or

[Paragraph as amended by section 70 of Act No. 16 of 1998]

(b) under subparagraph (ii), (iii) or (iv) of paragraph (b) of subsection (1);

declare such person to be incapable of being appointed a liquidator under this Act during his lifetime or any other period.

(3) The Master shall give notice in the Gazette of the removal of any liquidator from his office in terms of this section.

274 Liquidator to give security

(1) In every winding up of a company each liquidator, including a co-liquidator or a provisional liquidator, shall furnish security to the satisfaction of the Master for the due performance of his duties as such. Until he has furnished the Master with such security he shall not be capable of acting as liquidator, co-liquidator or provisional liquidator, as the case may be; and if the security is not furnished within a time to be fixed by the Master he shall be deemed to have resigned his office:

Provided that no security will be required in the case of a member's voluntary winding up if the company so resolves.

(2) The cost of giving the aforesaid security, provided it is furnished, in the prescribed form, if any, by a fidelity company or an association approved by the Master, shall be a cost in the winding up.

(3) When a liquidator has, in the course of winding up a company, accounted to the Master to his satisfaction for any property belonging to the company, the Master may consent to a reduction of the security mentioned in subsection (1) if he is satisfied that the reduced security will suffice to indemnify the company, its creditors and contributors against any maladministration by the liquidator of the remaining property belonging to the company.

275 Co-liquidator

(1) The Master may, whenever he considers it desirable, appoint a co-liquidator to act jointly with any other liquidator.

(2) When two or more liquidators have been appointed they shall act jointly in performing their functions as liquidators and each of them shall be jointly and severally liable for every act performed by them jointly.

276 Title and acts of liquidators

(1) A liquidator shall be described by the style of the liquidator of the particular company in respect of which he is appointed and not by his individual name.

(2) The liquidator shall proceed forthwith to recover and reduce into possession all the assets and property of the company, movable and immovable.

(3) Every liquidator shall give the Master such information and such access to and facilities for inspecting the books and documents of the company and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

(4) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

277 General meetings to hear liquidator's report

The liquidator shall, as soon as practicable, and, unless with the consent of the Master, not later than three months after the date of his appointment, submit to general meetings of creditors and contributories a report—

(a) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities; and

(b) if the company has failed, as to the causes of the failure; and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of its business; and

(d) whether the company has kept the books and accounts required by section one hundred and forty and, if not, in what respect such requirement has not been complied with; and

(e) as to the progress and prospects of the liquidation; and

(f) as to any other matter which he may think fit or in regard to which he may desire the directions of the creditors or the contributories.

278 Books to be kept by liquidator and inspection thereof

(1) From the beginning of his appointment and during the whole period of his office the liquidator shall punctually keep proper books and records of all transactions of the liquidation.

(2) The Master may at any time in writing order the liquidator to produce the said books or records for inspection.

(3) Any creditor or contributory may, at all reasonable times, personally or by his agent, but subject to the control of the Master, inspect such books or records.

Liquidators' Accounts

279 Liquidator to lodge with Master accounts in winding up

(1) Every liquidator shall, unless he receives an extension of time as hereinafter provided, frame and lay before the Master, not later than six months after his appointment, an account of his receipts and payments and a plan of distribution or, if there is a liability among creditors to contribute towards the cost in the winding up, a plan of contribution apportioning their liability. If the account is not the final account, the liquidator shall from time to time, and as the Master may direct, but at least once in every six months, unless he receives an extension of time, frame and lay before the Master a further account and plan of distribution.

(2) The account shall be in the prescribed form, shall be made in duplicate, shall be fully supported by vouchers, including the liquidator's bank statement or a certified extract from his bank account and shall be verified by an affidavit in the prescribed form.

(3) Where the office of the Master and the registered office of the company are not situated in the same district the liquidator shall forward a duplicate of the account—

(a) to the Assistant Master in cases where the registered office of the company is situated in the Bulawayo district; and

(b) in other cases to the district administrator of the district in which the registered office of the company is situated.

280 Application to court to compel liquidator to lodge account

(1) The Master, at any time when he considers that the liquidator has funds in hand that ought to be distributed, and the Master or any person interested in the company when a full and true account has not been lodged within the periods prescribed for the lodging of such an account, may apply to the court for an order compelling the liquidator to lodge his account:

Provided that—

(i) the Master or that other person shall, not later than fourteen days before making the application, require the defaulting liquidator by notice in writing to lodge his account in accordance with this Act;

(ii) any liquidator receiving such notice shall lay before the Master in writing his reasons for not having lodged his account and the grounds upon which he claims an extension of time within which to do so, and thereupon the Master may grant to the liquidator such extension of time as in the circumstances he may think necessary;

(iii) if the prescribed period for lodging an account has expired, or if it will expire within the time for which an extension is sought, the Master shall not grant an extension unless the liquidator has previously given, by advertisement in the Gazette, not less than fourteen days' notice of his intention to apply for an extension;

(iv) any liquidator who fails to satisfy the Master that he ought to receive an extension of time may, after notice to the Master and to the person referred to in proviso (i), apply by motion to the court for an order granting to him an extension of time within which to lodge his account.

(2) Upon an application by the Master under subsection (1) the court, although it may be of opinion that the reasons laid before the Master by the liquidator were such as would have justified the Master in granting an extension of time to lodge an account, shall order the liquidator to pay the costs of the Master if, before making his application, the Master allowed the liquidator sufficient time for an application to the court for an extension of the period for lodging his account.

281 Inspection of accounts

(1) Every liquidator's account shall lie open for inspection by creditors, contributories or other persons interested for a period of not less than fourteen days in the following manner—

(a) if the office of the Master and the registered office of the company are situated in the same district, then at the office of the Master;

(b) if the registered office of the company is situated in the Bulawayo district, then at the offices of the Master and of the Assistant Master;

(c) in all other cases, at the office of the Master and at the office of the district administrator of the district in which the registered office of the company is situated.

(2) The liquidator shall give due notice thereof, by advertisement in the Gazette, and shall state in that notice the period during which and the place or places at which the account will lie open for inspection and shall post or deliver a similar notice to every creditor who has proved a claim against the company.

(3) The Assistant Master or district administrator shall cause to be affixed in a public place in or about his office a list of all such accounts as have been lodged in his office and the respective dates on which they will be transmitted to the Master; and upon the expiry of the period of inspection so advertised he shall endorse on each

account his certificate that the account has been open in his office for inspection in terms of this section and shall transmit the account to the Master. No stamp duty shall be payable in respect of such certificate.

282 Objections to account by interested parties

(1) Any person interested in the winding up of the company may, at any time before the confirmation of an account, lay before the Master in writing any objection, with the reasons therefor, to the account.

(2) If the Master is of opinion that any such objection ought to be sustained he shall direct the liquidator to amend the account or may give such other directions as he may think fit.

(3) Notwithstanding that an objection to the account has not been lodged, if the Master is of opinion that any improper charge has been made against the assets or that the account is in any respect incorrect, he may direct the liquidator to amend the account or may give such other directions as he may think fit.

(4) The liquidator or any person aggrieved by any such direction of the Master under this section or by the refusal of the Master to sustain an objection lodged thereunder, may apply by motion to the court within fourteen days after the date of the Master's direction, after notice to the liquidator, for an order to set aside the Master's decision, and the court may confirm the account or make such other order as it thinks fit.

(5) When any such direction affects the interests of a person who has not lodged an objection with the Master, the account so amended shall again lie open for inspection in the manner and with the notice hereinbefore prescribed, unless the person affected as aforesaid consents in writing to the immediate confirmation of the account.

283 Confirmation of account

When an account has been open to inspection as hereinbefore prescribed and— (a) no objection has been lodged; or

(b) an objection has been lodged and the account has been amended in accordance with the direction of the Master and has again been open for inspection, if necessary, as in subsection (5) of section two hundred and eighty-two prescribed, and no application has been made to the court within the prescribed time to set aside the Master's decision; or

(c) an objection has been lodged but withdrawn or not sustained and the objector has not applied to the court within the time prescribed in section two hundred and eighty-two;

the Master shall confirm the account and his confirmation shall have the effect of a final sentence, save as against such persons as may be permitted by the court to re-open the account before any dividend has been paid thereunder.

284 Distribution of estate

(1) Immediately after the confirmation of any account the liquidator shall proceed to distribute the assets in accordance therewith or to collect from the creditors liable to contribute thereunder the amounts for which they may be liable respectively.

(2) The liquidator shall give notice of the confirmation of the account in the Gazette, stating that a dividend is in course of payment or that a contribution is in course of collection and that every creditor liable to contribute is required to pay to the liquidator the amount for which he is so liable, and the address at which the payment of the contribution is to be made, as the case may be.

285 Liquidator to lodge receipts for dividends or pay dividends to Guardian's Fund

(1) The liquidator shall without delay lodge with the Master the receipts for dividends.

(2) If any dividend remains unpaid for a period of three months after the confirmation of the account, the liquidator shall immediately pay it into the Guardian's Fund for account of the creditor or contributory.

(3) If the liquidator, at the expiry of the said period of three months, has failed to furnish the Master with a proper receipt for any dividend which has not been paid as aforesaid, his failure shall be prima facie evidence that such dividend has been received and has not lawfully been disposed of by him and the Master may institute proceedings against the liquidator to answer for his default. The court may order the liquidator to pay such dividend and, in addition, by way of penalty, such sum, not exceeding the amount of the dividend which has been unduly detained, as it may think fit, and such penalty shall be paid into the Consolidated Revenue Fund.

(4) If a liquidator delays payment of any dividend any creditor or contributory entitled thereto may, after notice to the liquidator, apply to the court for an order compelling the liquidator to pay that dividend.

Leave of Absence or Resignation of Liquidator

286 Leave of absence or resignation of liquidator

(1) At the request of any liquidator the Master may permit him to absent himself from Zimbabwe or may relieve him of his office, in either case upon such conditions as the Master may think fit to impose and subject to his giving such notice to absent himself from Zimbabwe or to resign as the Master may direct.

(2) Every liquidator who is permitted to absent himself from Zimbabwe or who is relieved of his office by the Master shall give notice thereof in the Gazette.

287 Power of company to provide for employees on cessation or transfer of business

(1) Subject to subsection (2), a company shall have power to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries, or for the dependants of any such persons, in the event of the cessation of or transfer of the whole or part of the business of the company or the subsidiary, as the case may be.

(2) The power conferred by subsection (1) shall not be exercised except in accordance with a special resolution of the company.

288 Power of liquidator to make over assets to employees

(1) Where prior to its winding up, whether by the court or voluntarily, a company has in terms of section two hundred and eighty-seven resolved to exercise the power conferred by that section, the liquidator of the company may, after the commencement of the winding up and subject to this section, give effect to that resolution.

(2) A payment made by a liquidator in terms of subsection (1)—

(a) shall be made only after the liabilities of the company have been fully satisfied and provision has been made for the costs of the winding up;

(b) may, subject to paragraph (a), be made out of assets which are available to the members on the winding up.

(3) In the case of a winding up by the court, the exercise of powers by a liquidator in terms of this section shall be subject to the control of the court, and any creditor or contributory may apply to the court in connection with the exercise or proposed exercise of the power.

Miscellaneous Provisions in Winding Up

289 Voting at meetings of creditors and contributories

(1) In every winding up of a company every creditor shall be entitled to vote at any meeting of creditors of the company as soon as his claim has been proved:

Provided that—

(i) he may not vote in respect of a claim that is dependent up on the fulfilment of a condition until he proves that the condition has been fulfilled or, on an application by the creditor to the court, the court otherwise orders;

(ii) he may not vote in respect of any claim acquired by him by cession or purchase from any person after— (a) the passing of the resolution to wind up the company in the case of a voluntary winding up or of

a voluntary winding up that is superseded by a winding up by the court; or

(b) the filing of the petition for winding up the company in the case of any other winding up by the court.

(2) The vote of a creditor shall be reckoned according to the value of his claim.

(3) Any creditor holding any security, other than a general notarial bond, shall put a value on his security when proving his claim and, except in the election of a liquidator and upon any question affecting his security, his vote shall be reckoned according to the value of the balance, if any, of his claim remaining after deduction therefrom of the said value of his security.

(4) At every meeting of contributories in the winding up of a company the votes of each contributory shall be those to which he is entitled according to the articles of the company in force at the commencement of the winding up.

290 Books of company to be evidence

Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be prima facie evidence of the truth of all matters therein recorded.

291 Application of assets, and costs of winding up

(1) In every winding up of a company the assets shall be applied in payment of the costs, charges and expenses incurred in the winding up and of the claims of creditors as nearly as possible as they would be applied in payment of the costs of sequestration and the claims of creditors under the law relating to insolvent estates, and the provisions of the said law relating to contributions by creditors shall apply.

(2) All costs and charges incurred and all advances made by the Master on account of the company shall, subject to the order of the court, be costs in the winding up.

292 Payment of money deposited with Master

Any person claiming to be entitled to any money paid to the Master by a liquidator under this Act may apply to the Master for payment of the same, and the Master may, on a certificate by the liquidator or on other sufficient evidence that the person claiming is entitled thereto, pay to that person the sum due.

293 Disposal of books and papers of company

When any company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators shall, unless the court otherwise directs, be delivered to the Master. Such books and papers shall not be destroyed for a period of five years from the date of dissolution of the company.

Miscellaneous Powers of the Court

294 Meetings to ascertain wishes of creditors and contributories

(1) The court may, as to all matters relating to a winding up, take into account the proved wishes of the creditors or contributories.

(2) The court may, if it thinks fit, for the purpose of ascertaining those wishes, order meetings of the creditors and contributories to be called, held and conducted in such manner as it directs and may appoint a person to act as chairman of any such meeting and to report the result thereof to it.

295 Power of court to declare dissolution of company void

When a company has been dissolved the court may, at any time within two years of the date of the dissolution, on an application by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

296 Review by court

(1) Any person aggrieved by any decision, ruling, order, appointment or taxation of the Master under this Act may bring the same under review by the court and to that end may apply to the court by motion, after due notice has been given to the Master and to any person whose interests are affected:

Provided that where the general body of creditors or contributors is affected notice to the liquidator shall be notice to them.

(2) Any person aggrieved by any decision, ruling or order of the officer presiding at any meeting of creditors or contributories may bring the same under review by the court in the same manner, *mutatis mutandis*, as is prescribed in subsection (1).

(3) Nothing in this section shall authorize the court to re-open any duly confirmed account or plan of distribution or of contribution otherwise than as is provided in section two hundred and eighty-three.

297 Special commissioners for taking evidence

(1) All magistrates and such other persons as the court may appoint shall be commissioners for the purpose of taking evidence or holding any inquiry under this Act in cases where a company is wound up in any part of Zimbabwe and the court may refer the whole or any part of the examination of any witnesses or of any inquiry under this Act to any person hereby

appointed commissioner, although he is out of the jurisdiction of the court. The Master, the liquidator and any creditor or contributory may be represented at such inquiry by an attorney with or without counsel.

(2) Every commissioner within Zimbabwe shall, in addition to any powers which he might lawfully exercise as magistrate, have in the matter so referred to him the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaulting or recalcitrant witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.

(3) The examination so taken shall be returned or reported to the court in such manner as the court directs.

298 Orders to be sent to Master and Registrar

Whenever under this Act any order is made by the court in connection with the winding up, judicial management or dissolution of a company, a copy of such order certified by the registrar of the court shall be transmitted by him to the Master and the Registrar.

Judicial Management Instead of Winding Up

299 Circumstances in which provisional judicial management order may be obtained

(1) Subject to section three hundred, the court may—

(a) on an application being made to it for such an order by any person who would be entitled to apply for the winding up of the company, grant a provisional judicial management order; or

(b) on an application being made to it for the winding up of the company, grant instead a provisional judicial management order.

(2) Before an application referred to in paragraph (a) of subsection (1) is filed with the court, a copy of the application, including the supporting affidavits and other documents, shall be lodged with the Master who may report to the court on any circumstances which appear to him to justify the court in postponing or dismissing the application, and in such event the Master shall transmit a copy of his report to the applicant.

300 Requirements for provisional judicial management order

The court may grant a provisional judicial management order in respect of a company—

(a) on an application referred to in paragraph (a) of subsection (1) of section two hundred and ninety-nine, if it appears to the court—

(i) that by reason of mismanagement or for any other cause the company is unable to pay its debts or is probably unable to pay its debts and has not become or is prevented from becoming a successful concern; and